

SOLICITATION OF CHILDREN FOR SEXUAL PURPOSES  
CHILD SEXUAL ABUSE MATERIAL  
SEXUAL EXPLOITATION OF CHILDREN  
TRAVEL AND TOURISM  
VICTIM  
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VICTIM  
SURVIVOR

# CHILD

**TERMINOLOGY GUIDELINES**  
**FOR THE PROTECTION OF CHILDREN**  
**FROM SEXUAL EXPLOITATION AND**  
**SEXUAL ABUSE**





# Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse

Adopted by the Interagency Working  
Group in Luxembourg, 28 January 2016

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Communication is of critical importance in our efforts to respect, protect and implement the rights of the child. In order to make this communication with and between children, parents, governmental officials, professionals and volunteers working with or for children as effective as possible, we need to use terms and concepts that all these actors understand and consider respectful.

Over the last decade, people working for the prevention and elimination of sexual exploitation and sexual abuse have had to deal with new terms like grooming, sexting, and live streaming of child sexual abuse. At the same time, terms like child prostitution and child pornography have been more and more criticized (including, at times, by the very victims of these heinous crimes) and increasingly replaced by alternative terms, considered less harmful or stigmatizing to the child. It was and is not clear if and how these novelties and changes in terminology should lead to different approaches or actions, and there has been a growing concern that changes to existing terms (especially established legal terms) might cause confusion or lack of understanding, and even hinder the effective prevention and elimination of child sexual exploitation, unless this change comes about in a joint and concerted manner by a broad set of child protection actors.

At ECPAT's initiative, an Interagency Working Group was established for the drafting of a set of Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse. The commitment and very valuable input of the members of the Working Group led to the adoption, in Luxembourg, of the Guidelines presented in this document (hence dubbed the "*Luxembourg Guidelines*").

The purpose of this document is to provide all individuals and agencies working for the prevention and elimination of all forms of sexual exploitation and sexual abuse of children with guidance for the understanding and use of the different terms and concepts they may encounter in their work.

Our hope is that the Guidelines will be widely disseminated and that all actors will familiarize themselves with the meaning and possible use of the terms and concepts presented in the Guidelines. We believe that by doing so they will contribute to a more effective protection of children from all forms of sexual exploitation and sexual abuse.



Jaap E. Doek

Chairperson of the Interagency Working Group

# Interagency Working Group

The Interagency Working Group comprised representatives from the following organisations (in alphabetic order):

- African Committee on the Rights and Welfare of the Child
- Child Rights Connect
- Council of Europe Secretariat
- ECPAT
- Europol
- INHOPE- The International Association of Internet Hotlines
- Instituto Interamericano del niño, la niña y adolescentes (OEA)
- International Centre for Missing and Exploited Children
- International Labour Office
- International Telecommunication Union
- INTERPOL
- Office of the United Nations High Commissioner for Human Rights
- Plan International
- Save the Children International
- Special Representative of the United Nations Secretary General on Violence against Children
- United Nations Committee on the Rights of the Child
- United Nations Special Rapporteur on the sale of children, child prostitution and child pornography
- United Nations Children’s Fund (UNICEF)

## **Observers to the project**

- London School of Hygiene & Tropical Medicine
- Oak Foundation
- University of Bedfordshire, The International Centre: Researching child sexual exploitation, violence and trafficking

## **Disclaimer**

These Terminology Guidelines are a set of orientations that can be used as a tool to enhance protection of children against sexual violence. It should be noted, however, that the views set out in these Guidelines do not necessarily reflect the official position of the international organisations participating in the project or their secretariats. Neither such organisations, nor any person acting on their behalf, may be held responsible for the use that may be made of the information contained herein. Furthermore, it should be noted that none of the organisations participating in this project, or their secretariats, has any intention of pre-empting any eventual future decision by governing, treaty-making, or treaty-interpreting bodies.



# Table of Contents

Acknowledgements	iii
Foreword	v
Interagency Working Group	vi
Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse	1
Introduction	1
Roadmap to the Terminology Guidelines	2
Terminology Guidelines	4
A. Child	5
A.1. Definitions in legally binding instruments	5
A.2. Terminology considerations	5
A.3. Related terms	6
A.3.i Age of majority	6
A.3.ii Age of sexual consent	7
A.3.iii Minor	8
A.3.iv Juvenile	9
A.3.v Adolescent	9
A.3.vi Teenager	10
A.3.vii Young person/young people/youth	10
A.3.viii Child in the online environment	11
B. Sexual violence against children	12
B.1. Definitions in legally binding instruments	12
B.2. Non-binding instruments	12
B.3. Terminology considerations	13
B.4. Related terms	17
B.4.i Child sexual assault	17
C. Child sexual abuse	18
C.1. Definitions in legally binding instruments	18
C.2. Non-binding instruments	18
C.3. Terminology considerations	18
C.4. Related terms	20
C.4.i Incest	20
C.4.ii Rape of a child	20
C.4.iii Child sexual molestation	21
C.4.iv Sexual touching of children	21
C.4.v Sexual harassment of a child	21
C.4.vi Online child sexual abuse	22
D. Child sexual exploitation	24
D.1 Definitions in legally binding instruments	24
D.2 Non-binding instruments	24

D.3 Terminology considerations	24
D.4 Related terms	26
D.4.i Commercial sexual exploitation of children	26
D.4.ii <i>Reserved</i>	27
D.4.iii Online child sexual exploitation	27
<b>E. Exploitation of children in/for prostitution</b>	<b>29</b>
E.1. Definitions in legally binding instruments	29
E.2. Non-binding instruments	29
E.3. Terminology considerations	29
E.4. Related terms	30
E.4.i Children in (a situation of) prostitution	30
E.4.ii Child prostitute	31
E.4.iii Child sex worker	31
E.4.iv Children/adolescents/young people selling sex	32
E.4.v Voluntary/self-engaged prostitution	32
E.4.vi Transactional sex	32
E.4.vii Use of children for pornographic performances	34
<b>F. Child pornography</b>	<b>35</b>
F.1. Definitions in legally binding instruments	35
F.2. Non-binding instruments	35
F.3. Terminology considerations	35
F.4. Related terms	38
F.4.i Child sexual abuse material/child sexual exploitation material	38
F.4.ii Computer/digitally generated child sexual abuse material	40
F.4.iii Sexualised images of children/child erotica	42
F.4.iv Self-generated sexual content/material	43
F.4.v Sexting	44
F.4.vi (Exposure to) harmful content	44
F.4.vii Corruption of children for sexual purposes	45
<b>G. Live online child sexual abuse</b>	<b>46</b>
G.1. Definitions in legally binding instruments	46
G.2. Terminology considerations	46
G.3. Related terms	47
G.3.i Live streaming of child sexual abuse	47
G.3.ii Child sexual abuse to order	47
G.3.iii Webcam child sex tourism/webcam child sex abuse	48
<b>H. Solicitation of children for sexual purposes</b>	<b>49</b>
H.1. Definitions in legally binding instruments	49
H.2. Non-binding instruments	49
H.3. Terminology considerations	49
H.4. Related terms	51
H.4.i Grooming (online/offline) for sexual purposes	51
H.4.ii Online (sexual) enticement of children	52
H.4.iii Sexual extortion of children	52
<b>I. Sexual exploitation of children in the context of travel and tourism</b>	<b>54</b>
I.1. Definitions in legally binding instruments	54
I.2. Non-binding instruments	54
I.3. Terminology considerations	55
I.4. Related terms	56

I.4.i Child sex tourism	56
J. Sale of children	57
J.1. Definitions in legally binding instruments	57
J.2. Non-binding instruments	57
J.3. Terminology considerations	57
K. Trafficking of children	59
K.1. Definitions in legally binding instruments	59
K.2. Non-binding instruments	60
K.3. Terminology considerations	60
L. Child/early marriage	62
L.1. Definitions in legally binding instruments	62
L.2. Non-binding instruments	62
L.3. Terminology considerations	63
L.4. Related terms	65
L.4.i Forced marriage	65
L.4.ii Teenage marriage	66
L.4.iii Temporary marriage	67
M. Harmful practices	68
M.1. Definitions in legally binding instruments	68
M.2. Non-binding instruments	68
M.3. Terminology considerations	68
N. Contemporary forms of slavery/child slavery	71
N.1. Definitions in legally binding instruments	71
N.2. Non-binding instruments	72
N.3. Terminology considerations	72
O. Worst forms of child labour	74
O.1. Definitions in legally binding instruments	74
O.2. Non-binding instruments	74
O.3. Terminology considerations	75
P. Child victim of sexual exploitation and/or abuse	77
P.1. Definitions in legally binding instruments	77
P.2. Non-binding instruments	77
P.3. Terminology considerations	77
P.4. Related terms	78
P.4.i Victim identification	78
P.4.ii Survivor	80
P.4.iii Children subjected to sexual exploitation/sexual abuse	81
P.4.iv Victimisation	81
P.4.v Self- Victimisation	81
P.4.vi Re-victimisation	81
P.4.vii Secondary victimisation	82
Q. Perpetrators of sexual crimes against children	83
Q.1. Definitions in legally binding instruments	83
Q.2. Non-binding instruments	83
Q.3. Terminology considerations	83

Q.4. Related terms	84
Q.4.i Sex offender	84
Q.4.ii Child sex offender	85
Q.4.iii Subcategories of perpetrators of sexual crimes against children	85
Q.4.iv Transnational child sex offenders	88
Q.4.v Travelling child sex offenders	88
Q.4.vi Child sex tourist	89
Q.4.vii Juvenile sex offender	89
Q.4.viii Facilitator	89
Q.4.ix Customer/client/John	90
Acronyms	91
Overview of terms and recommendations	93

# Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse

## Introduction

Words matter because they affect how we conceptualise problems, prioritise issues, and forge responses. Inconsistent use of language and terms can lead to inconsistent laws and policy responses on the same issue. Despite the existence of legal definitions for a number of sexual crimes against children, there is still considerable confusion surrounding the use of different terminology related to the sexual exploitation and sexual abuse of children. Even where the same terms are used, there is quite often disagreement concerning their actual meaning, leading to use of the same words to refer to different actions or situations. This has created significant challenges for policy development and programming, development of legislation, and data collection, leading to flawed responses and limited and ineffective methods of measuring impact or setting targets. In the context of international/cross-border child sexual exploitation and abuse, these difficulties are magnified.

The absence of consensus at international level on several terms or language that should be employed has had an impact on global efforts at data collection and identification of different modalities of sexual exploitation and sexual abuse of children. Confusion in the use of language and terms can impair and undermine advocacy work and intergovernmental and interagency cooperation. Translating terms into different languages introduces further challenges. Without clear conceptual understanding of (and agreement on) their meaning, translating terms accurately across multiple languages becomes an onerous and resource-intensive task.

Greater conceptual clarity on terminology is thus needed to ensure stronger and more consistent advocacy, policy and laws in all languages across all regions of the world. To engender more clarity in the conceptualisation, definition, and translation of sexual exploitation and sexual abuse of children, a multi-stakeholder dialogue involving the voices of a multitude of actors at all levels is needed. Given the fast evolution of information and communication technologies (ICTs), which in turn brings new manifestations of sexual exploitation and sexual abuse of children, shaping a common understanding is increasingly important in the global effort to eradicate these children's rights violations.

At the initiative of ECPAT International, and with the aim of moving beyond the lack of agreement among UN entities, international child rights non-governmental organisations (NGOs), and international and regional law enforcement agencies regarding what terms to use to describe different forms of sexual exploitation and sexual abuse of children, in September 2014 an Interagency Working Group (IWG) comprising representatives from key stakeholders was established. Drawing on the expertise that the IWG representatives and their respective organisations possess, an in-depth analysis and discussion on terminology and definitions were launched, which lasted for over a year. The IWG was chaired by Professor Jaap Doek, former Chair of the UN Committee on the Rights of the Child. Alongside the IWG discussions, a consultation process with a broader group of experts on child protection with English, French and Spanish as native/working languages was held.

These Terminology Guidelines represent the outcome of this interagency initiative, and contain a set of terms that professionals and international agencies commonly apply in their work on the prevention and elimination of sexual exploitation and sexual abuse of children. They are meant to be "universal" and applicable to work against these phenomena in all settings, including humanitarian settings.

The meaning of each term is explained from a linguistic point of view, and its use is analysed. Where there is need for caution in the use of a certain term, this is indicated. Moreover, the use of certain

terms is discouraged. For each term that has been defined in international and/or regional legal instruments, such definitions are included. Where relevant, information from General Comments of human rights treaty bodies is also used, as well as resolutions and recommendations by international and regional organisations. All participating organisations also contributed through providing relevant reports and publications produced by their respective organisations.

Much has changed in recent years in the terminology used in the field of child protection, in particular as a result of the use of Internet to commit different forms of sexual exploitation and/or abuse — for example “online grooming” and live streaming of sexual abuse. While international standards do not yet reflect all these new phenomena, the Terminology Guidelines contain an initial analysis of the terms used to describe them, aiming to clarify their meaning and provide advice with regard to their use.

Given the changing nature of sexual exploitation and sexual abuse of children, in particular those committed through the means of ICTs, these Terminology Guidelines may need to be reviewed on a regular basis.

### **Roadmap to the Terminology Guidelines**

A first and major challenge for the IWG related to deciding which terms to include in the Guidelines. The decision to include a term was led by the following rules/criteria:

- The term has a legal definition in international and/or regional treaties related to sexual exploitation and/or sexual abuse of children.
- The term, although not having a legal definition under international law, is frequently used in the context of sexual exploitation and/or sexual abuse of children.
- The term is used for conduct whose primary purpose is to facilitate, enable, propagate, incite, or engage in the sexual exploitation or sexual abuse of a child.
- The term creates misunderstanding among different stakeholders regarding the child’s rights and entitlements to protection from sexual exploitation and sexual abuse under international law.
- The term validates, encourages, propagates, or incites stereotypes, societal attitudes, cultural beliefs, or norms that are harmful or undermine the child’s right to protection from sexual exploitation and sexual abuse.

These rules have been good guidance but have not always been decisive. On a few occasions, the IWG found a term not covered by one of the rules but nevertheless significant enough to be included in the Guidelines.

Furthermore, the IWG discussed the inclusion of categories of children considered especially at risk of being sexually exploited or abused, such as street children, runaway children, unaccompanied refugee children, and working children. The IWG decided not to include these groups. Such children can be victims of many other violations of their rights and to include them in the Guidelines could mean singling out one of those risks, which may have resulted in a labelling the IWG wanted to avoid.

The next challenge for the IWG was to determine the order in which to structure the terms included in the Guidelines. It was agreed to move from the key term “child” to more general terms like sexual violence against children, child sexual abuse, and child sexual exploitation, followed by more specific terms like child prostitution, child pornography, and sexual abuse or sexual exploitation online and in travel and tourism. The final sections address child victims of sexual exploitation and sexual abuse, as well as perpetrators of sexual crimes against children. Within each section dealing with these (general and specific) terms, the IWG also identified directly related terms and included them in sub-sections.

The last challenge was the numbering of the sections and sub-sections. The IWG decided to use numbering that is identical for the different language versions to make comparison between them

easier. This necessitated the use of a number with the mention “*Reserved*” for when a certain term is not included in one of the language versions but exists in another.

For a proper understanding and use of the Guidelines, two terms need special attention in this introduction: “the child” and “sexual activity”.

For the scope of this document, the participating organisations agreed that the term “child” should refer to any person under the age of 18 years, in accordance with the Convention on the Rights of the Child (CRC).<sup>1</sup> Nevertheless, for the purposes of clarity, the first term addressed by the Terminology Guidelines is precisely the term “child”, in order to illustrate the current state of the art and existing debates relative to this concept.

Furthermore, for the scope of the Terminology Guidelines, the term “sexual activity” refers to any real or simulated explicit and non-explicit sexual conduct or acts of a sexual nature. The term “sexual activity” is very often used within definitions of child sexual abuse and exploitation but its precise scope is rarely defined. Neither the CRC (1989) nor its Optional Protocol on the sale of children, child prostitution, and child pornography (OPSC) (2000)<sup>2</sup> clearly define the term “sexual activity”. The OPSC mentions only such sexual activities that are explicit (although they might be simulated) and fails to explain what exactly is included in this notion, thus leaving a potential gap in international law with regard to sexual activities that would be considered “non-explicit”. A legal definition of “sexually explicit conduct” was set forth by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (“the Lanzarote Convention”)<sup>3</sup> and its explanatory report in 2007, including in this notion “*at least the following real or simulated acts: a) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between children, or between an adult and a child, of the same or opposite sex; b) bestiality; c) masturbation; d) sadistic or masochistic abuse in a sexual context; or e) lascivious exhibition of the genitals or the pubic area of a child. It is not relevant whether the conduct depicted is real or simulated.*”<sup>4</sup> In addition, in its first implementation report adopted in December 2015, the Lanzarote Committee “invites Parties to review their legislation to address all serious harm to the sexual integrity of children by not limiting their criminal offences to sexual intercourse or equivalent acts”.<sup>5</sup>

Today, there is no doubt that all forms of sexual conduct involving penetration should be included within the ambit of “sexual activity” but, as shown above, legal definitions have also included masturbation and lascivious exhibition of children’s genitals as constituting sexually explicit conduct. In the protection of children from sexual exploitation and sexual abuse, it appears crucial to focus on acts that harm the sexual integrity of the child. For the purposes of this document, the notion of “sexual activity” includes both explicit and non-explicit sexual activities that cause such harm.

<sup>1</sup> UN General Assembly (UNGA), “Convention on the Rights of the Child”, adopted in New York, 20 November 1989 <http://www.un.org/documents/ga/res/44/a44r025.htm>

<sup>2</sup> UNGA, “Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography”, adopted 25 May 2000 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

<sup>3</sup> Council of Europe, “Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted by the Committee of Ministers”, Council of Europe Treaty Series (CETS) 201, Lanzarote, 25 October 2007 <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201>

<sup>4</sup> Council of Europe, “Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse”, 2007, paragraph 143 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3832>

<sup>5</sup> Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, “First Implementation Report: Protection of Children against Sexual Abuse in the Circle of Trust”, 2015 adopted 4 December 2015 <http://www.coe.int/en/web/children/lanzarote-committee>

## Terminology Guidelines

*The three circles indicate how a certain term can be used:*

○ *The empty circle indicates that a term can be used without any particular concern in the context of the protection of children from sexual exploitation and sexual abuse: its meaning appears to be generally understood without confusion and/or the term is not harmful to the child. Terms with an empty circle will be accompanied by the text: “This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.”*

⊘ *The striped circle indicates some disagreement as to whether the term should be used or not, or as to how it should be used (e.g. with what meaning), and suggests specific care be taken when using it and how, in the context of the protection of children from sexual exploitation and sexual abuse. Terms with a striped circle will be accompanied by the text: “Special attention should be paid to how this term is used.”*

⊗ *The crossed circle indicates terms that should be limited or avoided completely in the context of the protection of children from sexual exploitation and sexual abuse. Terms with a crossed circle will be accompanied by the text: “The use of this term should be avoided.”*



## A. Child

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### A.1. Definitions in legally binding instruments<sup>6</sup>

“Child” is not a contentious term as such, and is used in a large number of international legal instruments. While the precise textual legal definition of “child” can vary slightly depending on the instrument, it is clear that a quasi-universal understanding of the legal notion exists:

- i. 1989: Article 1 of the CRC sets forth that, “[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”
- ii. 1990: Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC) states that, “[f]or the purposes of this Charter, a child means every human being below the age of 18 years.”<sup>7</sup>
- iii. 1999: Article 2 of International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour (WFCL) (ILO C182) sets forth that the term “child” shall apply to “all persons under the age of 18”.<sup>8</sup>
- iv. 2000: The OPSC refers explicitly, in its Preamble, to Article 1 of the CRC.
- v. 2000: Article 3(d) of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (“the Palermo Protocol”), defines the child as “any person under 18 years of age”.<sup>9</sup>
- vi. 2001: The Council of Europe Convention on Cybercrime (“the Budapest Convention”) uses the term “minor” in Article 9 dealing with child pornography and states that it includes all persons under 18 years of age. However, a State party may require a lower age limit, which shall not be less than 16 years.<sup>10</sup>
- vii. 2007: The Lanzarote Convention establishes in Article 3(a) that a child is “any person under the age of 18 years”.

### A.2. Terminology considerations

It should be noted that these documents do not necessarily define *who is a child* but rather the scope of their applicability under international law: the provisions are applicable to all persons below the age of 18, with or without exceptions. For instance, Article 1 of the CRC makes an exception to the applicability of the CRC, mentioning the possibility that the age of majority is attained before the age of 18 under national law. This is also the case for the OPSC, which explicitly refers back to Article 1 of the CRC and thus adopts the same scope of applicability.

<sup>6</sup> The legal instruments referred to throughout this document follow first a hierarchical order (international instruments before regional instruments) and second a chronological order (year of adoption from past to present).

<sup>7</sup> Assembly of Heads of State and Government of the Organization of African Unity, “African Charter on the Rights and Welfare of the Child”, adopted at the 26th Ordinary Session in Addis Ababa, 9–11 July 1990 <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/>

<sup>8</sup> International Labour Organization, “Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour”, adopted in Geneva, 17 June 1999 [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C182)

<sup>9</sup> UNGA, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime”, adopted in Palermo, 12–15 December 2000. [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THEREO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf)

<sup>10</sup> Council of Europe, “Convention on Cybercrime”, CETS 185, adopted in Budapest 23 November 2001 <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/185.htm>

The ACRWC, on the other hand, does not allow for such exceptions: regardless of the provisions on the age of majority in the domestic law, the provisions of the Charter are applicable to all persons below the age of 18. The same is true for ILO C182.

Despite the exception set forth by the CRC, it is noteworthy that the Committee on the Rights of the Child (CRC Committee) has consistently recommended that all states extend the scope of the CRC to all persons under the age of 18 years.<sup>11</sup>

While emphasising the importance of ensuring all persons under the age of 18 are considered children and granted the rights and protection that come with this status, it should also be acknowledged that older children in their adolescent years are commonly referred to (especially in non-legal contexts) as “adolescents” or “teenagers” (see Sections A.3.V and A.3.VI).

**Conclusion:** In line with the majority of international legal instruments and with international practice, the participating organisations advise that the term “child” be understood as including any person who is under the age of 18 years.

### A.3. Related terms

#### A.3.i Age of majority

∅ *Special attention should be paid to how this term is used.*

The age of majority is prescribed in law and is, in many countries, set at 18 years. This is the legally defined age at which a person becomes an adult, with all the attendant rights and responsibilities of adulthood. It means a person has full capacity to act or engage in any kind of legal activity and/or business, and is liable for his/her own actions, such as contractual obligations or liability for negligence. In general, parental duty of support to a child ceases when the child reaches the age of majority.<sup>12</sup>

Sometimes, a person can acquire the full decisional capacity of someone having reached the age of majority despite not having attained a certain age, through a certain act, for instance by entering marriage.<sup>13</sup> It can also be the result of emancipation (see Section A.3.III on “minor” below).

As an age marker, age of majority is a commonly misunderstood term and is sometimes confused with other age markers such as the age of consent to marriage, the age of sexual consent, or the minimum age of criminal responsibility.

**Conclusion:** Because of the abovementioned risk of confusion, care should be taken to ensure this term is used correctly. Moreover, the term is best used in a legal context, while being less relevant in other domains.

<sup>11</sup> CRC Committee, “General Measures of Implementation”, General Comment No. 5, adopted at the 34th session, 19 September–3 October 2003 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiQql8gX5Zxh0cQqSRzx6Zd2%2fQRsDnCTcaruSeZhPr2vUevjbn6t6Gsi1fheVp%2bj5HTLU2Ub%2fPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

<sup>12</sup> See, for instance, US Legal, “Legal Definitions and Legal Terms Defined” <http://definitions.uslegal.com/a/age-of-majority/>

<sup>13</sup> Infra, Section L on “child/early marriage”.

### A.3.ii Age of sexual consent

∅ *Special attention should be paid to how this term is used.*

#### A.3.ii.a Legal definitions

- i. 2007: The Lanzarote Convention, in Article 18 on sexual abuse, refers to the “legal age for sexual activities” (Article 18(1)(a)), and leaves it up to the States Party to the Convention to decide the age below which it is prohibited to engage in sexual activities with a child (Article 18(2)).
- ii. 2011: European Union (EU) Directive 2011/93 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography uses, in Article 2, the expression “age of sexual consent” and sets forth that it means “*the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child*”.<sup>14</sup>

#### A.3.ii.b Terminology considerations

There is no international treaty that establishes a legal age for sexual activities. The CRC, the OPSC, and ILO C182 are silent with regard to the age of sexual consent, leaving it entirely up to the States to establish this age. The legal age of sexual consent varies between countries, although many set the age of sexual consent at between 14 and 16 years of age.<sup>15</sup>

The Lanzarote Convention and many national legal systems make a distinction between sexual relations among peers (under 18) and sexual relations between a child and an adult. To acknowledge the evolving capacities of the child, and the fact that children who have reached the age of sexual consent have the right to engage in sexual relationships (provided these are not exploitative or abusive), the Lanzarote Convention has introduced an exception to the obligation of State Parties to criminalise certain conduct. This is done by referring to “*the age below which it is prohibited to engage in sexual activities with a child*” or “*the legal age for sexual activities*” (Articles 18(1)(a) and 23). Thus, for instance, the solicitation of a child above the age of sexual consent does not necessarily amount to a criminal offence *per se* (but can do so, depending on the circumstances).<sup>16</sup> Furthermore, States may decide not to criminalise acts causing the child to witness sexual abuse or sexual activities (“corruption of children” (Article 22)) if she/he has reached the age of sexual consent. Lastly, States Party to the Lanzarote Convention may decide not to criminalise the production or possession of pornographic material if said production is done with the consent of a child that has reached the age of sexual consent and if the possession is for personal use only (Article 20(3)).

Based on the above, it is clear that the CRC, the OPSC, and the Lanzarote Convention either remain silent with regard to sexual consent, leaving it up to the States to legislate on the matter (CRC and OPSC), or recognise the evolving capacities of the child by using as a cut-off age the age of sexual consent (Lanzarote Convention), which in European countries is most often set at 14, 15, or 16 years (EU Directive 2011/93). Note also that EU Directive 2011/93 sets forth that the terms of imprisonment for crimes involving sexual exploitation or sexual abuse of children can differ depending on the gravity of the crime and on whether or not the child has reached the age of sexual consent.<sup>17</sup>

**Conclusion:** To avoid possible misunderstandings or grey areas in the law, it should be clear that the age of sexual consent as defined by law means that engaging a child *below* that age in sexual activities

<sup>14</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093> (Note that the Directive is wrongly referred to as 2011/92/EU on the Eur-lex website).

<sup>15</sup> Few countries set the age limit lower, for example Japan, where the age of sexual consent is 13 years. Japanese Penal Code, Articles 176 and 177, <http://www.oecd.org/site/adboecdanti-corruptioninitiative/46814456.pdf>

<sup>16</sup> If the circumstances of Lanzarote Convention Article 18.1.b. apply. For more on this, see *infra*, Section H on the solicitation of children for sexual purposes.

<sup>17</sup> Directive 2011/93/EU, *supra* 14, Article 3(5).

is prohibited under all circumstances, and that the consent of such a child is legally irrelevant. A child *at or above* the age of sexual consent may, with her/his consent, be engaged in sexual activities. However, no child should ever, under any circumstances, be able to legally consent to her/his own exploitation or abuse. It is therefore important that States criminalise all forms of sexual exploitation of children up to the age of 18 years, and consider any presumed “consent” to exploitative or abusive acts as null and void.<sup>18</sup>

### A.3.iii Minor

∅ *Special attention should be paid to how this term is used.*

“Minor” is a term often seen in legislative texts. In major dictionaries, it is referred to as a legal term indicating a person who is “*under the age at which you legally become an adult*”<sup>19</sup>—that is, who has not attained the age of majority—which could be attained before (or after) the age of 18 depending on the legislation of each country. The CRC does not employ this term at all, and instead uses the term “child” to refer to any person under the age of 18.

Particularly in French and Spanish, the term “minor” can send a misleading message of children having no capacity, and/or being “less” than an adult. Therefore, the term “person(s) under the age of 18” is often preferred in non-legal contexts. No particular stigma or negative connotations are related to the latter, which can be used to refer to children in a neutral manner.

The term “minor” is also used in relation to emancipation—that is, “emancipated minor”. To be emancipated means to not or no longer be restricted by legal, social, or political considerations.<sup>20</sup> It has positive connotations when referring to, for instance, women’s emancipation during the 1960s and the acquisition of rights and opportunities.

However, this term is also seen in the context of childhood and in particular in relation to child marriage as a way to become emancipated, and can then have a different connotation. Indeed, the risk exists that a child who is emancipated may lose his/her protection as a child under national law.<sup>21</sup> An emancipated minor can be a person who, because her/his parents have died or are otherwise not in a position to take care her/him, is in charge of her/his family and/or household. A minor can also be emancipated through court order (sometimes with parental consent) as a result of her/his involvement in a business activity and because of having become economically independent. In some countries, a child may also become emancipated if she/he gets married (voluntarily or involuntarily) or joins the army.<sup>22</sup> Emancipation can be the result of a court decision, of a legal provision, or of a *de facto* situation.

**Conclusion:** Because its meaning can vary greatly depending on national legislation, and sometimes has a negative connotation, the term “minor” should be used sparingly in the context of child sexual exploitation and sexual abuse, and be reserved for legal issues.

<sup>18</sup> See, for instance, the ILO Committee of Experts on the Application of Conventions and Recommendations, Observation on Switzerland under C182: “The Committee emphasized that it is necessary to make a distinction between the age of sexual consent and the freedom to engage in prostitution”, 2014 [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3145249](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3145249)  
See also the case law of the European Charter of Social Rights, which, in the case of FAFCE v. Ireland, held that: “Article 7§10 requires that all acts of sexual exploitation of children be criminalised. [...] States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent”, Complaint 89/2013, Decision of 12 September 2014, paragraph 58. [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC89Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC89Merits_en.pdf)

<sup>19</sup> See Oxford Advanced Learner’s Dictionary. Cambridge Dictionaries online also refers to the term as a legal term.

<sup>20</sup> See, for instance, Oxford Advanced Learner’s Dictionary or Cambridge Advanced Learner’s Dictionary and Thesaurus.

<sup>21</sup> CRC Committee, “The Right of the Child to Freedom from All Forms of Violence”, General Comment No. 13, Doc. CRC/C/GC/13, adopted on 18 April 2011, [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf), asserts that “[t]he Committee considers that Article 19 [protection from all forms of violence] applies also to children under the age of 18 who have attained majority or emancipation through early marriage and/or forced marriage.”

<sup>22</sup> See, for instance <http://www.crckids.org/child-support/child-emancipation/>

With regard to the term “emancipated minor”, care should be taken so as not to use it in a way that would exclude such a person from the protection from which all children should benefit, independent of their living situation and status.

### A.3.iv Juvenile

Ø *Special attention should be paid to how this term is used.*

“Juvenile” is another frequently used term to refer to persons under the age of 18. Originally, the term derives from the Latin word *juvenis*, which means “young”, “a young person”.<sup>23</sup> It is today often used in the context of criminal justice, where it has a clear and precise meaning, referring to children in conflict with the law—that is, “juvenile offender”<sup>24</sup> or “juvenile delinquent”. It is also, although less frequently, used in connection with victims—that is, “juvenile victim”.<sup>25</sup>

In French and Spanish, this term is mainly used as an adjective, not as a noun. When the term is used as an adjective in English it often has a slightly negative connotation, expressing disapproval (e.g. someone acting or being juvenile).<sup>26</sup>

**Conclusion:** “Juvenile” is a term that is best reserved for the legal context, in particular in the field of juvenile justice, and only for children that have reached the age of criminal responsibility.

### A.3.v Adolescent

Ø *Special attention should be paid to how this term is used.*

While major dictionaries define adolescent as “[...] a young person in the process of developing from a child into an adult”,<sup>27</sup> and thus in a non-numerical manner, a number of UN agencies have defined “adolescents”, both in English and in Spanish, as persons up to the age of 19 years of age,<sup>28</sup> and adolescence as “the period in human growth and development that occurs after childhood and before adulthood, from ages 10 to 19”.<sup>29</sup> However, the term “adolescent” is not a legal term, and it is not referred to at all in the CRC or in the OPSC.

The term “adolescent” was included in the title of the World Congress III Against Sexual Exploitation of Children and Adolescents because Spanish-speaking stakeholders explained that “child” in Spanish mainly refers to very young children and does not include adolescents. The term “adolescent” could be a way of defining the “in-between” phase between childhood and adulthood, thus recognising that adolescents (who legally are still children if under 18 years of age) are in a phase of evolving capacities in which they can take partial or full responsibility for certain actions (e.g. sexual consent or the regulated right to work), while also acknowledging their lack of full legal capacity and, importantly, lack of capability to consent to abuse or exploitation.

**Conclusion:** When this term is used in the context of child sexual exploitation and sexual abuse, it is important to distinguish between adolescents up to age 18 (who legally should be considered children)

<sup>23</sup> See Oxford Advanced Learner’s Dictionary.

<sup>24</sup> The Cambridge Dictionaries refer to this term (noun) as a legal term and provide the examples of “juvenile crime”, “juvenile offender”.

<sup>25</sup> See, for instance, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Juvenile Offenders and Victims: 2014 National Report” <http://www.ojjdp.gov/ojstatbb/nr2014/html/chp2.html>

<sup>26</sup> See Oxford Advanced Learner’s Dictionary and Cambridge Dictionaries online.

<sup>27</sup> See, for instance, Oxford Dictionary online. <http://www.oxforddictionaries.com/definition/english/adolescent>

<sup>28</sup> UN Department of Economic and Social Affairs (UNDESA), “Definition of Youth”, <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>

<sup>29</sup> World Health Organization (WHO), “Maternal, Newborn, Child and Adolescent Health: Adolescent Development”, [http://www.who.int/maternal\\_child\\_adolescent/topics/adolescence/dev/en/](http://www.who.int/maternal_child_adolescent/topics/adolescence/dev/en/)

and adolescents aged 18 and above, and to ensure adolescents under the age of 18 are granted the rights and protection accorded to all children.

### A.3.vi Teenager

∅ *Special attention should be paid to how this term is used.*

The term “teenager” is closely related to that of “adolescent”, and these two terms are often defined in an identical fashion, in particular with regard to the upper age limit of 19 years.<sup>30</sup> The term “teenager” has, semantically speaking, a very clear definition: it means a person between 13 and 19 years of age—that is, a person in her/his “teens”—thus refers in the English language to the suffix “teen” in the words “thirteen”, “fourteen”, and so forth.

**Conclusion:** While there is no particular indication against the use of this term, care should be taken when it is used in the context of child sexual exploitation and sexual abuse, so as to distinguish between teenagers up to age 18 and teenagers aged 18 and above, and to ensure teenagers under the age of 18 are granted the rights and protection accorded to all children.

### A.3.vii Young person/young people/youth

∅ *Special attention should be paid to how this term is used.*

The UN defines youth as “a period of transition from the dependence of childhood to adulthood’s independence. That is why, as a category, youth is more fluid than other fixed age-groups.”<sup>31</sup> For statistical purposes, the UN defines “youth” as the 15–24-year-old age group,<sup>32</sup> and the World Bank has adopted the same definition.<sup>33</sup> The UN uses the terms “youth” and “young people” interchangeably.<sup>34</sup>

In its work related to intimate partner violence, WHO refers to “women” as being aged from 15 years,<sup>35</sup> and to “young women” as being aged 15–24 years.<sup>36</sup> This can be problematic from a child protection standpoint. The WHO definition of intimate partner violence includes “forced intercourse, and other forms of sexual coercion”,<sup>37</sup> and encompasses young girls in abusive relationships with much older adults, which would otherwise be defined as child sexual exploitation or sexual abuse for all children under the age of 18 years.

The African Youth Charter defines “youth” as “every person between the ages of 15 and 35 years”, and uses the terms “youth” and “young people” interchangeably. The Charter also specifies that those young people who are between 15 and 17 years of age (i.e. youth under the age of 18) shall be considered minors.<sup>38</sup>

<sup>30</sup> Compare, for instance, the definition of “adolescent” by the UN with the very clear and apparently uncontested definition of “teenager” that can be found in most dictionaries. The intermingling of these two terms can also come from the fact that the term “teenager” does not exist in French and Spanish, for instance, and is mainly translated into these languages as “adolescent”.

<sup>31</sup> UNDESA, “Definition of Youth”, <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>

<sup>32</sup> UNGA, “World Programme of Action for Youth to the Year 2000 and Beyond”, Resolution 50/81, 1995. Paragraph 9 of this resolution states that the UN defines youth as the age cohort of 15–24. The same age group is reiterated in UNGA Resolution A/RES/56/117 in 2001, Commission for Social Development Resolution E/2007/26 & E/CN.5/2007/8 in 2007, and UNGA Resolution A/RES/62/126 in 2008. See <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>

<sup>33</sup> See, for instance, <http://www.youthpolicy.org/mappings/internationalyouthsector/directory/actors/worldbank/>

<sup>34</sup> UNDESA, “Definition of Youth”, supra 31.

<sup>35</sup> WHO, “Violence against Women: Intimate Partner and Sexual Violence against Women”, Fact Sheet No. 239, updated November 2014 [www.who.int/mediacentre/factsheets/fs239/en](http://www.who.int/mediacentre/factsheets/fs239/en)

<sup>36</sup> WHO and Joint UN Programme on HIV and AIDS (UNAIDS), “Violence against Women and HIV/AIDS: Critical Intersections”, Information Bulletin Series No. 1, <http://www.who.int/hac/techguidance/pht/InfoBulletinIntimatePartnerViolenceFinal.pdf>

<sup>37</sup> Ibid.

<sup>38</sup> African Union Heads of State and Governments, “African Youth Charter”, adopted in Banjul, July 2006. [http://africa-youth.org/youth\\_charter](http://africa-youth.org/youth_charter)

**Conclusion:** When using these terms in the context of child sexual exploitation and sexual abuse, it should be clarified whether they do or do not include persons aged 18 or older. Moreover, special care should be taken to guarantee the legal rights of persons under the age of 18 years.

### A.3.viii Child in the online environment

Ø *Special attention should be paid to how this term is used.*

The meaning of the term “child” as referred above in this chapter sometimes becomes more difficult to grasp in the online sphere as it may relate to two different issues:

1. The actions of the child online: A child acting in the online environment is not different from a child offline, even if her/his right to access certain online services without parental consent may well be allowed before the child turns 18. While children under the set age limit (e.g. 13 years for many social media services) may be more vulnerable than older children, all young persons under the age of 18 years are entitled to special protection.

2. The representation of the child online: A child is a child at one specific moment in time, but childhood is, by definition, a temporary and passing status, which the child will leave behind as she/he grows older and moves on to adulthood. Yet the sexual abuse images of a child can remain online long after she/he has reached adulthood, and continue to be consumed (e.g. distributed, exchanged, sold, and bought). Victimization of children can take place in one country at a given time, but, through the dissemination of child sexual abuse material, could continue in various countries with different legislation, or at a much later moment in time.

The OPSC, the Lanzarote Convention, and the Budapest Convention all cover acts that go beyond the production of child sexual abuse material, including, among the constituent elements of the crime, acts such as offering, making available, distributing, transmitting, procuring, and possessing child sexual abuse material,<sup>39</sup> independent of the time elapsed since the production of such material. Indeed, the Lanzarote Convention also includes simulated representations or realistic images of a non-existent child (Article 20).

**Conclusion:** A child is any person under the age of 18, whether she/he is acting in the online environment or offline. Protection from sexual exploitation and sexual abuse should not be lessened by the fact that a child is acting online.

Furthermore, with regard to the representation of the child online, the illegal image of a child does not stop being illegal because the person depicted in the image has become an adult, and she/he is still a victim of child sexual abuse material (i.e. child pornography under international law and many national legal systems). Thus, the image or recording of a child online remains that of a child even when the person depicted has moved into adult age.

<sup>39</sup> Budapest Convention, supra 10, Article 9. Article 3(c) of the OPSC (supra 2) also mentions disseminating, exporting, importing, and selling.

## B. Sexual violence against children

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### B.1. Definitions in legally binding instruments

- i. 1989: The CRC does not define “sexual violence”, but includes “sexual abuse” in its definition of “violence” in Article 19<sup>40</sup> and specifically addresses protection from sexual exploitation and sexual abuse in Article 34.
- ii. 2011: The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (“the Istanbul Convention”) refers to “sexual violence” in its Article 36. Moreover, Article 3 of the Convention explicitly extends the scope of the instrument to include girls under 18 years of age.<sup>41</sup>

### B.2. Non-binding instruments

The term “sexual violence” is increasingly used in resolutions of the UNGA and of the Human Rights Council (HRC). Some examples are included below.

- i. 2010: HRC Resolution A/HRC/13/L.21 on the Rights of the Child: The Fight Against Sexual Violence.<sup>42</sup>
- ii. 2011: UNGA Resolution 66/140 on the Girl Child mentions sexual violence against children.<sup>43</sup>
- iii. 2011: UNGA Resolution 66/141 on the Rights of the Child, Paragraph 23, mentions rape and other sexual violence against children.<sup>44</sup>
- iv. 2011: CRC Committee General Comment No. 13 on the Right of the Child to Freedom from All Forms of Violence sets forth a broad definition of violence against children which includes sexual abuse and exploitation. It further defines sexual abuse and exploitation as including “(a) *The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.*”<sup>45</sup>
- v. 2013: The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in the Association of South-East Asian Nations (ASEAN) refers in its Preamble to the need to “*prevent and protect [women and children] from and respond to all forms of violence, abuse and exploitation [...] including women and children who are sexually exploited*”.<sup>46</sup>

<sup>40</sup> “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

<sup>41</sup> Council of Europe, “Convention on Preventing and Combating Violence against Women and Domestic Violence”, CETS No. 210, adopted in Istanbul, 11 May 2014 <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

<sup>42</sup> March 2010 <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G10/123/83/PDF/G1012383.pdf?OpenElement>

<sup>43</sup> Adopted 19 December 2011 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/140](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/140)

<sup>44</sup> Adopted 19 December 2011 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/141](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/141)

<sup>45</sup> CRC Committee, General Comment No. 13, paragraph 25.

<sup>46</sup> ASEAN, “Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN”, adopted at the 23rd Summit, 9 October.



### B.3. Terminology considerations

Although the term “violence” is often used in connection with some form of physical act, the original meaning of “violent” signifies “*having a marked or powerful effect*”.<sup>47</sup> While English dictionaries often refer to “violence” as the use of physical force, it is also recognised that violence means “*actions or words that are intended to hurt people*”.<sup>48</sup> Indeed, it is increasingly recognised that violence against children can be not only physical but also psychological and sexual.<sup>49</sup>

The notion of “sexual violence” has been used mainly when referring to adults, often in relation to gender-based violence and in the public health discourse, and is often associated with rape.<sup>50</sup> The Declaration on the Elimination of Violence Against Women, adopted by the UNGA in 1993, defines violence against women as “*any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life*”.<sup>51</sup> It encompasses, but is not limited to, “*physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women and forced prostitution; and physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs*”.<sup>52</sup>

The 1993 Declaration has become a text of reference at global level and has guided, for instance, the work of WHO, which, in 2002, defined sexual violence as “*any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work*”.<sup>53</sup> It is further specified that “coercion” can include “*a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats*”.<sup>54</sup>

The UN Secretary-General’s Study on Violence against Children, and its accompanying World Report on Violence against Children, reinforces the discourse on sexual violence against children at the UN level,<sup>55</sup> and takes as a starting point the CRC (in particular Article 19) and the WHO definition of violence. The Study systematically refers to sexual violence and contextualises it in the various settings, including, *inter alia*, sexual abuse, sexual exploitation, sexual harassment, and internet-related sexual offences. Since then, an increasing number of UNGA and HRC resolutions have referred to sexual violence against children,<sup>56</sup> often specifically addressing child sexual exploitation and sexual abuse. Over the past years, the discourse in the field of child protection has also moved towards a more “violence-based” language (e.g. violence against children instead of child abuse).

<sup>47</sup> See Oxford Advanced Learner’s Dictionary, origin of the word “violent”.

<sup>48</sup> Cambridge Advanced Learner’s Dictionary and Thesaurus.

<sup>49</sup> See the abovementioned references to UNGA resolutions as well as CRC Committee, General Comment No. 13.

<sup>50</sup> See, for instance, E. Krug et al., (eds), *World Report on Violence and Health*, Geneva, World Health Organization, 2002, Chapter 6, p. 149, where it is explained that “[s]exual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object. The attempt to do so is known as attempted rape. Rape of a person by two or more perpetrators is known as gang rape. Sexual violence can include other forms of assault involving a sexual organ, including coerced contact between the mouth and penis, vulva or anus.”

<sup>51</sup> Doc. A/RES/48/104, 20 December 1993, Article 1.

<sup>52</sup> Ibid., article 2.

<sup>53</sup> E. Krug et al., *World Report on Violence and Health*, supra 50, Chapter 6, p. 149.

<sup>54</sup> Ibid.

<sup>55</sup> P.S. Pinheiro, *World Report on Violence against Children*, New York, UN, 2006.

<sup>56</sup> See, for instance, UNGA Resolutions 66/140 (2011), 66/141 (2011), 68/146 (2013).

While there is no overall internationally agreed legal definition of sexual violence, which is mentioned neither in the CRC nor in the OPSC,<sup>57</sup> it is important to note that Article 7 of the Rome Statute of the International Criminal Court includes among crimes against humanity “*rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*” (when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack).<sup>58</sup>

In a report to the Security Council, the UN Secretary-General states, “*Under international law, sexual violence is not synonymous with rape. The statutes and the case law of the International Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone, and the Elements of Crimes of the International Criminal Court, define sexual violence to also encompass sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity, which may, depending on the circumstances, include situations of indecent assault, trafficking, inappropriate medical examinations and strip searches.*”<sup>59</sup> The disaggregation of sexual violence offences into the categories listed above permits a more focused approach to prevention.<sup>60</sup>

The notion of “sexual violence” is more and more often used as an umbrella term that includes sexual exploitation and sexual abuse.<sup>61</sup> This is in line with the abovementioned CRC Committee General Comment No. 13, which clearly states that violence against children can be both physical and mental, and that the latter includes “*psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect*”.<sup>62</sup> A similar approach can be found in the Sustainable Development Goals adopted by the UNGA in September 2015,<sup>63</sup> which include sexual exploitation as a form of violence. The implementation of the 2030 Agenda for Sustainable Development entails monitoring progress on both the elimination of all forms of violence against women and girls (Target 5.2)<sup>64</sup> and the elimination of all forms of violence against children (Target 16.2).<sup>65</sup> Moreover, the increasing attention paid to sexual violence against girls is reflected in the data collected at national level. The World’s Women, Trends and Statistics Report 2015 prepared by the UN Statistics Division<sup>66</sup> contains data on sexual violence against women and girls and, building on the 1993 UN Declaration on Violence against Women, defines sexual violence as “*any sort of harmful or unwanted sexual behaviour that is imposed on*

<sup>57</sup> It should be noted, however, that the French version of the CRC uses the terminology *violence sexuelle* where the English text refers to sexual abuse. See Articles 19 and 34 of the CRC.

<sup>58</sup> UNGA, “Rome Statute of the International Criminal Court” (last amended 2010), adopted 17 July 1998, Article 7(g).

<sup>59</sup> UN Secretary-General, “Report on the Implementation of Security Council Resolutions 1820 (2008) and 1888 (2009)”, Doc. A/65/592 – S/2010/604, Paragraph 4. See also Security Council Resolutions on sexual violence in conflict 1820 (2008), 1888(2009), and 1325 (2000).

<sup>60</sup> Sexual slavery or enforced prostitution, for example, may differ in terms of its logic from the execution of a specific policy of forced pregnancy during a campaign of “ethnic cleansing” designed to achieve a military or political end, or rape concurrent with looting to terrorise the population or as a result of overly lax command and control structures. Depending on the circumstances of the offence, sexual violence can constitute a war crime, a crime against humanity, an act of torture, or a constituent act of genocide.

<sup>61</sup> See WHO, *World Report on Violence and Health*. See also Inter-Agency Standing Committee (IASC), *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Contexts*, 2015, p. 323, which uses WHO’s definition and adds that “[s]exual violence includes, at least, rape/attempted rape, sexual abuse and sexual exploitation” and “[s]exual violence takes many forms, including rape, sexual slavery and/or trafficking, forced pregnancy, sexual harassment, sexual exploitation and/or abuse, and forced abortion.”

<sup>62</sup> CRC Committee, General Comment No. 13, Paragraphs 4 and 25. The Committee also emphasised in the General Comment that the choice of the term violence “*must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment)*”.

<sup>63</sup> UNGA, “Transforming our World: 2030 Agenda for Sustainable Development”, Doc. A/RES/70/1, 25 September 2015 [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

<sup>64</sup> UN Sustainable Development Goal 5, Target 2: “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”.

<sup>65</sup> UN Sustainable Development Goal 16, Target 2: “End abuse, exploitation, trafficking and all forms of violence against and torture of children”.

<sup>66</sup> <http://unstats.un.org/unsd/gender/aboutWW2015.html>. The guidelines for the production of statistics on sexual violence against women, published by the UN Statistics Division, also include a “minimum list of acts” to be considered: [http://unstats.un.org/unsd/gender/docs/Guidelines\\_Statistics\\_VAW.pdf](http://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf)

someone. It includes acts of abusive sexual contact, forced engagement in sexual acts, attempted or completed sexual acts with a woman without her consent, sexual harassment, verbal abuse and threats of a sexual nature, exposure, unwanted touching, and incest”.

The increased use of the term “violence”, in particular when used to refer to sexual exploitation and sexual abuse, has given rise to concern with regard to the focus that this term may draw to acts of commission, with the risk of making acts of omission (e.g. neglect/lack of supervision/lack of parental care leading to children’s vulnerability to sexual abuse/exploitation) less visible. This is also something that has been underlined in the field of gender-based violence, where the attention is often drawn to those who “commit” violence, leaving unattended the fact that violence can be as much a result of “omission” as of “commission”.<sup>67</sup> With regard to children, the CRC Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights have all been clear on the fact that violence against children includes failure to protect children from danger or harm and that it is the duty of the state to do so (positive obligations).<sup>68</sup>

“Sexual violence” has become an important term in programming and policy-making, and is increasingly found in public discourse. When interpreted broadly, it has the advantage of being an all-encompassing term including all degrees of violence and all forms of suffering inflicted (physical, psychological, or sexual) as well as all kinds of acts (through contact, without contact, by omission). It is important for policy-makers and legislators to, on the one hand, pursue an integrated approach to the protection of children from all violations of their human dignity and sexual integrity and, on the other hand, to monitor and act to prevent and respond to new forms of sexual violence and to adopt all necessary measures to ensure children’s effective protection, including providing appropriate referral mechanisms.<sup>69</sup>

With regard to children, the terms “sexual abuse” and “sexual exploitation” are, as the following sections will show more in detail, firmly established in international law and remain key when addressing violations of children’s rights that are of a sexual nature. In many domestic legal systems,<sup>70</sup> as well as within EU law,<sup>71</sup> the use of violence can represent an aggravating factor in a sexual crime against a child.

Lastly, sexual violence may constitute a form of torture or other cruel, inhuman, or degrading treatment or punishment under certain circumstances. The UN Convention against Torture and Other

<sup>67</sup> See, for instance, A. Basu, “Gender-Based Violence: Acts of Commission and Acts of Omission” [web blog], 23 November 2015 <http://unfoundationblog.org/gender-based-violence-acts-of-commission-and-acts-of-omission/>

<sup>68</sup> CRC Committee, General Comment No. 13, Paragraph 20; European Court of Human Rights, “Case of X and Y v. the Netherlands”, Judgement of 26 March 1985; Inter-American Court of Human Rights, “Case of González *et al.* (“Cotton Field”) v. Mexico”, Judgment of 16 November 2009.

<sup>69</sup> A referral mechanism is a cooperative framework through which state actors fulfil their obligations to protect and promote the rights of victims. The CRC Committee, in its General Comment No. 13, sets forth in its Paragraph 50 that “The person receiving the report should have clear guidance and training on when and how to refer the issue to which-ever agency is responsible for coordinating the response. [...] Professionals working within the child protection system need to be trained in inter-agency cooperation and protocols for collaboration. The process will involve: (a) a participatory, multi-disciplinary assessment of the short- and long-term needs of the child, caregivers and family, which invites and gives due weight to the child’s views as well as those of the caregivers and family; (b) sharing of the assessment results with the child, caregivers and family; (c) referral of the child and family to a range of services to meet those needs; and (d) follow-up and evaluation of the adequateness of the intervention.”

<sup>70</sup> Some examples: in Brazil “Dos crimes contra a liberdade sexual” <http://www.oas.org/juridico/MLA/sp/bra/index.html>; in Argentina “Delitos contra la integridad sexual” <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#17>; in Spain “Delitos contra la libertad e indemnidad sexuales” [https://www.boe.es/legislacion/codigos/codigo.php?id=038\\_Codigo\\_Penal\\_y\\_legislacion\\_complementaria&modo=1](https://www.boe.es/legislacion/codigos/codigo.php?id=038_Codigo_Penal_y_legislacion_complementaria&modo=1); in France “Des atteintes à l’intégrité physique ou psychique de la personne” <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>; in Germany “Offences against sexual self-determination” [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html)

<sup>71</sup> Directive 2011/93/EU, supra 14, Article 9 on “aggravating circumstances”: “In so far as the following circumstances do not already form part of the constituent elements of the offences [...], Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances [...]: (g): “the offence involved serious violence or caused serious harm to the child.”

Cruel, Inhuman or Degrading Treatment or Punishment sets forth that “[t]orture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>72</sup> The UN Committee against Torture has stated that it views “sexual violence and trafficking as gender-based acts of torture and within the purview of the Committee”,<sup>73</sup> and has repeatedly linked sexual violence to torture.<sup>74</sup> A similar approach can be found within the Inter-American Commission on Human Rights, which has admitted and opened a hearing on the reports of sexual torture of women in Mexico, promising also to continue with the theme.<sup>75</sup> Furthermore, the UN Human Rights Committee established under the International Covenant on Civil and Political Rights<sup>76</sup> recognises that sexual violence and abuse may constitute a form of torture or cruel, inhuman, or degrading treatment.<sup>77</sup> The Covenant deliberately refrains from elaborating an explicit definition of torture, on the basis that the nature, purpose, and severity of an act—not a pre-existing list of offences or crimes—should determine whether it is torture.<sup>78</sup> In all circumstances, the State is obligated to take measures to protect children from any form of sexual violence or abuse, whether perpetrated by persons acting in an official capacity, outside their official capacity, or in a private capacity.<sup>79</sup>

**Conclusion:** Sexual violence against children encompasses both sexual exploitation and sexual abuse of children and can be used as an umbrella term to refer jointly to these phenomena, both with regard to acts of commission and omission and associated to physical and psychological violence. At the same time, within this broader framework it is important also to maintain a more narrow focus on different specific manifestations of sexual violence against children in order to develop precise protection and prevention strategies as well as case-specific responses to child victims. From a child rights perspective, what matters is that the protection granted or sought through both legislation and policies be as broad and effective as possible, leaving no room for loopholes and securing all children’s protection and freedom from harm.

<sup>72</sup> Adopted on 10 December 1984, Article 1.

<sup>73</sup> See, for instance, <http://www1.umn.edu/humanrts/swap/law/un/enforcement/comtorture.htm>. It should be noted, however, that the UN Committee against Torture considers only violations committed by a State Party, and does not address issues relating to individuals or non-State actors exclusively. See, for instance, <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>

<sup>74</sup> For instance, in its Concluding Observations on the Fifth Periodic Report of the Russian Federation, (29 October–23 November 2012), the Committee against Torture expressed the following concern (Paragraph 14): “Despite consistent reports of numerous allegations of many forms of violence against women throughout the State party, the Committee is concerned that there are only a small number of complaints, investigations and prosecutions of acts of domestic violence and violence against women, including marital rape.” More recently, its Concluding observations on the initial report of Iraq (11-12 August 2015), the Committee expressed particular concern about “reports of ISIL fighters raping female captives, and about the fact that this extremist group has instituted a pattern of sexual violence, slavery, abduction and human trafficking targeted at women and girls belonging to religious and ethnic minorities (see S/2015/203, paras. 28-31). It is equally concerned by reports of sexual violence committed by members of the Iraqi army and militias on all sides of the conflict. The Committee is further concerned at the apparent impunity enjoyed by the perpetrators of such acts (arts. 1, 2, 4 and 16).”

<sup>75</sup> See <http://hrbrief.org/2015/03/reports-of-sexual-torture-of-women-in-mexico/>

<sup>76</sup> The UN Human Rights Committee is the treaty-monitoring body for the UN International Covenant on Civil and Political Rights established under Article 28 of the International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S 1057.

<sup>77</sup> See for instance, the following Concluding Observations by the Human Rights Committee: Cabo Verde, UN Doc. CCPR/C/CPV/CO/1; Honduras, UN Doc. CCPR/C/HND/CO/1; Kenya, UN Doc. CCPR/C/KEN/CO/3, para 17; Malawi, UN Doc. CCPR/C/MWI/CO/1, para 15; Mozambique, UN Doc. CCPR/C/MOZ/CO/1, para 17. See also UN Human Rights Committee, “V.D.A and Argentina”, Communication No. 1608/2007, 29 March 2011, UN Doc. CCPR/C/101/D/1608/2007.

<sup>78</sup> UN Human Rights Committee, “Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)”, CCPR General Comment No. 20, 10 March 1992, Paragraph 4.

<sup>79</sup> *Ibid.*, Paragraph 2.

## B.4. Related terms

### B.4.i Child sexual assault

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

*“Sexual assault” is defined as “the action or an act of forcing an unconsenting person to engage in sexual activity; a crime involving forced sexual contact” or “sexual contact that usually involves force upon a person without consent”.<sup>80</sup>*

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<sup>80</sup> See Oxford British and World English Dictionary and Merriam-Webster English Dictionary.

## C. Child sexual abuse

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### C.1. Definitions in legally binding instruments

- i. 1989: The CRC refers to “*all forms of sexual exploitation and sexual abuse*” in its Article 34, which elaborates on the requirement for State Parties to protect children from sexual exploitation and abuse as follows: “*For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.*”
- ii. 1999: The ACRWC refers in Article 27 to “all forms of sexual exploitation and sexual abuse”.
- iii. 2007: The Lanzarote Convention refers to both the “sexual exploitation and [the] sexual abuse of children”. The Preamble sets forth that “[a]ll forms of sexual abuse of children, including acts which are committed abroad, are destructive to children’s health and psycho-social development.” The Convention further states in Article 3(b) that “[s]exual exploitation and sexual abuse of children shall include the behaviour as referred to in Articles 18 to 23 of this Convention.” This includes sexual abuse, offences concerning child prostitution, child pornography, the participation of a child in pornographic performances, corruption of children, and solicitation of children for sexual purposes. Article 18(1) refers specifically to “sexual abuse”, which it defines for the purposes of criminalisation as follows: “(a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities”<sup>81</sup> and: “(b) engaging in sexual activities with a child where: use is made of coercion, force or threats; or abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.”
- iv. 2011: EU Directive 2011/93 sets forth, in its Article 3, a thorough definition of offences concerning sexual abuse, and includes in that definition the fact of causing a child to witness sexual activities or sexual abuse, engaging in sexual activities with a child, and coercing, forcing, or threatening a child into sexual activities with a third party.

### C.2. Non-binding instruments

The term “child sexual abuse” is often used in resolutions of the UNGA and of the HRC on the rights of the child (known as Omnibus Resolutions) and other non-binding international or regional documents (e.g. of the Council of Europe).

### C.3. Terminology considerations

The CRC does not make clear what the distinction is between child sexual abuse and child sexual exploitation. However, it is noteworthy that the sexual abuse of children requires no element of exchange and can occur for the mere purpose of the sexual gratification of the person committing the act, whereas the sexual exploitation of children can be distinguished by an underlying notion of exchange (for more details on sexual exploitation of children, see *infra*, Section D). A recurrent (although not indispensable) feature of child sexual abuse is that it is committed by someone who is

<sup>81</sup> It should be noted that Article 18(3) sets forth that Article 18(1)(a) does not cover consensual sexual activity between children.

not a stranger to the victim and who has some form of authority or power over them.<sup>82</sup> Such authority can be based on family ties (e.g. a relative), a position of authority or control (e.g. a teacher, coach), or other factors. The power a person can have over a child can also derive from the establishment of a relationship of trust or dependency, for the purpose of manipulating the child to engage in sexual activities.<sup>83</sup>

In accordance with major dictionaries, abuse refers to the cruel or violent, including sexual, treatment of someone, especially regularly or repeatedly.<sup>84</sup> The fact that a person who sexually abuses a child more often than not is someone familiar to the child also facilitates the repetition of the act.<sup>85</sup>

The UN has provided a general, very broad definition of sexual abuse (not particularly relating to children), referring to *“the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions”*.<sup>86</sup>

Child sexual abuse has been defined as *“any sexual activity between a child and closely related family member (incest) or between a child and an adult or older child from outside the family. It involves either explicit force or coercion or, in cases where consent cannot be given by the victim because of his or her young age, implied force”*.<sup>87</sup>

WHO provides a detailed definition of “child sexual abuse”: *“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.”*<sup>88</sup>

While most forms of child sexual abuse are contact abuse, it must be acknowledged that child sexual abuse can also be committed without physical contact (so-called “non-contact abuse”). Common examples of “non-contact sexual abuse” are sexual harassment of children, including verbal harassment such as unwanted sexual comments.<sup>89</sup> With the surge of child sexual abuse occurring through the Internet or other ICT, it becomes increasingly necessary to pay attention to such non-contact forms of abuse—and the consequences they have for young victims.

**Conclusion:** The sexual abuse of children requires no element of exchange, and can occur for the mere purpose of the sexual gratification of the person committing the act. Such abuse can be committed without explicit force, with other elements, such as authority, power, or manipulation being determining factors. Moreover, it is noteworthy that, when the child has not reached the age of sexual consent, there is no legal requirement to establish any of these elements. The mere fact of the sexual activity taking place is sufficient to constitute abuse. Furthermore, child sexual abuse can take the form of both contact and non-contact abuse. Child sexual abuse is a broad category that, at its core, defines

<sup>82</sup> See for instance Pinheiro, *World Report on Violence against Children*, supra 55, Chapter 3. The Explanatory Report to the Lanzarote Convention (paragraph 48) also explains that statistics demonstrate that the perpetrators of child sexual abuse are usually persons close to the victim.

<sup>83</sup> Ibid.

<sup>84</sup> See Oxford British and World English Dictionary.

<sup>85</sup> There appears to be a clear correlation between the fact that the perpetrator of child sexual abuse is often a known and trusted caregiver and the fact that child sexual abuse often occurs repeatedly over longer periods of time, in an increasingly sexually invasive manner. See, for instance, WHO, “Guidelines for Medico-Legal Care for Victims of Sexual Violence”, Geneva, WHO, 2003, Chapter 7, p. 76.

<sup>86</sup> UN Secretariat, “Secretary-General’s Bulletin on Special Measures for Protection for Sexual Exploitation and Abuse”, 9 October 2003, Section 1 <https://oios.un.org/resources/2015/01/ST-SGB-2003-13.pdf>. IASC, “Guidelines for Integrating Gender Based Violence Interventions in Humanitarian Action” (supra 61) use the same definition (p. 322) [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/femm/dv/gbv\\_toolkit\\_book\\_01\\_20\\_2015\\_/gbv\\_toolkit\\_book\\_01\\_20\\_2015\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/femm/dv/gbv_toolkit_book_01_20_2015_/gbv_toolkit_book_01_20_2015_en.pdf)

<sup>87</sup> N. Dominguez, C. Nelke, and B. Perry, “Child Sexual Abuse”, *Encyclopaedia of Crime and Punishment*, Vol. 1, 2002, cited in IASC, *Guidelines for Integrating Gender-Based Violence Interventions*, supra 61, p. 321.

<sup>88</sup> WHO Guidelines [http://www.who.int/violence\\_injury\\_prevention/resources/publications/en/guidelines\\_chap7.pdf](http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf)

<sup>89</sup> See infra, Section C.4.V on “Sexual harassment of a child”.

the harm caused to children by forcing or coercing them to engage in sexual activity, whether they are aware of what is happening or not. As such, it is an appropriate umbrella term for many of the other terms referred to in this document. The terms “child sexual abuse” and “sexual abuse of children” are used interchangeably in English and pose no particular problem. Linguistically speaking, “abuse” as a word in this context already implies the mistreatment of *someone else*, and appears sufficiently clear on its own to ensure no confusion arises. Both “child sexual abuse” and “sexual abuse of children” thus clearly refer to the fact that someone else is subjecting the child to the abuse.

## C.4. Related terms

### C.4.i Incest

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

“Incest” refers to the sexual activity between two people who are very closely related in a family, for example siblings, or parent and child. Incest involving a child constitutes sexual abuse. While some domestic legal systems require blood ties for a sexual activity to constitute incest, others have broadened the notion to include family members who are not blood-related but who are still considered too close to engage in sexual activities (e.g. step-parents). Others still recognise only “vertical” incest, meaning the law does not cover sexual relations between siblings. In accordance with major dictionaries, “incest” refers to “*sexual relations between people classed as being too closely related to marry each other*”.<sup>90</sup> It is sometimes also defined as “*the crime of having sexual intercourse with a parent, child, sibling, or grandchild*”.<sup>91</sup>

### C.4.ii Rape of a child

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

Rape is the crime of forcing someone (in this case a child) to have sex against her or his will, and it often involves the use of physical force or violence.<sup>92</sup> In some countries, the rape of a child is an act defined by domestic law that can be committed only against a female person, thus making it a gender-based crime.<sup>93</sup> It is important when using this term, to ensure that it is used in a gender-neutral manner. Furthermore, while the crime of rape typically requires some form of penetration,<sup>94</sup> some countries have moved away from the term “rape” in the Criminal Code and adopted laws on, for instance, “sexual assault”, which broaden the scope of the crime to include also sexual acts that do not involve penetration.<sup>95</sup>

<sup>90</sup> See for instance Oxford British and World English Dictionary.

<sup>91</sup> Ibid.

<sup>92</sup> See Oxford Advanced Learner’s Dictionary and Cambridge Essential English Dictionary.

<sup>93</sup> For instance, in Russia the crime of rape does not exist when the victim is a boy, when it is instead labelled as “violent acts of a sexual character”, see Criminal Code of the Russian Federation, 1996 (as amended), Articles 131 and 132 (in Russian) [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/6b12cdea9308b35504628c3292186f5140f65a68/](http://www.consultant.ru/document/cons_doc_LAW_10699/6b12cdea9308b35504628c3292186f5140f65a68/)).

<sup>94</sup> See, for instance, the Federal Bureau of Investigation Uniform Crime Reporting (UCR) system definition of rape: “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim”; French Criminal Code, Article 222-23–222-26: “*tout acte de pénétration sexuelle, de quelque nature qu’il soit, commis sur la personne d’autrui par violence, contrainte, menace ou surprise. Tout acte de pénétration sexuelle est visé : buccale, vaginale, anale, par le sexe, par le doigt, par un objet.*”

<sup>95</sup> See, for instance, the Criminal Code of Canada, Articles 264 et seq.



### C.4.iii Child sexual molestation

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

Molestation refers to the act of touching or attacking someone, especially a child, in a sexual way.<sup>96</sup> The word “molest” derives from the Latin words *molestare* (“to annoy”) and *molestus* (“troublesome”).<sup>97</sup> The term “molestation” is widely used in family law contexts, where it usually relates to spousal/parental relations (e.g. “non-molestation clauses” in the context of matrimonial proceedings/spousal separation/domestic violence in common law countries).<sup>98</sup>

### C.4.iv Sexual touching of children

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

There is no internationally agreed (legal) definition of sexual touching of children. Nevertheless, “to touch” means to physically put hands on something or someone, and the term “sexual touching of children” mainly refers to the act of touching the private parts of a child’s body, and/or making the child touch her or his own private parts, for the purpose of one’s own sexual arousal/gratification.<sup>99</sup>

Sexual touching often marks, along with sexual comments,<sup>100</sup> the beginning of a gradually increasing process of sexual abuse of the child by an adult or by another child.<sup>101</sup> For that reason, it may represent a crucial stage of intervention to avoid further, and more serious, sexual abuse of the child.

**Conclusion:** Sexual touching of a child is a form of sexual abuse. While the term “sexual touching” can of course have positive connotations when referring to adult consensual sexual relationships, it refers to abusive acts when committed on children, except where both parties are children over the age of sexual consent and the touching is consensual.

### C.4.v Sexual harassment of a child

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

“Harassment” refers to the act of “*annoying or worrying somebody by putting pressure on them or saying or doing unpleasant things to them*”.<sup>102</sup> The Istanbul Convention defines “sexual harassment” as any form of unwanted verbal, non-verbal, or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment (Article 40).

<sup>96</sup> See Oxford Advanced Learner’s Dictionary and Cambridge Essential English Dictionary.

<sup>97</sup> See Oxford Advanced Learner’s Dictionary.

<sup>98</sup> See, for example,

<http://www.legislation.gov.uk/ukpga/1996/27/part/IV/crossheading/nonmolestation-orders>

<sup>99</sup> In the US and the UK, for instance, sexual touching of a child is a form of sexual assault (“sexual assault by touching”). The touching must be deliberate and have a sexual motive, and includes any physical contact, including touching through clothing, as well as direct contact with the other person’s skin.

<sup>100</sup> See *infra*, Section C.4.V on “Sexual harassment of a child”.

<sup>101</sup> “The sexual abuse of children frequently occurs as repeated episodes that become more invasive with time. Perpetrators usually engage the child in a gradual process of sexualizing the relationship over time.” See: WHO, Guidelines for medico-legal care for victims of sexual violence, chapter 7 Child sexual abuse.

<sup>102</sup> See Oxford Advanced Learner’s Dictionary.

The Istanbul Convention currently provides the only international legal definition of “sexual harassment”, although such acts are commonly recognised as a form of gender-based violence.<sup>103</sup>

“Unwanted sexual comments” can be a form of sexual harassment. The process of sexual abuse may include or even start with unwanted sexual comments on, for instance, the way the child is dressed or is using make-up or on her/his physical beauty, thus embarrassing the child. While such comments do not always lead to sexually abusive activities, they may still cause harm to the child, and may be considered a form of non-contact abuse.<sup>104</sup>

The notion of sexual harassment is used more often with regard to adults than it is for children, and frequently in relation to situations happening in the workplace or elsewhere outside the home (although it can also take place within the home/family setting). Sexual harassment of children can happen at school or in other places, however, and can be committed by for instance teachers, coaches, or other staff supposed to care for the child.<sup>105</sup>

**Conclusion:** Importantly, “sexual harassment” refers not only to sexual conduct with the explicit intention to violate the dignity of another person (i.e. purpose) but also to conduct of a sexual nature that a person experiences as offensive or intimidating (i.e. effect).<sup>106</sup> It therefore relates clearly to what is also sometimes called sexual bullying.<sup>107</sup> “Unwanted sexual comments” can be an example of this, since the person making the comments may not necessarily intend for them to violate the dignity of the person, although that is the effect they may cause.

#### C.4.vi Online child sexual abuse

∅ *Special attention should be paid to how this term is used.*

As explained above in Section A.3.VIII on the child in the online environment, sexual exploitation and sexual abuse of children increasingly take place through the Internet, or with some connection to the online environment.

Online sexual abuse can be any form of sexual abuse of children, as set forth in the previous sections, which has a link to the online environment. Thus, online sexual abuse can take the form of, for instance, sexual molestation and/or harassment through social media or other online channels.

Child sexual abuse also takes on an online dimension when, for instance, acts of sexual abuse are photographed or video-/audio-recorded and then uploaded and made available online, whether for personal use or for sharing with others (see Section D.4.II on “online child sexual exploitation”). Each

<sup>103</sup> See, for instance, WAVE (Women Against Violence Europe) and UN Population Fund (UNFPA) Regional Office for Eastern Europe and Central Asia, “Strengthening Health System Responses to Gender-based Violence in Eastern Europe and Central Asia – A Resource Package”, *Defining Gender-Based Violence* <http://www.health-genderviolence.org/training-programme-for-health-care-providers/facts-on-gbv/defining-gender-based-violence/21>

<sup>104</sup> Child sexual abuse is often divided into contact and non-contact sexual abuse, the latter including acts where the abuser does not touch the child. See for instance NSPCC (National Society for the Prevention of Cruelty to Children), “Child Sexual Abuse”, Research Briefing, July 2013. The Rape, Abuse and Incest National Network defines “sexual harassment” as including “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature”. See <https://rainn.org/get-information/types-of-sexual-assault/sexual-harassment>. For similar definitions of sexual harassment explicitly mentioning unwanted sexual comments/statements, see, for instance, <https://sapac.umich.edu/article/63>

<sup>105</sup> I.I. Akkaab, “Sexual Harassment for Grades in Tertiary Institutions – A Myth or Reality?” *Global Awareness Society International 21<sup>st</sup> Annual Conference*, New York City, May 2011, pp 1–11.

<sup>106</sup> Istanbul Convention, Explanatory Report, Paragraph 208, which specifies that the acts must have the “purpose or effect of violating the dignity of the victim”.

<sup>107</sup> While bullying is not necessarily related to sexual abuse or exploitation, it can also contain such elements, and be linked to sexting, grooming, and sexual extortion. Sexual bullying is sometimes used to refer to coercion, intimidation, or enticement to sexual activity from peers, or unwanted pressure from peers to have sex. See, for instance, UK Department for Children, Schools and Families, “Safeguarding Children and Young People from Sexual Exploitation”, 2009.

repeated viewing and/or sharing of such recorded material constitutes a new violation of the rights of the child. More details on different forms of online sexual abuse are provided in the sections to follow.<sup>108</sup>

It is important to note, however, that online child sexual abuse is not, in and by itself, a new and distinct form of sexual abuse. Rather, different manifestations of child sexual abuse are facilitated by the Internet, and can increase the accessibility to children by persons looking to sexually abuse them.

“Virtual child sexual abuse” is a term sometimes used as a synonym for “online child sexual abuse”. Care should be taken not to confuse these two terms, which have very different meanings. “Virtual” relates to online artificially or digitally created images of children involved in sexual activities. The realism of such images creates the illusion that children are actually involved, although this is not the case.<sup>109</sup> More details on virtual child sexual abuse can be found in Section F.4.II below on “computer/digitally generated child sexual abuse material”.

**Conclusion:** The term “online child sexual abuse” has become a widely used term to refer both to the sexual abuse of children that is facilitated by ICTs (e.g. online grooming) and to sexual abuse of children that is committed elsewhere and then repeated by sharing it online through, for instance, images and videos (which is where it becomes exploitation, see Section D.4.II on “online child sexual exploitation”). The preferred term in the case of the former is “online-facilitated child sexual abuse”.

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<sup>108</sup> See infra sections F. on “Child pornography”, G. on “Live online child sexual abuse”, and H. on “Solicitation of children for sexual purposes”.

<sup>109</sup> Interpol, “Appropriate Terminology”, paragraph 21, <http://www.interpol.int/Crime-areas/Crimes-against-children/Appropriate-terminology>

## D. Child sexual exploitation

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### D.1 Definitions in legally binding instruments

- i. 1989: As mentioned in Section C on “child sexual abuse”, the CRC refers to “*all forms of sexual exploitation and sexual abuse*” in its Article 34, and explicitly to “*(b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.*”
- ii. 1999: The ACRWC refers to all forms of sexual exploitation and sexual abuse, and explicitly mentions in Article 27 “*(a) the inducement, coercion or encouragement of a child to engage in any sexual activity; (b) the use of children in prostitution or other sexual practices; (c) the use of children in pornographic activities, performances and materials*”.
- iii. 2000: The OPSC refers to sexual exploitation in its Article 3, whereby it is required of State Parties to criminalise the sexual exploitation of the child in the context of what the OPSC defines as sale of children (Article 3.1(a)(i)a).
- iv. 2007: The Lanzarote Convention, as mentioned above, refers to the behaviour constituting the offences of child sexual exploitation and child sexual abuse as described in Articles 18–23. The Preamble refers to exploitation as “*the sexual exploitation of children, in particular child pornography and prostitution*”.
- v. 2011: EU Directive 2011/93 defines offences concerning sexual exploitation in its Article 4, and includes in that definition acts such as making a child participate in pornographic performances, knowingly attending pornographic performances that include children, making a child participate in child prostitution, and engaging in sexual activities with a child where recourse is made to prostitution.

### D.2 Non-binding instruments

The term “child sexual exploitation” is often used in resolutions of the UNGA and of the HRC on the rights of the child (known as Omnibus Resolutions) and other non-binding international or regional documents (e.g. of the Council of Europe).<sup>110</sup>

### D.3 Terminology considerations

A child is a victim of sexual exploitation when she/he takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such)<sup>111</sup> from a third party, the perpetrator, or by the child her/himself.

A child may be coerced into a situation of sexual exploitation through physical force or threats. However, she/he may also be persuaded to engage in such sexual activity as a result of more complex

<sup>110</sup> To mention a few, see UNGA Resolution 51/77 of 20 February 1997; UNGA Resolution 57/306 of 22 May 2003; UNGA Resolution 69/484 of 5 December 2014; Council of Europe Parliamentary Assembly, Resolution on the Sexual Exploitation of Children: Zero Tolerance, 5 September 2002; Council of Europe, Committee of Ministers Recommendation No. R(91)11 concerning sexual exploitation, pornography, and prostitution of, and trafficking in, children and young adults; Council of Europe, Committee of Ministers Recommendation Rec(2001)16 concerning the protection of children against sexual exploitation.

<sup>111</sup> In legal language, this notion of exchange is well covered by the term “consideration”, which refers to “anything given or promised or forborne by one party in exchange for the promise or undertaking of another” (J.M. Feinman (Ed.), “One Thousand and One Legal Words You Need To Know”, Oxford University Press, 2003). Nevertheless, in non-legal contexts, the term “consideration” is mainly used in a different sense (careful thought or sympathetic regard), which may cause confusion. The more general notion of “exchange” is therefore preferred in the present Guidelines.

and nuanced factors, either human or situational, including a power imbalance between the victim and the perpetrator.<sup>112</sup> While any child may be sexually exploited, children may also find themselves in a situation that makes them particularly vulnerable to such exploitation (e.g. poverty, abuse/neglect, unaccompanied/homeless). Furthermore, the age of a child may increase her/his vulnerability to sexual exploitation, with older children often mistakenly assumed to be either consenting to their own abuse or not in need of protection.

“Exploitation” in this context is thus a key term, the meaning of which marks its difference from sexual violence and sexual abuse of children. The main distinction lies in the notion of exchange involved in exploitation, which is lacking from the concepts of abuse and/or violence.

According to major dictionaries, “exploitation” is the use of something or someone else (unfairly) for one’s own advantage,<sup>113</sup> the action of taking advantage of a person or situation, especially unethically or unjustly for one’s own ends,<sup>114</sup> or treating others unfairly in order to gain an advantage or benefit.<sup>115</sup> This idea of extracting or incurring a benefit, advantage, or gain from the sexual act involved in exploitation does not necessarily, as the meaning of the word clearly shows, have anything to do with a monetary gain, but can be any type of benefit.

It is noteworthy that the notion of exchange is often involved in the context of child sexual abuse material, such material often being exchanged for other child sexual abuse material or for monetary gain, and thus also amounts to child sexual exploitation. At the same time, the abuse depicted in the material may not originally have been committed for monetary gain. In this sense, the acts committed against the child, as well as the image of the child, can be both abusive and exploitative simultaneously.

In more general terms, the UN has defined “sexual exploitation” (not necessarily related to children) as follows: “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another”.<sup>116</sup> Other existing definitions include describing child sexual exploitation as a type of child abuse that happens when a child is performing, and/or another or others are performing on them, sexual activities in exchange for something (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money).<sup>117</sup>

It should be noted that children can be the perpetrators, as well as the victims, of child sexual exploitation. The prior is described as “peer-on-peer” sexual exploitation.<sup>118</sup>

**Conclusion:** What distinguishes the concept of child sexual exploitation from other forms of child sexual abuse is the underlying notion of exchange present in exploitation. While these two phenomena must be distinguished, it is also important to acknowledge that there is considerable overlap between them, and that, semantically, the distinction will probably never be completely clear. For example, many cases of child sexual abuse also involve some kind of benefit to the child or exchange—often to win trust or ensure silence (especially non-tangible benefits like small gifts, attention, and affection). Similarly, the idea of exploitation is arguably applicable to all victims of abuse in the sense of exploiting the vulnerability of a child.

<sup>112</sup> See, for instance, <http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-exploitation/what-is-child-sexual-exploitation/> or [http://www.barnardos.org.uk/what\\_we\\_do/our\\_work/sexual\\_exploitation/about-cse.htm](http://www.barnardos.org.uk/what_we_do/our_work/sexual_exploitation/about-cse.htm)

<sup>113</sup> Cambridge English Dictionary.

<sup>114</sup> Collins English Dictionary.

<sup>115</sup> Oxford Advanced Learner’s Dictionary.

<sup>116</sup> UN Secretariat, “Secretary-General’s Bulletin on Special Measures for Protection for Sexual Exploitation and Abuse”.

<sup>117</sup> This definition of child sexual exploitation was created by the UK National Working Group for Sexually Exploited Children and Young People and is used in statutory guidance for England <http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-exploitation/what-is-child-sexual-exploitation/>. In England, “child sexual exploitation” would also refer, for instance, to the situation of a child “receiving” attention and affection from an adult who sexualises the relationship over time and then routinely sexually abuses the child. See Department for Children, Schools and Families, “Safeguarding Children and Young People from Sexual Exploitation”.

<sup>118</sup> See [https://www.beds.ac.uk/\\_\\_data/assets/pdf\\_file/0006/461463/RBF-3-CurtisLS.pdf](https://www.beds.ac.uk/__data/assets/pdf_file/0006/461463/RBF-3-CurtisLS.pdf)

## D.4 Related terms

### D.4.i Commercial sexual exploitation of children

Ø *Special attention should be paid to how this term is used.*

There is no definition under international law for the term “commercial sexual exploitation of children” (CSEC), and the term has increasingly been used interchangeably with the abovementioned term “child sexual exploitation”. This can be observed, for instance, in the outcome documents from the three World Congresses against the Sexual Exploitation of Children. The outcome document of the first World Congress against Commercial Sexual Exploitation of Children in Stockholm in 1996, the so-called Stockholm Declaration and Agenda for Action, refers to CSEC, defining this phenomenon as follows: *“It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery.”*<sup>119</sup>

For the second World Congress, in Yokohama in 2001, the title continued to be World Congress against Commercial Sexual Exploitation of Children. However, in the outcome document of the second World Congress, the Yokohama Commitment, there was a clear tendency to move away from the term “commercial” when mentioning the protection of children from all forms of sexual exploitation.<sup>120</sup> The term was, nevertheless, still included in the framework of criminal responsibility and accountability, and as part of the “fight” or “combat” against CSEC.<sup>121</sup>

At the third World Congress in Rio de Janeiro in 2008, the term “commercial” was dropped from the title, to make the World Congress against the Sexual Exploitation of Children and Adolescents. This decision came after discussions among various participating organisations and Congress organisers, which concluded that the term “commercial” in the context of sexual exploitation of children did not add anything to this notion and was, therefore, redundant. In the outcome document of the third World Congress, the Rio Declaration, no mention whatsoever is made of the term “commercial”, except in Paragraph 59, which sets forth that the States shall: *“[u]ndertake national and international coordinated measures to curb and stop the involvement of organised crime in commercial sexual exploitation of children and bring persons and/or legal entities responsible for this form of organized crime to justice.”* Again, the term ‘commercial’ thus appears only within the framework of criminal responsibility and accountability – in this case regarding members of organised crime.

EU Directive 2011/93, on the other hand, appears to include commercial aspects into the term “sexual exploitation” by indicating that states should, in combating sexual exploitation of children, make full use of *“existing instruments on the seizure and confiscation of the proceeds of crime”* (Paragraph 23). Moreover, Article 7 of the OPSC requires that State Parties shall take measures for the seizure and confiscation of goods used to commit or facilitate offences under the OPSC and proceeds derived from such offences.

There are arguments in favour of maintaining the term “commercial” in the context of (organised) criminality and financial transactions. For instance, in the context of the Financial Coalitions,<sup>122</sup> the commercial nature of certain financial transactions and websites that provide access to children for sexual exploitation and abuse, as well as to child sexual abuse material, the use of “commercial” is felt to be important as a way to distinguish this particular form of exploitation and to underline the

<sup>119</sup> Stockholm Declaration and Agenda for Action, Stockholm, 1996, Paragraph 5.

<sup>120</sup> Yokohama Commitment, 2001, for instance Paragraph 2, which repeatedly refers to sexual exploitation *tout court*.

<sup>121</sup> *Ibid.*, Paragraph 5.

<sup>122</sup> See the European Financial Coalition <http://www.europeanfinancialcoalition.eu/>; the Financial Coalition against Child Pornography <http://www.icmec.org/fcacp/>; and its Asian-Pacific counterpart <http://www.icmec.org/apac-fcacp/>

focus on the accountability of payment and money transfer providers.<sup>123</sup> This term also conveys the sense that criminals and criminal networks profit from the sexual commodification and objectification of children. As such, the CSEC could be used as a subset of “sexual exploitation of children”.

From a linguistic point of view, major English dictionaries set forth that the term “commercial” refers to something/someone “concerned with or engaged in commerce”, “making or intended to make a profit”, or “having profit rather than another value as a primary aim”.<sup>124</sup> Furthermore, such dictionaries refer specifically to the fact of “buying and selling” things, goods, or services that have “been produced with the aim of making money”.<sup>125</sup>

**Conclusion:** As explained in section D.3 on child sexual exploitation above, the term “exploitation” refers to the unfair use of something/someone for one’s own advantage or benefit, which includes both monetary and non-monetary exchanges. For the reasons set forth in this section, a distinction can thus be made between “sexual exploitation” and “commercial sexual exploitation”, with the latter being a form of sexual exploitation where the focus is specifically on monetary benefit, often relating to organised criminality where the primary driver is economic gain.

#### D.4.ii Reserved

Reserved for the term “*violencia sexual comercial*” in the Spanish Terminology Guidelines.

#### D.4.iii Online child sexual exploitation

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

As previously explained, sexual abuse and sexual exploitation of children increasingly take place on or through the Internet, or with some connection to the online environment. Just as child sexual abuse and exploitation offline can take on a variety of forms, so can online abuse and exploitation. What is important to note is that the term “online child sexual exploitation” refers to the use of the Internet as a *means* to exploit children sexually. Indeed, the terms “ICT-facilitated”<sup>126</sup> and “cyber-enabled”<sup>127</sup> child sexual exploitation are sometimes used as alternatives to define these practices.

The reference to “online child sexual exploitation” includes all acts of a sexually exploitative nature carried out against a child that have, at some stage, a connection to the online environment. It includes any use of ICT that results in sexual exploitation or causes a child to be sexually exploited or that results in or causes images or other material documenting such sexual exploitation to be produced, bought, sold, possessed, distributed, or transmitted. This notion can thus encompass (but is not limited to):

- sexual exploitation that is carried out while the victim is online (such as enticing/manipulating/threatening a child into performing sexual acts in front of a webcam<sup>128</sup>)

<sup>123</sup> The Financial Coalitions work to enhance “collaboration across sectors [...] to better understand the commercial business models of illegal merchants involved in the sale, access and distribution of child sexual abuse images in order to develop tools towards their prevention”, see <https://www.itu.int/en/cop/case-studies/Documents/FCACP.PDF>. INHOPE has also underlined the importance of addressing the commercial nature of child sexual abuse material.

<sup>124</sup> See Oxford Advanced Learner’s Dictionary, Collins English Dictionary.

<sup>125</sup> See Cambridge English Dictionary, Merriam-Webster English Dictionary.

<sup>126</sup> UN Office on Drugs and Crime (UNODC), “Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children”, May 2015.

<sup>127</sup> M. McGuire and S. Dowling, *Cyber Crime: A Review of the Evidence*, Research Report 75, Chapter 3: “Cyber-Enabled Crimes – Sexual Offending against Children”, UK Home Office, October 2013, p. 4.

<sup>128</sup> A webcam is a video camera that feeds or streams its image in real time to or through a computer-to-computer network. A video stream may be viewed, saved, or sent on to other networks, for instance via the Internet. A webcam is usually connected by a cable to a computer or built into computer hardware. What it records can be seen on a website or on another computer as it happens. Webcams can also be wirelessly connected or connected to a local area network (LAN).

- identifying and/or grooming potential child victims online with a view to exploiting them sexually (whether the acts that follow are then carried out online or offline)
- the distribution, dissemination, importing, exporting, offering, selling, possession of, or knowingly obtaining access to child sexual exploitation material online (even if the sexual abuse that is depicted in the material was carried out offline)

**Conclusion:** The line between child sexual exploitation online and offline is often blurred and, with the rapid evolution of ICTs, child sexual exploitation with some online component is increasingly common. While the term “online child sexual exploitation” can be used as an umbrella-term to indicate such forms of sexual exploitation that have an online component or a relation to the Internet, it should be recalled that the Internet is a means, albeit very potent, to exploit children sexually; it is not, in and by itself, a distinct type of sexual exploitation.

For more details on online manifestations of child sexual exploitation, see infra sections F. on child pornography, G. on live online child sexual abuse, and H. solicitation of children for sexual purposes.



## E. Exploitation of children in/for prostitution

○ This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.

### E.1. Definitions in legally binding instruments

- i. 1989: Article 34 of the CRC requires State Parties to take measures to prevent the “exploitative use of children in prostitution”. However, this expression is not defined.
- ii. 1990: Article 27(b) of the ACRWC sets forth that State Parties shall take measures to prevent the “use of children in prostitution or other sexual practices”.
- iii. 1999: ILO C182 refers in its Article 3(b) to “the use, procuring, or offering of a child for prostitution”, defining it among the “worst forms of child labour”.
- iv. 2000: The OPSC uses the term “child prostitution” in Article 2(b), and defines it as follows: “[c]hild prostitution means the use of a child in sexual activities for remuneration or any other form of consideration.” In addition, Article 3(b) requires States to criminalise the following constituent parts of the offence of child prostitution: “offering, obtaining, procuring, or providing a child for child prostitution”.
- v. 2007: The Lanzarote Convention uses the term “child prostitution” in Article 19(2), and defines it as “the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person”.
- vi. 2011: EU Directive 2011/93 uses the term “child prostitution” and defines it as “the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party”.

### E.2. Non-binding instruments

- i. 1990: The UN Commission for Human Rights (now the HRC) appointed a Special Rapporteur on the sale of children, *child prostitution* and child pornography.<sup>129</sup> However, the Resolution by which the appointment was made does not contain a definition of child prostitution.
- ii. 2015: The UNAIDS Terminology Guidelines on preferred terminology set forth that the term “prostitution” or “prostitute” should not be used at all, whether with regard to adults or children, because it denotes value judgement. When referring to adults, the UNAIDS Terminology Guidelines suggest using terms such as “sex work” and “sex worker”; in reference to children, they suggest the term “sexual exploitation of children”.<sup>130</sup>

### E.3. Terminology considerations

“Sexual exploitation of children in/for prostitution” is frequently referred to as “child prostitution”, both in legal instruments adopted in the 21st century and in mass media. This form of exploitation consists of a child performing a sexual act in exchange for (a promise of) something of value (money, objects, shelter, food, drugs, etc). It is not necessarily the child who receives the object of exchange, but often a third person. Moreover, it is not necessary that an object of exchange is actually given; the mere promise of an exchange suffices, even if it is never fulfilled.

<sup>129</sup> UN Commission on Human Rights, “Sale of Children”, Resolution 1990/68, 53rd Meeting, 1990.

<sup>130</sup> UNAIDS, Terminology Guidelines, 2015, p. 10  
[http://www.unaids.org/sites/default/files/media\\_asset/2015\\_terminology\\_guidelines\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf)

The use of the term “child prostitution” has been questioned, since it may arguably be interpreted in a manner to imply that the phenomenon represents a legitimate form of sex work or that the child has given her/his informed consent to prostitute her/himself.<sup>131</sup> For this reason, other terms that better reflect the fact that the child is a victim of exploitation and that she/he is entitled to protection have been suggested. Indeed, even a slight twist of the term, from “child prostitution” to “prostitution of children” could serve to indicate that the child is being subjected to prostitution *by someone/something*<sup>132</sup> rather than freely choosing it.

While there is an existing legal definition of “child prostitution”, which is firmly anchored in a number of international<sup>133</sup> and national<sup>134</sup> legal instruments, it should also be noted that “child prostitution” is not a universal legal term and that some of the major legal instruments related to children’s rights and child protection refrain from using it. As illustrated above in Section E.1 on legal definitions, the CRC instead uses the term “exploitative use of children in prostitution”, the ACRWC refers to “use of children in prostitution” as a form of sexual exploitation, and ILO refers to “the use, procuring, or offering of a child for prostitution”.<sup>135</sup>

A potentially negative aspect of the term used in the CRC, “exploitative use of children in prostitution”, is that it might be understood as there also being a non-exploitative use of children in prostitution. This is of course not what the CRC is suggesting, but in order to ensure a more neutral terminology the ACRWC, which refers simply to “use”, might represent an alternative.

**Conclusion:** In order to avoid the risk of stigmatising children exploited in/for prostitution, or of inadvertently legitimising such practices, it is preferable to use terms other than “child prostitution” to define this phenomenon, in particular in non-legal contexts. Moreover, it is noteworthy that, while the qualification of the act under international law is still to be found in existing legal documents, which often use the term “child prostitution”, nothing prevents States from using other, more suitable terms to criminalise the same acts. “Exploitation in prostitution” or “exploitation for prostitution” arguably represent a more appropriate way to address the issue, because it underlines the element of exploitation of the child and leaves no doubt as to the fact that the child is not to be held responsible for the acts that follow from her/his situation.

## E.4. Related terms

### E.4.i Children in (a situation of) prostitution

∅ *Special attention should be paid to how this term is used.*

This term refers more to the situation or living conditions of a child, thus indicating that there are cases in which children find themselves in prostitution. While this term expresses a reality in a neutral

<sup>131</sup> The problematic connotation related to the term “child prostitution” was highlighted already in 2005: “these constructions [‘child prostitution’ and ‘child prostitute’] on their own, fail to make it clear that children cannot be expected to make an informed choice to prostitute themselves”. See: Subgroup Against the Sexual Exploitation of Children, *Semantics or Substance? Towards a shared understanding of terminology referring to the sexual abuse and exploitation of children*, 2005, p.14 <http://www.ecpat.net/sites/default/files/Semantics%20or%20Substance.pdf>

<sup>132</sup> “Something” could here refer to, for instance, the living conditions of the child, which may mean that she/he has no real choice.

<sup>133</sup> The OPSC, supra 2, the Lanzarote Convention, supra 3, and Directive 2011/93/EU, supra 14.

<sup>134</sup> For instance, in some parts of the US, law enforcement officials are obliged to arrest sexually exploited children on child prostitution charges in order for them to subsequently access rehabilitation services. See, for instance, *The Los Angeles Times*, 21 October 2015 <http://www.latimes.com/local/lanow/la-me-ln-sheriff-children-sex-trafficking-20151021-story.html>. It is noteworthy that the UK, in its recently adopted Serious Crime Act, has removed all references to “child prostitution” and has substituted them with the term “sexual exploitation of a child”. See UK Serious Crime Act 2015, Chapter 68 “child sexual exploitation” <http://www.legislation.gov.uk/ukpga/2015/9/section/68/enacted>

<sup>135</sup> The word “use” in this expression is not limited to the personal but takes on a broader meaning, by means of which a child is made available for sexual exploitation and abuse by others, through her/his prostitution.

fashion, without necessarily stigmatising or shifting the blame onto the child, it also omits completely the element of exploitation and of responsibility of the/those person(s) behind it.

Moreover, this term can be used to indicate that the child is living in an environment of prostitution without being sexually exploited her/himself. For instance, the parents of the child or other members of the family may be involved in prostitution either as prostitutes or as pimps. The term would then indicate a child at risk of becoming a victim of prostitution, but not necessarily a child already exploited in prostitution.

#### E.4.ii Child prostitute

⊗ *The use of this term should be avoided.*

Concerns have been raised that the terms “child prostitution” and, even more so, “child prostitute” could imply that the child has consented to engage in prostitution or open up an assumption of (co) responsibility of the child in her/his own exploitation. As mentioned above, alternative terms, such as “exploitation of children in prostitution”, are sometimes used to capture the fact that a child can never voluntarily choose to be exploited in prostitution but rather is a victim of sexual exploitation.

In March 2015, following a national campaign to remove the phrase “child prostitution” from all legislation in the UK,<sup>136</sup> the Serious Crime Act was adopted, which “amends the Sexual Offences Act 2003 to remove references to child prostitution and child pornography [... and] replace these terms with references to the sexual exploitation of children” (Chapter 68, Paragraph 51). Furthermore, the offence of loitering or soliciting for the purposes of prostitution, which used to apply to all persons aged 10 years or over, is now limited to adults (Chapter 68, Paragraph 52).

Similar voices have been raised in the US, where anti-slavery and human rights groups are arguing for the removal of this term from legislation and other use.<sup>137</sup>

**Conclusion:** The term “child prostitute” should never be used in legislative or policy documents or in practice, as it may harm the child and/or risk shifting the blame onto the child.

#### E.4.iii Child sex worker

⊗ *The use of this term should be avoided.*

The concern relative to this term is similar to that regarding the abovementioned term “child prostitute”. While the term is frequently used to refer to adults, the terms “sex work” and “sex worker” should never be used to refer to children sexually exploited through prostitution, since they could imply that this is a legitimate occupation for a child, or shift the blame onto the child.

<sup>136</sup> See <http://www.theguardian.com/society/2015/jan/06/child-prostitution-term-outdated-mp-ann-coffey> and <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/victory-mps-campaign-rid-laws-8637437>

<sup>137</sup> See <http://rights4girls.org/>; [http://www.trust.org/item/20150108213653-fg6zb/?source=fiOtherNews3&utm\\_content=buffercc978&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.trust.org/item/20150108213653-fg6zb/?source=fiOtherNews3&utm_content=buffercc978&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer) and [http://www.huffingtonpost.com/cindy-mccain/theres-no-such-thing-as-a\\_6\\_b\\_6547232.html](http://www.huffingtonpost.com/cindy-mccain/theres-no-such-thing-as-a_6_b_6547232.html)

#### E.4.iv Children/adolescents/young people selling sex

⊗ *The use of this term should be avoided.*

“Young people selling sex” is a term increasingly used in relation to policy and programme interventions in the field of HIV/AIDS. It has been used to refer to people 10–24 years of age: children 10–17 years and young adults 18–24 years old.<sup>138</sup> While adults (18 years old and above) can of course also be victims of sexual exploitation, it is important to note that, in relation to children under the age of 18 years, reference should always be made to the fact that they are sexually exploited. Children should not be referred to as persons “selling sex”.<sup>139</sup>

#### E.4.v Voluntary/self-engaged prostitution

⊗ *The use of this term should be avoided.*

In relation to the issue of sexual exploitation of children in prostitution, it is necessary to address the terms “voluntary prostitution” and “self-engaged prostitution”, which are sometimes used in situations where it is perceived that young boys or girls have made an informed choice to engage in prostitution.

In this regard, it must be noted that a child does not under international law have the capacity to consent to her or his own sexual exploitation. As such, any form of consent or seemingly “voluntary” conduct is irrelevant in respect of protecting children under the age of 18 years from all forms of sexual exploitation.<sup>140</sup>

**Conclusion:** With regard to children involved in prostitution, the terms “voluntary” and “self-engaged” should be avoided. Children under the age of 18 years who are involved in prostitution should always be seen and addressed as victims of sexual exploitation.

#### E.4.vi Transactional sex

⊗ *The use of this term should be avoided.*

“Transactional sex” is described as a commodified relationship in which sexual acts are exchanged for goods, cash, or benefits, often linked to economic survival, educational achievement, enhancing one’s economic opportunities, or boosting one’s social status.<sup>141</sup> The term “transactional sex” first appeared in the 1990s<sup>142</sup> as part of the discourse on HIV transmission patterns among young women in Sub-Saharan Africa. Indeed, transactional sex has been associated with increased risk of sexual violence, and higher risk of HIV transmission.<sup>143</sup> In public health circles, transactional sex is distinguished from prostitution on the basis that it revolves around an implicit, rather than an explicit, agreement or predetermined payment, forms part of a broader set of social obligations,<sup>144</sup> is often embedded in

<sup>138</sup> See, for instance, WHO, “HIV and Young People Who Sell Sex”, Technical Brief, 2015, Glossary on p. 3 [www.unaids.org/sites/default/files/media\\_asset/2015\\_young\\_people\\_who\\_sell\\_sex\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/2015_young_people_who_sell_sex_en.pdf)

<sup>139</sup> The 2015 UNAIDS Terminology Guidelines (supra 130) also point out that “[s]ex work is defined as the consensual sale of sex between adults, [and] children (people under 18 years) cannot be involved in sex work. Instead, children involved in sex work are considered to be victims of sexual exploitation.”

<sup>140</sup> Ibid.

<sup>141</sup> T.P. Williams et al. “Transactional Sex as a Form of Child Sexual Exploitation and Abuse in Rwanda: Implications for Child Security and Protection”, *Child Abuse & Neglect*, vol. 36, 2012, pp. 354–61, p. 355; see also M. Hunter, “The Materiality of Everyday Sex: Thinking beyond ‘Prostitution’”, *African Studies*, vol. 61, no. 1, 2005, pp. 99–120, p. 101; G. Banteby et al., “Cross-Generational and Transactional Sexual Relations in Uganda: Income Poverty as a Risk Factor for Adolescents”, London, in: *Overseas Development Institute*, 2014, p. 3.

<sup>142</sup> H. Standing, “AIDS: Conceptual and Methodological Issues in Researching Sexual Behavior in Sub-Saharan Africa”, *Social Science and Medicine*, vol. 34, no. 5, 1992, pp. 475–83; A. Ankomah, “Premarital Sexual Relationships in Ghana in the Era of AIDS”, *Health Policy and Planning*, vol. 7, no. 2, 1992, p. 137.

<sup>143</sup> K.L. Dunkle et al., “Transactional Sex among Women in Soweto, South Africa; Prevalence, Risk Factors and Association with HIV Infection”, *Social Science Medicine*, vol. 59, 2004, pp. 1851–92, p. 1582.

<sup>144</sup> V. Choudhry et al., “Transactional Sex and HIV Risks – Evidence from a Cross-Sectional National Survey among Young People in Uganda”, *Global Health Action*, vol. 8, 2015.

an emotional relationship, and is generally not perceived by communities as a form of prostitution or sexual exploitation.<sup>145</sup>

The motivation behind transactional sex may vary depending on the socioeconomic factors and cultural context in which the relationship occurs. There are a number of different forms of transactional sex: (1) transactional sex for basic needs, known as “survival sex”, involves the exchange of sex activities for food, clothing, or shelter; (2) transactional sex for school grades, known as “sex for grades” involves students engaging in sexual activities in exchange for passing grades on exams or higher grades; (3) transactional sex for luxury items or social upward mobility, known as the “sugar daddy”, “sugar mommy” phenomenon, involves young adults exchanging sexual activities for cell phones, jewellery, fashionable clothes, meals at expensive restaurants, or other items indicative of higher social status;<sup>146</sup> and (4) transactional sex for materialistic expressions of love, involving gift giving as a way of expressing affection.<sup>147</sup>

Applying a child protection legal framework, children engaged in transactional sex should be viewed as victims of sexual exploitation on the basis that children cannot consent to engaging in sexual activities in exchange for material benefits or any other form of consideration.<sup>148</sup> The possible argument of the perpetrator that the child consented to this form of sex is legally irrelevant: the consent of a child cannot justify exploitation.<sup>149</sup> However, in this context, determining whether a child (where the child is above the age of sexual consent) engaged in a sexual relationship with an adult constitutes sexual exploitation or a mutually consensual sexual relationship remains problematic.

What makes transactional sex exploitative is the imbalance of power, which is used by an adult to coerce, entice, or compel a child into engaging in sexual activities. The power imbalance may be imputed where there is a significant age gap or economic asymmetry between the adult and the child. For example, some States criminalise sexual conduct between an adult and a child (or between two persons under the age of 18 years) only where the age difference is more than three or five years.<sup>150</sup> However, age on its own cannot be determinative of exploitation, and a child may be at equal risk of sexual exploitation by an adult with a lesser age difference, if that adult abuses her/his position of power or authority. When a teacher offers a pupil good grades in exchange for sexual acts, she/he is exploiting her/his position of authority to coerce a child into engaging in sexual acts. When a child is in need of shelter, food, and protection, she/he may engage in a sexual relationship with an adult to fulfil those survival needs. It is the adult’s ability to provide such basic needs, material goods, or upward social mobility, which is the basis of the power imbalance in the relationship; and it is the decision by the adult to exploit this power imbalance to coerce, entice, or compel a child into performing sexual acts that result in the victimisation of a child through transactional sex.

**Conclusion:** There is no clear definition of transactional sex under international law, and no systematic legislative response to transactional sex. In relation to adults, there appears (at least in some contexts) to be a greater acceptance of “transactional sex” than there is for “prostitution”. Nevertheless, the phenomenon of “transactional sex” remains elusive in the child protection framework. Within the field

<sup>145</sup> K.L. Dunkle et al. “Transactional Sex among Women in Soweto, South Africa”, supra 143, p. 1582; see also S. Leclerc-Madlala, “Transactional Sex and the Pursuit of Modernity”, *Social Dynamics*, vol. 29, no. 2, 2003.

<sup>146</sup> B. Kuate-Defo, “Young People’s Relationships with Sugar Daddies and Sugar Mummies: What Do We Know and What Do We Need to Know?” *African Journal of Reproductive Health*, vol. 8, no. 2, 2004, pp. 13–37, p. 15; see also USAID (US Agency for International Development), “Behavioral Interventions: Transactional and Age-disparate Sex in Hyperendemic Countries”, <https://aidsfree.usaid.gov/resources/pkb/behavioral/transactional-and-age-disparate-sex-hyperendemic-countries>

<sup>147</sup> E.E. MacPherson et al., “Transactional Sex and HIV: Understanding the Gendered Structural Drivers of HIV in Fishing Communities in Southern Malawi”, *Journal of the International AIDS Society*, vol. 15(Suppl 1), 2012.

<sup>148</sup> T.P. Williams et al., “Transactional Sex as a Form of Child Sexual Exploitation and Abuse in Rwanda”, p. 355; see also CRC, supra 1, Article 34 and OPSC, supra 2, Article 2.

<sup>149</sup> Ibid.

<sup>150</sup> See, for instance, definitions of sexual assault against minors in different states of the US at <https://apps.rainn.org/CrimeDef/landing-page-crimes.cfm>. Similar provisions exist in Canadian law <http://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

of protection of children from sexual exploitation, this terminology would not be the most appropriate, as it would risk (inadvertently or not) legitimising certain forms of child sexual exploitation.

#### E.4.vii Use of children for pornographic performances

Ø *Special attention should be paid to how this term is used.*

A number of international legal instruments refer to the “use of children for pornographic performances”, thus extending the notion of “pornographic” to cover not only what is recorded and/or documented but also what is performed live. This term is used in Article 34(c) of the CRC, which refers to “*the exploitative use of children in pornographic performances and materials*”, thus focusing both on the act of performances and on the eventual material outcome. Article 27(c) of the ACRWC refers to the “use of children in pornographic activities, performances and materials”, whereas Article 3(b) of ILO C182 contains the expression “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances”. This notion can protect children from some situations of exploitation involving live performances of a sexual nature without producing any pornographic material (i.e. no recording).<sup>151</sup>

Lastly, the Lanzarote Convention goes even further, by detailing different types of “use” of a child and requiring State Parties to criminalise a series of offences concerning the participation of a child in pornographic performances, such as recruiting a child into participating in pornographic performances or causing a child to participate in such performances; coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes; and knowingly attending pornographic performances involving the participation of children.

For the same reasons explained below in Section F regarding the term “child pornography”, the term “pornographic”<sup>152</sup> in connection to the child is misleading and can result in stigmatising or otherwise harming the child being used for this purpose. A more neutral term to describe this phenomenon, and to put the accent on the sexualisation of the child, is “use of children for sexual performances”.

**Conclusion:** The notion of “using a child” for sexual purposes (whether performances or other) has the benefit of placing the accent on the fact that the child is subjected to a crime and does not bear the responsibility for what happens to her/him. In that sense, it represents a more neutral term, which avoids stigmatising or placing the blame on the child.

In addition, the term “pornographic” in relation to the child is inappropriate and is better replaced by “sexual”. In this context, the term “use of children for sexual performances” should thus be the preferred term.

<sup>151</sup> It should be noted that the age of sexual consent is irrelevant in this context, and consent to take part in consensual sex is not the same as consent to participate in the production of pornographic performances.

<sup>152</sup> Pornography derives from the Greek *pornographos* and means writing about prostitutes.

## F. Child pornography

∅ *Special attention should be paid to how this term is used.*

### F.1. Definitions in legally binding instruments

- i. 1989: The CRC refers to “the exploitative use of children in pornographic performances and material” in Article 34(c). However, no definition of this term is provided.
- ii. 1990: The ACRWC refers to “the use of children in pornographic activities, performances and materials” in Article 27(c).
- iii. 1999: ILO C182 uses the expression “the use, procuring or offering a child [...] for the production of pornography or pornographic performances” in article 3(b).
- iv. 2000: The OPSC uses the term “child pornography” in Article 2 and defines it as “*any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes*”. In addition, through Article 3(c), States are required to criminalise the following constituent parts of the offence of child pornography: “*[p]roducing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes child pornography.*”
- v. 2001: Article 9(2) of the Budapest Convention contains the term “child pornography”, which is defined as “*pornographic material that visually depicts: (a) a minor engaged in sexually explicit conduct [sexually explicit conduct is defined in the same way as in the Lanzarote Convention] (b) a person appearing to be a minor engaged in sexually explicit conduct; (c) realistic images representing a minor engaged in sexually explicit conduct.*”<sup>153</sup>
- vi. 2007: Article 20.2 of the Lanzarote Convention contains the term “child pornography”, which is defined as “*any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes*”. The Lanzarote Convention prohibits, through Article 20(1) “*producing child pornography; offering or making available child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; possessing child pornography, and knowingly obtaining access to child pornography*”.
- vii. 2011: Article 2 of EU Directive 2011/93 defines “child pornography” as “*(i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes*”.

### F.2. Non-binding instruments

- i. 1990: By adopting Resolution 1990/68, the UN Commission on Human Rights decided to appoint a Special Rapporteur on the sale of children, child prostitution and child pornography.<sup>154</sup> However, the Resolution does not define child pornography.

### F.3. Terminology considerations

“Child pornography” is a term in need of clarification, because it has quite a complex legal definition as a crime. The term is used to describe child sexual abuse material, but also to describe the offences

<sup>153</sup> Lanzarote Convention Explanatory Report, supra 4, Paragraph 100.

<sup>154</sup> Commission on Human Rights, Resolution 1990/68 on Sale of children.

of producing/preparing, consuming, sharing/spreading/disseminating, or possessing such material.<sup>155</sup> In order to enable an effective law enforcement response to the phenomenon of “child pornography”, it is essential to attach a criminal consequence to the conduct of each participant in the chain, from production to possession/consumption.<sup>156</sup>

For a full understanding of the existing legal definitions of the term “child pornography”, it is, moreover, useful to address more in detail some of the components of this notion as included in the OPSC, the Lanzarote and Budapest Conventions, and EU Directive 2011/93.

#### OPSC:

- o “any representation, by whatever means”

The use of the expression “any representation, by whatever means” reflects the broad range of pornographic material available in a variety of media, which depict children in a manner intended to sexually arouse or gratify the user. This includes, but is not limited to, visual material such as photographs, movies, drawings, and cartoons; audio representations; live performances; written material in print or online; and physical objects such as sculptures, toys, or ornaments. It arguably also covers so called “virtual child pornography”.<sup>157</sup> There remain significant variations in the national laws of States Parties to the OPSC with regard to the kinds of representations included in the criminalisation of “child pornography”.

- o “or any representation of the sexual parts of a child for sexual purposes”

The term “for sexual purposes” refers to the intent behind the production and/or use of the material, and it is only those representations that were (intended to be) used for sexual purposes that are deemed to be child pornography. For example, photographs of a child’s genitalia produced for a scientific text book would not be considered pornographic, whereas the same images (re)produced for a pornographic website may be deemed child pornography.

- o The constitutive elements of the offence

In terms of the material representing the sexual abuse of a child, the OPSC requests State Parties to criminalise the following acts: “[p]roducing, distributing, disseminating, importing, exporting, offering, selling or possessing [...] child pornography.”

#### Lanzarote Convention:

- o “any material that visually depicts a child”

By this formulation, the Lanzarote Convention contains a somewhat narrower definition than the OPSC, in that it specifies that child pornographic material must be *visually* depicted, thus potentially excluding, for instance, audio representations. The Explanatory Report to the Convention confirms this interpretation. From the explicit addition of a possibility for State Parties to choose not to criminalise the production and possession of “pornographic material consisting exclusively of simulated representations or realistic images of a non-existent child” (Article 20(3)),<sup>158</sup> it becomes clear that the Lanzarote Convention otherwise covers also such material, often called “virtual child pornography” (see section F.4.II below).

<sup>155</sup> Thus, the act of using a child for the production of pornographic material and the actual material that results from this use, are sometimes conflated.

<sup>156</sup> Lanzarote Convention Explanatory Report, supra 4, Paragraph 139.

<sup>157</sup> For instance realistic images that can be artificially created but do not depict real children. For more details, see section F.4.II on “Computer/digitally generated child sexual abuse material”.

<sup>158</sup> It is noteworthy that this non-application clause refers only to production and possession, and not to the other elements listed by the Convention.



- o The constitutive elements of the offence

In terms of the material representing the sexual abuse of a child, the Lanzarote Convention goes further than other existing legal instruments by requesting State Parties criminalise the following acts: *“producing child pornography; offering or making available child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; possessing child pornography; [and] knowingly obtaining access, through information and communication technologies, to child pornography”*.

#### **Budapest Convention:**

- o *“any material that visually depicts a minor [...] a person appearing to be a minor [...] realistic images representing a minor [...]”*

This definition (which preceded the one in the Lanzarote Convention) also contains the potentially limiting term “visually depicted”. Nevertheless, this Convention explicitly covers “virtual child pornography” (i.e. realistic images representing a minor engaged in sexually explicit conduct). It also goes a step further by including “persons appearing to be minors” in the definition of “child pornography”.

- o The constitutive elements of the offence

The Budapest Convention requires the criminalisation of the following acts: *“producing child pornography for the purpose of its distribution through a computer system; offering or making available child pornography through a computer system; distributing or transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; possessing child pornography in a computer system or on a computer-data storage medium”*.

#### **EU Directive 2011/93:**

- o *“any material that visually depicts a child” or that “visually depicts any person appearing to be a child” engaged in real or simulated sexually explicit conduct;*
- o *“any depiction of the sexual organs of a child” or of “any person appearing to be a child” “for primarily sexual purposes”;*
- o *“realistic images of a child engaged in sexually explicit conduct or [...] of the sexual organs of a child, for primarily sexual purposes”*

The definition included in the EU Directive is very similar to that of the Budapest Convention, and covers representations both of real children and of persons appearing to be children, as well as realistic images of children. Again, this instrument is limited in the sense that it requires the material to “visually depict” sexual conduct or sexual organs.

- o The constitutive elements of the offence

On the other hand, like the Lanzarote Convention, the EU Directive explicitly mentions that *“[k]nowingly obtaining access, by means of information and communication technology, to child pornography should be criminalised.”* It further details that, *“[t]o be liable, the person should both intend to enter a site where child pornography is available and know that such images can be found there”* (Article 5.3).

Child erotica or other sexualised images of children (see section F.4.III below), which represent child (semi-) nudity or erotic posing with no explicit sexual activity, but which sexualise the child directly or indirectly,<sup>159</sup> are not recognised by any of these legal instruments as falling under the definition of child

<sup>159</sup> For more on the concept of child erotica, it is recommended to read Save the Children, “Images in the Grey Area: How Children Are Legally Exploited as Sex Objects on the Internet”, March 2014 <http://www.savethechildren.dk/Report-Child-Abuse.aspx?ID=435>

pornography, and remain legal in many States.<sup>160</sup> The legal vacuum that the omission of child erotica from current legal definitions of child pornography constitutes was noted already in 2003.<sup>161</sup> At the time, the most likely reason why “child erotica” was omitted was that it challenges the debate of censorship on the Internet.<sup>162</sup> Whether for that reason or others, international legal instruments adopted more recently, such as the Lanzarote Convention and EU Directive 2011/93, have maintained the same approach, whereas some law enforcement bodies, such as the Child Exploitation and Online Protection Centre (CEOP) today include child erotica in the scale of images considered child sexual abuse.<sup>163</sup>

**Conclusion:** As shown in Section F.1. on legal definitions, the term “child pornography” is firmly anchored in international legal instruments adopted in the 21st century,<sup>164</sup> although its precise definition varies somewhat depending on the legal instrument one looks at. This has contributed to the use of the term also in domestic legislation. Thus, “child pornography” remains important for the definition of a crime in many countries. Nevertheless, for reasons that the following section will explain, there is a growing tendency among both law enforcement bodies and child protection agencies to question the appropriateness of this term, and to suggest alternative terminology. Just as is suggested in Section E above with regard to the term “child prostitution”, while the qualification of the act under international law is still to be found in existing legal documents, which often use specific terms such as “child prostitution” and “child pornography”, nothing prevents States from using other terms to refer to such criminal acts.

Colloquial terms to refer to child pornography (e.g. “child porn”, “kiddy porn”, or “paedo-porn”) should be avoided altogether.

## F.4. Related terms

### F.4.i Child sexual abuse material/child sexual exploitation material

∅ *Special attention should be paid to how this term is used.*

The term “child sexual abuse material” is increasingly being used to replace the term “child pornography”.<sup>165</sup> This switch of terminology is based on the argument that sexualised material that depicts or otherwise represents children is indeed a representation, and a form, of child sexual abuse, and should not be described as “pornography”.<sup>166</sup>

Pornography is a term primarily used for adults engaging in consensual sexual acts distributed (often legally)<sup>167</sup> to the general public for their sexual pleasure. Criticism of this term in relation to children comes from the fact that “pornography” is increasingly normalised and may (inadvertently or not)

<sup>160</sup> Although there are exceptions: South Africa’s Sexual Offences and Related Matters, Amendment Act 32 of 2007, Article 1(1)(l) refers to images showing or describing the body of such person in a manner or circumstances which, within the context, violate or offend the sexual integrity of that person; Australia’s Criminal Code, Article 473(1) uses the term “sexual pose” in the definition of child pornography.

<sup>161</sup> Save the Children Europe Group, “Child Pornography and Internet-Related Sexual Exploitation of Children”, Position Paper, June 2003, p. 10.

<sup>162</sup> Ibid. See also J.M. Petit, “Report by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography”, UN Commission on Human Rights, 23 December 2004, E/CN.4/2005/78, Paragraphs 20-21 <http://www.refworld.org/docid/42d66e480.html>

<sup>163</sup> CEOP, “Threat Assessment of Child Sexual Exploitation and Abuse,” June 2013, p. 22. [http://ceop.police.uk/Documents/ceopdocs/CEOP\\_TACSEA2013\\_240613%20FINAL.pdf](http://ceop.police.uk/Documents/ceopdocs/CEOP_TACSEA2013_240613%20FINAL.pdf) The scales of child sexual abuse considered are (i) nudity or erotic posing with no sexual activity; (ii) sexual activity between children, or solo masturbation of a child; (iii) non-penetrative sexual activity between adult(s) and child(ren); (iv) penetrative sexual activity between child(ren) and adult(s); (v) sadism or bestiality.

<sup>164</sup> It is noteworthy that earlier international treaties, such as the CRC, the ACRWC, and ILO C182, focused on the *use* of children in pornography rather than on the resulting material, and do not contain the term “child pornography”.

<sup>165</sup> See, for instance, UNODC, Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children”, p. 10; and INHOPE, “CSAM – A Terminology Note” <http://www.inhope.org/tns/resources/Fact-sheets.aspx>

<sup>166</sup> Interpol, “Appropriate Terminology”, supra 109.

<sup>167</sup> While legal in most of Europe and in North America, pornography is not legal in most other parts of the world.

contribute to diminishing the gravity of, trivialising, or even legitimising what is actually sexual abuse and/or sexual exploitation of children.<sup>168</sup> Furthermore, as with the terms discussed above, “child prostitution” and “child prostitute”, the term “child pornography” risks insinuating that the acts are carried out with the consent of the child,<sup>169</sup> and represent legitimate sexual material.

In light of the above, the European Parliament, in its Resolution on Child Sexual Abuse Online of 11 March 2015, explicitly set forth that it *“is essential to use the correct terminology for crimes against children, including the description of images of sexual abuse of children, and to use the appropriate term ‘child sexual abuse material’ rather than ‘child pornography’”*.<sup>170</sup>

So called “child pornography” *“involves children who cannot (legally) consent”* to the sexual acts they are being subjected to, *“and who may be victims of a crime”*.<sup>171</sup> This has been the general approach of the law enforcement sector in recent years, and it has led the way in characterising “child pornography” as forensic evidence of the sexual abuse or exploitation of children. Law enforcement bodies in many countries, as well as Europol and INTERPOL at the international level, thus tend to reject the term “child pornography” and use either “child sexual abuse material” or “child sexual exploitation material”.<sup>172</sup>

EU Directive 2011/93 refers, in its Preamble, to the fact that *“[c]hild pornography frequently includes images recording the sexual abuse of children by adults”*, but argues that child pornography can also be something broader, by adding *“[i]t may also include images of children involved in sexually explicit conduct, or of their sexual organs, where such images are produced or used for primarily sexual purposes and exploited with or without the child’s knowledge. Furthermore, the concept of child pornography also covers realistic images of a child, where a child is engaged or depicted as being engaged in sexually explicit conduct for primarily sexual purposes”* (Recital Paragraph 8).

Following this description, “child sexual abuse material” would arguably encompass a narrower set of acts than “child pornography”, since the latter could go beyond the representation of an act of sexual abuse against a child. This is precisely where the term “child sexual exploitation material” becomes particularly important, because it encompasses material that sexualises and is exploitative to the child although it is not explicitly depicting the sexual abuse of a child.<sup>173</sup>

Moreover, certain forms of sexual conduct involving children are not covered by current legal definitions of child pornography, but could nevertheless be seen as falling within the ambit of sexual exploitation of children (e.g. sexual posing, “erotica”, see section below). In these cases, the law enforcement sector tends to refer to such material as “child sexual exploitation material” (“CSEM”) as a broader category that encompasses both material depicting child sexual abuse and other sexualised content depicting children.

Consequently, “child sexual abuse material” is used to describe a subset of “child sexual exploitation material” where there is actual abuse or a concentration on the anal or genital region of the child. Both terms refer to material that depicts and/or that documents acts that are sexually abusive and/or exploitative to a child. Such material can be used in criminal intelligence investigations and/or serve

<sup>168</sup> See for instance D. Frangež et al., “The Importance of Terminology Related to Child Sexual Exploitation” *Journal of Criminal Investigation and Criminology*, vol. 66, no. 4, Ljubljana 2015, pp. 291-299.

<sup>169</sup> “Child Sexual Abuse Material [...] is believed to more accurately reflect the seriousness and the very nature of the content as well as challenge any notion that such acts might be carried out pursuant to the consent of the child” INHOPE, “CSAM – A Terminology Note”.

<sup>170</sup> Doc. 2015/2564(RSP), Paragraph 12.

<sup>171</sup> Interpol, “Appropriate Terminology”, supra 109.

<sup>172</sup> See Europol, “Joint Action in 22 European Countries against Online Child Sexual Abuse Material in the Internet”, Press Release 16 December 2011, note 2 to editors, <https://www.europol.europa.eu/content/press/joint-action-22-european-countries-against-online-child-sexual-abuse-material-internet>; see also Virtual Global Taskforce, “Child Sexual Exploitation Environmental Scan”, 2015, p. 32 <https://www.europol.europa.eu/content/2015-vgt-child-sexual-exploitation-environmental-scan>

<sup>173</sup> See for instance D. Frangež et al., “The Importance of Terminology Related to Child Sexual Exploitation”, supra 168, p. 296.

as evidence material in criminal court cases. Today, most child sexual abuse/exploitation material is exchanged, bought, and sold online, making the online dimension of this crime almost omnipresent.

Lastly, the term “child sexual abuse images” has also sometimes been used in this context. However, it is important to note that, by limiting the terminology to “*images*”, the risk exists of excluding other forms of material representing child sexual abuse and exploitation, such as audio files, written story lines, or other potential forms of recording. Therefore, many child protection organisations as well as law enforcement agencies working on these issues today prefer the term “material” to “images”. Moreover, in relation to child sexual abuse and sexual exploitation, it appears important to add the qualifier “*sexual*” to the term “child abuse/exploitation material”, because “child abuse material” may also refer to other forms of violence that is not necessarily of a sexual nature.

**Conclusion:** The term “child pornography” is still used when addressing legal issues and contexts, in particular when reference is made to international and domestic legal treaties that explicitly include this term. However, for the reasons set forth in the paragraphs above, this term should be avoided to the extent possible, in particular when referring to non-legal contexts. In such contexts, “child sexual abuse material” or “child sexual exploitation material” should be the terms of choice.<sup>174</sup>

The term “child sexual abuse material” can be used as an alternative to “child pornography” for material depicting acts of sexual abuse and/or focusing on the genitalia of the child. The term “child sexual exploitation material” can be used in a broader sense to encompass all other sexualised material depicting children.

#### F.4.ii Computer/digitally generated child sexual abuse material

∅ *Special attention should be paid to how this term is used.*

Computer-generated child sexual abuse material is the production, through digital media, of child sexual abuse material and other wholly or partly artificially or digitally created sexualised images of children. The realism of such images creates the illusion that children are actually involved, although this is not the case.<sup>175</sup> This type of material is also commonly referred to as “virtual child pornography”<sup>176</sup> or “pseudo child pornography”.

This type of material is covered by the Budapest Convention (Article 9(2)(c)) and EU Directive 2011/93 (Article 2(c)(iv)) and referred to by these legal instruments as “*realistic images of a child engaged in sexually explicit conduct*”. At national level, there is some debate as to whether or not “virtual child pornography” and “pseudo child pornography” should be included in offences related to “child pornography”.<sup>177</sup>

Computer-generated child sexual abuse material can include, but is not limited to, pseudo photographs, comics, drawings, and cartoons such as *manga*<sup>178</sup> and *anime*,<sup>179</sup> which depict children involved in

<sup>174</sup> Ibid. D. Frangež et al. make the same recommendation, based on research carried out in five European countries and Europol.

<sup>175</sup> Interpol, “Appropriate Terminology”, supra 109, Paragraph 21.

<sup>176</sup> S. Liu, “Ashcroft virtual child pornography and first amendment jurisprudence”, UC Davis Journal of Juvenile Law and Policy, vol. 11, no. 1, 2011, pp.1-54. The author refers to three categories of “virtual child pornography”: wholly computer-generated “child pornography”, morphed “child pornography”, and “child pornography” made by using youthful-looking adults.

<sup>177</sup> See, for instance, US Supreme Court, Ashcroft, Attorney General, et al. vs. Free Speech Coalition et al., Certiorari to the US Court of Appeals for the Ninth Circuit, No. 00-795, argued 30 October 2001, decided 16 April 2002. In this case, the Ninth Circuit held the Child Pornography Prevention Act (1996) invalid on its face, finding it to be substantially overbroad because it bans materials that are neither obscene nor produced by the exploitation of real children. Summary available at <https://supreme.justia.com/cases/federal/us/535/234/>. In the UK, on the other hand, pseudo child pornography is treated identically to child sexual abuse material depicting real children, except with regard to sentencing for the offence, which may be lighter in the case of pseudo child pornography.

<sup>178</sup> A style of Japanese comic books and graphic novels, typically aimed at adults as well as children.

<sup>179</sup> A style of Japanese film and television animation, typically aimed at adults as well as children.

sexual activities or in a sexualised manner, and full movies of child sexual abuse that do not involve real children. Despite the use of the prefix “computer-generated”, it is important to recall that, while most artificially created child sexual abuse material is indeed created with the help of a digital device, a hand-drawn picture depicting a child involved in sexual activities can also represent child sexual abuse material.

A “pseudo photograph” is “*an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph*”.<sup>180</sup> Such photographs, which are also sometimes referred to as “morphed” or “blended” images, are created by digitally combining a number of photographs or portions of photographs (often of children and adults) to create an individual image.<sup>181</sup> In the days before computer-aided photo editing was available, offenders would place the picture of the head of a child about whom they were fantasising onto that of the naked body of an adult or another child.

It has been observed that this type of material can also include the practice whereby young adults are recorded or photographed in child-like poses, staged with props to reinforce the impression of youth; this has been referred to as “pseudo-infantile pornography” or “initiation pornography”.<sup>182</sup> While this is not uniformly addressed by international law, it is noteworthy that the Budapest Convention and EU Directive 2001/93 both explicitly include “persons appearing to be minors” in the definition of “child pornography”.

Although computer-generated child sexual abuse material does not necessarily involve direct physical harm to a child in its creation, it is still harmful because (i) it is known to be used in grooming children for exploitation; (ii) it fuels very real fantasies, encourages the propensity of sexual predators, and contributes to maintaining a market for child sexual abuse material; and (iii) it creates a culture of tolerance for the sexualisation of children and thereby cultivates demand.<sup>183</sup>

**Conclusion:** The term “computer (or digitally) generated child sexual abuse material” encompasses all forms of material representing children involved in sexual activities and/or in a sexualised manner, with the particularity that the production of the material does not involve actual contact abuse of real children but is artificially created to appear as if real children were depicted. It includes what is sometimes referred to as “virtual child pornography” as well as “pseudo photographs”. Although most artificially created child sexual abuse material is computer-generated, it is important not to exclude the possibility that such material can be, for instance, drawn by hand. Computer-generated child sexual abuse material is not illegal everywhere, although it can have a harmful effect on children.

The term “virtual” frequently used in this context should not be confused with “existing online”, because, although it does indeed exist online, it refers to images that have been created with the purpose of conveying the impression that they depict children. There is nothing “virtual” or unreal in the sexualisation of children, and these terms risk undermining the harm that children can suffer from these types of practices or the effect material such as this can have on the cognitive distortions of offenders or potential offenders. Therefore, terms such as “computer-generated child sexual abuse material” appear better suited to this phenomenon.

<sup>180</sup> UK Protection of Children Act, Article 7(7), 1978 (as amended in 1994).

<sup>181</sup> A morphed image has been changed from what it was originally into something else (e.g. by use of computer software). In the context of child sexual exploitation and sexual abuse, an image of a child can be morphed by, for instance, blending it with a pornographic image of an adult, so it appears as if it is a child who is engaged in sexual activities. This is a term coined in the 1990s from the term “metamorphosis”, which signifies a process of transformation in which something changes completely into something different to what it was.

<sup>182</sup> Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Paragraph 22.

<sup>183</sup> ECPAT International, “Protection and the OPSC: Justifying Good Practice Laws to Protect Children from Sexual Exploitation”, Journal Series No. 2, 2012 [http://www.ecpat.net/sites/default/files/ecpat\\_journal\\_apr2012\\_final.pdf](http://www.ecpat.net/sites/default/files/ecpat_journal_apr2012_final.pdf)

### F.4.iii Sexualised images of children/child erotica

∅ *Special attention should be paid to how this term is used.*

“Child erotica” consists of images of children posing semi-nude or nude with the emphasis on sexualising the child.<sup>184</sup> Sometimes called “posing pictures”,<sup>185</sup> this practice is an issue in several countries, where the laws on child pornography do not cover images of children engaged in non-explicit sexual poses or conducts or where there is no focus on the nude sexual parts of the child (e.g. the genitalia are covered by some form of clothing). Since such images are not illegal everywhere, they can be quite freely disseminated and serve to underpin the belief of some persons that the sexualisation of children is normal. They can also be circulated within (online) networks of people with a sexual interest in children and, depending on national legislation, this circulation may or may not constitute a crime of child pornography. In criminal investigations and court rulings on child sexual exploitation, it has been proven that websites publishing “child erotica” are sometimes used as a first step to, and can serve as a cover up of, the sexual exploitation of children, as well as being used in the grooming process.<sup>186</sup>

Whether considered legal or illegal under existing national laws, the images of children posing semi-nude or nude with the emphasis on sexualisation may harm the child later in life in different respects, in particular when these images are distributed online. The posing as such may not be criminalised, but the distribution of the images may constitute a serious violation of the right to privacy of the child (or later of the adult person).

Sexualised images do not necessarily represent sexual abuse of a child. Such images could also be, for instance, a family picture of a young child in a bikini or in her mother’s high heels. Sexualisation is not always an objective criterion, and the crucial element in judging such a situation is the *intent* of a person to sexualise a child in an image or to make use of an image *for sexual purposes* (e.g. for sexual arousal or gratification). The question is, then, what happens when images are shared (most often online) and end up being circulated on pornographic websites or on websites/forums for persons with a sexual interest in children. Such circulation constitutes a serious violation of the right to privacy and should be dealt with as an offence regardless of whether the images are pornographic or not. Moreover, the distribution of an image for sexual purposes could constitute an offence under child pornography laws even if the image was not initially produced for sexual purposes, and the person depicted in the image could be a victim. This would be a typical situation where a picture can be exploitative without depicting sexual abuse, and where law enforcement would classify the image in the abovementioned category of CSEM instead of CSAM.

**Conclusion:** While the determination of a certain image as pornographic or not does not depend on a subjective element, the publication or distribution of an image can be done with or without the purpose of sexual gratification and, consequently, be illegal or legal. Distinguishing between the different uses of a picture, and focusing on the (illegal) use of a child’s picture for purposes of sexual gratification, could be a means to determine if the depicted child is the victim of an offence.

Just as the term “child pornography” has been considered inappropriate because pornography is a term used for adults engaging in consensual sexual acts distributed (often legally) to the general public for their sexual pleasure, it must be questioned whether “erotica” is a term appropriate in association with children. In accordance with major dictionaries, “erotica” refers to books, pictures, and other material intended to make somebody feel sexual desire or that produce sexual desire and pleasure.<sup>187</sup> On this basis, where there is a clear sexualisation of the child in the images, it is recommended to use the term CSEM.

<sup>184</sup> HRC, “Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography”, Doc. A/HRC/12/23, 13 July 2009, Paragraph 20.

<sup>185</sup> Save the Children Europe Group, “Child Pornography and Internet-Related Sexual Exploitation of Children”, p.10.

<sup>186</sup> See, for instance. “Operation Koala”, which involved 19 countries:  
<http://www.eurojust.europa.eu/press/pressreleases/pages/2007/2007-11-05.aspx>

<sup>187</sup> See Oxford Advanced Learner’s Dictionary and Cambridge British English Dictionary.

#### F.4.iv Self-generated sexual content/material

∅ *Special attention should be paid to how this term is used.*

Children and adolescents under 18 years may take compromising pictures or videos of themselves. While this conduct in itself is not necessarily illegal or socially unacceptable, there are risks that any such content can be circulated online or offline to harm children or be used as a basis to extort favours.

There is a potential risk in using “self-generated” or “self-directed” as opposed to “coercive”, since this might imply the child is to blame for the abuse that may result from the generation of those pictures or other material. Although children (in particular adolescents) may willingly produce sexual content, this does not mean they consent to or are responsible for the exploitative or abusive use and/or distribution of these images. Therefore, they should never face criminal liability for their role in producing or making available the material.

Moreover, when content is self-generated by children (sometimes called “youth-produced”)<sup>188</sup> and no adult is visible in the image, the reasons behind its production (e.g. the potential coercion or manipulation) are sometimes disregarded. Yet experiences by child protection professionals and law enforcement show such factors are indeed likely to play a role, and that it is possible that another person has dictated the sexual acts depicted. This is especially the case when very young users appear in such content. Therefore, when using the term “self-generated”, it is important to be aware of the risk of implicitly or inadvertently placing the blame on the child who has produced the image against his/her will. Indeed, for any self-generated sexual material depicting a younger child, the assumption ought to be that it is the result of an abusive or coercive relationship with an adult or another child.

In addition, it is important to distinguish content created within the context of a romantic relationship between consenting older teenagers from content featuring younger children where, by definition, exploitation is involved—even if the means of producing/recording the content are the same. However, this is not always the case, and self-generated content is sometimes considered and referred to as “illegal content”. Indeed, there have been several cases of children facing criminal charges simply for having sent a sexualised image of themselves to someone they knew (e.g. a boyfriend/girlfriend).<sup>189</sup> As explained in Section F.4.III above on “sexualised images of children”, it is important in such cases to distinguish between the initial image and the use being made of it.

In relation to the term “self-generated content”, the term “indecent” is sometimes added to define the type of images or content. In accordance with major English dictionaries, “indecent” is something that is *“thought to be morally offensive, especially because it involves sex or being naked”*.<sup>190</sup> In using the term “indecent” when referring to youth-produced content, it is important to bear in mind that it hardly refers to an objective criterion, and to ask the questions of when and why something is indecent and who has the authority to define what is morally offensive or not.<sup>191</sup> For this reason, it may be useful to remove from this context the term “indecent”, which is hard to define in an objective manner. As an alternative, the term “sexual” or “sexualised” could be employed.

<sup>188</sup> Self-generated content has also been defined as a subset of user-generated content, which comprises images and videos that are produced by and feature children, especially teens. See E. Quayle et al., “Data Collection”, cited in M. Ainsaar and L. Lööf (eds.), *Online Behaviour Related to Child Sexual Abuse*, ROBERT Literature Report, p. 14. See also UNODC, “Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children”.

<sup>189</sup> See, for instance, *The Guardian*, “Teenagers Who Share ‘Sexts’ Could Face Prosecution, Police Warn” 22 July 2014, <http://www.theguardian.com/media/2014/jul/22/teenagers-share-sexts-face-prosecution-police>. For the US, see, for instance, *The New York Times*, “Rethinking Sex Offender Laws for Youth Sexting”, 20 March 2010, [http://www.nytimes.com/2010/03/21/us/21sexting.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/03/21/us/21sexting.html?pagewanted=all&_r=0). See also Criminal Defense Lawyer, “Teen Sexting”, <http://www.criminaldefenselawyer.com/crime-penalties/juvenile/sexting.htm>

<sup>190</sup> See, for instance, Oxford Advanced Learner’s Dictionary <http://www.oxfordlearnersdictionaries.com/>

<sup>191</sup> Definitions of what is “indecent” are often determined by community standards and, under legal systems that employ this notion, by a jury or a judge. The competent authority must then determine whether or not a particular image is indecent or constitutes child sexual abuse material.

**Conclusion:** The term that appears the most appropriate to refer to this type of material is “self-generated sexual content/material involving children”. This term clearly explains that the material or content is self-generated (whether illegal or not, and whether coerced or not); sexualised (but leaving aside indecent, which may involve a more subjective value judgement); and involving children.

#### F.4.v Sexting

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

“Sexting” has been defined as the “self-production of sexual images”,<sup>192</sup> or as the “exchange of sexual messages or images” and “the creating, sharing and forwarding of sexually suggestive nude or nearly nude images through mobile phones and/or the internet”.<sup>193</sup> Sexting is a form of self-generated sexually explicit content,<sup>194</sup> and the practice is “remarkably varied in terms of context, meaning, and intention”.<sup>195</sup>

While “sexting” is possibly the most common form of self-generated sexually explicit content involving children, and is often done by and among consenting adolescents who derive pleasure from the experience, there are also many forms of “unwanted sexting”. This refers to the non-consensual aspects of the activity, such as sharing or receiving unwanted sexually explicit photos, videos, or messages, for instance by known or unknown persons trying to make contact, put pressure on, or groom the child. Sexting can also be a form of sexual bullying, where a child is pressured to send a picture to a boyfriend/girlfriend/peer, who then distributes it to a peer network without their consent.

Unwanted sexting is related to the discussion above on sexual harassment and unwanted sexual comments,<sup>196</sup> and research has shown that the practice of sexting is far from gender-neutral. It has been suggested that sexting “might be understood as an online extension of [...] sexual harassment” against girls.<sup>197</sup>

**Conclusion:** “Sexting” is a commonly used term, and a frequent practice among young persons. It is often a consensual activity between peers, although research has shown that girls feel pressured or coerced into it more often than boys.<sup>198</sup> When sexting leads to abuse or exploitation, it is crucial that the fact that the material is self-generated does not result in blaming the child for what happens or in holding the child criminally liable for the production of child sexual abuse material.

#### F.4.vi (Exposure to) harmful content

∅ *Special attention should be paid to how this term is used.*

Exposure to harmful content refers to children accessing or being exposed to, intentionally or incidentally, age-inappropriate sexual or violent content, or content otherwise considered harmful to their development.<sup>199</sup> Harmful content can thus cover a much broader range of material than child sexual abuse material (“child pornography”) and include any content that could cause harm to the child, including (but not limited to) adult pornography and child sexual abuse material. It is important, however, for legislation to contain a clear definition of harmful content, as it is possible to consider many types of content “harmful”, potentially resulting in criminalisation bordering on censorship or a violation of other freedoms.

<sup>192</sup> K. Cooper et al., *Adolescents and Self-Taken Sexual Images: A Review of the Literature*, 2015.

<sup>193</sup> J. Ringrose et al., “A Qualitative Study of Children, Young People and ‘Sexting’”, Study Prepared for the NSPCC, 2012, p. 6.

<sup>194</sup> UNODC, “Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children”, p.22.

<sup>195</sup> K. Cooper et al., *Adolescents and Self-Taken Sexual Images*, p. 24.

<sup>196</sup> See supra, section C.4.V on the sexual harassment of a child.

<sup>197</sup> K. Cooper et al., *Adolescents and Self-Taken Sexual Images*, p. 22.

<sup>198</sup> K. Cooper et al., *Adolescents and Self-Taken Sexual Images*, p. 22.

<sup>199</sup> UNODC, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, p. 13.



Exposure of children to harmful content that is “pornographic” in nature is sometimes referred to as the “corruption” or “pornification” of children.<sup>200</sup> This can be the case, for instance, if an adult deliberately shows (harmful content or) pornography to a child or watches pornography in the presence of a child. The first example could be a form of non-contact sexual abuse,<sup>201</sup> and harmful and or sexual content is often used in the process of grooming children.

Exposure to harmful content can normalise harmful sexual behaviour for children as individuals or within their peer groups. This could be seen as a form of “corruption of children”, although more through societal sexualisation of children rather than as a result of the intentions or actions of any specific individuals.<sup>202</sup>

While exposure to pornography may be harmful to a very young child, it is also important to recognise that, when it comes to adolescents, it is not necessarily harmful but could be a matter of exploring sexuality. Moreover, exposure to online pornography can be either involuntary exposure or pornography sought out by the child/adolescent on his or her own initiative, and can involve adult pornography as well as child sexual abuse material.

**Conclusion:** Harmful content should not be used as a synonym for “child sexual abuse material” or “child pornography”, as it is a much broader concept and can refer to content other than sexualised material, for instance violent video games or websites that encourage hate speech. Moreover, “harmful content” does not necessarily refer only to illegal material but can also include material that is legal but still harmful to a person considering his/her age, level of maturity, etc.

#### F.4.vii Corruption of children for sexual purposes

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

The term “corruption” in this context refers to the “*action or effect of making someone or something morally depraved*”<sup>203</sup>—that is, the “*act or effect of making somebody change from moral to immoral standards of behaviour*”.<sup>204</sup>

The term “corruption of children for sexual purposes” refers to acts causing the child to witness sexual abuse or sexual activities, and can be found, for instance, in Article 22 of the Lanzarote Convention. The Article, which is entitled “corruption of children”, sets forth that “[e]ach Party shall take the necessary legislative or other measures to criminalise the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.”

“Online sexual corruption of a child” is sometimes used in legal standards<sup>205</sup> as an alternative term to “online solicitation of children for sexual purposes” (“grooming”).<sup>206</sup>

<sup>200</sup> “Pornification” is defined by the Oxford British and World English Dictionary as “*the increasing occurrence and acceptance of sexual themes and explicit imagery in popular or mainstream culture*”. With regard to children, it is used to refer to the increasing sexualisation of children in society, which can contribute to normalising sexual behaviours and attitudes among young children.

<sup>201</sup> See supra section C.3 on child sexual abuse, terminology considerations.

<sup>202</sup> M. Coy et al., “‘Sex without Consent, I Suppose that Is Rape’: How Young People in England Understand Sexual Consent”. Report commissioned for the Office of the Children’s Commissioner’s Inquiry into Child Sexual Exploitation in Gangs and Groups, November 2013.

<sup>203</sup> See Oxford British and World English dictionary.

<sup>204</sup> See Oxford Advanced Learner’s English dictionary.

<sup>205</sup> Some state laws in the US use this language, see for instance [www.oregonlaws.org/ors/163.432](http://www.oregonlaws.org/ors/163.432)

<sup>206</sup> For more details on online solicitation of children for sexual purposes, see infra section H.

## G. Live online child sexual abuse

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### G.1. Definitions in legally binding instruments

- i. 1989: The CRC refers, in its Article 34, to “the exploitative use of children in pornographic performances”, without specifying whether such performances are carried out online or offline.
- ii. 1999: The ACRWC refers, in its Article 27(c), to the “use of children in pornographic activities, performances and materials”. Like the CRC, this instrument does not specify how (online or offline) such activities or performances are carried out.
- iii. 1999: ILO C182 contains, in Article 3(b), a prohibition of “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances”.
- iv. 2007: The Lanzarote Convention details different types of “use” of a child and requires State Parties to criminalise a series of offences concerning the participation of a child in pornographic performances, such as recruiting a child into participating in pornographic performances or causing a child to participate in such performances; coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes; and knowingly attending pornographic performances involving the participation of children.
- v. 2011: EU Directive 2011/93, in its definition of “pornographic performance” (Article 2(e)) includes a “live exhibition aimed at an audience, including by means of information and communication technology, of (i) a child engaged in real or simulated sexually explicit conduct; or (ii) the sexual organs of a child for primarily sexual purposes”.

### G.2. Terminology considerations

Live online child sexual abuse is a practice on the rise, related both to the sexual exploitation of children through prostitution and sexual performances and to the production of child sexual abuse material. Given the absence of a clear definition of these practices as an offence, this field has seen an absence of adequate criminalisation.<sup>207</sup> However, while not explicitly included in major international legal instruments on child protection, it is crucial to note that live online child sexual abuse would fall under many existing legal provisions related to child sexual exploitation and sexual abuse. Thus, the recruitment and use of a child for participation in any type of pornographic performances,<sup>208</sup> whether online or offline, must be criminalised in accordance with the CRC (Article 34(c)), the ACRWC (Article 27(c)), ILO C182 (Article 3(b)), and the Lanzarote Convention (Article 21). Moreover, it could fall under the OPSC definition of “child prostitution”: “the use of a child in sexual activities for remuneration or any other form of consideration” (Article 2(b)). When the live performance by the child is recorded or registered, this can amount to the production of child sexual abuse material, also covered by all major legal instruments under child pornography provisions.

Nevertheless, live online child sexual abuse often represents a dual abuse of the child. She/he is coerced to participate in sexual activities, alone or with other persons—an act that already constitutes sexual abuse. The sexual activity is, at the same time, transmitted live through ICT and watched by others remotely. Often, the persons watching remotely are the persons who have requested and/or ordered the sexual abuse of the child, dictating how the act should be carried out (see Section G.3.II below), and those persons may be paying for the abuse to take place. Live online child sexual abuse

<sup>207</sup> Often, existing child pornography laws are insufficient for trends such as live streaming of sexual abuse, sexual abuse “to order”, etc. See, for instance, International Centre for Missing and Exploited Children, “Child Pornography: Model Legislation and Global Review”, 8th Edition, 2016.

<sup>208</sup> For more details on the use of children for pornographic performances, see *supra*, section E.4.VII.

has been observed to take on both commercial and non-commercial forms,<sup>209</sup> and there are cases where it has been set up as a proper business with the only apparent objective being to make money out of the sexual exploitation of the children involved.

**Conclusion:** It is important to note that live child sexual abuse has been prohibited under international law since the adoption of the CRC, through provisions related to “the use of children for pornographic performances” (see Section E.4.VII). The fact that live child sexual abuse can now occur online through the use of ICTs does not mean the phenomenon as such is new. What is new, however, is the fact that such sexual abuse can now be carried out “remotely” with the perpetrator viewing the abuse possibly in a different country than that of the victim.

### G.3. Related terms

#### G.3.i Live streaming of child sexual abuse

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

Live online child sexual abuse is often transmitted to viewers through “streaming” over the Internet. This means the data are transmitted instantaneously to the viewer, who can watch and engage while the abuse is occurring. Importantly for the viewer, streaming leaves no trace on the device, because no file is downloaded; when the streaming is stopped the child sexual abuse material is gone, unless the offender deliberately records it.<sup>210</sup> This increases the perception of impunity of the offender, and creates specific challenges for post-event investigation, particularly relating to the recovery of evidence and the identification of victims and offenders. Live streaming may also be referred to as “on-demand child sexual abuse”.

**Conclusion:** It has been observed that live streaming of sexual abuse is “no longer an emerging trend but an established reality”.<sup>211</sup> It is important to note that terms such as “streaming” and “webcam” merely describe a technological means that take into account neither the intention of the perpetrator nor the result of the committed acts—namely, the sexual abuse and/or exploitation of a child.

Regarding the use of these terms, it is important not to overemphasise the focus on the “technological” aspect (i.e. which tool is used to commit a certain act), since the evolution in ICTs is extremely rapid and new devices and tools with new names continue to emerge on the market on an almost daily basis.

#### G.3.ii Child sexual abuse to order

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

“Child sexual abuse to order” refers to a specific type of online sexual abuse that consists of a perpetrator requesting or dictating beforehand—or while the abuse takes place—that a certain action

<sup>209</sup> For instance, in the case of the Queen vs. Ian Watkins and others, it was observed how the accused encouraged a mother to sexually abuse her daughter in front of a webcam. There was no apparent commercial aspect to the crime (Case No: 62CA1726112, The Law Courts, Cathays Park, Cardiff CF10 3PG, 18 December 2013). In other known cases, young girls have performed sexual acts on themselves while collecting payments. Yet other cases have appeared purely commercial, with adults acting as facilitators and offering live online child sexual abuse on demand and in exchange for money transfers.

<sup>210</sup> Streaming is a technology that consists of playing data before the entire file has been transmitted, sending the information directly to the computer or device of the recipient (via a webcam, audio interface, etc.) without any need to save the file onto a hard disk (although streaming material can also be recorded and saved to a file). Unless the content is deliberately recorded, it is available only on one occasion and leaves no trace on the device once it has been viewed. In relation to online child sexual exploitation cases, most of the incidents that relate to live streaming involve real-time production and transmission of the audio/video data through the webcam at the victim’s end

<sup>211</sup> Virtual Global Taskforce, “Child Sexual Exploitation Environmental Scan”, supra 172.

be carried out. The abuse is displayed via webcam or recorded to a file for the viewing/consumption of the person who ordered/dictated it, sometimes in exchange for payment.

**Conclusion:** Child sexual abuse to order can be a modality of live streaming, with the added element that the person viewing the streaming takes an active part in determining how the sexual abuse should be carried out. The same technologies (e.g. streaming, webcam) are used as for other online crimes.

### G.3.iii Webcam child sex tourism/webcam child sex abuse

⊗ *The use of the term should be avoided.*

“Webcam child sex tourism” is a term that was coined to emphasise the transnational character of the crime, in which a person can sit in front of a computer and order and watch child sexual abuse taking place in another country, without having to travel.<sup>212</sup> However, this term does not appear to be the most appropriate to define the live online sexual abuse of a child, and risks being misleading for several reasons. First, it introduces one more term to define an issue that already has a number of different names or labels (e.g. “online/live child sexual abuse”, “live streaming of child sexual abuse”, etc.) and thus risks adding to an already existing confusion. Second, it appears to imply that the response to these types of crimes lies with the tourism sector.<sup>213</sup> And third, it raises the question of the appropriateness of the term “child sex tourism”, which represents a debated issue *per se* (discussed in Section I below). In the same context, the more neutral “webcam child sexual abuse” has also been used.<sup>214</sup> While this term appears more adequate than “webcam child sex tourism”, it is important to recall that a “webcam” is, just like “streaming”, a technological means used to view live online child sexual abuse and could, as such, be replaced by another technology at any time.

**Conclusion:** The term “webcam child sex tourism” should be avoided. The term “webcam child sex abuse” can be used bearing in mind that it refers to a specific technological device and that “live online child sexual abuse” is broader and may be more appropriate.

<sup>212</sup> See, for instance, Terre des Hommes Netherlands, “Sweetie”, <https://www.youtube.com/user/sweetie>

<sup>213</sup> For further details on child sex tourism, see *infra*, section I.

<sup>214</sup> See, for instance, Terre des Hommes, “Sweetie Campaign in [the] Philippines Intensifies”, 7 December 2015 <https://www.terredeshommes.nl/en/news/sweetie-campaign-philippines-intensifies>

## H. Solicitation of children for sexual purposes

○ This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.

### H.1. Definitions in legally binding instruments

- i. 2007: The Lanzarote Convention is the first international legal instrument to define grooming, and the Convention refers to this act as “solicitation of children for sexual purposes”. Thus, the Convention (art. 23) requires states parties to criminalise *“the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting”*.
- ii. 2011: EU Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography follows the Lanzarote Convention and also includes a definition of solicitation of children for sexual purposes (article 6):
  - “1. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable: the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting [...].
  2. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.”

### H.2. Non-binding instruments

- i. 2011: The CRC Committee, in General Comment No. 13, mentions that *“in contact with others through ICT, children may be bullied, harassed or stalked (child ‘luring’) and/or coerced, tricked or persuaded into meeting strangers off-line, being ‘groomed’ for involvement in sexual activities and/or providing personal information”*.
- ii. 2011: Resolution 2011/33 by the Economic and Social Council on Prevention, Protection and International Cooperation against the Use of New Information Technologies to Abuse and/or Exploit Children stresses that, *“new information and communications technologies and applications are being misused to commit child sexual exploitation crimes and that technical developments have permitted the appearance of crimes such as the production, distribution or possession of child sexual abuse images, audio or video, the exposure of children to harmful content, the grooming, harassment and sexual abuse of children and cyberbullying”*.

### H.3. Terminology considerations

The term “solicit” means *“to ask somebody for something”* or *“to try to get something or persuade someone to do something”*.<sup>215</sup> The solicitation of children for sexual purposes is often referred to as “grooming” or “online grooming”. It can be described as a practice by means of which an adult “befriends” a child (often online, but offline grooming also exists and should not be neglected) with the intention of sexually abusing her/him. Currently, only EU Directive 2011/93 sets forth that attention must also be paid to *offline* grooming and that states should criminalise such practices as well (Recital 19).<sup>216</sup>

<sup>215</sup> Oxford Advanced Learner’s Dictionary.

<sup>216</sup> Directive 2011/93/EU, supra 14, Recital 19.

Only two legally binding international instruments contain an obligation to criminalise the solicitation of children for sexual purposes: the Lanzarote Convention and EU Directive 2011/93. The Lanzarote Convention (Article 23), requires as constitutive elements of this crime (i) the solicitation of children for sexual purposes (i.e. “sexual chatting with a child”<sup>217</sup>); (ii) the intentional proposal to meet the child for the purpose of committing a sexual offence; and (iii) posterior “material acts leading to such a meeting”. This does not require that a sexual offence is committed. It suffices that concrete steps to make the meeting happen were taken (e.g. the perpetrator arriving at the meeting place).

The more recent EU Directive 2011/93 divides the definition of the offence in two, whereby the same “material acts” are required for any proposal by an adult to meet with a child, but the act of soliciting a child to provide sexual images of her/himself is also, in and by itself, punishable (Article 6.2).

Considering the rapid evolution of ICTs and of new forms of online criminality, it can be seen as worrying that a concrete physical meeting or, at least, material acts leading to such a meeting is required by existing legal instruments governing this offence. It is clear that, in many grooming cases today, children are being sexually abused and exploited online, and the “meeting” is never a physical meeting but takes place online. Data on online grooming from the UK have suggested that children are most frequently lured or manipulated into producing sexual images or videos without any intention by the “groomer” of meeting the children in real life.<sup>218</sup> This boosts the production of child pornographic material and is often linked to other forms of exploitation such as “sexual extortion” (see section H.4.III below) and blackmailing. Moreover, experience shows that victims of grooming often suffer the same consequences as victims of physical sexual abuse or exploitation. In addition to this, they often have to deal with feelings of shame and guilt for having, to some extent, contributed to their own exploitation (e.g. because initially they agreed to turn on their webcams and/or take photos), as well as the anxiety of permanently losing control of the images and not knowing who has seen them. To reflect this reality, it appears necessary to extend the definition of “grooming” to cover meetings in the online sphere.

To respond to this evolving situation, in an opinion adopted in June 2015 on Article 23 of the Lanzarote Convention, the Lanzarote Committee held that “[t]he solicitation of children through information and communication technologies does not necessarily result in a meeting in person. It may remain online and nonetheless cause serious harm to the child.”<sup>219</sup> Moreover, the Committee sets forth that “[t]he overall phenomenon of online grooming evolves in parallel to information and communication technologies. Its understanding should therefore not restrict itself to the way online grooming was committed when the Convention was drafted, but should be understood and tackled according to how it is being committed today and could be committed tomorrow. As no static definition of online grooming is possible, Parties should consider extending its criminalisation also to cases when the sexual abuse is not the result of a meeting in person, but is committed online.”<sup>220</sup>

Another potential weakness of the legal instruments that address grooming is that they oblige States to criminalise such acts only when carried out against children who have not reached the age of sexual consent. This does not necessarily provide adequate protection to children above that age who may still be lured or manipulated into an exploitative situation.

<sup>217</sup> Lanzarote Convention Explanatory Report, supra 4, Paragraph 157.

<sup>218</sup> CEOP, “Threat Assessment of Child Sexual Exploitation and Abuse”, Paragraph 38.

<sup>219</sup> Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES), “Opinion on Article 23 of the Lanzarote Convention and Its Explanatory Note”, 23 June 2015, Paragraph 17. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046ebc8>

<sup>220</sup> Ibid., Paragraph 20.

Today, numerous examples exist of national legal systems that criminalise the pure use of ICT with the purpose of committing a sexual offence against children.<sup>221</sup>

**Conclusion:** There appears to be no linguistic or other logical reason why the definition of solicitation of children for sexual purposes should be limited to acts where a physical, in-person meeting has been attempted and/or occurred. While occurring increasingly online, the solicitation of children for sexual purposes can lead to sexual activities online or offline (or both), and can be harmful to the child even if it never goes offline. Similarly, solicitation and grooming can occur solely offline, although it is often facilitated by some form of ICT, for example phone or text contact. This may particularly be the case where a child is introduced to a perpetrator by a peer and is then groomed and tricked into believing an abuser is their boyfriend—a form of sexual abuse that has been described as the “boyfriend model” of child sexual exploitation.<sup>222</sup> Thus, the act of soliciting a child to, for instance, provide sexual images of her/himself is part of this practice. By consequence, the following elements appear necessary in the definition of the (online) solicitation of children for sexual purposes: (i) contacting a child; (ii) (if online, through ICTs); (iii) with the intent of luring or inciting the child; (iv) to engage in any sexual activity by any means, whether online or offline.

## H.4. Related terms

### H.4.i Grooming (online/offline) for sexual purposes

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

In the context of child sexual exploitation and sexual abuse, “grooming” is the short name for the solicitation of children for sexual purposes. “Grooming/online grooming” refers to the process of establishing/building a relationship with a child either in person or through the use of the Internet or other digital technologies to facilitate *either online or offline* sexual contact with that person.<sup>223</sup> Grooming is defined by major dictionaries as the act of “*prepar[ing] or train[ing] (someone) for a particular purpose or activity*”, and in the specific context of child sexual exploitation and abuse as “*(of a paedophile) prepare (a child) for a meeting, especially via an Internet chat room, with the intention of committing a sexual offence*”<sup>224</sup> or “*the criminal activity of becoming friends with a child, especially over the internet, in order to try to persuade the child to have a sexual relationship*”.<sup>225</sup>

As with the solicitation of children for sexual purposes, there appears to be no linguistic or other logical reason why the definition of “grooming” should be limited to acts where a physical, in-person

<sup>221</sup> See for instance South Africa, Article 18 of the Sexual Offences and Related Matters Act criminalises the use of any means (even through an intermediary) with the intention of facilitating the commission of a sexual act with a child. Sexual acts are considered in a broad way, including the child performing a sexual act while the offender is watching; exposing the child to pornography, or exposing parts of his/her body in a manner that violates the child’s sexual integrity or dignity; Australia, Article 474.27 of the Criminal Code (using a carriage service to “groom” persons under 16 of age): use a carriage to transmit communication with the intention of making it easier to procure the recipient to engage in sexual activity with the sender, a participant, or another person; Article 272.15 (grooming wholly or partly out of Australia): criminalisation of establishing communication with a children with the intention of engaging in sexual activity even if it is impossible that the sexual activity take place (12 years of imprisonment). According to Australia’s Criminal Code, “sexual activity” must be interpreted broadly, encompassing different kinds of sexual activity. This term must not be confused with the more limited term “sexual intercourse”; Argentina, Criminal Code, Article 131: criminalisation of the establishment of contact with a person under 18 with the purpose of committing an offence against her or his sexual integrity (six months to four years of imprisonment); Costa Rica, Criminal Code, Article 167 bis: “seducción o encuentros con menores por medios electrónicos”: criminalisation of (i) establishment of sexual or erotic communications with a child (one to three years of imprisonment); (ii) procuring a meeting in a physical place with a child (two to four years of imprisonment).

<sup>222</sup> S. Jago et al., “What’s Going on to Safeguard Children and Young People from Sexual Exploitation? How Local Partnerships Respond to Child Sexual Exploitation”, Luton, University of Bedfordshire, 2011.

<sup>223</sup> See, for instance, <http://www.europeanonlinegroomingproject.com/home.aspx>

<sup>224</sup> See Oxford British and World English Dictionary.

<sup>225</sup> See Cambridge Advanced Learner’s Dictionary & Thesaurus.

meeting has been attempted and/or occurred. Research has shown that grooming, which is a term that suggests a course of conduct evolving over a period of time while the offender subtly gains the trust of her/his victim, is not the most frequent form of online sexual exploitation of children today. *“While slow-time grooming of a single victim still occurs, there is evidence that the dynamics of this threat have changed considerably over the last few years. Today, the period of time between initial engagement with a child and an offending outcome is often extremely short”* and *“[o]ffenders focus on quickly gaining leverage over a victim rather than first establishing a trusting relationship.”*<sup>226</sup> For this reason, the term “online child sexual exploitation” has sometimes been preferred to cover not only specific practices such as grooming but also other, more direct and coercive, forms of solicitation of children for sexual purposes.<sup>227</sup>

#### H.4.ii Online (sexual) enticement of children

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

“Grooming” has sometimes also been defined as *“online enticement of children for sexual acts”*.<sup>228</sup> “Enticement” refers to something used to attract or tempt someone,<sup>229</sup> which indeed reflects a common way of proceeding of the person “grooming” a victim with the aim of sexually exploiting her/him. The term “online enticement” has also been used by, for instance, the US Department of Justice, which defines the practice as follows: *“Child predators often use the internet to identify, and then coerce, their victims to engage in illegal sex acts. These criminals will lurk in chat rooms or on bulletin board websites that are popular with children and teenagers. They will gain the child’s confidence and trust, and will then direct the conversation to sexual topics. Sometimes they send the child sexually explicit images of themselves, or they may request that the child send them pornographic images of themselves. Often, the defendants plan a face-to-face for the purpose of engaging in sex acts.”*<sup>230</sup>

**Conclusion:** Enticement of children is sometimes used as a synonym of the “solicitation of children for sexual purposes” or “grooming”.

#### H.4.iii Sexual extortion of children

∅ *Special attention should be paid to how this term is used.*

Sexual extortion, also called “sextortion”, is the blackmailing of a person with the help of self-generated images of that person in order to extort sexual favours, money, or other benefits from her/him under the threat of sharing the material beyond the consent of the depicted person (e.g. posting images on social media). Often, the influence and manipulation typical of groomers over longer periods of time (sometimes several months) turns into a rapid escalation of threats, intimidation, and coercion once the person has been persuaded to send the first sexual images of her/himself.

Sexual extortion is considered a feature of online solicitation of both children and adults, and there appears to be an increase of the use of this type of blackmailing, including more extreme, violent, sadistic, and degrading demands by offenders.<sup>231</sup> When carried out against children, sexual extortion involves a process whereby children or young people are coerced into continuing to produce sexual material and/or told to perform distressing acts under threat of exposure to others of the material

<sup>226</sup> CEOP, “Threat Assessment of Child Sexual Exploitation and Abuse”, p.10.

<sup>227</sup> Ibid.

<sup>228</sup> J.M. Petit, “Report by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography”, supra 162, Paragraph 13.

<sup>229</sup> See Oxford British and World English Dictionary.

<sup>230</sup> US Department of Justice, “National Strategy for Child Exploitation Prevention and Interdiction”, Report to Congress, August 2010, p.3 <http://www.justice.gov/psc/docs/natstrategyreport.pdf>, p.3.

<sup>231</sup> Virtual Global Taskforce, “Child Sexual Exploitation Environmental Scan”, supra 172.



that depicts them. In some instances, the abuse spirals so out of control that victims have attempted to self-harm or commit suicide as the only way of escaping it.<sup>232</sup>

**Conclusion:** The recommended term is “sexual extortion of children”, which emphasises that this is a form of extortion that is sexual in nature and that the act is carried out against a child. The colloquial, often-used term “sextortion” remains more debated in the field of child protection, as it does not show clearly that it is a matter of sexual exploitation against a child and risks trivialising a practice that can produce extremely serious consequences.

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<sup>232</sup> Ibid.

## I. Sexual exploitation of children in the context of travel and tourism

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### I.1. Definitions in legally binding instruments

- i. 2000: The OPSC refers to the term “child sex tourism” in its Preamble as well as in Article 10(1), where it is set forth that “*States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.*” Article 10(3) continues: “*States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.*”
- ii. 2007: The Lanzarote Convention mentions the “travel and tourism sector” as an actor in the “*elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation*” (Article 9(2)).
- iii. 2011: EU Directive 2011/93 contains a provision on “measures against advertising abuse opportunities or child sex tourism” (Article 26). Recital 29 of the Directive defines this phenomenon as “*the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children*”.

### I.2. Non-binding instruments

- i. 1996: The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism was created.<sup>233</sup>
- ii. 1999: The UNWTO Global Code of Ethics for Tourism expressly recognised the problem of sexual exploitation of children in travel and tourism, and defined it as contrary to the essence and the objectives of tourism: “*The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism.*”<sup>234</sup>
- iii. 2001: The UNWTO adopted a set of Guidelines for National Tourism Administration Focal Points for the Protection of Children from Sexual Exploitation in Tourism.<sup>235</sup>
- iv. 2013: In several reports to the HRC, the Special Rapporteur on the sale of children, child prostitution, and child pornography referred to both the “sexual exploitation of children in travel and tourism” and “child sex tourism”.<sup>236</sup>
- v. 2013: The Council of Europe Parliamentary Assembly adopted a document, “Fighting ‘Child Sex Tourism’”.<sup>237</sup>
- vi. 2013: CRC Committee General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights highlighted “[f]or example, *child sex tourism can be facilitated by travel agencies operating on the Internet as they enable the exchange of information and planning of sex tourism activities.*”

<sup>233</sup> See [www.thecode.org](http://www.thecode.org)

<sup>234</sup> World Tourism Organization, Global Code of Ethics for Tourism, Adopted by Resolution A/RES/406(XIII) at the 13th WTO General Assembly, Santiago, Chile, 27 September- 1 October 1999, Article 2.3.

<sup>235</sup> World Tourism Organisation, “Guidelines for National Tourism Administration (NTA) Focal Points for the Protection of Children from Sexual Exploitation in Tourism”, 2001.

<sup>236</sup> See, for instance, Document A/HRC/25/48, 23 December 2013.

<sup>237</sup> Doc. 13152, 27 March 2013 <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19535&Language=en>

- vii. 2016: The Global Study on the Sexual Exploitation of Children in Travel and Tourism uses the terminology of its title, along with the acronym “SECTT”, defining it as *“acts of sexual exploitation embedded in a context of travel, tourism, or both”*.<sup>238</sup>

### I.3. Terminology considerations

The term “sexual exploitation of children in (the context of) travel and tourism” refers to sexual exploitation of children that is embedded in a context of travel, tourism, or both. The offence can be committed by either foreign or domestic tourists and travellers and longer-term visitors. In the past, it has been defined as a practice involving *“people who travel from their own country to another and engage in commercial sex acts with children”*.<sup>239</sup> According to major dictionaries, “sex tourism” is the *“organisation of holidays with the purpose of taking advantage of the lack of restrictions imposed on sexual activity and prostitution by some foreign countries”*<sup>240</sup> and the *“act of travelling to another country for the purpose of paying to have sex, especially with children”*.<sup>241</sup> Nevertheless, it has been noted that child sexual exploitation also occurs in the context of domestic travel and tourism and is not restricted to the crossing of a national border.

In the outcome documents of the three World Congresses against Sexual Exploitation of Children, numerous references are made to the sexual exploitation of children in travel and tourism. Article 4(d) of the Stockholm Declaration and Agenda for Action mentions the tourism industry as an actor in the prevention and protection of children from commercial sexual exploitation, and refers to “sex tourism” and the need to “strengthen and implement laws” to tackle this problem.

The Yokohama Global Commitment points to the need for *“the comprehensive, systematic and sustained involvement of the private sector, such as [...] members of the travel and tourism industry [...], in enhancing child protection, including their adoption and implementation of corporate policies and codes of conduct to protect children from sexual exploitation”*.

The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents repeatedly refers to the sexual exploitation of children and adolescents in travel and tourism. The Declaration highlights global concern regarding the continuing high level of sexual exploitation of children and adolescents, including as a result of increased mobility in travel and tourism.

The term “sexual exploitation of children in (the context of) travel and tourism” is used as an alternative to the broadly used term “child sex tourism”. It focuses on the fact that the child is being sexually exploited, and that such exploitation occurs within a specific context. It covers the notion of “travel”, which implies the action of moving from one place to another for any purpose (but which does not always imply tourism) and the notion of “tourism”, which refers to the commercial organisation and operation of holidays and visits to places of interest (which can exclude certain forms of travel). Thus, while covering the traditional concept of tourism and the tourism industry, this term also captures business travel, cultural or other forms of exchanges, travelling workers, and longer-term transits outside one’s home region/country.

It is noteworthy that the travel and tourism sector has particular characteristics and stakeholders/duty-bearers, making it important to develop specific strategies to prevent and tackle child sexual exploitation committed within this context. Specific travel/tourism actors in the circuit of child sexual exploitation (such as hotels, travel agencies, tour operators, transportation companies, airlines, bars, and restaurants) become, knowingly or not, intermediaries in the commission of these offences, and can also play a role in their prevention. In particular, businesses within the travel and tourism sector should be guided by the UN Guiding Principles on Business and Human Rights and the Child

<sup>238</sup> ECPAT International, *Offenders on the Move: Sexual Exploitation of Children in Travel and Tourism*, 2016.

<sup>239</sup> US Department of State, Office to Monitor and Combat Trafficking in Persons, Fact Sheet, Washington DC, 19 August 2005.

<sup>240</sup> Oxford British and World English Dictionary.

<sup>241</sup> Cambridge English Dictionary.

Rights and Business Principles to respect and support the prevention of and response to child sexual exploitation, as well as by the UNWTO Global Code of Ethics for Tourism.

**Conclusion:** While other terms, such as “child sex tourism” (see Section I.4.I below), are sometimes used to refer to this phenomenon, the term “sexual exploitation of children in the context of travel and tourism” arguably represents the most adequate manner of referring to this practice, and ought to be the preferred term in the field of child protection.

## I.4. Related terms

### I.4.i Child sex tourism

⊗ *The use of the term should be avoided.*

The term “child sex tourism” is broadly used,<sup>242</sup> but it has become increasingly debated. It was already under discussion prior to the Third World Congress of 2008, and in the outcome document of the Congress, the Rio Declaration, the term used was the abovementioned “sexual exploitation of children in travel and tourism”. It is noteworthy that in Latin America this term has prevailed over that of “child sex tourism” for over a decade.

Nevertheless, the term has, more recently, been discouraged within the ECPAT network, as well as by the Special Rapporteur on the sale of children, child prostitution, and child pornography.

The reasons underlying the increasingly critical debates around the term “child sex tourism”, in particular by child protection professionals and law enforcement bodies, are that the term may inadvertently give the idea that this is a legitimate form of tourism, and may also associate the crime with the entire industry. Furthermore, by referring exclusively to tourism and tourists, it excludes many types of travelling offenders, such as business travellers and military personnel, and offenders in transit or residing out of their country more generally.<sup>243</sup> Lastly, the term completely omits the fact that it refers to serious criminal conduct that a large number of States have included in the scope of extraterritorial legislation. The potential “normalisation” of the practice through the use of the term “child sex tourism” risks being harmful to the child.

**Conclusion:** “Child sex tourism” is a term that could, for the abovementioned reasons, be harmful to the child. Alternative terms such as “sexual exploitation of children in travel and tourism” appear more appropriate; this explicitly mentions that the child is being exploited and adequately broadens the focus from the actions of offenders to a wider perspective on the settings in which the exploitation takes place.

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<sup>242</sup> The term has previously been used by a number of actors and networks, including, for instance, the U.S. Department of Justice in its National Strategy for Child Exploitation Prevention and Interdiction, supra 230, the Federal Bureau of Investigation (FBI), and the Council of Europe Parliamentary Assembly in a resolution entitled “Fighting “Child sex tourism””.

<sup>243</sup> High-Level Taskforce to End Sexual Exploitation of Children in Travel and Tourism, Meeting in London, 4 November 2014.

## J. Sale of children

Ø *Special attention should be paid to how this term is used.*

### J.1. Definitions in legally binding instruments

i.1989: The CRC sets forth, in its Article 35, that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form,” but does not provide a definition of these terms.

ii.1999: ILO C182 refers to “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict” (Article 3) but does not define the terms “sale and trafficking of children”.<sup>244</sup>

iii.2000: The OPSC defines “the sale of children” in its Article 2 as follows: “Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”. Moreover, article 3 contains a request to criminalise the following acts: “(a) In the context of sale of children as defined in article 2: (i) Offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour; (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption”.

### J.2. Non-binding instruments

i.1990: By adopting Resolution 1990/68, the UN Commission on Human Rights decided to appoint a Special Rapporteur on the sale of children, child prostitution, and child pornography. However, the Resolution does not define ‘sale of children’.

ii.The many periodic and thematic reports by the different persons serving as Special Rapporteur on the sale of children, child prostitution, and child pornography refer to the sale of children.

### J.3. Terminology considerations

The most detailed legal definition of “sale of children” can be found in the OPSC, which, as mentioned above, defines this notion as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. The first Special Rapporteur on the sale of children, child prostitution, and child pornography identified, in a report in 1993, the following forms of sale of children: sale by adoption, sale for child labour exploitation, and sale of children’s organs. Under an additional category of “other forms of sale”, the Special Rapporteur included “disappearances, abductions and kidnappings of children”, as well as “child soldiers”.<sup>245</sup> A more recent Special Rapporteur included “child marriage” within the category of sale of children.<sup>246</sup>

A question that has arisen with regard to the sale of children is whether a child can be sold for a limited amount of time, and repeatedly. While one former Special Rapporteur excluded this possibility from

<sup>244</sup> As explained further down in these Guidelines, ILO C182 covers not only the prohibition of practices amounting to the worst forms of child labour but also immediate and effective measures for their elimination as a matter of urgency (Article 1). See infra, section O on worst forms of child labour.

<sup>245</sup> Doc. E/CN.4/1993/67, 12 January 1993.

<sup>246</sup> Doc. A/HRC/25/48, 23 December 2013, Paragraphs 26–27.

the definition of “sale of children”;<sup>247</sup> more recent Special Rapporteurs appear to have included this possibility by, for instance, addressing the practice of temporary marriages.<sup>248</sup>

The similarity between the concepts of “sale of children” and “trafficking of children” has led to confusion between the two, and they are often used in conjunction and without any clear distinction, including in existing international treaties (see e.g. the CRC and ILO C182). This confusion has led to disparate uses and interpretations of the terms, and has become an issue with which major child protection agencies continuously grapple. In her 1999 report, then Special Rapporteur on the sale of children, child prostitution, and child pornography, Ofelia Calcetas-Santos, highlighted that “[i]n most situations where there is sale there is also trafficking involved.”<sup>249</sup> Following a comparison of different definitions of sale and trafficking existing at the time, she concluded that, “[a]s in the sale of a person, trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable”, and that “[i]n most cases, elements of both are involved, but there is no line where one ends and the other begins. For this reason, and for the purposes of this report, the issues of sale and trafficking will not be treated as distinct and separate categories.”<sup>250</sup>

The confusion surrounding the term “sale of children” has also been observed at State level, as States Party to the OPSC, and thus obliged to report on its implementation at the national level, often report on the anti-trafficking legislation they have adopted also in the context of sale of children.<sup>251</sup>

Nevertheless, despite a certain irrefutable overlap, “sale of children” is not identical to “trafficking”, and a more in-depth analysis does allow some fundamental, albeit minor, distinctions to be made. Indeed, under international law “sale of children” requires *both* the transfer of a child from person to person and a transaction, consisting of some form of remuneration. As the next section will demonstrate, this is not necessarily the case for trafficking.

The use of the term “sale of children” must, in accordance with international law, always include some form of commercial transaction. On the other hand, it must *not* necessarily include the purpose of exploiting a child. An example of this is the sale of children for illegal adoption, whereby a child could be illegally sold to a couple wishing to adopt a baby and who has every intention to treat that child well and provide a good and caring living for her/him.<sup>252</sup> Lastly, despite the fact of involving a transfer from one person to another, “sale of children” can take place without physical moving the child out of her/his social environment.<sup>253</sup>

**Conclusion:** “Sale of children” is not necessarily related to sexual abuse and sexual or other forms of exploitation but can also occur, for instance, for purposes of illegal adoption and child marriage. Sale of children is thus a broader concept, within which elements of sexual abuse or sexual or other forms of exploitation can (and often do) exist/occur. Lastly, it should also be noted that the term “illegal adoption” may also mean that an adoption was performed in violation of existing national laws, without this necessarily relating to the sale of a child.

<sup>247</sup> Doc. E/CN.4/1999/71, 29 January 1999, Paragraph 33. The Special Rapporteur defined the sale of children as “the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration [...] to exclude transactions that are strictly on a temporary basis, as when a child is ‘rented’ out, in order to obviate confusion as to whether the transaction constitutes sale or pimping, for example.”

<sup>248</sup> See, for instance, Doc. A/HRC/22/54, 24 December 2012, Paragraph 32. It should be noted that the report focused on the sexual exploitation of children in travel and tourism, in the context of which the Special Rapporteur mentioned temporary child marriages, and that it was not made clear whether the Special Rapporteur considered this a form of sale of children.

<sup>249</sup> Doc. E/CN.4/1999/71, Paragraph 5.

<sup>250</sup> Ibid., Paragraphs 47–48.

<sup>251</sup> The Special Rapporteur on the sale of children, child prostitution, and child pornography has also noted this confusion in, for instance, government briefings for her country visits.

<sup>252</sup> It is noteworthy that the mere fact of a child being sold for illegal adoption, independent of the intention of the adoptive parents, makes the act constitutive of exploitation.

<sup>253</sup> UNICEF, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, Florence, February 2009, p.10. [http://www.unicef-irc.org/publications/pdf/optional\\_protocol\\_eng.pdf](http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf)

## K. Trafficking of children

∅ *Special attention should be paid to how this term is used.*

### K.1. Definitions in legally binding instruments

- i. 1989: Article 35 of the CRC sets forth that *“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”*
- ii. 1999: ILO C182, Article 3(a), refers to *“the sale and trafficking of children”* as a worst form of child labour.
- iii. 2000: The OPSC refers to *“traffic in children”* in its Preamble, expressing concern regarding the significant and increasing international traffic for the purposes of sale of children, child prostitution, and child pornography.
- iv. 2000: The Palermo Protocol refers to *“trafficking in persons, particularly women and children”* and defines it as follows (Article 3.a): *“[t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”* Article 3(c) further sets forth that *“[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”*
- v. 2005: Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings provides the following definition: *“‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”* Just like the abovementioned Palermo Protocol, this Convention continues by specifically setting forth in Article 4(c) that *“[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in human beings’ even if this does not involve any of the means set forth in subparagraph (a) of this article.”*
- vi. 2007: The Preamble to the Lanzarote Convention refers to *“trafficking in children”*.
- vii. 2011: EU Directive 2011/36 on Preventing and Combating Trafficking<sup>254</sup> sets forth in Article 2(1) that the following offences must be criminalised as trafficking of human beings: *“[t]he recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”* Furthermore, Article 2(5) specifies that *“[w]hen the conduct referred to in paragraph 1 involves a child, it*

<sup>254</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

*shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.”*

## K.2. Non-binding instruments

- i. 2004: The Commission on Human Rights adopted Decision 2004/110, by which it decided to appoint a Special Rapporteur on trafficking in persons, especially women and children, to focus on the human rights aspects of the victims of trafficking in persons.<sup>255</sup>
- ii. The periodic and thematic reports by the Special Rapporteur on trafficking in persons, especially women and children, refer to trafficking. Some of the reports focus more specifically on the trafficking of children and its links to sexual exploitation.<sup>256</sup>
- iii. 2015: The IASC Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action refers to trafficking of persons exactly as it is defined by the abovementioned Palermo Protocol.<sup>257</sup>

## K.3. Terminology considerations

Child trafficking is the recruitment and/or transport, transfer, harbouring, and receipt of a child by others with the intent of exploiting the child through various means, like prostitution, begging, child labour, etc. As shown above in Section K.1 on legal definitions, a consistent feature of “trafficking” under international law is that its purpose is the exploitation of a human being (in this case the child). This feature also represents the main distinction between “trafficking” and the “sale” of children.

A former Special Rapporteur on trafficking in persons, especially women and children, has noted that trafficking as defined by the Palermo Protocol contains four constitutive elements: “*act, means, end result, and victim status*”, and points out that “*[i]f the victim is a child, then the means element becomes irrelevant, and the question of whether trafficking has occurred will be determined solely by reference to the act and the end result elements.*”<sup>258</sup>

As noted by the UNICEF Implementation Handbook for the OPSC, “[m]ost acts that meet the definition of sale also meet the definition of trafficking, but there are some situations of sale that are not trafficking and vice versa.”<sup>259</sup> The Handbook, which was published in 2009, also sets forth that the sale of a child becomes trafficking when an element of movement is involved: “*Moving a child out of his or her social environment is a key element of the concept of trafficking because this is thought to increase the vulnerability of the victim.*”<sup>260</sup> Importantly, such movement does not necessarily involve the crossing of a border, and an act can amount trafficking even “*when it occurs in the victim’s own home village, town or city.*”<sup>261</sup>

However, as is clear from Section K.1 on legal definitions, the definition set forth by the EU in 2011 seems to move away from this requirement of movement as an inherent feature of trafficking, by adding to the previously adopted legal definitions that an “*exchange or transfer of control over those persons*” may suffice for an act to amount to trafficking. This resembles the definition of “sale” where the child must indeed be transferred from one group or person to another but this does not necessarily imply the physical movement of the child.

<sup>255</sup> UN Office of the High Commissioner for Human Rights, Decision 2004/110, further endorsed by ECOSOC Decision 2004/228.

<sup>256</sup> See, for instance, Doc. E/CN.4/2006/62, 20 February 2006, which contains a study on the relationship between trafficking and the demand for commercial sexual exploitation.

<sup>257</sup> P. 323.

<sup>258</sup> Doc. E/CN.4/2006/62, Paragraph 35–36.

<sup>259</sup> UNICEF, *Handbook on the Optional Protocol*, supra 253, p. 4.

<sup>260</sup> *Ibid.*, pp. 9–11.

<sup>261</sup> Doc. E/CN.4/2006/62, Paragraph 44.



Just as the Special Rapporteur on the sale of children, child prostitution, and child pornography has stated, the UNICEF Handbook also explains that “[i]n some cases, child trafficking and the sale of children overlap, and differences in the definition do not have any effect on the actual experience of a child and his or her exploitation. However, the distinction is important with regard to the prosecution of perpetrators, creating indicators for identification and determining the best interests of the child, including with regard to the child’s repatriation to his or her family. Finally, in order to more effectively address the trafficking and sale of children, it is important to identify the root causes and to pinpoint any gaps in child protection systems.”<sup>262</sup>

Thus, the legal analysis of “sale” and “trafficking” show two coherently upheld differences between these two acts. First, the “sale of children” always involves some form of commercial transaction, which trafficking in children does not require (e.g. trafficking of a child by means of deceit, force, or abduction). Second, trafficking always has the purpose of exploiting the child, whereas the “sale of children” must not necessarily lead to or be for the purpose of her/his exploitation (e.g. the sale of children for illegal adoption).

Given the scope of the Terminology Guidelines, which is to address terminology related to the sexual exploitation and sexual abuse of children, specific attention is granted here to the trafficking of children for sexual purposes. This form of trafficking may require a distinct kind of response, in terms of both prevention and protection, from other kinds of trafficking.

Trafficking for sexual purposes, also called “sex trafficking”, is a particular form of trafficking in which “the human rights of women and children are violated as women and children”,<sup>263</sup> and it represents a form of gender-based act. While children can be trafficked for a variety of reasons and purposes, most children are trafficked for sexual purposes.<sup>264</sup>

“Virgin trade”, a form of sexual exploitation of children, has also been associated with trafficking<sup>265</sup> and can constitute a form of sale of children.

**Conclusion:** Trafficking of children has a clear and consistent international legal definition. Trafficking can be committed for many different purposes, an important one of which is related to sexual exploitation. Moreover, children trafficked for other purposes, such as child labour, are often sexually abused even when this was not the initial purpose of their trafficking.

So-called “sex trafficking” is sometimes conflated with the term “sexual exploitation of children”.<sup>266</sup> While sexual exploitation of children can (and often does) amount to trafficking for sexual purposes, it must be recalled that adults can also be victims of trafficking, and that trafficking has, as mentioned above, four constitutive elements (three in the case of children). Moreover, although the sexual exploitation of children through prostitution is often related to trafficking, it is important to note that there are many other forms of child sexual exploitation that occur without the child having been trafficked.

<sup>262</sup> UNICEF, *Handbook on the Optional Protocol*, supra 253, pp. 9–11.

<sup>263</sup> Doc. E/CN.4/2006/62, Paragraph 63.

<sup>264</sup> See, for instance, UN Global Initiative to Fight Global Trafficking <http://www.ungift.org/knowledgehub/en/about/trafficking-of-children.html>

<sup>265</sup> See, for instance, the Borgen Project, “Cambodia’s Virginity Trade”, 12 April 2014 <http://borgenproject.org/cambodias-virginity-trade/>; see also *The Economist*, “Ethnic Discrimination Fuels a Vile Trade”, 13 September 2007 <http://www.economist.com/node/9804032> and *The Guardian*, “Virginity for Sale: Inside Cambodia’s Shocking Trade”, 6 July 2014, <http://www.theguardian.com/society/2014/jul/06/virginity-for-sale-cambodia-sex-trade>

<sup>266</sup> This is particularly the case in the US, where all children who are sexually exploited are addressed as victims of “sex trafficking”. See US Victims of Trafficking and Violence Protection Act, Public Law 106-386-Oct. 28, 2000, Sections 103:3, 8 and 9. See also Missing Kids, “Commercial Sexual Exploitation of Children: A Factsheet”.

## L. Child/early marriage

∅ *Special attention should be paid to how this term is used.*

### L.1. Definitions in legally binding instruments

- i. 1962: The UNGA Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages states that State Parties should take legislative action to specify a minimum age for marriage (Article 2).
- ii. 1979: The UNGA Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) prohibits the *“betrothal and marriage of a child”* in Article 16(2).<sup>267</sup>
- iii. 1989: The CRC does not specifically mention child marriage, but it does state in Article 24(3) that all appropriate measures should be taken to *“abolish traditional practices prejudicial to the health of children”* and references other positive children’s rights that are connected to child marriage, such as the right to freedom of expression and the right to protection from all forms of abuse.
- iv. 1990: The ACRWC is the only human rights treaty that expressly requires State Parties to set the minimum age for both persons entering a marriage at 18 years (Article 21(2)).<sup>268</sup>

### L.2. Non-binding instruments

- i. 1948: The Universal Declaration of Human Rights (UDHR) sets forth in Article 16(2) that marriage shall be entered into only with the free and full consent of the intending spouses.
- ii. 1965: UNGA Recommendation on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (Resolution 2018/20) sets the minimum age to at least 15 years of age.
- iii. 1994: CEDAW General Recommendation No. 21 on Equality in Marriage and Family Relations states that *“notwithstanding”* the CRC’s definition of child, *“the Committee considers that the minimum age for marriage should be 18 years for both man and woman”* (Paragraph 36).
- iv. 2003: General Comment No. 4 by the CRC Committee on *“adolescent health and development in the context of the CRC”* mentions *“early marriage”* and states that *“[t]he Committee strongly recommends that States parties review and, when necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years for both girls and boys”* (Paragraph 16).
- v. 2005: Council of Europe Resolution 1468 on forced marriages and child marriages defines child marriage as *“the union of two persons at least one of whom is under 18 years of age”* (Paragraph 7).
- vi. 2011: UNGA Resolution 66/140 on the Girl Child refers to both child marriage and early marriage, but also includes child marriage in the notion of early marriage (pp. 3 and 4).
- vii. 2013: Several UNGA and HRC resolutions referred to the terms *“child, early, and forced marriage”*.<sup>269</sup>
- viii. 2014: A joint General Comment by the CRC Committee and the CEDAW Committee on harmful practices includes a definition of child marriage, and states that *“[c]hild marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age.”* The General Comment continues by stating that *“[a]s a matter of respecting the child’s*

<sup>267</sup> “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

<sup>268</sup> See also Economic and Social Council, “Forced Marriage of the Girl Child”, 5 December 2007, (E/CN.6/2008/4), Paragraph 3. <http://www.crin.org/docs/Girlchildreport.pdf> .

<sup>269</sup> UNGA Resolution 68/146 on the Girl Child; UNGA Resolution 68/148 on Child, Early, and Forced Marriage; HRC Resolution A/HRC/24/L.34/Rev.1 on *“strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps”* adopted on 25 September 2013.

*evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances a marriage of a mature, capable child below the age of 18 may be allowed provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions.”<sup>270</sup>*

- ix. 2014: An HRC report on “Preventing and Eliminating Child, Early and Forced Marriage” defines child marriage as “*a marriage in which at least one of the parties is a child*”, while early marriage is “*often used interchangeably with ‘child marriage’ and refers to marriages involving a person aged below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options*”.<sup>271</sup>
- x. 2014: The African Committee of Experts on the Rights and Welfare of the Child appointed a Special Rapporteur on child marriage.<sup>272</sup>
- xi. 2015: The HRC adopted a resolution on “strengthening efforts to prevent and eliminate child, early and forced marriage”.<sup>273</sup>

### L.3. Terminology considerations

“Child marriage” and “early marriage” are not terms found in international legal instruments, but they are frequently used in “soft law”<sup>274</sup> language, where the two terms are often used interchangeably or in conjunction with one another.

Child marriage is a marriage in which at least one of the parties is a child. It also refers to the act of marrying off children, usually young girls, with or without their consent. Because of the lack of a universal legal definition of “child marriage” establishing an age limit, and the divergent national legal definitions of what is a child, persons under the age of 18 years but who have attained majority under the national law applicable to them still risk falling outside the scope of this term. Moreover, in many countries around the world, children aged 16 and 17 years, and sometimes even younger, who wish to get married can do so with their parents’ consent or permission of the authorities.<sup>275</sup> General Comment No. 4 of the CRC Committee on adolescent health and development urges countries to set the minimum age for marriage for both men and women (with or without parental consent) to 18 years.<sup>276</sup> More recently, the CRC Committee defined child marriage as any marriage where at least one of the parties is under 18 years of age.<sup>277</sup> UNICEF has defined ‘child marriage’ as “a formal marriage or informal union before age 18”, thus also recognising the importance of including non-formal marriages or unions in this notion.<sup>278</sup>

<sup>270</sup> CEDAW and CRC Committee, “Harmful Practices”, Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of the CRC Committee, CEDAW/C/GC/31; CRC/C/GC/18, 4 November 2014, Paragraph 19.

<sup>271</sup> HRC, “Preventing and Eliminating Child, Early and Forced Marriage”, Report of the Office of the United Nations High Commissioner for Human Rights, Doc. A/HRC/26/22, 2 April 2014.

<sup>272</sup> African Union, Social Affairs, Appointment of the Special Rapporteur on Child Marriage, 10 October 2014 <http://sa.au.int/en/content/appointment-special-rapporteur-child-marriage>

<sup>273</sup> Doc. A/HRC/29/L.15, 1 July 2015.

<sup>274</sup> Soft law refers to rules that are not strictly binding in nature but that can still have a certain legal significance, such as (in the context of international law) resolutions, guidelines, policy declarations, or codes of conduct.

<sup>275</sup> For a list of the world’s legal ages for marriage, see <http://www.independent.co.uk/news/world/the-lowest-age-you-can-legally-get-married-around-the-world-10415517.html>

<sup>276</sup> UN CRC Committee, “Adolescent Health and Development in the Context of the Convention on the Rights of the Child”, General Comment No. 4, 1 July 2003, CRC/GC/2003/4.

<sup>277</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270, Paragraph 9.

<sup>278</sup> See, for instance, UNICEF, “Child Protection from Violence, Exploitation and Abuse”, [http://www.unicef.org/protection/57929\\_58008.html](http://www.unicef.org/protection/57929_58008.html)

The term “early marriage” has been defined in a similar manner. Although the term “early” does not necessarily refer to someone aged less than 18 years old,<sup>279</sup> it is frequently found in that context. The term can also be found in UN documents in the phrase “early marriage, including child marriage”,<sup>280</sup> implying that early marriage encompasses child marriage but also includes situations that do not qualify as child marriage, such as marriages in which one or both spouses are below the age of 18 but have attained majority under state laws.<sup>281</sup> As set forth by a report by the HRC addressing these issues, although early marriage is often used interchangeably with child marriage “[i]t refers to marriages involving a person aged below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options.”<sup>282</sup>

Following this reasoning, early marriage could be seen as a broader term than child marriage, since this notion also includes other factors than the age element as potentially making a marriage inappropriate and considered too early to be permitted.

Occasionally, the term “underage marriage” has been used to define marriages involving at least one person who has not attained the age of majority.<sup>283</sup> Children who are (to be) married are often referred to as “child brides”.<sup>284</sup>

As held by the CEDAW and CRC Committees in Joint General Comment No. 31 related to harmful practices, any recognition of a marriage of a person below the age of 18 years should be accompanied by the *conditio sine qua non* that the decision is not made based on culture or tradition but “by a judge based on legitimate exceptional grounds defined by law” (Paragraph 19).

It has been observed that families sometimes marry off their children (in particular their daughters) with the aim of protecting them or granting their security.<sup>285</sup> This may particularly be the case in contexts of humanitarian crisis and armed conflict.<sup>286</sup> However, although the purpose of the marriage may indeed be to protect the child, and not to make any gain or cause any harm, the reality is more complex and the risk that the marriage will result in harm to the child is extremely high. Often the child is married very young, and in many cases obliged to marry a person who is decades older.<sup>287</sup> Sexual abuse may thus occur in the act of consummating the marriage. Moreover, it has been observed that international indicators on maternal health, education, food security, poverty eradication, HIV/AIDS, and gender equality are all negatively linked to high child marriage rates.<sup>288</sup>

**Conclusion:** It can be concluded that the terms “child marriage” and “early marriage” are often used interchangeably, but that the latter can take on a somewhat broader definition, since it can also include persons having attained the age of 18 years but who, for other reasons, may be unable to give their free, full, and informed consent to marry. Both terms should be used with care bearing in mind the abovementioned nuances. (For more details, see also Section L.4.I below on forced marriage.)

<sup>279</sup> According to the Oxford Advanced Learner’s Dictionary, early means “arriving, or done before the usual, expected or planned time”.

<sup>280</sup> See, for instance, UNGA Resolution 66/140 on the Girl Child.

<sup>281</sup> Sexual Rights Initiative, “Analysis of the Language of Child, Early, and Forced Marriages”, 2013, p. 2.

<sup>282</sup> Office of the UN High Commissioner for Human Rights, “Preventing and Eliminating Child, Early and Forced Marriage”, Paragraph 5.

<sup>283</sup> See, for instance, Voice of America, “Underage Marriage Higher for Females than Males in Pakistan”, 19 November 2015 <http://www.voanews.com/content/study-pakistan-underage-marriage-girls/3064839.html>

<sup>284</sup> See, for instance, Girls Not Brides, a global partnership of more than 550 civil society organisations from over 70 countries committed to ending child marriage: <http://www.girlsnotbrides.org/>

<sup>285</sup> CARE International, “To Protect Her Honour: Child Marriage in Emergencies – the Fatal Confusion between Protecting Girls and Sexual Violence”, Gender and Protection in Humanitarian Contexts: Critical Issues Series No. 1, May 2015.

<sup>286</sup> UNICEF, “A Study on Early Marriage in Jordan”, 2014. The study found reasons for child and early marriage included providing *sutra* (which can be interpreted as security and protection from hardship), having protection of a husband in the refugee camp, and protecting against rape. Other incentives were poverty and the fact of alleviating the economic burden of a family (pp. 26–28).

<sup>287</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270, Paragraph 21.

<sup>288</sup> See Girls Not Brides: <http://www.girlsnotbrides.org/>

## L.4. Related terms

### L.4.i Forced marriage

Ø *Special attention should be paid to how this term is used.*

The term “forced marriage” is often used interchangeably or in conjunction with the terms “child marriage” and “early marriage”, addressed in the section above.

#### L.4.i.a Legal definitions

- i. 2011: Article 37 of the Istanbul Convention sets forth that the “*intentional conduct of forcing an adult or a child to enter into a marriage [must be] criminalised*”.<sup>289</sup>

#### L.4.i.b Non-binding instruments

- i. 1948: The abovementioned UDHR, Article 16.b., declares that “*marriage shall be entered into only by the free and full consent of the intending spouses*”.
- ii. 2005: The Council of Europe Parliamentary Assembly, in its Resolution 1468 on forced marriages and child marriages, defines “forced marriage” as the union of two persons, at least one of whom has not given their full and free consent to the marriage (Paragraph 4).
- iii. 2014: The abovementioned Report of the Office of the UN High Commissioner for Human Rights on preventing and eliminating child, early, and forced marriage defines forced marriage as “*any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure*” (paragraph 6).
- iv. 2014: The abovementioned Joint General Comment No. 31 by the CEDAW and CRC Committees on harmful practices defines forced marriages as “*marriages where one or both parties have not personally expressed their full and free consent to the union*” (Paragraph 22).

#### L.4.i.c Terminology considerations

A forced marriage is a marriage to which one or both of the spouses did not give her/his/their free or full consent or is/are not able to owing to lack of maturity and/or capacity. As set forth in the *Semantics or Substance* publication from 2005, there is a distinction to be made between child marriage and forced marriage, based on the following: “*A distinction should be made [...] between the two concepts so that there is room on the one hand to highlight the concerns particular to the marriage of young people aged under 18 while also stressing, on the other hand, the various forms and degrees of force that may be used to arrange the marriage of both children and adults.*”<sup>290</sup>

Child marriage and early marriage are sometimes seen as forced marriages because it is considered that children cannot give their full, free, and informed consent to marry.<sup>291</sup> Nevertheless, as illustrated in the previous section, there are nuances to this definition and child marriage can, under specific circumstances, also exist without force. It must also be recalled that the practice of forced marriage exists for both children and adults.

In July 2015, the HRC adopted a resolution recognising that “[c]hild, early and forced marriage constitutes a violation, abuse or impairment of human rights and a harmful practice that prevents individuals from living their lives free from all forms of violence.”<sup>292</sup> In September 2015, the 193

<sup>289</sup> See also the Explanatory Report of the Convention, paragraph 195-197.

<sup>290</sup> Subgroup Against the Sexual Exploitation of Children, *Semantics or Substance?*, supra 131, p.70.

<sup>291</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270, Paragraph 20.

<sup>292</sup> HRC, “Strengthening Efforts to Prevent and Eliminate Child, Early, and Forced Marriage”.

Member States of the UN committed to the eradication of this practice by 2030, by adopting the Sustainable Development Goals.<sup>293</sup>

Child, early, and forced marriage can be a *channel to* and a *form* of child sexual abuse and exploitation.<sup>294</sup> This can be the case when the child is, for instance, used for sexual purposes in exchange for goods or payment in cash or in kind. Often, in such cases, parents or a family member marry off a child in order to gain benefit or to support the household, as with a dowry system. Dowry is understood as covering both the sum paid by the future spouse to the family of the bride (so called “bride price”) and the sum paid by the bride’s family to the future spouse’s family. In some countries, a child who is a victim of rape can be forced to marry the perpetrator in order to save the latter from prosecution.<sup>295</sup> Such a marriage could be seen to legitimise further sexual abuse. Child marriage can also intersect with the concept of child trafficking when children are recruited, harboured, transported, transferred, or received with the intent to exploit them in slave-like conditions, such as servile marriage or domestic and sexual slavery. In such circumstances, child marriage can become a mere camouflage for trafficking of children for sexual purposes. Furthermore, child marriage can constitute a form of sale of children, such as where young girls are given as wives to men in exchange for money,<sup>296</sup> for instance as a means to settle family debts or provide economic security to families. The requirement to provide a dowry for younger girls can serve as an incentive for parents to arrange to marry their daughters at an early age.<sup>297</sup>

**Conclusion:** Child, early, and forced marriage are closely related and overlapping practices, which have been defined as a form of harmful practices<sup>298</sup> as well as a form of slavery.<sup>299</sup> The three terms can be used separately or in conjunction, paying attention to the fact that they can have slightly different meanings. While child marriage involves at least one person who is under the age of 18, early marriage can also refer to persons having attained the age of 18 but for whom the marriage can be considered early because of other factors. Forced marriage can refer to child and early marriage, but also affects adults.

#### L.4.ii Teenage marriage

∅ *Special attention should be paid to how this term is used.*

“Teenage marriage” is an often-used term to differentiate the marriage between younger children and that of teenagers (13–19 years old). In the media it is sometimes also referred to as “teen marriage”. “Teenage marriage” is not a term that has been defined in international legal instruments, but is often used in academic articles.<sup>300</sup>

**Conclusion:** Since it can include persons who have attained the age of majority (persons up to 19 years of age) this term cannot be considered a synonym for child marriage. If it is used, it should be borne in mind that the term could contribute to the confusion surrounding the definition of child marriage unless there is clear explanation as to what it is intended to cover.

<sup>293</sup> UNGA, “Transforming Our World: the 2030 Agenda for Sustainable Development”, supra 63. Goal 5.3 reads “Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.”

<sup>294</sup> E. Riggio, “Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage”, ECPAT International, 2015.

<sup>295</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270, Paragraph 23.

<sup>296</sup> UNGA, “Report of the Special Rapporteur of the Secretary General on the Sale of Children, Child Prostitution and Child Pornography”, Doc. A/65/221, 4 August 2010, Paragraph 22.

<sup>297</sup> Doc. A/HRC/25/28, Paragraph 26.

<sup>298</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270.

<sup>299</sup> See Anti-Slavery International: “[c]hild marriage can be referred to as slavery, if the following three elements are present: If the child has not genuinely given their free and informed consent to enter the marriage; If the child is subjected to control and a sense of ‘ownership’ in the marriage itself, particularly through abuse and threats, and is exploited by being forced to undertake domestic chores within the marital home or labour outside it, and/or engage in non-consensual sexual relations; If the child cannot realistically leave or end the marriage, leading potentially to a lifetime of slavery” [http://www.antislavery.org/english/slavery\\_today/descent\\_based\\_slavery\\_2/default.aspx](http://www.antislavery.org/english/slavery_today/descent_based_slavery_2/default.aspx)

<sup>300</sup> While it is not the most frequently used term among child protection organisations, “teenage marriage”, searched for on Google Scholar, threw up thousands of results of academic articles employing this term.

#### L.4.iii Temporary marriage

Ø *Special attention should be paid to how this term is used.*

The term “temporary marriage” refers to short-term contract marriages that often serve as an excuse to cover up or condone sexual exploitation or abuse.<sup>301</sup> Examples of such temporary and transactional practices are different forms of *muta’a*, such as *nikah al-muta’a* (short-term marriage), *zawaj al-muta’a* (pleasure marriage), *zawaj al-safka* (a contract marriage based on benefits and interests), and *zawaj al-misyar* (traveller’s marriage or summer marriage).<sup>302</sup>

Temporary marriages have been identified as a serious problem for girls, and it has been noted that in some cases “[f]amilies will agree to the temporary ‘marriage’ of their daughter in exchange for financial gains, also referred to as a contractual marriage, which is a form of trafficking in human beings.”<sup>303</sup>

**Conclusion:** Temporary marriage should not be seen as a form of marriage and the term “marriage” in this context appears inappropriate. The recommended term to use in this context is the sexual exploitation of children.

<sup>301</sup> ECPAT International, “Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage”, Thematic Report, October 2015, p. 42, pp. 44–45.

<sup>302</sup> For more information on Islamic temporary marriages, see, for instance, <http://www.gatestoneinstitute.org/3748/uk-islamic-temporary-marriages> and <http://www.dailynewsegypt.com/2012/12/25/a-business-deal-called-marriage/>

<sup>303</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270, Paragraph 24.

## M. Harmful practices

∅ *Special attention should be paid to how this term is used.*

### M.1. Definitions in legally binding instruments

- i. 1989: CRC Article 24(3) states that parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
- ii. 1999: ACRWC Article 21 sets forth that all State Parties shall take the measure to eliminate harmful social and cultural practices.
- iii. 2000: The OPSC states in its Preamble that traditional harmful practices represent a contributing factor to the sale of children, child prostitution, and child pornography.
- iv. 2005: The Istanbul Convention sets forth in Article 42(1) that State Parties shall “*take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts*”.

### M.2. Non-binding instruments

- i. 1992: CEDAW General Recommendation No. 19 sets forth that “[i]n some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children.”<sup>304</sup>
- ii. 2014: The CEDAW and CRC Committees adopted Joint General Comment No. 31 on harmful practices.

### M.3. Terminology considerations

International law clearly prohibits all forms of harmful practices and, as shown above in Section M.1 on legal definitions, states are obliged to undertake measures to eliminate such practices. Harmful practices are often linked to child and early marriage,<sup>305</sup> but also include other practices that are seen as harmful to the child, such as corporal punishment and female genital mutilation/cutting. At the national level, there are sometimes attempts to justify these practices based on the principle of the “best interest of the child” or on a historic or cultural reasoning. Nevertheless, both the CRC Committee and the CEDAW Committee have firmly rejected such justifications, as has the Istanbul Convention.

Indeed, while such practices are often referred to as religious, traditional, or cultural, it is of little importance where they come from and of greater importance how they affect the child. Therefore, the present Guidelines refer to “harmful practices” *tout court*.

The term “harmful practices” may not always amount to sexual exploitation and sexual abuse of children, but there are a number of practices harmful to the child that do, or that contribute to increasing the vulnerability of the child to sexual exploitation and sexual abuse. One clear example is child, early, and forced marriage, addressed in detail in the previous section of these Guidelines.

Female genital mutilation can also have a severe impact on girls’ sexuality and sexual identity, and is generally associated with traditions or customs based on controlling a woman’s sexuality.<sup>306</sup> It refers to all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons (usually to suppress female sexuality). It is performed in

<sup>304</sup> 11th Session, 1992, Paragraph 20.

<sup>305</sup> CEDAW and CRC Committees, Joint General Comment No. 31, supra 270. Paragraph 7 refers to child, early, and forced marriage as one of the “most prevalent and well documented” forms of harmful practices. Others are female genital mutilation, polygamy, crimes committed in the name of so-called honour, and dowry-related violence.

<sup>306</sup> The Advocates for Human Rights, Stop Violence against Women, “Female Genital Mutilation” [http://www.stopvaw.org/female\\_genital\\_mutilation](http://www.stopvaw.org/female_genital_mutilation)



line with tradition and social/religious norms and considered under international treaties as a practice harmful to children who are subjected to it.<sup>307</sup> It represents a form of gender-based discrimination<sup>308</sup> and can be experienced as a form of sexual abuse.<sup>309</sup> Other examples of harmful practices that relate to children's and young women's sexuality are:

Breast ironing – this is a practice often performed by a mother, in which the breasts of pubescent girls are pounded using tools such as spatulas, grinding stones, hot stones, and hammers as a means of delaying their development and, arguably, protecting them from rape and other types of unwanted male attention.<sup>310</sup>

Virginity tests – this term refers to the examination of the female genitals as a way to determine sexual chastity.<sup>311</sup>

Adult initiation rites – this is a practice to mark the move from childhood to adulthood and demonstrate a change in the child's social status. These traditions include harmful, degrading, and humiliating practices such as forced public nudity, beatings, hazing,<sup>312</sup> and rape.

Forced abortion/sterilisation – This term refers to the acts of performing an abortion on a pregnant girl or woman without her prior and informed consent and to performing surgery that has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.<sup>313</sup>

Although these practices are not necessarily considered sexual abuse, they represent, without any doubt, a violation of the human rights of the child to respect for and protection of her physical (and sexual) integrity.

The adjectives “traditional”, “cultural”, and “religious” are often used to refer to harmful practices of a specific origin, whether belonging to religious rituals or culture and/or tradition.<sup>314</sup> In accordance with theories of cultural relativism, it has sometimes been argued that certain practices can be justified if they are anchored in strong and long-lasting traditions.<sup>315</sup> Nevertheless, it is increasingly held that children's right to protection from physical and psychological harm is a universal right, and that practices involving such harm of a child cannot be justified using arguments based on cultural relativism theories.

<sup>307</sup> Article 38 of the Istanbul Convention (supra 40) requires the criminalisation of female genital mutilation.

<sup>308</sup> UNICEF, “Female Genital Mutilation/Cutting” [http://www.unicef.org/protection/57929\\_58002.html](http://www.unicef.org/protection/57929_58002.html)

<sup>309</sup> Sometimes, these practices are not considered sexual abuse because they are not carried out for sexual gratification. Nevertheless, the victim may experience them as such.

<sup>310</sup> See, for instance, <http://www.endvawnow.org/en/articles/609-breast-ironing.html>

<sup>311</sup> Virginity testing is defined as a harmful practice in CRC Committee General Comment No. 13, Paragraph 29.

<sup>312</sup> Hazing is a form of initiation ritual, and a practice often occurring in the sports/military environments. It refers to a harmful or dangerous activity expected of a person in order to join or enter a group. See, for example, P. David, *Human Rights in Youth Sport: A Critical Review of Children's Rights in Competitive Sport*, Routledge, 2004, pp. 71–73.

<sup>313</sup> Istanbul Convention, supra 40, Article 39 requires the criminalisation of forced abortion and sterilisation.

<sup>314</sup> The 2015 IASC Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action (supra 61), in quoting the 2006 UN Secretary General's Report on the Rights of the Child, refer to harmful traditional practices as “[c]ultural, social and religious customs and traditions that can be harmful to a person's mental or physical health. Every social grouping in the world has specific traditional cultural practices and beliefs, some of which are beneficial to all members, while others are harmful to a specific group, such as women. These harmful traditional practices include female genital mutilation (FGM); forced feeding of women; child marriage; the various taboos or practices that prevent women from controlling their own fertility; nutritional taboos and traditional birth practices; son preference and its implications for the status of the girl child; female infanticide; early pregnancy; and dowry price. Other harmful traditional practices affecting children include binding, scarring, burning, branding, violent initiation rites, fattening, forced marriage, so-called honour crimes and dowry-related violence, exorcism or ‘witchcraft’” (p. 322).

<sup>315</sup> See, for instance, Human Rights Watch, *The Trouble with Tradition: When “Values” Trample over Rights* <https://www.hrw.org/world-report/2013/country-chapters-1>

**Conclusion:** In the context of sexual exploitation or abuse of children, it is more appropriate to use the term “harmful practices” instead of “traditional harmful practices”, since it refers to the more neutral principle of harm and avoids cultural and other relative or more subjective factors. Harmful practices are harmful irrespective of their alleged origin or attempted justification.

Not all harmful practices constitute sexual exploitation or sexual abuse. Nevertheless, it should be recalled that the abovementioned forms of harmful practices can seriously affect the sexuality of the victim, and the victim may experience them as a form of sexual abuse.

## N. Contemporary forms of slavery/child slavery

Ø Special attention should be paid to how this term is used.

### N.1. Definitions in legally binding instruments

- i. 1926: According to the Slavery Convention, “[s]lavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”<sup>316</sup>
- ii. 1930: The ILO Committee of Experts on the Application of Conventions and Recommendations has used ILO Forced Labour Convention No. 29, although it does not explicitly contain the term “slavery”, to address slavery and slave-like practices. Its definition of “forced labour” (Article 2) as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” is understood also to cover slavery and slave-like practices. The 2014 Protocol to the Forced Labour Convention does not change the definition of “forced labour” but adds, in its Preamble, explicit mention of the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.
- iii. 1948: The UDHR contains a strong prohibition of slavery in its Article 4: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” but does not define the concept.
- iv. 1956: The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines slavery and practices similar to slavery that must be abolished as “(a) Debt bondage [...]; (b) Serfdom [...]; (c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”<sup>317</sup>
- v. 1999: Article 3 of ILO C182, which defines worst forms of child labour, includes: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”

<sup>316</sup> League of Nations, Slavery Convention, signed in Geneva, 25 September 1926, Article 1.

<sup>317</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XVI) of 30 April 1956 in Geneva, 7 September 1956 [www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx)

## N.2. Non-binding instruments

- i. 2007: The HRC appointed a Special Rapporteur on contemporary forms of slavery, including its causes, and consequences.<sup>318</sup> Included in the mandate is the issue of children working in slavery or slavery-like conditions.<sup>319</sup>
- ii. 2011: The CRC Committee has included “sexual slavery” in the notion of child sexual abuse and exploitation.<sup>320</sup>

Neither of these two documents contains a definition of slavery or child slavery.

## N.3. Terminology considerations

As can be seen from the abovementioned legal definitions of slavery, the notion of slavery and slave-like practices includes a much broader set of acts than those covered within the scope of the present Guidelines. The Guidelines therefore focus on contemporary forms of slavery that involve or are directly linked to child sexual exploitation and sexual abuse.

A number of the terms and concepts addressed in the Guidelines are also considered forms of slavery or slave-like practices. This is particularly the case for trafficking of children, sale of children, worst forms of child labour, and certain harmful practices.

While traditional forms of slavery have been addressed since the 19th century, the term “slavery” has returned in new shapes in recent years and can today be found in the notions of, for instance, “contemporary forms of slavery”, “modern slavery”, and “modern day slavery”. The term “slavery” has thus taken on a much broader meaning and today incorporates many forms of child sexual exploitation and sexual abuse.

Major dictionaries define slavery as *“the condition of being legally owned by someone else, or the system in which some people are owned by others”*<sup>321</sup> (the more classical definition), but also as *“a condition of having to work very hard without proper remuneration or appreciation”*,<sup>322</sup> which indicates the possibility of a more informal system or situation. Most forms of contemporary slavery fall under this latter definition, and are considered illegal, although still existing.

With regard to contemporary forms of slavery affecting children, “child slavery” has been defined as children being in a hazardous situation and being exploited for someone else’s gain, often under threats and/or use of violence, such as children who are used for profit through prostitution or pornography, forced begging, petty theft; children who are used for child labour; children who are used to take part in armed conflict; and child domestic workers/children in domestic servitude.<sup>323</sup>

Sexual slavery is slavery for the purposes of sexual exploitation and it can affect both children and adults (mainly women). It includes child trafficking for sexual purposes<sup>324</sup> and the sale of children for sexual purposes.<sup>325</sup> The Palermo Protocol sets forth that trafficking of human beings must be for the purposes of exploitation, including slavery and practices similar to slavery (Article 3(a)),<sup>326</sup> and the Special Rapporteur on trafficking in persons, especially women and children, has underlined that “[t]

<sup>318</sup> HRC Resolution 6/14, 28 September 2007.

<sup>319</sup> <http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx>

<sup>320</sup> General Comment No. 13, Paragraph 25(d).

<sup>321</sup> Cambridge Academic Content Dictionary

<sup>322</sup> Oxford British and World English Dictionary.

<sup>323</sup> Anti-Slavery International, “Child Slavery” [http://www.antislavery.org/english/slavery\\_today/child\\_slavery/default.aspx](http://www.antislavery.org/english/slavery_today/child_slavery/default.aspx).

Oxford British and World English Dictionary defines “servitude” as the state of being a slave or completely subject to someone more powerful, whereas Cambridge Advanced Learner’s Dictionary and Thesaurus defines “servitude” as the state of being under the control of someone else and of having no freedom.

<sup>324</sup> See, for instance, <https://polarisproject.org/sex-trafficking>

<sup>325</sup> The Special Rapporteur on the sale of children, child prostitution and child pornography has addressed the issue of “modern-day slavery” within the scope of her mandate. See, for instance, Doc. A/70/222, 31 July 2015, Paragraph 5.

<sup>326</sup> For more details on the trafficking of children, see supra section K.

*trafficking is a grave violation of a number of human rights, especially the right to liberty and the right not to be held in slavery or involuntary servitude.*<sup>327</sup>

The US Government has used the term “modern slavery” to refer to human trafficking,<sup>328</sup> and the UK Government in 2015 adopted the Modern Slavery Act in order to “*make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims; to make provision for an Independent Anti-slavery Commissioner; and for connected purposes*”.<sup>329</sup> The Modern Slavery Act specifically includes provision related to the sexual exploitation of children.<sup>330</sup>

Child marriage has also been seen as a form of slavery or slave-like practices. “*Married children can experience levels of suffering, coercion and control that meet international legal definitions of slavery and slavery-like practices.*”<sup>331</sup>

**Conclusion:** While a broad range of child sexual exploitation and sexual abuse have been labelled “slavery” and constitute a violation of the international legal framework on slavery, it must be recalled that the notion of slavery is much wider and encompasses human rights violations against both children and adults. Furthermore, slavery is far from limited to sexual violence, and can include forced labour and trafficking for other than sexual purposes.

The past years have seen an intensification of global action against what is referred to as forced labour, human trafficking, and slavery.<sup>332</sup> These terms have often been used interchangeably and there has been a tendency to use one or the other as an umbrella term to capture a large spectrum of manifestations that could amount to any or all of these phenomena. Although there are similarities and a certain overlap between the trafficking of children, contemporary forms of slavery, and worst forms of child labour, it should be recalled that these phenomena are not identical, and contain certain crucial differences, including in terms of their legal definition. For instance, a child may be born into a situation of forced labour, including a situation of sexual exploitation, without having been trafficked. Furthermore, child sexual exploitation and sexual abuse also occur in forms that do not meet the constitutive elements of forced labour or slavery. It has been noted that, while many coercive situations can be alternatively identified, and even prosecuted, as either forced labour, human trafficking, or slavery, blurring of definitions causes confusion.<sup>333</sup>

<sup>327</sup> HRC, Doc. A/HRC/29/38, 31 March 2015, Paragraph 29.

<sup>328</sup> The White House, “The Obama Administration Announces Efforts to Combat Human Trafficking at Home and Abroad”, Fact Sheet, 25 September 2012, <https://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki>

<sup>329</sup> UK Modern Slavery Act 2015, <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>330</sup> Ibid.

<sup>331</sup> Anti-Slavery International, “Child Slavery”, supra 323.

<sup>332</sup> AP-Forced Labour Net, “What Is Forced Labour, Human Trafficking and Slavery? Do Definitions Matter, and Why?”, Online Discussion Report, 22 April–2 May 2014.

<sup>333</sup> Ibid.

## O. Worst forms of child labour

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### O.1. Definitions in legally binding instruments

- i. 1989: Article 32 of the CRC sets forth that “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”
- ii. 1999: Article 3 of ILO C182 defines worst forms of child labour as follows: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” Under another category of worst forms of child labour—namely, so-called “hazardous work”—“[w]ork which, by its nature or the circumstances in which it is carried out, **is likely to harm the** health, safety or **morals of children**” (emphasis added) must be prohibited for all children under 18 years of age. “The types of work referred to under Article 3(d) shall be determined by national laws or regulations” (Article 3(d) and 4).

### O.2. Non-binding instruments

- i. 1999: ILO Recommendation 190<sup>334</sup> supplements the provisions in ILO C182 concerning worst forms of child labour. It includes some particularly relevant provisions:
  3. “In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to: (a) work which exposes children to physical, psychological or sexual abuse[...]<sup>335</sup>
  11. “Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by: (a) gathering and exchanging information concerning criminal offences, including those involving international networks; (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances; (c) registering perpetrators of such offences.”
  12. “Members should provide that the following worst forms of child labour are criminal offences: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and (c) the use, procuring or offering of a child for illicit activities.”
  15. “Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following: [...] (d) providing for the prosecution in their own country of the Member's nationals who commit

<sup>334</sup> Adopted 17 June 1999,

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312528:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312528:NO)

<sup>335</sup> Some examples of national provisions on this topic (e.g. prohibiting employment of under-18 in sex shops, night-clubs, massage parlours, etc.) can be found in ILO, *The Tripartite Process of Determining Hazardous Child Labour – Guide for Facilitators* (especially pp.105-106) [http://www.ilo.org/ipec/Informationresources/WCMS\\_195334/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_195334/lang--en/index.htm)

*offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country.”*

### O.3. Terminology considerations

The term worst forms of child labour pertains specifically to the field of (international) labour law, and includes a whole range of practices that go beyond the scope of the present Guidelines. However, the sexual exploitation of children is explicitly included in the definition of WFCL. ILO C182 is almost universally ratified<sup>336</sup> and the UN promoted it<sup>337</sup> as one of the international instruments relevant for children alongside the CRC. It legally obliges States not only to prohibit sexual exploitation of children and other WFCL but also to take immediate and effective measures towards its elimination. The latter measures include, among other things, penal or other sanctions, measures of prevention, removal of and direct assistance to children affected, and their rehabilitation and social integration. State Parties are also obliged to design and implement programmes of action to eliminate WFCL and to establish or designate appropriate monitoring mechanisms.

Furthermore, in the framework of the internationally agreed Sustainable Development Goals, a clear commitment is made to *“take immediate and effective measures to [...] secure the prohibition and elimination of the worst forms of child labour [...] and by 2025 end child labour in all its forms.”*<sup>338</sup>

Some concern has been expressed related to the fact of calling, for instance, the sexual exploitation of children through prostitution or for pornographic performances a form of labour. Such concern is based on the reasoning that defining child sexual exploitation in terms of labour could associate it with the debate around prostitution as a form of sex work, rather than seeing it as a crime, and thus as harmful or detrimental to the child.<sup>339</sup>

Regarding the question as to whether sexual exploitation of children is ‘labour’, it is noteworthy that the preparatory report to ILO C182 sets forth that *“[c]hild prostitution, child pornography and the sale and trafficking of children are crimes of violence against children. They must be treated as crimes and attacked as the most serious crimes are attacked. Such repellent abuses are so far removed from any normal notion of work or labour that it seems strange to focus on them in an ILO report. Yet while they are crimes they are also forms of economic exploitation akin to forced labour and slavery. Any new international standards on the most extreme forms of child labour must therefore specifically aim at abolishing the commercial sexual exploitation of children.”*<sup>340</sup>

Thus, it is clear that the inclusion of a topic within an ILO standard neither signifies any acknowledgement of it as a form of legitimate labour nor requires its regulation in terms of, for instance, employment relationship. Forced labour, including slavery, is also addressed under ILO standards with the aim of its abolition and not for the purpose of legitimising or regulating such practices.

Child sexual exploitation can amount to one of the worst forms of child labour as defined by ILO C182 directly (Article 3(b)), but sexual exploitation and/or abuse can also be a result of other manifestations of WFCL. For instance, child labour in domestic work is often associated with sexual abuse. Some of the most common risks children face in domestic work include humiliating or degrading treatment, such as

<sup>336</sup> The list of ratifications is available at

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO)

<sup>337</sup> See, for instance, Paragraph 29 of UNGA Special Session on Children, “A World Fit for Children”, Resolution adopted on 11 October 2002 (A/RES/S-27/2).

<sup>338</sup> Sustainable Development Goal 8, Target 7 [http://www.ilo.org/global/topics/sdg-2030/goal-8/WCMS\\_403787/lang-en/index.htm](http://www.ilo.org/global/topics/sdg-2030/goal-8/WCMS_403787/lang-en/index.htm)

<sup>339</sup> See the case law of the European Charter of Social Rights, which, for instance, in the case of FAFCE vs. Ireland, held that *“Article 7§10 requires that all acts of sexual exploitation of children be criminalised. [...] States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.”* Complaint 89/2013, Decision of 12 September 2014, Paragraph 58. [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC89Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC89Merits_en.pdf)

<sup>340</sup> International Labour Conference, “Child Labour: Targeting the Intolerable”, 86th Session (1998), Report VI(1), p. 66.

physical and verbal violence, and sexual abuse by members of the family the child is working for. These risks increase when the child lives in the household where he or she works as a domestic worker.<sup>341</sup>

With regard to the term “child labour in domestic work”, ILO coined this terminology expressly to clear out the confusion that had previously surrounded the notion of “child domestic work”.<sup>342</sup> Indeed, “child domestic work” could encompass also such situations where children have reached the relevant minimum age for work and are performing work that is permitted under national laws. “Child labour in domestic work”, on the other hand, refers to situations where domestic work is carried out by children below the relevant minimum age or puts the child (independent of her/his age) in hazardous conditions or in a slavery-like situation. Among other terms used to refer to child labour in domestic work are *criadazgo*<sup>343</sup> and *restavèks*.<sup>344</sup>

**Conclusion:** Even where they are not directly used for purposes of sexual exploitation as defined by ILO C182 Article 3(b), children who are working (whether in child labour or as young workers of legal working age) are vulnerable to and run an elevated risk of being exposed to different forms of sexual violence and abuse in the workplace.<sup>345</sup>

At the same time, it is important not to lose sight of the fact that child sexual exploitation and sexual abuse can occur outside of, or unrelated to, the context of child labour. Moreover, the fact of considering some forms of sexual exploitation a form of child labour should never lead to considering sexual exploitation as a legitimate form of work or to shifting the blame onto the child, who remains at all times a victim of exploitation.

The term “child labour in domestic work” has been coined by ILO to refer to such situations where children are not in a legitimate situation of work.

<sup>341</sup> See <http://www.ilo.org/ipec/areas/Childdomesticlabour/lang--en/index.htm>

<sup>342</sup> This was done with the adoption in 2011 of C189, the Domestic Workers Convention, concerning decent work for domestic workers. The confusion had arisen in particular when translating this term into languages such as French and Spanish. For an explanation of ILO’s understanding of the two terms, see <http://www.ilo.org/ipec/areas/Childdomesticlabour/lang--en/index.htm>

<sup>343</sup> See, for instance, CRC Committee, “Concluding Observations on the Initial Report of Paraguay on the OPSC”, Doc. CRC/C/OPSC/PRY/CO/1, 19 October 2013, Paragraphs 34–35: “While noting the prohibition of the long-established and socially encouraged practice of *criadazgo*, the Committee regrets that the practice has not been defined as a possible case of the sale of children in accordance with articles 2 and 3 of the Optional Protocol”; “The Committee recommends that the State party amend its criminal legislation to criminalize the practice of *criadazgo* as a case of the sale of children whenever it fulfils the criteria in articles 2 and 3 (a) of the Optional Protocol. The Committee also recommends that the State party take appropriate measures to deter this practice.”

<sup>344</sup> See, for instance, CRC Committee, “Concluding Observations on the Combined Second and Third Periodic Reports by Haiti”, Doc. CRC/C/HTI/CO/2-3, 29 January 2016, Paragraph 62: “the Committee, while noting the efforts taken by the State party to criminalize the exploitation of child domestic workers (so-called “*restavèks*”) is concerned that the number of child domestic workers remains high. It also notes with concern that: (a) Many child domestic workers are forced to work in slavery-like conditions, are subjected to physical, emotional and sexual abuse by their host family, and are frequently malnourished and stunted.”

<sup>345</sup> This is expressly recognised by the 2006 UN Study on Violence against Children, which states that “the most common forms of violence against children in the workplace are: physical violence [...], psychological (emotional) violence [...], sexual violence, including sexual harassment, fondling and rape” (p. 242) <http://www.unicef.org/violencestudy/reports.html>



## P. Child victim of sexual exploitation and/or abuse

○ This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.

### P.1. Definitions in legally binding instruments

- i. 1989: The CRC uses, but does not define, the term ‘victim’.
- ii. 2000: The OPSC uses, but does not define, the term ‘victim’.
- iii. 2007: Article 3(c) of the Lanzarote Convention defines ‘victim’ as “any child subject to sexual exploitation or sexual abuse”.

### P.2. Non-binding instruments

- i. 2005: The UN Guidelines on Justice in Matters involving Child Victims or Witnesses of Crime<sup>346</sup> define “victims” as “children and adolescents, under the age of 18, who are victims of crime [...] regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders”.

### P.3. Terminology considerations

The term “victim” refers to a person who has been hurt, harmed, injured, or killed as a result of a crime, accident, or other event or action<sup>347</sup> or who has suffered because of the actions of someone else.<sup>348</sup> This definition does not take into account how the person in question feels about her/his situation, and is not intended to label a person as such, but merely states the fact that the person has been subjected to or experienced one of the abovementioned scenarios.

In the legal context, in particular in the framework of judicial proceedings, this definition of “victim” is necessary for a person to be identified and recognised by law or by other means in order to be eligible to access recovery and/or reintegration services and/or to claim compensation. The term “victim” thus remains an important legal term to define duty-bearers and rights-holders.

However, the term “victim” can also refer to “a person who has come to feel helpless and passive in the face of misfortune or ill-treatment”.<sup>349</sup> This definition is based on the more subjective element of a person’s (the “victim’s”) own feelings. The fact that “victim” can also be interpreted in this manner has sometimes made the use of the term appear disempowering and has been seen as defining a person in terms of her/his experiences of abuse or applying a “label” of weakness or helplessness, which is not helpful to the person’s recovery.<sup>350</sup>

The term “child victim” has, as mentioned above, been defined as children and adolescents, under the age of 18, who are victims of crime.<sup>351</sup> This definition, which appears to include only acts directly intended towards the child while potentially excluding forms of indirect victimisation, is very similar, if not identical, to the definition of adult victims. Yet it has been observed that “due to [...] vulnerabilities and characteristics unique to children the definition of adult victimization is not suitable for children”<sup>352</sup> and that an adequate definition of “child victim” must “reflect the fact that due to their unique characteristics, vulnerabilities and needs, the injurious effect of crime to children goes far beyond direct

<sup>346</sup> UN Economic and Social Council (ECOSOC), *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, 22 July 2005, E/RES/2005/20, available at: <http://www.refworld.org/docid/468922c92.html>, Paragraph 9(a).

<sup>347</sup> Oxford British and World English Dictionary; Cambridge Advanced Dictionary and Thesaurus.

<sup>348</sup> Cambridge Advanced Dictionary and Thesaurus.

<sup>349</sup> Oxford British and World English Dictionary.

<sup>350</sup> See, for instance, The Guardian, “People Who’ve Been Raped Are Survivors, Not Just Victims”, 22 December 2014.

<sup>351</sup> *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, supra 346.

<sup>352</sup> M. Gilad, “The Young and the Helpless: Re-defining the Term ‘Child Victim of Crime’”, Public Law and Legal Theory Paper No. 14-23, University of Pennsylvania Law School, 2014, p. 23.

victimization”.<sup>353</sup> In this regard, it is noteworthy that the Preamble of the Istanbul Convention recognises that “[c]hildren are victims of domestic violence, including as witnesses of violence in the family.”

Lastly, it is important to recall that any notion related to the consent of the child shall be considered irrelevant in determining that she/he is a victim of sexual exploitation or sexual abuse. Moreover, the identification of someone as a “child victim” shall not depend on the identification, prosecution, or detection of an offender, nor shall it depend on his or her willingness or ability to provide the police with information or to testify against the offender.<sup>354</sup>

In the context of child sexual exploitation and sexual abuse, reference is sometimes also made to “children at risk” or “children in vulnerable situations”. These terms refer to children who have not necessarily been victims of abuse or exploitation but who are at greater risk than other children owing to their situation and/or circumstances and need to be reached for prevention purposes. These terms can be used without stigmatising the child as long as it is clear children are not necessarily vulnerable *per se* but in relation to their surrounding environment (e.g. their evolving capacities and limited decisional power, but also factors such as living conditions or disabilities).<sup>355</sup> For this reason, it may be better avoiding the term “vulnerable children”. It has been observed that “[p]eople who have less power have fewer choices and are therefore more vulnerable to abuse” and that, given their limited power, “[c]hildren are especially vulnerable to abuse.”<sup>356</sup> In requesting that States criminalise acts of child sexual abuse, the Lanzarote Convention refers to the “particularly vulnerable situation of the child”, for instance because of “mental or physical disability or a situation of dependence” (Article 18(b) third indent). ILO C182 refers to the need to identify and reach out to “children at special risk” (Article 7(2)(d)), and the OPSC mentions “particularly vulnerable groups, including girl children” and refers to the need to protect “children who are especially vulnerable” (Preamble and Article 9).

**Conclusion:** In the context of child sexual exploitation and sexual abuse, the term “victim” is a crucial legal term that serves to define children who have been subjected to harmful and/or criminal acts as rights-holders and to avoid any form of responsibility or blame being placed on the child. The term should be used in an objective manner to state the fact that the child has been subjected to or has experienced a harmful/criminal act, and not be used to label the person as weak and/or helpless.

Taking into account children’s special needs and rights to protection, it is important to use an inclusive notion of the “child victim”, which encompasses not only acts directly aimed at the child but also acts that indirectly cause harm to her/him.

## P.4. Related terms

### P.4.i Victim identification

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

The term “victim identification” refers to an investigation process by experts to analyse CSAM/CSEM (child sexual abuse material/child sexual exploitation material) in order to identify the victims of sexual abuse or sexual exploitation. The analysis includes different methodologies, especially in finding potential location indicative objects, remarks, or data within or around the material (content and technical information) and to evaluate them with existing or other relevant information. The goal of this process is to identify the location of the abuse and therefore the victim and offender to enable

<sup>353</sup> Ibid., p. 24.

<sup>354</sup> UNICEF, Guidelines on the Protection of Child Victims of Trafficking, New York, 2006, p.14.

<sup>355</sup> The Centre for Children in Vulnerable Situations states that it “starts from a perspective trying to avoid stigmatisation, as being convinced that all children and adolescents, notwithstanding their vulnerabilities, still dispose of a large range of strengths and competencies (coping and resilience)” [www.centreforchildren.be](http://www.centreforchildren.be)

<sup>356</sup> UNFPA, *Managing Gender-Based Violence Programmes in Emergencies: E-Learning Companion Guide*, 2012, pp. 4 and 6, [www.unfpa.org/publications/managing-gender-based-violence-programmes-emergencies](http://www.unfpa.org/publications/managing-gender-based-violence-programmes-emergencies)

the safe removal of the child from harm while at the same time allowing evidence of the criminal activity to be secured.

“Victim identification” is a victim-centred discipline within policing and should be included as a constituent part in any child exploitation investigation. It should also be central to any strategy, scheme, or initiative put in place to enhance child safety. For example, Internet service providers who put blocking or removal policies in place should remember that images or videos representing CSAM depict a real child being abused or exploited and that she/he deserves every opportunity to be removed from harm.

“Victim identification”, in most countries, is primarily a law enforcement task and is done in accordance with INTERPOL Resolution AG-2011-RES-08 on “promoting victim-centric management of child abuse material at the national level”,<sup>357</sup> which recognises the local nature of the child sexual abuse while acknowledging the global nature of the distribution of the resultant material. Furthermore, Article 15 of EU Directive 2011/93 stipulates that EU Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3–7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of ICT.<sup>358</sup>

While the majority of CSAM is found during police actions against perpetrators (both online and offline) it is also proactively gathered online and through reports from members of the public. Where not reported to law enforcement directly, these reports are often managed by INHOPE member hotlines in different countries and the material is analysed, triaged, and forwarded to law enforcement for further analysis and uploading to the International Child Sexual Exploitation (ICSE) database.

Since material found in one country may contain information or clues that allow identification of a child in another country, the ICSE database plays an important role in ensuring new abuse material relating to an unidentified victim is considered and added to the series. Since CSAM is rarely just one image or movie and is generally recorded during a number of different abuse sessions, all material is grouped together in series based on the victim or victims.

CSAM can be subdivided into the categories “Identified”, “Unidentified”, and “Not Distributed”. “Identified” is a series or material where the victim has been identified and removed from harm. “Unidentified” is a series that is circulating online but has not yet been identified. A “Not Distributed” series is one where it is not known if the material has been shared either online or offline.

**Conclusion:** In the context of child sexual exploitation and child sexual abuse, and in particular with regard to CSAM/CSEM, “victim identification” has become an increasingly important term, which should be understood as a victim-centred approach crucial to the protection of children and their removal from harm.

<sup>357</sup> Adopted at the 2011 ICPO-INTERPOL General Assembly <http://www.interpol.int/content/download/12398/85453/version/4/file/AG-2011-RES-08.pdf>

<sup>358</sup> Further, EU Member States shall promote regular training for officials likely to come into contact with child victims of sexual abuse or exploitation, including front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation (Article 23). For the blocking, “[m]echanisms may also be put in place to block access from the Union’s territory to Internet pages identified as containing or disseminating child pornography” (Article 47). Therefore, Europol supports INTERPOL’s and EU Member States’ actions in victim identification (<https://www.europol.europa.eu/ec3/child-sexual-exploitation>) and training ([https://www.europol.europa.eu/latest\\_news/16th-europol-training-course-%E2%80%98combating-online-sexual-exploitation-children-internet%E2%80%999](https://www.europol.europa.eu/latest_news/16th-europol-training-course-%E2%80%98combating-online-sexual-exploitation-children-internet%E2%80%999))

#### P.4.ii Survivor

∅ *Special attention should be paid to how this term is used.*

Outside of legal and medical contexts, which often use the term “victim”, the term “survivor” is sometimes preferred, and the two have been used interchangeably. This is the case, for instance, in the psychological and social support sectors, because, it is argued, the term “survivor” implies resilience.<sup>359</sup> “Survivor” has also been largely used in the context of violence against women and gender-based violence, and these fields of work have further influenced the field of child protection, which is increasingly using the term interchangeably or in combination with “victim”.

In some contexts, “survivor” is used simply to define anyone who did not die, and has nothing to do with how much the person has overcome. Linguistically, this is the intransitive meaning of the word survive—namely, to continue to live or exist. Nevertheless, a transitive form of the word survive also exists, which entails to “*continue to live despite a dangerous event or time*”.<sup>360</sup> Indeed, in this latter sense of the word, “survivor” does appear to imply some sort of resilience,<sup>361</sup> and can represent an appropriate term. There are examples of regional non-binding instruments that contain the term “survivor” as an alternative to the term “victim”.<sup>362</sup>

The terms “victim” and “survivor” have also been seen as existing in a continuum, where the person (child) who suffered sexual exploitation or sexual abuse is first a victim, and then is seen to move on/progress from the status of “victim” to become a “survivor” as the rehabilitation process advances. Such an approach implies that every survivor has, at some point, been a victim. An important question arises in this regard as to when, exactly, the child moves from being a victim to being a survivor. To a certain degree, it is likely that, whether a child moves or not from victim to survivor status will depend on the measures and services provided to her/him to address and overcome the consequences of her/his victimisation. “Victim” and “survivor” would then distinguish between situations where there has been a (effective) process and situations where no such process has taken place. Furthermore, this question relates to factors inherent to the child, such as age and agency. Indeed, if the term “survivor” is to be used for persons who themselves have the capacity to affirm that they have moved beyond a traumatic experience, age and agency become crucial elements of this definition.

A technical distinction in law could be that a person is a victim until she/he receives remedies/reparations, which would then enable her/him to move beyond victim status (and become a survivor). A more “qualitative” understanding of victim/survivor should, however, be based on subjective experiences and appreciations. Indeed, it has been pointed out that “[e]very survivor [...] is an individual, and will experience harm in different ways.”<sup>363</sup>

**Conclusion:** The term “survivor” is increasingly used in the child protection sector, either interchangeably or in combination with the term “victim”, to refer to persons who have suffered harm and victimisation.

Just as people (including children) may reject the term “victim” and see it as a label they do not identify with, the same could happen with the term “survivor”. Outside of the legal context, it is important never to label a person who does not want to be called “victim” or “survivor”.

<sup>359</sup> UNFPA, *Managing Gender-Based Violence Programmes in Emergencies*, supra 356, p. 8.

<sup>360</sup> Oxford Advanced Learner’s Dictionary.

<sup>361</sup> In accordance with Oxford Advanced Learner’s Dictionary, “resilience” refers to “*the ability of people [...] to feel better quickly after something unpleasant, such as shock, injury, etc.*”, whereas Oxford British and World English Dictionary defines it as “*the capacity to recover quickly from difficulties; toughness*”.

<sup>362</sup> See Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN, adopted at the 23rd ASEAN Summit, 9 October 2013; and Addendum to the Southern African Development Community Declaration on Gender and Development (1997) on the Prevention and Eradication of Violence against Women and Children, adopted by the Southern African Development Community (SADC) on 14 September 1998.

<sup>363</sup> UNFPA, *Managing Gender-Based Violence Programmes in Emergencies*, supra 356, p. 7.

#### P.4.iii Children subjected to sexual exploitation/sexual abuse

∅ *Special attention should be paid to how this term is used.*

Alternatives to the terms “victim” and “survivor” have sometimes been sought, and a number of terms have been suggested in their place.<sup>364</sup> In the effort to find a term that does not attribute a “label” to the child, the suggested terms (such as “children having experienced sexual exploitation”) sometimes risk inadvertently shifting the blame onto the child, and fail to adequately reflect both the responsibility of the State to protect children from human rights violations and the fact that the child has been the subject of a crime.

Other terms, such as “exploited children” or “abused children” avoid using “victim” and seek to place the emphasis on what has happened to the child (she/he was sexually exploited, abused, etc.). These terms arguably express in a more neutral manner that a child has been a victim of a crime. Nevertheless, because these types of terms are still used as nouns, there is still the risk that a “label” is ascribed to the child (who becomes an “abused child”, etc.).

**Conclusion:** The expression “children subjected to sexual exploitation or abuse” describes a situation in a more neutral fashion without labelling the child with a noun. At the same time, the term clearly denotes that the responsibility does not lie with the child but with the person who subjected the child to the exploitation/abuse. From a linguistic perspective, to subject somebody to something means “to make somebody suffer or be affected by something”, usually something unpleasant.<sup>365</sup>

#### P.4.iv Victimisation

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

The term “victimisation” refers to the act of victimising someone; singling (someone) out for cruel or unjust treatment.<sup>366</sup> The sexual exploitation and sexual abuse of children represent forms of victimisation,<sup>367</sup> whereby the child is the victim of the exploitation/abuse.

#### P.4.v Self- Victimisation

⊗ *The use of the term should be avoided.*

It is widely held that children cannot consent to their own exploitation or abuse by another. Therefore, to use the term “self-victimisation” in the field of sexual abuse and exploitation of children, which could infer that the child is responsible or to blame for the crime she/he has suffered, would be inappropriate.

#### P.4.vi Re-victimisation

∅ *Special attention should be paid to how this term is used.*

The term “re-victimisation” has been defined as including “any sexual abuse or assault subsequent to a first abuse or assault that is perpetrated by a different offender to the initial victimisation”,<sup>368</sup> and refers to a pattern wherein the victim of abuse and/or crime has a statistically higher tendency

<sup>364</sup> The Interagency Working Group discussed different terminology related to the child victim at length. The most relevant examples have been included in these Guidelines.

<sup>365</sup> Oxford Advanced Learner’s Dictionary.

<sup>366</sup> Oxford British and World English Dictionary.

<sup>367</sup> The University of the Pacific has made a list of types of victimisation: [www.pacific.edu/Campus-Life/Safety-and-Conduct/Victims-Advocacy-Program/Types-Of-Victimization.html](http://www.pacific.edu/Campus-Life/Safety-and-Conduct/Victims-Advocacy-Program/Types-Of-Victimization.html)

<sup>368</sup> M. Stathopoulos, “Sexual Revictimisation, Individual, Interpersonal and Contextual Factors”, Australian Institute of Family Studies, 2014, p. 2.

to be victimised again, either shortly thereafter or much later in adulthood in the case of abuse as a child. Research has shown that this pattern is particularly notable in cases of sexual victimisation.<sup>369</sup>

One area in which the notion of “re-victimisation” has become increasingly important is in the framework of child sexual abuse material. Such material has been recognised as “*the re-victimisation of the child by serving as a permanent record of abuse*”,<sup>370</sup> and it has been argued that “[t]he possessor of child pornography directly harms the child in the image by exacerbating the primary harm.”<sup>371</sup> However, while this interpretation of the term “re-victimisation” may indeed be important and useful, it is also critical to note that traditional theories of re-victimisation, which focus, for instance, on how a person who is a victim of sexual abuse is rendered more vulnerable by her/his experience and becomes easier for other perpetrators to identify, approach, and harm, appear hardly applicable to this scenario.

**Conclusion:** The term “repeat victimisation” is also used to refer to the issue of re-victimisation<sup>372</sup> and the two can be used interchangeably. The term “re-victimisation” is sometimes also used interchangeably with the term “secondary victimisation”.<sup>373</sup> However, these two concepts have different definitions and should be distinguished from one another.

#### P.4.vii Secondary victimisation

∅ *Special attention should be paid to how this term is used.*

The term “secondary victimisation” relates to further victimisation following on from the original (sexual) victimisation. It has been defined as “*[t]he victim-blaming attitudes, behaviour, and practices engaged in by community service providers, which results in additional trauma for sexual assault survivors*”<sup>374</sup> or as the negative social or societal reaction or consequence of the primary victimisation, which the victim experiences as a further violation.<sup>375</sup>

Thus, secondary victimisation of children can be the result of the (wrongful) responses of individuals or institutions to the victim, such as victim-blaming and inappropriate language or handling by medical/legal personnel or by other organisations with which the victim has contact after suffering exploitation/abuse. It can also be the result of a treatment that does not correspond to the principles of child-friendly justice, such as repeated police/court hearings, repeated health controls, etc., by multiple persons during the judicial process.<sup>376</sup>

This notion should not be confused with the fact that other persons surrounding the “direct” victim or the offender could also feel victimised. The latter could also be referred to as collateral (/indirect) victimisation.

**Conclusion:** “Secondary victimisation” follows after an initial victimisation and relates to the way a victim of sexual exploitation or sexual abuse is treated after such an experience. It should be distinguished from the abovementioned term “re-victimisation”.

<sup>369</sup> D. Finkelhor et al., “Re-victimization Patterns in a National Longitudinal Sample of Children and Youth”, *Child Abuse and Neglect*, vol. 31, 2007, pp. 479–502. See also M. Stathopoulos, “Sexual Revictimisation”. One of the key messages of this report is that “*people who are sexually abused in childhood are two to three times more likely to be sexually re-victimised in adolescence and/or adulthood*”, with a series of scholarly works on the issue quoted.

<sup>370</sup> M. Taylor and E. Quayle, *Child Pornography: An Internet Crime*, 2003, Routledge, p. 24.

<sup>371</sup> S. Ost, *Child Pornography and Sexual Grooming*, Cambridge University Press, 2009, p. 123.

<sup>372</sup> D. Finkelhor et al., “Re-victimization Patterns”, supra 369.

<sup>373</sup> See, for instance, A. Gillespie, *Child Pornography: Law and Policy*, Routledge, 2011.

<sup>374</sup> R. Campbell and S. Raja, “The Sexual Assault and Secondary Victimization of Female Veterans”, *Psychology of Women Quarterly*, 2005. See also [http://www.stopvaw.org/secondary\\_victimization](http://www.stopvaw.org/secondary_victimization)

<sup>375</sup> U. Orth, “Secondary Victimization of Crime Victims by Criminal Proceedings”, *Social Justice Research*, vol. 15, no. 4, 2002, pp. 313–25.

<sup>376</sup> In this regard, the 2005 UN Guidelines on Justice in Matters involving Child Victims or Witnesses of Crime (supra 346) are a key tool to avoid the secondary victimisation of sexually exploited/abused children.

## Q. Perpetrators of sexual crimes against children

○ This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.

### Q.1. Definitions in legally binding instruments

- i. 2000: The OPSC uses the term “alleged offender” to describe an individual who is suspected of committing an offence involving child sexual exploitation (Article 4) and refers to “offender” for persons having committed such an offence (Article 5(5)) and to “accused” for persons within the criminal judicial process (Article 8(6)).
- ii. 2000: The Palermo Protocol uses the term “offender” in the context of criminal proceedings (Article 6(2)(b)) and “perpetrators” in situations prior to arrest or investigation (Article 10(1)(a)).
- iii. 2001: Article 22(3) of the Budapest Convention refers to “alleged offender” to describe persons suspected of committing a criminal offence involving child sexual exploitation.
- iv. 2007: The Lanzarote Convention refers to “convicted sexual offenders” and “persons convicted of offences” to describe individuals already convicted of an offence involving sexual exploitation of children, as enumerated under the Convention (Articles 16 and 37). The term “perpetrator” is used in a generic manner to describe any person who may have engaged in sexual exploitation of children (irrespective of their engagement in the criminal justice process).
- v. 2011: EU Directive 2011/93 refers to “offender” in Articles 9 and 17 and, in its Recital, to “child offender” and “sex offender” (Paragraphs 25, 37, and 43) to describe persons suspected of a sexual offence against a child as well as those convicted of committing such an offence.

### Q.2. Non-binding instruments

- i. 2005: The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime uses multiple terms: “alleged perpetrator” (Paragraphs 31(b), 24(a)) and “alleged offender” (Paragraph 9(a)) for individuals not convicted of an offence; “accused” (Paragraph 8(c)) and “offender” (Paragraphs 20(b), 37) for individuals within the criminal judicial process; and “convicted offenders” (Paragraphs 7(j) and 8(c)) for individuals convicted after a criminal process.
- ii. INTERPOL uses the terms “sex offender” and “travelling sex offender”.<sup>377</sup>
- iii. Europol uses the term “child sex offender”.<sup>378</sup>

### Q.3. Terminology considerations

“Offender” and “perpetrator” tend to be the most frequently used terms to refer to individuals having allegedly committed or been convicted of committing sexual offences against children. In accordance with major dictionaries, the term “offender” takes on the principal meaning of a person who commits/is guilty of a crime.<sup>379</sup> The term “perpetrator” appears to take on a slightly broader meaning, referring to a person “*who carries out a harmful, illegal, or immoral act*”,<sup>380</sup> as well as someone who has been convicted of committing such a crime or act.<sup>381</sup>

Determining the appropriate term to describe an individual’s involvement in a sexual offence against a child should be based on two considerations: (i) the individual’s role in perpetrating or facilitating

<sup>377</sup> INTERPOL, Crimes against Children, <http://www.interpol.int/Crime-areas/Crimes-against-children/Sex-offenders>

<sup>378</sup> Europol, <https://www.europol.europa.eu/content/press/european-police-and-fbi-dismantle-network-child-sex-offenders-1361>.

<sup>379</sup> Cambridge Advanced Learner’s Dictionary and Thesaurus; Oxford Advanced Learner’s Dictionary.

<sup>380</sup> Oxford Advanced Learner’s Dictionary.

<sup>381</sup> Cambridge Advanced Learner’s Dictionary and Thesaurus.

the sexual offence against the child; and (ii) the status of the individual in the possible criminal proceedings related to the sexual offence against the child, taking into account the specificities of national legislation.

Regarding the first consideration, some common terms are frequently used in the context of child sexual exploitation to refer to offenders: (i) the “consumer” or “client”—the individual using the child for her/his sexual gratification (in cases of exploitation in exchange for money or any other consideration or the promise of such), with or without the involvement of an intermediary. The term “abuser” may also be used to describe the “consumer”/“client”. An “abuser” is a person who treats another person in a cruel or violent way, especially regularly or repeatedly,<sup>382</sup> and especially sexually.<sup>383</sup> The term has also been defined as an individual who “*sexually assaults someone, especially a woman or a child*”<sup>384</sup>; (ii) the “facilitators”—the individuals/entities whose conduct facilitates or aids and abets the commission of the sexual offence against the child (sometimes referred to as “intermediaries”). In sexual crimes against children, this person can be a trafficker, making the child available for sexual exploitation; (iii) the “exploiter”—the individual who receives the main benefit or payment for the sexual exploitation. Linguistically, the term “exploiter” refers to someone “*who uses other people or things for his or her own profit or advantage*”.<sup>385</sup>

Furthermore, an individual’s role in perpetrating sexual offences against children can also take the form of solicitation,<sup>386</sup> incitement, and the attempt to commit an offence.<sup>387</sup>

However, there is often overlap between these different notions and, in reality, the situation may be more complex given that it can be difficult to distinguish between these different actors, and that one person may play more than one role.

Regarding the second consideration, three stages can be identified based on the individual’s involvement or not in the commission of a sexual offence against a child: (i) “alleged offender” or “alleged perpetrator” for the individual who is suspected of sexual exploitation or sexual abuse of a child but who has not been formally investigated, arrested or charged, indicted, prosecuted, or convicted under the law for any offence; (ii) “suspect” or “accused” for the individual who is being formally investigated for a criminal offence or is involved in an ongoing criminal process for which he or she may be convicted; (iii) “convicted offender” or “convicted perpetrator” for the individual who has been prosecuted and convicted of a criminal offence involving sexual exploitation or sexual abuse of a child.

## Q.4. Related terms

### Q.4.i Sex offender

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

The term “sex offender” refers to a person who is involved in or has committed a crime of a sexual nature. Crimes of a sexual nature include acts such as sexual assault, sexual exploitation, trafficking in persons for sexual purposes, and any other criminal offence, including those committed online, whose intent and primary purpose is to engage in or facilitate activities or conduct of a sexual nature. Other related terms to “sex offender” include “rapist”. A “rapist” is a person who commits rape—that is, forces somebody to have sex when they do not want to.<sup>388</sup>

<sup>382</sup> Oxford British and World English Dictionary.

<sup>383</sup> Oxford Advanced Learner’s Dictionary.

<sup>384</sup> Oxford British and World English Dictionary.

<sup>385</sup> Cambridge Advanced Learner’s Dictionary and Thesaurus.

<sup>386</sup> Directive 2011/93/EU, supra 14, Article 6, on “solicitation of children for sexual purposes”.

<sup>387</sup> Ibid., Article 7, on “incitement, aiding and abetting, and attempt”.

<sup>388</sup> Oxford British and World English Dictionary and Oxford Advanced Learner’s Dictionary.



The term “sex offender” includes offences involving both child victims as well as adult victims, thus introducing a much broader scope that goes beyond sexual offences against children.

**Conclusion:** On this basis, it is recommended that the terms “perpetrator of sexual crimes against children” or (if a shorter expression is needed) “perpetrator of child sex offences” or “child sex offender” be used as the preferred terminology in the context of child sexual exploitation and sexual abuse.

#### Q.4.ii Child sex offender

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

The term “child sex offender” is one of the most frequently used terms to refer specifically to individuals involved in sex-based crimes against children, and it is particularly used by international law enforcement agencies. The term encompasses all forms of sexual offences against children, including acts carried out through or enabled by the Internet.

While the term “child sex offender” is not inaccurate, the qualifier “child” before “sex offender” may cause confusion with regard to who (a child or an adult) has committed the offence. To avoid confusion, where the offender is a minor, the recommended qualifying term is “juvenile” (see section Q.4.vii below on “juvenile offender”).

Alternative terms to “child sex offender” are the abovementioned “perpetrator of sexual crimes against children” or “perpetrator of child sex offences”.

**Conclusion:** The term “child sex offender” can be used to refer to adults who have committed sex-based crimes against children and represents the most frequently used term in the law enforcement sector. It should not be confused with the term “juvenile offender”, where it is a child who has committed an offence.

#### Q.4.iii Subcategories of perpetrators of sexual crimes against children

Perpetrators of sexual offences against children may have a variety of deviant sexual interests and be motivated by a variety of factors. In some cases, perpetrators will have a strong sexual preference for children; in other cases, they will be more likely to offend when their inhibitions regarding sexual interest in children are weakened or if their arousal patterns are fuelled and validated by interaction with, for instance, child sexual abuse material.<sup>389</sup>

Thus, the notion of “perpetrators of sexual offences against children” may be broken down into two broad sub-categories related to their behaviour: (i) preferential—individuals with a predisposition or motivation to sexually engage with children (“preferential offenders”); and (ii) situational—individuals who victimise children but “*who do not have a true sexual preference for children*” (“situational offenders”).<sup>390</sup>

From a victim perspective, the typology of offender it is not important. Moreover, there is no relation between the typology of offender and the gravity of the act committed. However, dividing child sex offenders into these typologies can be of great value when planning intervention, prevention, and investigation strategies.

<sup>389</sup> K.V. Lanning, “Sex Offender Continuum”, adapted from Chapter 4 in J.S. Peters (ed.), *Prosecuting Online Child Exploitation Cases*, US Department of Justice, 2002, p. 8, [http://www.cac-kent.org/pdfs/Lanning\\_-\\_Suspect\\_Typology.pdf](http://www.cac-kent.org/pdfs/Lanning_-_Suspect_Typology.pdf)

<sup>390</sup> K.V. Lanning, *Child Molesters: A Behavioral Analysis*, National Center for Missing and Exploited Children, 2010, p. 34.

#### Q.4.iii.1 Preferential offenders

∅ *Special attention should be paid to how this term is used.*

Individuals with a predisposition or motivation to sexually engage with children and who seek out children for sexual interaction have been described as “preferential offenders”. They have identifiable behavioural traits and their offending tends to lie within the spectrum of sexually deviant paraphilias.<sup>391</sup> One category of “preferential offenders” is known as “paedophiles”.

“Paedophilia” or “paedophilic disorder” refers to a clinical diagnosis of a mental health condition. WHO defines the condition broadly as “a sexual preference for children, boys or girls or both, usually or prepubertal or early pubertal age”.<sup>392</sup> According to the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), paedophilic disorder is a part of a larger group of paraphilic disorders, characterised as a “persistent and intense atypical sexual arousal patterns that are accompanied by clinically significant distress or impairment”.<sup>393</sup> The change in terminology from “paedophilia” or “paedophile” to “paedophilic disorder” in DSM-5 was intended to reflect the growing acceptance among mental health professionals that not all individuals who present with symptoms of paedophilic disorder are perpetrators of child sexual abuse or exploitation.<sup>394</sup>

The terms “paedophile” and “paedophilia” continue to be overused and misunderstood, often seen as a label for a person convicted of child sexual exploitation or sexual abuse rather than as a term for a clinical condition. In some instances, States have wrongly characterised in legislation all persons with paedophilic disorder as criminals, defining a “paedophile” as “a person who has at any time been convicted of a sexual offence respecting a child”.<sup>395</sup> Such legislation propagates the misconception that child sexual exploitation and sexual abuse is perpetrated exclusively by paedophiles or that anyone diagnosed with paedophilic disorder is or has been engaged in such acts. In truth, while some perpetrators of child sexual exploitation and sexual abuse suffer from the clinical condition of paedophilic disorder, many more perpetrators of sexual offences against children are not diagnosed with paedophilic disorder. It is therefore important that a clear distinction be made between the act of sexual abuse/exploitation and the clinical condition of paedophilic disorder, which may or may not involve conduct amounting to child sexual exploitation and sexual abuse.<sup>396</sup>

Another category of preferential offenders are “hebephiles” — persons who exhibit a clear and specific sexual preference for children who are in their early to mid stages of pubertal development (in the age range of 11 to 14 years).<sup>397</sup> While it remains disputed whether hebephilia should be recognised as a clinical condition,<sup>398</sup> these “preferential offenders” display a discriminable sexual preference for

<sup>391</sup> “Paraphilia” or “paraphilic disorder” describes a condition of sexual desires or behaviours that involves another person’s psychological distress, injury, or death, or a desire for sexual behaviours involving unwilling persons or persons unable to give legal consent. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, DSM-5, 2014.

<sup>392</sup> WHO, *International Statistical Classification of Diseases and Related Health Problems*, 10th revision, 2010, F65.4.

<sup>393</sup> M.B. First, MD, “DSM-5 and Paraphilic Disorders”, *Journal of American Academic Psychiatry Law*, vol. 42, 2014, pp. 191–201.

<sup>394</sup> Despite the changes in the classification of paedophilic disorder, there are criticisms that the abovementioned *Diagnostic and Statistical Manual* has in fact contributed to the misconception that those suffering from paedophilic disorder are synonymous with perpetrators of child sexual abuse: “[m]any in society are likely to equate Pedophilia with child molestation. They are not the same. The *Diagnostic and statistical manual of Mental Disorders, Fifth Edition (DSM-5)* may be contributing inadvertently to the misconception that they are the same” (F.S. Berlin, MD, PhD, “Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder”, *Journal of American Academic Psychiatry Law*, vol. 42, no. 4, pp. 404–7; see also M.B. First, “DSM-5 and Paraphilic Disorders”).

<sup>395</sup> Legislative Assembly of Ontario, Bill 145, Protection against Pedophiles Act, 1997, [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=1442&ParlSessionID=36:2&isCurrent=false](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=1442&ParlSessionID=36:2&isCurrent=false)

<sup>396</sup> A. Altamura, “Understanding Demand for CSEC and the Related Gender Dimensions: A Review of the Research” in ECPAT, *Examining Neglected Elements in Combating Sexual Exploitation of Children*, ECPAT Journal Series No. 7, 2013, pp. 3–4.

<sup>397</sup> R. Blanchard et al., “Pedophilia, Hebephilia and the DSM-V”, *Archives of Sexual Behavior*, vol. 38, 2009, pp. 335–350.

<sup>398</sup> R. Prentky and H. Barbaree, “Commentary: Hebephilia – A Would-be Paraphilia Caught in the Twilight Zone Between Prepubescence and Adulthood”, *Journal of American Academic Psychiatry Law*, vol. 39, no. 4, 2011, pp. 509–511.

children in a specific age range.<sup>399</sup> Equally, individuals with a preference for older adolescent children (in the age range of 15 to 18 years) have been labelled “ephebophiles”.<sup>400</sup> Notwithstanding these categories, the aetiology of offending is much more complex, involving a myriad of socioeconomic, cultural, psychological, biological, cultural, and situational factors.<sup>401</sup>

#### Q.4.iii.2 Situational offenders

Ø *Special attention should be paid to how this term is used.*

This category refers to individuals who do not display any distinguishable sexual preference for children or adolescents but who will engage in the sexual exploitation of children if and when they find themselves in situations where a child is readily available for sexual use.<sup>402</sup> “Situational sex offenders” frequently molest readily available children to whom they have easy access, such as their own or those they may live with or have control over. Pubescent teenagers are high-risk, viable sexual targets. Younger children may also be targeted because they are weak, vulnerable, or available”.<sup>403</sup> These individuals are not driven or motivated by sexual fantasies of children *per se*.<sup>404</sup> It has been posited that the majority of perpetrators of child sexual exploitation fall into the category of situational offenders.<sup>405</sup>

This category of offenders may include impulsive adolescents or adults who frequent adult sex trade venues or access a wide range of pornography or sexual opportunities and who tend to be reckless or wilfully blind to the situation of sexual exploitation of children. Because the child’s age is not the primary factor driving the perpetrator’s conduct, motives can be attributed to a wide range of cultural, social, and economic factors.<sup>406</sup> Such individuals do not necessarily have any specific intent to engage sexually with children or do not care about the age of the other person as long as they get their sexual gratification.

Situational offenders would also include those who have sex with post-pubescent children below the age of consent either knowingly or being reckless about their age. One type of offender (according to the law) that does not fit easily into either of these broad categories is the “older boyfriend”. In this case, a person who is also an adolescent engages in sexual relations with someone who is considered underage but is still quite close to in age. In some jurisdictions, this issue is dealt with by not prosecuting; in others, legislation includes a sliding scale of age difference to assess liability or criminality. Another situation can arise where people with no sexual interest in children breach existing laws prohibiting possession of child abuse material. These can include journalists, overzealous citizens, or misguided people sharing child sexual abuse material as a joke or inadvertently.<sup>407</sup>

**Conclusion:** The terms “preferential offender” and “situational offender” should always be seen as referring to very broad descriptive typologies and not as statements of absolute fact. Behaviour traits from each type can be present in any given case. Child sex offenders are a diverse and complex group and are far from homologous.

While there may be some sex offenders who have been diagnosed with paedophilic disorder, the term “paedophile” is not recommended; the term “preferential offender” (of sexual offences against children) appears better suited to individuals who actively and knowingly seek out children with the

<sup>399</sup> R. Blanchard et al., “Pedophilia, Hebephilia and the *DSM-V*”, supra 397.

<sup>400</sup> Ibid.

<sup>401</sup> T. Ward and R.J. Siegart, “Toward a Comprehensive Theory of Child Sexual Abuse: A Theory Knitting Perspective”, *Psychology, Crime & Law*, vol. 8, no. 4, pp. 319–51, p. 344.

<sup>402</sup> A. Altamura, “Understanding Demand for CSEC”, supra 396, p. 4.

<sup>403</sup> K.V. Lanning, *Child Molesters*, supra 390, p. 34.

<sup>404</sup> A. Altamura, “Understanding Demand for CSEC”, supra 396. See also HRC Doc. E/CN.4/2006/67.

<sup>405</sup> HRC Doc. A/HRC/31/58, Paragraph 29.

<sup>406</sup> Ibid.

<sup>407</sup> K.V. Lanning has referred to this category of offenders as “miscellaneous offenders”, since they do not really fit into any of the two abovementioned typologies (*Child Molesters*, supra 390, p. 123).

intent of engaging in sexual activities with them. Others can be grouped under “situational offenders”, except where there are specific reasons not to.<sup>408</sup>

Both of these terms can be used for both contact offences and online offences such as the possession, distribution, etc. of child sexual abuse material.

#### Q.4.iv Transnational child sex offenders

∅ *Special attention should be paid to how this term is used.*

This term describes a modality of perpetrators of child sexual exploitation: those who sexually engage with children outside of their country of nationality or habitual residence.<sup>409</sup>

The term “transnational child sex offender” is similar to the term “travelling child sex offender”, with law enforcement agencies preferring the former because it also includes the notion of offenders residing permanently or on a long-term basis abroad.<sup>410</sup> On the other hand, because it only includes offenders who cross a national border to commit sexual offences against children, this term does not take into account sex offenders travelling within a country or region to commit such offences.

**Conclusion:** The term “transnational child sex offender” is used to refer to a national or permanent resident who travels or resides in another country and sexually exploits a child, regardless of her/her status and of the circumstances of her/her travel/residence.<sup>411</sup>

#### Q.4.v Travelling child sex offenders

∅ *Special attention should be paid to how this term is used.*

A “travelling child sex offender” has been defined as a person who travels in order to commit sexual offences against children. *“Although widely used across the global child protection community for the last decades, the term may be misleading on two counts. Firstly, the use of the term infers travel as a key component of the offending. This is inaccurate as some of the most prolific offenders often permanently reside abroad. Secondly, the term can appear to suggest that the threat is from registered sex offenders who travel.”*<sup>412</sup> Stakeholders such as INTERPOL still use this term.<sup>413</sup>

Travelling child sex offenders may travel within their own country or region as well to commit sexual offences against children. This is an important notion to take into account in the framework of international law enforcement cooperation.

**Conclusion:** Some law enforcement agencies still use the term “travelling sex offenders” but it has been increasingly replaced by the above-discussed term “transnational child sex offenders”, which is seen as broader. The advantage of the term “travelling child sex offender” is that it can also encompass persons travelling within a country or region, but not crossing a border, to commit sexual offences against children. However, it must also be recalled that, since such domestic travellers remain under their national jurisdiction, they can also be referred to as “child sex offenders” *tout court*. The main point in adding the qualifier “transnational” or “travelling” is to denote that such offenders are

<sup>408</sup> See reference to Lanning’s “miscellaneous offenders”.

<sup>409</sup> CEOP uses it with the reference “overseas”, which is not suitable in many places other than the UK (for having mostly other than sea borders).

<sup>410</sup> CEOP, “Threat Assessment of Child Sexual Exploitation and Abuse”, June 2013, [http://ceop.police.uk/Documents/ceopdocs/CEOP\\_TACSEA2013\\_240613%20FINAL.pdf](http://ceop.police.uk/Documents/ceopdocs/CEOP_TACSEA2013_240613%20FINAL.pdf)

<sup>411</sup> Examples of such persons could be travellers and tourists but, importantly, the notion also encompasses individuals such as members of civil crisis management, military operations, and “voluntarism”, but also retired people and diplomats.

<sup>412</sup> CEOP, “Threat Assessment of Child Sexual Exploitation and Abuse”, supra 410.

<sup>413</sup> INTERPOL, “Crimes against Children”, <http://www.interpol.int/Crime-areas/Crimes-against-children/Crimes-against-children>

sometimes acting with impunity because they operate outside of their national jurisdiction. Many States have adopted extraterritorial laws governing sexual offences against children committed in other jurisdictions in order to tackle this situation.

#### Q.4.vi Child sex tourist

⊗ *The use of the term should be avoided.*

Like “child sex tourism”, the term “child sex tourist” is frequently used to refer to travelling perpetrators of child sexual offences. The term should be avoided (see Section I.4.I above on child sex tourism).

#### Q.4.vii Juvenile sex offender

○ *This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

The term “juvenile sex offender” is used for persons under the age of 18 years who under their national law are considered criminally responsible for sexual offences and have been convicted.

Generally, the same criteria are used with regard to adults and juveniles in terms of what constitutes a sexual offence, and the victim of such a crime may be another child or an adult person. The challenge for the justice system in all cases that involve juvenile sex offenders lies in taking measures that account for all their rights, and the circumstances of the offence: the age, maturity, and condition of the offender, the age of the victim, and the gravity of the sexual offence committed.<sup>414</sup>

**Conclusion:** The term “juvenile sex offender” refers to a minor above the age of criminal responsibility who has committed an offence of a sexual nature (whether against another child or against an adult). The term should not be confused with “child sex offender”, which is used to refer to a person (usually an adult) who has committed a sexual offence against a child.

Importantly, children who have not reached the age of criminal responsibility should not be seen as offenders at all.

#### Q.4.viii Facilitator

∅ *Special attention should be paid to how this term is used.*

As explained in the interpretive section above, the term “facilitator” (also known as the “intermediary”) refers to the individual whose conduct facilitates or aids and abets the (sometimes commercial) contact sexual offence against the child. The facilitator may be, but is not necessarily, the person who receives the benefit or payment for the sexual exploitation of a child. The facilitator may be a taxi driver, a hotel receptionist, a family member, or anyone putting an abuser in contact with a child for sexual exploitation, whether she/he is paid for this “service” or not. It can also include the private sector in the domain of ICTs and financial services.

<sup>414</sup> Article 5 of the CRC sets forth that the “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.” The commentary on Rule 4 of the Beijing Rules on the administration of juvenile justice states that “[t]he minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility: that is, whether a child, by virtue of his or her individual discernment and understanding can be held responsible for essentially anti-social behaviour. If the age [...] is fixed too low, or if there is no lower age at all, the notion of responsibility would become meaningless.” See also UNICEF Innocenti Research Centre, “The Evolving Capacities of the Child”, Innocenti Insight, Florence, 2005 <http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>

Children can act as facilitators, for example, where a perpetrator pressures them to introduce or recruit other children. This practice has been described as a form of peer-on-peer sexual exploitation.<sup>415</sup>

Frequently used terms for persons serving the role of intermediaries in the context of child sexual exploitation are “sex trafficker”, “pimp”, and “*mamasan*”.

A sex trafficker is someone who engages in human trafficking for the purposes of sexual exploitation.

The term “pimp” is defined as “*a man who controls prostitutes and arranges clients for them, taking a percentage of their earnings in return*”.<sup>416</sup> The US Department of Justice uses the term “pimp” as a synonym for “commercial sex trafficker”,<sup>417</sup> and argues that “[w]hile some believe that the term “pimp” often is used by commercial sex traffickers as a favourable street title for someone who can procure sex for sale and thus should not be used, we use the term as it is commonly known and highlights that these offenders profit by the victimization of children through prostitution.”<sup>418</sup>

“*Mamasan*” is a term especially used in Japan and East Asia, and refers to a woman in a position of authority, especially one in charge of a geisha house or bar.<sup>419</sup>

**Conclusion:** A person who facilitates the commission of sexual crimes against children can be referred to as a ‘facilitator’. Nevertheless, while the specific role played in the commission of a crime can be relevant from a legal point of view in determining the individual’s criminal responsibility, it is important to recall that the facilitator also contributes to sexually victimising the child. From the exploited child’s point of view, the facilitator could harm the child as much or more than the person sexually abusing the child, by putting her/him in that situation.

#### Q.4.ix Customer/client/John

⊗ *The use of the term should be avoided.*

Persons who pay to sexually abuse children for their own gratification are frequently referred to as “customers” or “clients”, or sometimes as “Johns”.<sup>420</sup> The terms “customer” and “client” pertain to economic language and refer to persons buying goods or services from a business. They completely omit the fact that child sexual exploitation is a criminal act and a serious violation of the child’s human rights, and are thus inappropriate in this context.

**Conclusion:** For the above stated reasons, the terms “customer”, “client”, and “John”, should be avoided in the context of sexual exploitation and sexual abuse of children. Other terms, which underline the criminal nature of these acts, such as the abovementioned “abuser”, “child sex offender”, or “perpetrator of child sex offences”, are therefore more appropriate.

<sup>415</sup> See [http://www.msunderstood.org.uk/assets/templates/msunderstood/style/documents/MSU\\_College\\_of\\_Policing\\_CSE\\_Guidance.pdf](http://www.msunderstood.org.uk/assets/templates/msunderstood/style/documents/MSU_College_of_Policing_CSE_Guidance.pdf)

<sup>416</sup> Ibid.

<sup>417</sup> National Strategy for Child Exploitation Prevention and Interdiction, supra 230, p. 31.

<sup>418</sup> Ibid, footnote 58.

<sup>419</sup> Oxford British and World English Dictionary.

<sup>420</sup> Oxford British and World English Dictionary defines “John” in this context as “a prostitute’s client”.

## Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
ASEAN	Association of South-East Asian Nations
CAM/CSAM	Child (Sexual) Abuse Material
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CEM/CSEM	Child Sexual Exploitation Material
CEOP	Child Exploitation and Online Protection Centre
CETS	Council of Europe Treaty Series
CGI	Computer-Generated Image
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes
EU	European Union
HRC	Human Rights Council
IASC	Inter-Agency Standing Committee
ICSE database	International Child Sexual Exploitation database
ICT	Information and Communication Technology
ILO	International Labour Organization
ITU	International Telecommunication Union
IWG	Interagency Working Group
NGO	Non-Governmental Organisation
NSPCC	National Society for the Prevention of Cruelty to Children
OPSC	Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography
TOR	The Onion Router
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNAIDS	Joint UN Programme on HIV and AIDS
UNDESA	UN Department of Economic and Social Affairs
UNFPA	UN Population Fund
UNGA	UN General Assembly
UNICEF	United Nations Children’s Fund
UNODC	UN Office on Drugs and Crime

UNWTO	World Tourism Organization
US	United States
USAID	US Agency for International Development
WAVE	Women Against Violence Europe
WFCL	Worst Forms of Child Labour
WHO	World Health Organization



## Overview of terms and recommendations

TERM	SYMBOL	RECOMMENDATION	NOTES
Child	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Age of majority	∅	<i>Special attention should be paid to how this term is used.</i>	
Age of sexual consent	∅	<i>Special attention should be paid to how this term is used.</i>	
Minor	∅	<i>Special attention should be paid to how this term is used.</i>	
Juvenile	∅	<i>Special attention should be paid to how this term is used.</i>	
Adolescent	∅	<i>Special attention should be paid to how this term is used.</i>	
Teenager	∅	<i>Special attention should be paid to how this term is used.</i>	
Young person/ young people/youth	∅	<i>Special attention should be paid to how this term is used.</i>	
Child in the online environment	∅	<i>Special attention should be paid to how this term is used.</i>	
Sexual violence against children	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Child sexual assault	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	

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Child sexual abuse	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Incest	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Rape of a child	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Child sexual molestation	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Sexual touching of children	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Sexual harassment of a child	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Online child sexual abuse	∅	<i>Special attention should be paid to how this term is used.</i>	
Child sexual exploitation	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	

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Commercial sexual exploitation of children	∅	<i>Special attention should be paid to how this term is used.</i>	
Online child sexual exploitation	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Exploitation of children in/for prostitution	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Children in (a situation of) prostitution	∅	<i>Special attention should be paid to how this term is used.</i>	
Child prostitute	⊗	<i>The use of this term should be avoided.</i>	
Child sex worker	⊗	<i>The use of this term should be avoided.</i>	
Children/adolescents/young people selling sex	⊗	<i>The use of this term should be avoided.</i>	
Voluntary/self-engaged prostitution	⊗	<i>The use of this term should be avoided.</i>	
Transactional sex	⊗	<i>The use of this term should be avoided.</i>	
Use of children for pornographic performances	∅	<i>Special attention should be paid to how this term is used.</i>	
Child pornography	∅	<i>Special attention should be paid to how this term is used.</i>	
Child sexual abuse material/child sexual exploitation material	∅	<i>Special attention should be paid to how this term is used.</i>	
Computer/digitally generated child sexual abuse material	∅	<i>Special attention should be paid to how this term is used.</i>	

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Sexualised images of children/child erotica	∅	<i>Special attention should be paid to how this term is used.</i>	
Self-generated sexual content/material	∅	<i>Special attention should be paid to how this term is used.</i>	
Sexting	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
(Exposure to) harmful content	∅	<i>Special attention should be paid to how this term is used.</i>	
Corruption of children for sexual purposes	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Live online child sexual abuse	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Live streaming of child sexual abuse	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Child sexual abuse to order	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Webcam child sex tourism/webcam child sex abuse	⊗	<i>The use of the term should be avoided.</i>	

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Solicitation of children for sexual purposes	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Grooming (online/offline) for sexual purposes	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Online (sexual) enticement of children	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Sexual extortion of children	∅	<i>Special attention should be paid to how this term is used.</i>	
Sexual exploitation of children in the context of travel and tourism	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Child sex tourism	⊗	<i>The use of this term should be avoided.</i>	
Sale of children	∅	<i>Special attention should be paid to how this term is used</i>	
Trafficking of children	∅	<i>Special attention should be paid to how this term is used</i>	
Child / early marriage	∅	<i>Special attention should be paid to how this term is used.</i>	
Forced marriage	∅	<i>Special attention should be paid to how this term is used.</i>	
Teenage marriage	∅	<i>Special attention should be paid to how this term is used.</i>	

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Temporary marriage	∅	<i>Special attention should be paid to how this term is used</i>	
Harmful practices	∅	<i>Special attention should be paid to how this term is used.</i>	
Contemporary forms of slavery/child slavery	∅	<i>Special attention should be paid to how this term is used.</i>	
Worst forms of child labour	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Child victim of sexual exploitation and/or abuse	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Victim identification	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Survivor	∅	<i>Special attention should be paid to how this term is used.</i>	
Children subjected to sexual exploitation/sexual abuse	∅	<i>Special attention should be paid to how this term is used.</i>	
Victimisation	∅	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Self-victimisation	⊗	<i>The use of this term should be avoided.</i>	
Re-victimisation	∅	<i>Special attention should be paid to how this term is used.</i>	

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Secondary victimisation	∅	<i>Special attention should be paid to how this term is used.</i>	
Perpetrators of sexual crimes against children	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Sex offender	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Child sex offender	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Preferential offender	∅	<i>Special attention should be paid to how this term is used.</i>	
Situational offender	∅	<i>Special attention should be paid to how this term is used.</i>	
Transnational child sex offenders	∅	<i>Special attention should be paid to how this term is used.</i>	
Travelling child sex offenders	∅	<i>Special attention should be paid to how this term is used.</i>	
Child sex tourist	⊗	<i>The use of this term should be avoided.</i>	
Juvenile sex offender	○	<i>This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.</i>	
Facilitator/intermediary	∅	<i>Special attention should be paid to how this term is used.</i>	

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Customer/client/ John/	⊗	<i>The use of this term should be avoided.</i>	





