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**DRAFT 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**

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## I. Introduction: Recent developments and the need for Guidelines on the implementation of the OPSC

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

1. The Convention on the Rights of the Child (CRC), adopted in 1989, and its Optional Protocol on the sale of children, child prostitution and child pornography (OPSC), adopted in 2000, represent the most comprehensive international legal instruments to promote and safeguard the rights of the child and to protect children from sale, sexual exploitation and sexual abuse. However, these treaties were adopted at a time when information and communications technologies (ICTs)<sup>1</sup>, and in particular the internet, were much less developed and widespread, and when sexual offences against children did not have the close linkage to the digital environment that it often presents today. While both the CRC and the OPSC are fully relevant and applicable also in the digital environment, their provisions require an interpretation adapted to today’s realities to ensure that concrete measures taken to implement them are easily adaptable and up to date with current and evolving practices.
2. The rapid development and spread of ICTs over the past few years 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 undertake sexual extortion of children. In addition, these technologies provide opportunities for offenders to connect and share information with one another, using encrypted networks on the dark web to remain anonymous. Recent reports show alarming trends with regard to sexual exploitation of children through the use of digital media, including an increased offending by individuals who have no sexual interest in children, but who use the opportunity to exploit the vulnerabilities of children for economic profit. In a world where internet access is expanding at unprecedented levels, including in areas torn by conflict and other humanitarian disasters where many children are in extremely vulnerable positions, the risks of children being sexually exploited or bought and sold as a commodity become ever greater.
3. Furthermore, in a globalised and increasingly mobile world, the 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 dark web.<sup>2</sup>
4. The gender dimension of sexual offences against children represents another important aspect for the implementation of the OPSC. While a majority of victims are girls, recent research has shown that a significant proportion of children depicted in online child sexual abuse material are boys. In addition, the research shows that when boys are depicted, the abuse is more likely to involve paraphilic themes.<sup>3</sup> This needs to be considered in the development of response mechanisms. Moreover, 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. There are still very few support structures for boys who are victims of sexual exploitation and sexual abuse.
5. Recent developments in technology have impacted the way that many sexual offences are committed against children and have given rise to new means and manifestations of sexual exploitation and abuse.

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

<sup>2</sup> ECPAT International, *Offenders on the move: Global Study on the Sexual Exploitation of Children in Travel and Tourism* (2016), available at: <http://www.globalstudysect.org/>

<sup>3</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>. Paraphilia refers to abnormal sexual desires, typically involving extreme or dangerous activities.

To reflect and describe these manifestations, new terms, such as “grooming”, “sexting”, “sexual extortion” and “child sexual abuse material”, have been coined.

6. At the same time, some of the terms used in international and regional instruments on the rights of the child, such as “child pornography” or “child prostitution” have come under increasing criticism from the child protection community and 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. Hence, the term “child pornography”, for instance, 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. The Committee supports this change to avoid trivialising the abuse suffered by children.

7. The Committee encourages States parties and other relevant stakeholders to use the “Terminology Guidelines on the Protection of Children from Sexual Exploitation and Sexual Abuse” (*Luxembourg Guidelines*)<sup>4</sup> to guide them with regard to the terminology to be used in the development of legislation and policies addressing the prevention and protection of sexual exploitation and sexual abuse of children.

### **Increasing body of recommendations from different international stakeholders**

8. The Committee has considered the significant impact that digital media and ICTs are having on children’s lives, including in Concluding Observations and in its General Comments No. 13 (freedom from all forms of violence), No. 14 (best interests), No. 16 (business sector) and No. 17 (right to rest, leisure and play). Furthermore, it devoted its twenty-first Day of General Discussion in 2014 to “Digital media and Children’s Rights” to better understand the impact of social media and ICTs on children’s rights as well as the importance of children’s rights in developing rights-based strategies to maximise the online opportunities for children while protecting them from risks and potential harm.<sup>5</sup> The UN Human Rights Council also held its 2016 annual day on the rights of the child on “information and communications technology and child sexual exploitation”,<sup>6</sup> and both the Special Representative of the Secretary-General on violence against children and the Special Rapporteur on the sale and sexual exploitation of children have recently looked specifically into these issues.<sup>7</sup> These Guidelines reflect some of the recommendations included in such resources.

9. In 2015, the Sustainable Development Goals (SDGs) were adopted through General Assembly Resolution 70/1.<sup>8</sup> Through these goals, States manifested their intention to invest in children and ensure a world where children can be free from violence. Goal 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 Goal 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”. And in Goal 16.2, the commitment was made to “end abuse, exploitation, trafficking and all forms of violence against and torture of children”. An effective implementation of the OPSC, which includes an adequate consideration of the abovementioned developments, can also contribute to reaching the SDGs.

10. The present Guidelines on the implementation of the OPSC (the Guidelines) are the result of a process of extensive consultations with relevant stakeholders, including international NGOs and UN

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<sup>4</sup> Interagency Working Group, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (2016), available at: [www.luxembourgguidelines.org](http://www.luxembourgguidelines.org)

<sup>5</sup> Report of the 2014 Day of General Discussion “Digital media and children’s rights”, 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)

<sup>6</sup> See OHCHR Report Annual Day on the Rights of the Child, “Information and communications technology and child sexual exploitation”, A/HRC/31/34, (2016), and UN HRC resolution 31/7 on the rights of the child: information and communications technologies and child sexual exploitation, A/HRC/RES/31/7 (2016).

<sup>7</sup> See Annual Report of the Special Representative of the Secretary-General on Violence against Children, 30 December 2014, A/HRC/28/55, and Report of Special Rapporteur on the sale of children, child prostitution and child pornography, 22 December 2014, A/HRC/28/56.

<sup>8</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>

specialised agencies and bodies such as UNICEF, the OHCHR, the ILO, the ITU, the Special Rapporteur on the sale and sexual exploitation of children, and the Special Representative of the Secretary General on violence against children. The consultation process was facilitated and supported by ECPAT International.

## II. Objectives of the Guidelines

11. The main objective of these Guidelines is to foster a deeper understanding of the substantive provisions of the OPSC in light of developments in the digital environment as well as of the increased knowledge and experience developed with regard to the sale and sexual exploitation of children since its adoption to enable a better implementation of the OPSC by States parties.

12. The Committee recalls that each State party to the OPSC, irrespective of their national situation, has an obligation to report to the Committee on the implementation of the OPSC. These Guidelines also have the objective to support and strengthen initiatives and efforts undertaken by States parties to better fulfill their obligations under the OPSC, including in respect of reporting to the Committee as defined in the “Revised guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the OPSC” adopted in 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” adopted in 2014. The present Guidelines may be directly referred to by the Committee in its Concluding Observations.

13. The Committee views the OPSC as a living instrument which must be interpreted in the light of today’s reality and in accordance with how sexual offences against children are committed. These Guidelines therefore provide a dynamic interpretation of the OPSC provisions, aimed to enable their effective implementation and to ensure that it remains an instrument that enhances the protection of children from sale and sexual exploitation, whether facilitated by ICTs or not.

## III. General measures of implementation

14. The Committee emphasises that measures of implementation of the provisions in the OPSC should fully comply with the CRC and, in particular, with its general principles contained in articles 2, 3, 6 and 12, as well as the child’s right to privacy. It also requires that the child is informed of her/his rights in an age-appropriate manner, that the child has the right to express her/his views freely in all matters affecting her/him, and that such views are given due weight in accordance with the age and maturity of the child.

15. Hence, States parties should make efforts to include child participation in the drafting process of legislative and policy measures ensuring that the views of children – including girls, boys and children of other gender/sex identities, children with disabilities, and children in vulnerable or marginalised situations – are considered, 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. Moreover, measures to implement the OPSC provisions should include a gender perspective.<sup>9</sup>

### A. Legislation

16. The Committee underscores the pressing need to fight impunity for the offences covered by the OPSC. The legislative measures for the implementation of the OPSC should cover, explicitly, all acts mentioned in article 3, including attempts to commit these acts. Attention should be given to the prohibition of the sale of children for the purpose not only of sexual exploitation, but also for the purpose of transfer of organs, engagement in forced labour, and situations where adoption constitutes sale of children. Furthermore, legislative measures should include the liability of both natural and legal persons, and should establish extraterritorial jurisdiction over all offences covered by the OPSC (article 4), as

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<sup>9</sup> See for instance UNGA Resolution 69/194, 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).

well as provide precise conditions and rules for extradition (article 5) and for the seizure and confiscation of goods (article 7).

17. While legislation is essential to fighting impunity, it is also crucial to ensuring access to redress and securing the availability of child-sensitive, confidential and safe counselling, reporting and complaint mechanisms<sup>10</sup> to address incidents of sexual exploitation and sexual abuse and protect victims.

18. The Committee urges States parties to ensure that national legislation does not, in any way, criminalise child victims of sale, sexual exploitation and sexual abuse, including children who have been sold and/or trafficked across borders.

19. In addition, the Committee recommends that States parties establish legal frameworks which are as “technology neutral” as possible, to ensure that their applicability is not eroded by future technological developments and can, at the same time, take into account technological advancements to avoid loopholes associated with emerging concerns, including new forms of online sexual exploitation. In light of the evolving nature of the issue, States parties should also ensure a regular assessment of legislation and policies, and consider periodically reviewing their legislation to guarantee that the legal framework remains adapted to rapidly changing realities.

### **B. Data collection**

20. 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>11</sup>

21. The Committee urges States parties to develop and implement a comprehensive and systematic mechanism for data collection, analysis, monitoring and impact assessment, as well as for its dissemination, which includes all issues covered by the OPSC. Importantly, data collection should be coordinated between all relevant stakeholders, including a national statistical bureau, and data should be centralised 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. As a minimum, data should be disaggregated by sex, age, and form of exploitation. Where possible, the Committee encourages States parties to disaggregate data also by national and ethnic origin, geographic location, socioeconomic status, and disability;
- (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 ICTs;
- (c) Collect data on the number of cases reported (including to the police and any other existing reporting mechanisms), prosecutions, convictions and sanctions, as well as redress provided to victims, disaggregated by the nature of the offence, including with regard to online and offline activity, category of perpetrator, and abovementioned characteristics of victims;
- (d) Develop common indicators and a standardised data collection system in case data are collected at regional or local levels (e.g. municipalities) in the country;
- (e) All data should be collected with due respect for children’s right to privacy.

22. The Committee further underlines that collected data should be analysed and used as a basis for designing and evaluating policies and strategies to implement the OPSC.

### **C. Comprehensive policy and strategy**

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<sup>10</sup> See Special Representative of the Secretary-General on Violence against Children, “Legislation”: <https://violenceagainstchildren.un.org/content/legislation>

<sup>11</sup> Regarding data collection, the Committee draws the attention to: OHCHR, “A Human Rights-Based Approach to Data, available at: <https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>

23. States parties should develop a national comprehensive policy and strategy that explicitly includes all the issues covered by the OPSC in a holistic and multi-disciplinary manner. Such a policy and strategy could be a component of a broader National Plan of Action (NPA) for the implementation of the rights of the child or for the protection of children from violence, or a separate specific document.

24. With regard to the private sector, the Committee encourages States parties to pay increased attention to the role that financial institutions, banking and telecom operators, internet providers, the travel and tourism industry and non-governmental organisations can play in enhancing child protection policies and strategies, and to include these actors properly in the drafting and in the execution of such policies and strategies.

#### **D. Coordination, monitoring and evaluation**

25. States parties should designate a national mechanism charged with the coordination of all activities related to the implementation of the OPSC. This coordinating mechanism must have a clear mandate for implementing the OPSC specifically, and sufficient authority for taking the necessary measures and coordinating at cross-sectoral, national, regional and local levels, including to ensure a framework for the referral of cases and effective support to child victims. The mechanism, which should include cooperation with all relevant stakeholders, could be part of the mandate of a Ministry or a national body for the coordination of the implementation of children’s rights or, more specifically, for the eradication of child sexual exploitation.

26. States parties should regularly monitor and evaluate the implementation of the policy and strategy and use the outcome for adjusting the policy and strategy when necessary. Evaluations should be made public.

#### **E. Allocation of resources**

27. The Committee recommends that States parties ensure specific and clear budgetary allocations for the implementation of the OPSC as detailed in the present Guidelines, taking note as well of the guidance provided in the Committee’s General Comment No.19 (2016) on public budgeting for the realisation of children’s rights.

28. As an important part of their implementation measures, States parties should earmark all human, technical and financial resources allocated for policies, strategies and mechanisms designed to implement the provisions of the OPSC. 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 OPSC.

#### **F. Dissemination and awareness raising**

29. To promote and support the implementation of the OPSC, information about this legal instrument should be widely disseminated at national, regional and local level. In order to enhance the understanding of the purpose and provisions of the OPSC States parties should:

- (a) Develop and conduct long-term educational and awareness-raising programmes and campaigns on preventive measures and harmful effects of all offences covered by the OPSC;
- (b) Systematically disseminate information on the provisions of the OPSC among government officials at the national, regional and local levels, among all relevant professional groups such as education, health, social welfare, judicial and law-enforcement sectors and in the areas of sport, culture, leisure activities and travel and tourism, 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, child- and gender-sensitive information;
- (c) Ensure that all persons, especially those caring for children, have an adequate knowledge of the different forms of sexual exploitation and 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 is reasonable ground to believe that a child is a victim;

- (d) Ensure that issues relating to the provisions of the OPSC are included in school curricula at all levels of the educational system. In particular, children in primary and secondary school should receive appropriate materials created especially for children to learn about the risks of sexual exploitation and abuse as well as the means to protect themselves. Educational programmes should always include information on concrete practical ways for children to seek help and support, as well as to signal sexual abuse safely and confidentially. Information should be provided in collaboration with parents;
- (e) Take measures to target and reach also children who are outside of the formal school system, and who may be in situations making them more vulnerable to sale and sexual exploitation;
- (f) Encourage the media to provide appropriate information regarding all aspects of sexual exploitation of children, using appropriate terminology, while safeguarding the privacy and identity of child victims and child witnesses at all times.

### **G. Training**

30. The provision of education and continued training of all relevant professionals, as well as support to families and caregivers, should be an integral part of any national policy and strategy for the implementation of the OPSC. States parties should:

- (a) Ensure systematic and targeted training on the provisions of the OPSC and their implementation, including how to identify and address offences covered by the OPSC and foster child- and gender-sensitive approaches when dealing with child victims and survivors, to all relevant professionals and groups working with or for children;
- (b) Ensure that such training includes multidisciplinary programmes developed in consultation with relevant associations and professionals working with or representing child victims and survivors;
- (c) Strengthen cooperation and strategic partnerships with non-governmental organisations and use their expertise and advocacy materials to widen online literacy and safety among children and their families and promote responses to harm;
- (d) Conduct regular assessments of the 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 OPSC.

31. With regard to specific groups who require specialised training, States parties should:

- (a) Ensure that teachers and other professionals working with 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 these issues;
- (b) Train health care professionals, who are often the first to notice signs of sexual abuse, as well as 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 child sexual exploitation and abuse offences, including cases associated with the use of ICTs, as well as prosecutors and the judiciary, to deal with child victims in a child- and gender-sensitive manner and to handle digital evidence and assess its weight and value, as well as to better understand child sexual exploitation and abuse cases associated with new technologies.

## **IV. Prevention of the sale of children, child prostitution and child pornography**

### **General measures**

32. States parties of the OPSC have an obligation to adopt or strengthen, implement and disseminate laws, administrative measures and social policies and programmes to prevent the offences referred to in article 9.1 OPSC.

33. In preventing the sale and sexual exploitation of children, States parties should pay attention to root causes underlying these problems, such as harmful social norms, particularly with regard to complex notions related to masculinity and gender, which may contribute to perpetuating the problem, and which require specific awareness raising measures. An important aspect underlying these offences lies in the demand that exists, both among sex offenders and economic profiteers, of children for purposes of sexual exploitation and abuse.

34. The Committee recommends States parties to take all necessary measures, with due attention to the gender dimension, to identify, support and monitor children at risk of falling victims of the offences covered by the OPSC, especially children in vulnerable situations such as migrant and refugee children, children in street situations,<sup>12</sup> child domestic workers, LGBTI children, children in alternative care and children deprived of liberty, children from economically vulnerable families and children experiencing social exclusion or isolation, and to strengthen prevention programmes and the protection of potential victims. To that end, States parties should:

- a. Carry out studies to analyse and assess the nature, extent, root causes and consequences on children of the offences covered by the OPSC 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<sup>13</sup> and pay special attention to those practices which amount to the sale, sexual exploitation or sexual abuse of children, such as child, early and forced marriage.<sup>14</sup> The prevention of harmful practices requires a gender perspective, to ensure that different practices affecting boys and girls are adequately addressed.

35. As an important general measure in the prevention of sale and sexual exploitation and abuse of children, States parties should require screening of all persons applying for a work in which they would be in direct contact with children and, where they do not already exist, consider establishing registers of convicted sex offenders.

36. States parties should adopt measures to ensure that relevant actors from the private sector play a proactive role in the prevention and combating of offences covered by the OPSC.

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

37. The sexual exploitation of children in the context of travel and tourism (SECTT) is an issue of increasing concern. Research has shown that children are at risk of sexual exploitation and sexual abuse from travelling offenders that cross borders to carry out premeditated abuse, but they are equally at risk of falling victims to offenders travelling for business and tourism within their own countries, as well as to “opportunistic” offenders, which may not have planned to carry out a sexual offence during their travels.<sup>15</sup> Illegal adoption may also be carried out using the context of travel and tourism as a cover or pretext.

38. To prevent these offences, which take place in the specific context of travel and tourism, States parties should undertake at least the following measures:

- (a) Undertake awareness raising and advocacy actions with the travel and tourism industry to draw the attention to the harmful effects of SECTT, inter alia by widely disseminating and encouraging the signature of the World Tourism Organisation Global Code of Ethics for

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<sup>12</sup> General Comment No. 21 (2017).

<sup>13</sup> General Comment No 18 (2015). See also The Sustainable Development Goals (2016 – 2030) target 5.3. calling for the elimination of harmful practices by 2030.

<sup>14</sup> ECPAT International and PLAN International, “Unrecognised Sexual Abuse and Exploitation of Children in Child, Early, and Forced Marriage” (2015).

<sup>15</sup> See: “Offenders on the move: Global Study on the Sexual Exploitation of Children in Travel and Tourism” (2016).

Tourism, and by promoting the Code of conduct for the protection of children from sexual exploitation in travel and tourism.<sup>16</sup>

- (b) Strengthen collaboration with the travel and tourism industry and ensure that the industry takes responsibility through, for instance, adopting and enforcing explicit corporate policies for the prevention of SECTT.
- (c) The links of SECTT to the ICTs sector are also strong, and States parties should join hands with ICT companies that can take a lead on the development of technology-based solutions to combat SECTT, such as blocking payment for SECTT-related offences and new techniques to track payments to undermine the business model of SECTT offenders and their intermediaries.
- (d) The transnational character of these offences means that States must consider measures also to prevent convicted child sexual offenders from reoffending in other countries, for instance through cross-border exchange of information, travel restrictions, or similar measures.

### **Prevention of online sale and sexual exploitation**

39. Online sale, sexual exploitation and sexual abuse are phenomena on the rise and in serious need of special attention. States parties should integrate specific considerations for preventing and addressing online sale, sexual exploitation and sexual abuse of children in their national policies and strategies. National legal frameworks should also be assessed to ensure that they are adequately covering all manifestations of sale, sexual exploitation and sexual abuse, also when these are committed and/or facilitated through ICTs.

40. Online-specific analyses, research and monitoring should be carried out to better understand these offences, and responses to online sale, sexual exploitation and sexual abuse should be developed in close collaboration with relevant industries and organisations.

41. Public education programmes to increase awareness, knowledge and reporting of cases of sale, sexual exploitation and sexual abuse of children should include an online-specific dimension, and specialised training for police, lawyers, prosecution and judiciary professionals must include specific parts on online issues, but also on online tools to facilitate victim identification techniques and rescue operations.

42. While there is often a general expectation that adults, e.g. parents and teachers, supervise children to mitigate online risks, the Committee recalls that States parties also have obligations to protect children from sexual exploitation and sexual abuse. 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>17</sup> In particular, States parties should:

- a. Inform, support and engage parents, teachers and other caregivers, including through their digital empowerment and literacy, so that they can support, advise and protect children when they access and use ICTs and help them build 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 they may encounter, including privacy risks and risks of sharing self-generated content, and to use online reporting tools where necessary;
- c. Provide meaningful child- and gender-sensitive information about how children’s data is 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. Involve and empower children through the use of new technologies and social media, encouraging them to share their own ideas and knowledge of exploitative behaviours and ways

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<sup>16</sup> [www.thecode.org](http://www.thecode.org)

<sup>17</sup> See Lanzarote Committee, 1st Implementation Report, Protection of children against sexual abuse in the circle of trust.

to stop them, as well as on ways to report suspicious behaviour, and take their proposals into consideration in prevention and protection strategies;

- e. Ensure that adequate services and expertise are effectively in place and able to respond rapidly whenever a child or adult reports suspicious online behaviour and/or cases of sexual exploitation or abuse.

43. 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 the promotion of a subculture in which children are perceived as sexual objects, 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, ultimately, remove such content as soon as possible as part of their prevention policies.

## V. Prohibition of the sale of children, child prostitution and child pornography

44. The implementation of article 3 of the OPSC requires the adoption of substantive criminal law prohibiting all offences included in the OPSC. The Committee recognises that compliance with article 3 is a matter in which each State party has to take into account the specifics of its national legal system and practice.

45. Article 3 requires States parties to ensure that all acts explicitly included in the provision, whether committed domestically or internationally, are fully covered under their criminal or penal law, as a minimum. This means that States parties can also criminalise other, newly emerging means and modalities to commit sexual offences of children, and the Committee encourages States parties to do so.

46. The Committee reminds States parties that, in accordance with article 3.2 OPSC, the obligation to criminalise the acts below shall apply also to attempts to commit any such acts, as well as to complicity or participation in any such acts.

47. **Sale of children** is defined by the OPSC as the transfer of a child by any person (e.g. a parent) or a group of persons (e.g. a family) to another person in exchange for remuneration or any other consideration. It may entail the movement of a child to another place but not necessarily so. The “remuneration or any other consideration” is the core element of the sale of a child, and the payment of money (remuneration) 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 to another person. It is also possible that money is used to pay a debt of the parents. However, there may be other reasons (consideration) for the sale of a child, e.g. the promise by the other person that the child will receive education or vocational training, or other kinds of offers for a better future.

48. The sale of children as defined in article 2 should be criminalised (article 3, para. 1(a)(i)) if a child is offered, delivered or accepted:

- a. For the purpose of sexual exploitation. While the term “sexual exploitation” is not defined here, the Committee is of the view that this legal provision should cover all forms of sexual exploitation and sexual abuse, including when these are facilitated through ICTs.
- b. For the purpose of transfer of organs of a child for profit. It is important to specify that the purpose of such transfer must be “for profit”. The legal transfer of an organ of a child may entail costs which are not for profit.
- c. For the purpose of engaging a child in forced labour.<sup>18</sup>

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<sup>18</sup> As established also by ILO Conventions 29 and 105 on the abolition of forced labour. The Committee recalls that children are engaged in many forms of unlawful labour, which may not be defined as *forced* labour, and that States are also under obligations to prohibit child labour as defined by international standards such as ILO C182 on the worst forms of child labour and ILO C138 Minimum Age Convention.

- d. The Committee emphasises that the fact of “offering, delivering or accepting” a child includes situations where the child is offered or accepted through the use of ICTs.

49. While sale and trafficking of children may overlap, their international legal definitions differ. The Committee underlines that, in accordance with the OPSC, States parties are under the obligation to criminalise, explicitly, the sale of children for all abovementioned purposes.

50. Article 3, para. 1(a)(ii) requires the criminalisation, as a form of sale of children, of “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption”. Provisions meant to prohibit this activity should reflect the key components:

- a. Improperly inducing consent for adoption. Concretely, this means to obtain the consent for the adoption of a child in a dishonest or inappropriate manner. In light of the definition of sale of children (article 2 OPSC), an element of “improperly inducing consent” is to do so through remuneration or any other consideration.
- b. In violation of international legal instruments on adoption. For this element, the Committee recommends States parties to require compliance with the rules set in article 20 CRC but also in the provisions of the Hague Convention on protection of children and cooperation in respect of intercountry adoption (1993).

51. An adoption that follows all the applicable rules of international law but involves the sale of a child should be covered by the provision in the Criminal Code prohibiting the sale of a child. The use of a means that is prohibited by international law (the sale of a child) makes an adoption illegal.

52. The sale of children can also occur in the context of surrogacy, which has emerged as an area of concern, where a demand-driven system risks endangering the rights of children.<sup>19</sup> While not all forms of surrogacy constitute sale of children, the practice, in particular in its commercial form, may have this effect. The Committee encourages States parties to regulate this practice to avoid any form of sale of children under surrogacy arrangements and to ensure that the best interests of the child is upheld at all times.

53. **Child prostitution** is defined by the OPSC as the “use of a child in sexual activities in exchange for remuneration or any other form of consideration”, without specifying what those sexual activities would be. The Committee is of the view that “sexual activities” should include, at a minimum, (whether real or simulated): sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between children or between an adult and a child, independent of the sex of all involved persons; masturbation; sadistic or masochistic abuse in a sexual context; bestiality<sup>20</sup>; lascivious exhibition of the genitals or the pubic area of a child.<sup>21</sup>

54. The definition of child prostitution in the OPSC must not be understood as suggesting that the child could consent to “sexual activities in exchange for remuneration or any other form of consideration”, and that the child is necessarily the recipient of money or other “consideration”. The reality is that a child cannot, in any legally relevant way, consent to her/his own sexual exploitation. Moreover, such remuneration or consideration can be paid or given to any third person, and the child often does not receive anything, or the “consideration” is limited to basic survival needs such as food or shelter. The Committee underscores that all children who are sexually exploited in prostitution shall be considered victims, and must never be considered liable for their exploitation.

55. In order to avoid any misunderstanding in this regard, the Committee draws the attention of States parties to developments in the use of the term “child prostitution”. According to prevailing views, this term does not cover what really happens to the child and could be interpreted in a manner as to imply

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<sup>19</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>20</sup> Bestiality in this context refers to sexual activity between a person and an animal.

<sup>21</sup> The Committee also draws the attention to the Lanzarote Convention and its Explanatory Report, which provides one of the few legal definitions of “sexual activities”.

that it represents a (legitimate) form of “sex work”, or 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 in legislative, policy and other documents and suggests to use the term “sexual exploitation of children in prostitution”.<sup>22</sup> In addition, the Committee strongly recommends not to use terms such as “child prostitute” or “child sex worker”, and to replace them by “children who are prostituted” as suggested by the Special Rapporteur on the sale and sexual exploitation of children,<sup>23</sup> or “children exploited in prostitution”.

56. States parties should prohibit by law the sexual exploitation of children in prostitution in any form, including through the use of ICTs. Article 3.1(b) of the OPSC requires the criminalisation 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 in exchange for remuneration or any other form of consideration. The Committee emphasises 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.

57. The Internet presents new challenges to 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 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 ICTs.

58. 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.<sup>24</sup> When such “relationships”, often 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.

59. **Sexual exploitation of children in travel and tourism** is part of the offences covered by the OPSC, which requires States parties to take measures to end this practice. The Committee notes that the term “child sex tourism”, sometimes used to refer to the sexual exploitation of children which is embedded in a context of travel, tourism, or both, has been subject to increasing international criticism and should be avoided. The offence can be committed by either foreign or domestic tourists and travellers and longer-term visitors.

60. The Committee is concerned by the increased use of ICTs to facilitate the sexual exploitation of children in travel and tourism,<sup>25</sup> and encourages States parties to pay attention to this development. Moreover, stakeholders in the travel and tourism sector should develop specific strategies to tackle child sexual exploitation committed within this context. 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 these offences, and should play a proactive role in preventing and combating the sexual exploitation of children.

61. **Child pornography** is defined in article 2 OPSC as “any representation of a child engaged in real or simulated explicit sexual activities, regardless of the means used, or any representation of the sexual parts of a child for primarily sexual purposes”. The qualification “by whatever means” reflects the broad range of material available in a variety of media, online and offline. It includes, inter alia: visual material such as photographs, movies, drawings and cartoons; audio representations; any digital media

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<sup>22</sup> See Luxembourg Guidelines, p.29-30.

<sup>23</sup> See Special Rapporteur on the sale and sexual exploitation of children, 2014 report to the UN HRC, A/HRC/28/56.

<sup>24</sup> See Luxembourg Guidelines, p.32-33.

<sup>25</sup> See “Offenders on the move: Global Study on Sexual Exploitation of Children in Travel and Tourism” (2016).

representation; live performances; written materials in print or online; and physical objects such as sculptures, toys, or ornaments.<sup>26</sup>

62. The Committee urges States parties to prohibit, by law, child sexual abuse material in any form. The Committee notes that such material is increasingly circulating online, and strongly recommends States parties to ensure that relevant provisions of their Criminal Codes cover all forms of material, including when the acts listed in article 3.1(c) are committed online and including when such material represents realistic representations of non-existing children.

63. The Committee is of the view that “simulated explicit sexual activities” should be interpreted as including any material, online or offline, that depicts or otherwise represents any person appearing to be a child engaged in real or simulated sexually explicit conduct and realistic and/or virtual depictions of a child engaged in sexually explicit conduct. Such depictions contribute to normalising the sexualisation of children and fuels the demand of child sexual abuse material.

64. Moreover, for the reasons explained in paragraph 63, any representation of the sexual parts of a child, including realistic images of the sexual organs of a child, for primarily sexual purposes falls under the definition of this offence. Where it may be complicated to establish with certainty if a representation is intended or used for “primarily sexual purposes”, the Committee deems it necessary to consider the context in which it is being used.

65. The Committee draws the attention of States parties to an increasing international reluctance to use the term “child pornography”. The term is considered to undermine the situation of the victim because it suggests a connection with pornography – an activity that is often legal, in which the subject participates voluntarily and to which the subject is capable of consenting, i.e. an adult. This is far from the reality of child victims of sexual exploitation and abuse.

66. The Committee therefore recommends that States parties, in line with recent developments, avoid the term “child pornography” to the extent possible in legislation and policy, and use other terms such as the “use of children in pornographic performances and materials”,<sup>27</sup> “child sexual abuse material” and/or “child sexual exploitation material”.

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

68. Article 3.1(c) OPSC obliges States Parties to criminalise the acts of producing, distributing, disseminating, importing, exporting, offering, selling or possessing, for specific purposes<sup>28</sup>, “child pornography”. The Committee strongly recommends States Parties to criminalise the mere possession of such material, while granting due consideration to potential exceptions to this prohibition, for instance where professional requirements justify the possession of such material. Exceptions should be clearly framed by law and accompanied by procedures that establish when such material can be possessed and by whom.

69. In accordance with article 9.5 OPSC, States parties should also ensure that the production and dissemination of material that advertises the offences described in the OPSC is criminalised. For instance, any insertion on an online or offline medium, such as an ad or a commercial, promoting the sexual exploitation of children in any way, must be criminalised.

70. The Committee emphasises the need to pay special attention to the increasing number of children who produce sexual images, e.g. representations of their own sexual parts, either exclusively for themselves or to share them with their boy/girlfriends or a wider group of peers. A distinction must be

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<sup>26</sup> See Luxembourg Guidelines, p.36.

<sup>27</sup> See also the CRC, article 34(c), the African Charter on the Rights and Welfare of the Child, article 27(c) and ILO Convention 182 article 3(b).

<sup>28</sup> Article 3.1(c) reads: “Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2”.

made between what the OPSC refers to as “child pornography” and which constitutes a criminal offence, and the production by a child of **self-generated sexual content/material** representing her/himself. The Committee is concerned that the “self-generated” aspect of such material could increase the risk that the child is considered responsible instead of treated as a victim, and underscores that a child should never be held criminally liable for the production of images of her-/himself. On the other hand, if these images are produced as a result of coercion, blackmailing or other forms of undue pressure against the will of the child, the person who made the child produce such content should be brought to justice.<sup>29</sup> For any self-generated sexual material depicting very young children (e.g. pre-pubescent children), the assumption ought to be that it is the result of an abusive or coercive relationship.<sup>30</sup> Furthermore, if such images are subsequently distributed, disseminated, imported, exported, offered, or sold as child sexual abuse material, the persons responsible for such acts should be held criminally liable.

71. “**Sexting**” occurs when self-generated content is created, shared and forwarded by the child through mobile phones, applications, and/or the Internet. Sexting has been observed to be a product of youth peer pressure and, to a certain extent, teenagers increasingly consider sexting to be “normal”.<sup>31</sup> While this conduct in and of itself is not necessarily illegal or wrongful, there are risks that such content is circulated online or offline beyond or against the will of the child, including to harm children or be used as a basis to extort favours.

72. The Committee acknowledges that, with the increased use of ICTs, children are also increasingly involved in distributing sexualised material of other children, which can produce the same traumatising effects on the victims as if an adult does it. Such material, once circulating online, can be very difficult to remove and can easily spread beyond the initial intentions. Sexualised images of children have also been used in the context of bullying, producing serious consequences on children, including suicide. This complex issue needs careful attention, and the Committee encourages States parties to establish clear legal frameworks protecting children but also ensuring that children are made aware of the gravity of spreading images of others.

73. States parties should develop special programmes to which children who have disseminated sexualised material of other children can be diverted, preferably as an alternative to being tried in the formal criminal justice system, and avoiding criminal records and the inclusion in sexual offender’s registers.

74. “**Grooming**” is a term often used to refer to the solicitation of children for sexual purposes. Grooming or online grooming refers to the process of establishing a relationship with a child either in person or through the use of the ICTs to facilitate online or offline sexual contact with that person. Although the terms grooming or solicitation of children for sexual purposes are not covered explicitly in the OPSC, they represent a form of child sexual exploitation which may constitute an offence covered by the OPSC. For instance, the grooming of children very often involves the production and dissemination of child sexual abuse material (“child pornography”). Moreover, children who are groomed may become victims of sale of children or sexual exploitation in prostitution as per the OPSC. In that regard, the grooming process may also constitute an attempt to commit any of the offences covered by the OPSC. The Committee encourages States parties to criminalise such acts.

75. **Sexual extortion**, sometimes also called “sextortion”, refers to the process by which a person is coerced with a view to extort sexual favours, sexual material, money or other benefits under the threat of sharing such material beyond the consent of the depicted person, for instance by sharing it with family members or on social media.<sup>32</sup> This practice is often linked to grooming and sexting, and the Committee

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<sup>29</sup> In case the person who made the child produce the material is, her/himself, a minor, relevant laws regarding criminal responsibility and juvenile justice should be applied.

<sup>30</sup> OHCHR report ADRC 2016; Luxembourg Guidelines, p.43-44.

<sup>31</sup> See Madigan et al., “Prevalence of Multiple Forms of Sexting Behavior Among Youth: A Systematic Review and Meta-analysis”, in *Jama Pediatrics*, 2018.

<sup>32</sup> OHCHR report ADRC 2016; Luxembourg Guidelines, p.52.

is concerned by the apparent increase in more extreme, violent, sadistic, and degrading demands by offenders,<sup>33</sup> which expose children to severe risks.

76. In relation to the abovementioned acts, the Committee notes that children are sometimes made to **witness sexual activities**, and encourages States parties to criminalise the intentional causing, for sexual purposes, of a child to witness sexual abuse or sexual activities, even without having to participate<sup>34</sup>;

77. Finally, the Committee underscores that a child under the age of 18 can never consent to any form of sale, sexual exploitation or sexual abuse, and that States parties must criminalise all offences covered by the OPSC 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. The age of sexual consent is irrelevant in this regard. States parties should not criminalise adolescents of similar ages for consensual sexual activity.

## VI. Sanctions

78. The Committee recalls that, under article 7 OPSC, States parties are obliged to take measures to seize and confiscate any materials and assets that are used to commit or facilitate the offences covered by the OPSC. They are also obliged to seize and confiscate any proceeds derived from such offences, and take measures to close any premises used to commit such offences. International cooperation must also be guaranteed in this regard, and any request for seizure or confiscation from another State party must be executed.

79. Given the increase in the use of ICTs to commit or facilitate offences covered by the OPSC, States parties need to pay close attention to the different electronic means, including both hardware and software, used to commit such offences. Moreover, the Committee emphasises the need to address these new forms of committing such offences, which may involve online, or “immaterial”, premises, such as chat rooms, online fora, and other online spaces that do not represent a physical premise in the classical sense of the term.

80. For any evidence collected during investigations on offences covered by the OPSC, clear rules and procedures must be established on how such evidence can be collected, how and where it shall be stored, who can have access and for how long it will remain stored. 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 revictimise the victims a long time after the initial offence was committed.

81. The sale and sexual exploitation of children constitute among the most serious violations of children’s rights to protection, and have a longlasting negative impact on the victims. The Committee urges States parties, in accordance with article 3 OPSC, to treat all offences covered therein as crimes that shall be punished with appropriate criminal sanctions that take into account their grave nature under national criminal or penal law.

82. A distinction should be made between complicity and participation in the offence, as well as for the attempt to commit the offences. All these different roles in the commission of an offence covered by the OPSC should be criminalised under national criminal or penal law.

83. Regarding liability and sanctions for legal persons, States parties shall ensure that legal persons can be held liable, under criminal, civil or administrative law, for the commission, complicity and participation in the offences covered by the OPSC. Particular attention shall be paid to the legal responsibility of ICT companies to block and remove child sexual abuse material hosted on their servers, for financial institutions to block and refuse financial transactions aimed to pay for any such offences,

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<sup>33</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>34</sup> Covered as “corruption of the child” by the Lanzarote Convention, article 22, for children who have not reached the age of sexual consent, and by national laws of some States.

as well as the responsibility of the travel and tourism sector, including online travel agencies and booking websites, for facilitating the sexual exploitation of children.

## VII. Jurisdiction and extradition

84. As a minimum, States parties must establish criminal jurisdiction over all offences mentioned in article 3, para. 1, as explained under the section on Prohibition, when they are committed in their territory, including on board of a ship or aircraft registered in their countries, regardless of the location of said ship or aircraft. This allows the State to investigate and prosecute all these offences regardless 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 the alleged perpetrator. The Committee urges States parties to adopt legislation to comply with this obligation if this is not already the case.

85. The Committee encourages States parties to expand the investigatory capacity of police to find and rescue child victims and, where it is not already the case, to open for the possibility of the police 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.<sup>35</sup> The Committee also encourages States parties to strengthen international cooperation in this regard, and recalls that INTERPOL has developed specialised skills and resources to tackle crimes against children.<sup>36</sup>

86. In accordance with article 4.2 OPSC, a States party should also establish jurisdiction in case offences covered by the OPSC are committed outside its territory (**extraterritorial jurisdiction**), if the alleged offender is a national of that State or if she/he has her/his habitual residence 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 an alleged offender if she/he meets the qualifications mentioned above or if the victim is a national of that State. For this action it is not necessary that the alleged offender is present on the territory of the State. While it is the State in which the offence was committed that is primarily responsible for investigation and prosecution of the offender, the State of which the alleged offender is a national or in which he/she has her/his habitual residence has the authority to start an investigation, which may include the issuing of an international warrant for her/his arrest.

87. Regarding legislation on extraterritorial jurisdiction, the Committee encourages the States parties to include cases in which a child victim is not a national but has her/his habitual residence in the territory of the State.<sup>37</sup>

88. Furthermore, States parties should abolish the requirement of double criminality, making it possible to exercise extraterritorial jurisdiction for crimes covered by the OPSC committed in another country even if the relevant offence is not criminalised in that country. The principle of double criminality creates a gap in the law which enables impunity, and should not be applied.

89. Extraterritorial jurisdiction is particularly important for offences related to the sale of children for trade in organs and to the sexual exploitation of children in travel and tourism, where the offender is likely to travel to another country. As the exploitation may not be detected until the offender has returned to her/his country of origin, it is essential that States parties have the capability to prosecute her/him.

90. The Committee therefore reminds States parties that, when a national who allegedly committed an offence covered by the OPSC abroad is present on their territory and would not be extradited because she/he is a national, they must, as a minimum, establish their jurisdiction (article 4.3 OPSC). The Committee urges States parties to make all necessary legislative adjustments to comply with this obligation. In situations of porous borders, where offenders can easily move and cross back and forth between different countries, regional cooperation becomes essential in order to fight impunity.

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<sup>35</sup> Special Representative of the Secretary-General on violence against children, A/HRC/28/55.

<sup>36</sup> INTERPOL, Crimes against Children, see: <https://www.interpol.int/Crime-areas/Crimes-against-children/Crimes-against-children>

<sup>37</sup> Also established by the Lanzarote Convention, article 25, which refers explicitly to both the nationality and the habitual residence of the offender and victim.

91. The Committee is concerned with the increased use of ICTs to commit sexual offences against children and the new challenges that this poses 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. It is absolutely crucial that offenders committing crimes through the use of ICTs are prosecuted. The absence of a “hands on” act must never mean that the person can avoid prosecution and benefit from impunity.

92. To effectively put an end to the still widely existing impunity, the Committee encourages States parties to establish universal jurisdiction for all offences covered by the OPSC, i.e. 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 OPSC can also be committed, or facilitated, through the use of ICTs, and that jurisdiction must cover also such manifestations of the offences.

93. **Extradition:** The Committee wishes to recall the following rules for extradition based on article 5 OPSC for offences covered by the OPSC:

- a. The OPSC provides a sufficient legal basis for extradition between States parties for the offences it defines. As a consequence, as far as these offences are concerned, and in accordance with article 5.2 OPSC, 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 who do not make extradition conditional on the existence of a treaty shall, in accordance with article 5.3 OPSC, consider such offences as extraditable offences between themselves;
- c. Such offences should, under article 5.4 OPSC, be treated as having been committed in the territory of the States parties who do not extradite their nationals. In addition, when a State party does not extradite the alleged offender, that State shall take measures to prosecute her/him in line with the “extradite or prosecute principle” of article 5.5 OPSC.

94. Furthermore, the Committee encourages States parties to extend the applicability of extradition also to attempt, complicity and participation in any offences covered by the OPSC.

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

### General observations

95. The Committee recognises the significant progress made by States parties in taking child- and gender-sensitive measures to make criminal justice systems more accessible and hospitable 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 in the OPSC, who still rarely enter the criminal justice system or participate in criminal proceedings.<sup>38</sup>

96. The Committee encourages States parties and other relevant stakeholders to use the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime to guide them in ensuring the child’s right to assistance and protection in legal proceedings.

97. The Committee urges States parties to ensure the right to information as well as the right to be heard of child victims in an age-sensitive way, regardless of their legal capacity. Child victims, as well as their parents, guardians or legal representatives, should receive all information needed in a language they can understand and in a gender- and age-appropriate format 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.

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<sup>38</sup> ECPAT International, “Through the eyes of the child”, available at: [http://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child\\_Barriers-to-Access-to-Justice-thematic-report.pdf](http://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child_Barriers-to-Access-to-Justice-thematic-report.pdf)

98. The Committee also urges States parties to institute a formal “best interests of the child” determination process, in accordance with article 12 CRC and General Comment No. 14, to ensure that the criminal prosecution of an alleged offender does not adversely affect the health and recovery of the victim. In that context, the recovery and wellbeing of the child should be given due consideration and it may be necessary to first provide the victim with a period of time to receive the necessary support, before launching a criminal prosecution.<sup>39</sup> This can be of even greater importance in cases where it is the child’s parents or guardians who are the alleged offenders, and where the child must be separated from one or more family members. In such cases, due consideration is also needed for the child’s siblings, if any.

99. The Committee observes that investigations regarding offences covered in the OPSC are still largely child-dependent rather than child-supportive, relying almost entirely on the testimony of the child to convict offenders. The Committee strongly encourages States parties to make a better and full use of crime scene evidence, including digital evidence, the introduction of such evidence in courts and the full use of evidentiary rules, such as child sexual abuse shield laws and child hearsay exceptions. In that vein, the Committee urges States parties to allow the possibility for the prosecution to start an investigation without the victim’s complaint.

### **Counseling, reporting and complaints mechanisms**

100. Child victims of offences covered by the OPSC are particularly unlikely to report what has happened to them. Many are afraid to disclose what has happened, often because the perpetrator is someone they know or because they feel ashamed, guilty or complicit. Others do not perceive themselves as victims, lack confidence in the police and distrust the justice system, risk retaliation and stigma, or fear long-term placement in government facilities.

101. The Committee recommends States parties to avoid establishing statutes of limitations in respect of those offences. Should there be such statutes of limitations, the Committee urges States to adjust them to the particular nature of the crime and ensure that they only begin to run when the victim reaches the age of 18.<sup>40</sup>

102. The Committee urges States parties to provide an assistance and protection framework conducive to the creation of an environment where children feel believed and safe to talk. In particular, States parties should:

- a. Establish widely available, easily accessible, child- and gender-sensitive and confidential psycho-social counselling, reporting and complaints mechanisms for children, to facilitate the reporting of abuse by child victims. Such mechanisms should be established by law and should define clearly the actors, services and facilities responsible for the care and protection of children, and should be accessible to all children without discrimination. Such mechanisms should include reporting channels, such as online child hotlines, phone helplines and other points of contact, as well as justice complaints mechanisms, which enable children to seek help in any way they feel most comfortable (even anonymously) and tell if they have been sexually abused, but also if they wish to seek advice or help regarding self-generated sexually explicit content;
- b. Centralise services for child victims and witnesses in one safe space, e.g. “Children’s Houses” or “One-Stop-Shops”, in which all different actors intervening for the child’s care and protection converge. Such places offer multi-disciplinary and interagency 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 national human rights institutions or ombudspersons, to receive, investigate and address complaints by children in a child- and gender-sensitive manner, ensure the privacy and

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<sup>39</sup> Special Rapporteur on the sale and sexual exploitation of children, 2014 report to the UN HRC, A/HRC/28/56.

<sup>40</sup> See for instance Lanzarote Convention, article 33; ECPAT International, “Through the eyes of the child”.

protection of victims, and undertake monitoring, follow-up and verification activities for child victims;

- d. Provide child victims (and families, where appropriate) with the opportunity for a recovery and reflection period after rescue to help them start the healing process and understand what happened to them before deciding whether to participate in a criminal case against the alleged perpetrator.<sup>41</sup> In this regard, it should be made absolutely clear, by law, that access to all the abovementioned services is not depending on participation in criminal proceedings.

### **Participation in criminal justice proceedings**

103. The Committee reminds States parties of their obligation to provide appropriate support and legal counselling to assist child victims of offences covered in the OPSC at all stages of criminal justice proceedings and protect their rights and interests, and to ensure that such proceedings are carried out in the best interest of the child. This includes:

- a. Ensuring that legal and investigative procedures, including methods of questioning, are child- and gender-sensitive, while also enabling officials to adapt such procedures to the special needs and preferences of the individual child, to avoid the secondary victimisation of the child. To that end, confrontation with the alleged offender and multiple interviews should be avoided. Police officers, judges, prosecutors and lawyers should be sensitised to 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 and assigning (depending on the national legal system) a lawyer or guardian ad litem or another qualified advocate to represent the child. Moreover, providing access to and support of medical personnel, child psychiatrists, psychologists and social workers to every child victim during the criminal justice process and ensuring that these professionals are well-trained and able to build relationships of trust with children;
- d. Making efforts to avoid the need for child victims to be physically present during criminal proceedings, including when they are giving evidence, and to make use, where possible, of appropriate communication technologies to enable child victims to be heard during the trial without being present in the courtroom.<sup>42</sup> This also becomes essential in judicial proceedings involving OPSC 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, e.g. by placing a screen between the two.
- e. Taking special precautionary measures, as needed, when the alleged perpetrator is a parent, a member of the family, another child, or a primary caregiver. Such measures should involve careful consideration of the fact that a child’s disclosure should not worsen her/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.

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

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<sup>41</sup> ECPAT International, “Through the eyes of the child”.

<sup>42</sup> See Lanzarote Committee, 1st Implementation Report, Protection of children against sexual abuse in the circle of trust, the framework.

105. Finally, 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 far as they are appropriate.

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

106. 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 also an obligation under articles 9.3 and 9.4 OPSC.<sup>43</sup> To that end, the Committee recommends that States parties:

- a. Ensure that the relevant services for the medical care, social reintegration and physical and psychological recovery of victims are accessible free of cost 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;
- c. Carefully consider which form of compensation is preferable for each victim, depending on her/his specific situation and prospects for life. In addition or as an alternative to cash payments, it is possible to provide compensation in the form of financial or other support to education and/or income generating activities, which could benefit the victim in the long term.

107. With regard to online sexual exploitation and abuse, the discovery of offences does not necessarily lead to identifiable victims and offenders. 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.

108. In many cases where ICTs have been used to commit or to facilitate an offence covered by the OPSC, a permanent record (in the form of child sexual abuse material) exists. The Committee is deeply concerned about the continued impact that this can have on the child’s recovery and reintegration. States parties should increase their awareness about such situations and take adequate measures to provide long-term social and psychological services as needed.

109. The continued existence and circulation online of material depicting the sexual abuse of a child also risks exacerbating the child’s stigmatisation and increase the shame that the child and her/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 removal of prejudicial or harmful material involving children, in order to avoid that such material continues to be accessed and shared. Such procedures should be established in collaboration with law enforcement, reporting hotlines, as well as the private sector, in particular Internet Service Providers and social networks.<sup>44</sup>

110. States parties should provide victims with the possibility to bring civil action, regardless of their economic status, including through the provision of legal aid or through 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.<sup>45</sup> Such civil proceedings should integrate the same child- and gender-sensitive measures as those described for criminal proceedings, as appropriate.

111. The issue of compensation is particularly complex in cases where the sexual exploitation and sexual abuse of child are committed or facilitated through the use of ICTs. Children suffer serious harm when

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<sup>43</sup> This is also an obligation under ILO C182, articles 6 and 7(2), as well as Recommendation 190, paragraph 15.

<sup>44</sup> DGD report (2014). For instance, States could use ‘PhotoDNA’ technology.

<sup>45</sup> Special Rapporteur on the sale and sexual exploitation of children, 2014 report to the UN HRC, A/HRC/28/56; ECPAT International, “Through the eyes of the child”.

they are sexually abused before 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 “child pornography” victims is required by statute, it has proven difficult for courts to calculate the amount of compensation each viewer should pay to the child based on a causal link between the viewer’s act and the child’s harm.

112. To improve the chances of victims to receive compensation from convicted offenders, States parties should enable the identification and attachment of defendants’ assets early in the proceedings and amend money laundering laws to allow victims to be paid from forfeited property. Compensation measures should be enforced in line with international standards, such as article 2.3(c) of the International Covenant on Civil and Political Rights, which sets forth that States parties must “ensure that the competent authorities shall enforce such remedies when granted”.

113. Finally, 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, i.e. deterrence. In that context, the Committee encourages States parties to demonstrate political will and be proactive in ensuring accountability for offences covered by the OPSC and fight against impunity.

## **X. Mutual legal assistance and international cooperation**

114. The Committee reminds States parties that they are required, under article 6.1 OPSC, to afford one another the greatest measure of assistance in connection with investigations and criminal or extradition proceedings, including assistance in obtaining evidence at their disposal necessary for the proceedings. In concrete terms, States parties should share information that can be useful in the investigation of offences covered by the OPSC, and contribute in any way possible to facilitate investigations on their territory, including identifying persons that could be linked to or have knowledge of such offences.

115. In accordance with article 10 OPSC, States parties are required to cooperate more broadly for the prevention, detection, investigation, prosecution and punishment of those responsible for acts related to the offences covered by the OPSC. 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. Cooperation should also cover the assistance to victims in their recovery, reintegration and repatriation, where appropriate.

116. Some States parties face challenges in securing sufficient budgetary allocation to effectively implement the OPSC due to low government revenue. The Committee encourages States parties to take appropriate steps 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 assistance, including support for social and economic development, poverty eradication programmes and universal education.

117. The Committee strongly encourages States parties to enter into bilateral and multilateral agreements involving different actors, including State agencies, law enforcement actors, judicial authorities and other relevant stakeholders. Partnerships should also be established with private stakeholders, such as the private sector and specialised non-governmental organisations, to develop the technological tools necessary to enable identification, investigation and prosecution of offenders before the courts, as well as the identification of victims.<sup>46</sup>

118. Similarly, 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 the competent law enforcement and judicial authorities to evidence of crimes committed across borders, including witness testimony and electronic information stored by Internet Service Providers and online platforms. The private sector should collaborate and comply with the law enforcement measures taken in that respect.

119. The Committee encourages States parties to support alliances such as the Virtual Global Taskforce and the WePROTECT Global Alliance to End Child Sexual Exploitation Online for an effective

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<sup>46</sup> HRC Resolution A/HRC/RES/31/7, OHCHR report ADRC 2016, and DGD report 2014.

cooperation in the investigation and prosecution of criminal networks and perpetrators. Furthermore, the Committee encourages States parties to establish 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>47</sup>

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<sup>47</sup> See Special Rapporteur on the sale and sexual exploitation of children, 2014 report to the UN HRC, A/HRC/28/56.