



**ACERWC**  
African Committee of Experts on  
the Rights and Welfare of the Child

# GENERAL COMMENT No 7 on ARTICLE 27 of the ACRWC

## ***“SEXUAL EXPLOITATION”***



JULY 2021





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## ***LIST OF ABBREVIATIONS AND ACRONYMS***

ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the rights and Welfare of the Child
ACHPR	African Commission on Human and People's Rights
ART	Antiretroviral therapy
AU	African Union
CRC	Committee on the Rights of the Child
CSAM	Child Sexual Abuse Materials
CSEA	Child Sexual Exploitation and Abuse
DGD	Day of General Discussion
EUROPOL	European Police Office
HIV	Human immunodeficiency virus
ICTs	Information and Communication Technologies
IOT	Internet of Things
ILO	International Labor Organization
INTERPOL	International Criminal Police Organization
NGO	Non-governmental Organization
OCSE	Online Child Sexual Exploitation
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
PEP	Post-exposure Prophylaxis
STI	Sexually transmitted infection
UNGA	United Nations General Assembly

## General Comment No. 7 on article 27 on Sexual Exploitation of the African Charter on the Rights and Welfare of the Child

### *Article 27: Sexual Exploitation*

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent

- 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.

### I. INTRODUCTION

1. The African Charter on the Rights and Welfare of the Child (ACRWC) includes a provision which requires States to protect children from sexual exploitation and abuse. The contents of this article proceed further to oblige States Parties to take measure to prevent the inducement, coercion or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices and the use of children in pornographic activities, performances and materials.
2. This General Comment relates to the overall mandate of the African Committee of Experts on the rights and Welfare of the Child (ACERWC/the Committee) to guide State Parties in their obligations towards child victims of child sexual exploitation and abuse (CSEA). They can achieve this only if they clearly know and understand their obligations under the Charter, which entail the obligation to respect, protect and fulfil the rights. The Committee feels the need to clarify and interpret what constitutes CSEA for these purposes, and what States responses should at best be undertaken. There is a strong need to demystify CSEA, taking into account the cultural context of various African Communities. It is widely known that the reality in the region is that the major threat for children is abuse by people that they encounter in person on a daily basis (e.g. family members, teachers and school administrators).
3. The African Union has longed expressed concern, in different forms, about the

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prevalence of sexual exploitation of women and children on the continent. This has manifested, amongst others, in plans of action to reduce Gender Based violence,<sup>1</sup> end child marriage,<sup>2</sup> and to address impunity for violations committed during peace keeping operations in Africa.<sup>3</sup>

4. In an international context, the Sustainable Development Goals adopted by the UNGA in September 2015 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) and the elimination of all forms of violence against children (Target 16.2). This also forms one of the priority goals for the Agenda 2040 adopted by this Committee in 2015 at the 25th anniversary of the Charter.
  
5. This General Comment is furthermore grounded in the AU Executive Council Decision which mandates “the ACERWC to scale up its work in safeguarding and promoting the rights and welfare of children in the cyberspace, namely the protection of children’s information, rights to safety, informed choices and digital literacy.” Formerly, the AU had adopted the African Union Cyber Security and Data Protection Convention (Malabo Convention) in 2014. The Malabo Convention spells out the options for an African wide cyber security policy. It has four chapters, where chapter 3 deals with promoting cyber security and combating cybercrime. Chapter 3 Section 2 article 29 (3) is an important provision for the topic at hand. It deals with content related offences committed in cyber space concerning children and calls upon State parties to criminalize them.<sup>4</sup> The Malabo Convention can also be used to tackle the challenge of extraterritorial jurisdiction – chapter 3 article 28 deals with this issue (international cooperation and extra-territorial jurisdiction). The African Union also hosted a Global Summit on Online child sexual exploitation in December 2019, in collaboration with We Protect Global Alliance. Similarly, the African Commission on Human and People’s Rights developed

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1 Maputo Plan of Action 2015-2030 (available at [https://au.int/sites/default/files/documents/24099-poa\\_5-revised\\_clean.pdf](https://au.int/sites/default/files/documents/24099-poa_5-revised_clean.pdf)).

2 African common position on the AU campaign to end child marriage in Africa (available at [https://au.int/sites/default/files/documents/31010-doc-cap\\_on\\_ending\\_child\\_marriage\\_english\\_0.pdf](https://au.int/sites/default/files/documents/31010-doc-cap_on_ending_child_marriage_english_0.pdf)).

3 African Union Policy on Prevention and Response to Sexual Exploitation and Abuse for Peace Support Operations <https://reliefweb.int/report/world/african-union-policy-prevention-and-response-sexual-exploitation-and-abuse-peace> (December 2018).

4 The Malabo Convention requires State Parties to criminalise the following (amongst others): (a) produce, register, offer, manufacture, make available, disseminate and transmit an image of or a representation of child pornography through a computer system; (b) procure for oneself or for another person, import or have imported, and export or have exported an image or representation of child pornography through a computer system; (c) possess an image or representation of child pornography in a computer system or on a computer data storage system.



and issued Guidelines on combatting sexual violence and its consequences in Africa in 2017.<sup>5</sup>

6. At the global level, the CRC Committee adopted a General Comment no 13 on the right of the child to be free from all forms of violence in 2011, and endorsed the “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse”, adopted by the Interagency Working Group on the Protection of Children from Sexual Exploitation and Abuse (Terminology Guidelines) in Luxembourg, 28 January 2016.
7. The ACERWC hosted a Day of General Discussion (DGD) on ‘Online Child Sexual Exploitation’ (OCSE) during its 33rd ordinary session. An increase in internet usage was noted, which comes with a bigger risk of children being susceptible and sexually exploited online.<sup>6</sup> In the region’s context, Covid-19 has exacerbated sexual exploitation due to school lockdowns. Globalization too has resulted in increased connectivity among different groups, across different countries and regions, which contributes to children’s increased access to information but exposes them at the same time to predatory sexual exploiters and abusers.

## II. CONTEXTUAL BASIS

8. CSEA is believed to be the lived reality of millions of children in Africa. However, the nature of CSEA and the lack of considered focus on the issue makes updated and comprehensive data regarding its prevalence in Africa difficult to obtain. Frequently it remains unreported due to the high level of stigmatization in society, among other things. It is often rooted in harmful gender stereotypical beliefs and practices, patriarchy and the subordinate position of women and girls. Harmful masculinities caused by negative socialisation, such as the restriction of emotional expression and the pressure to conform to expectations of dominance and aggression, may heighten the potential for boys and men to engage in general acts of violence.
9. CSEA is exacerbated by the culture of silence common in African communities,

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5 “The Niamey Guidelines (available at [https://www.achpr.org/public/Document/file/English/achpr\\_eng\\_guidelines\\_on\\_combating\\_sexual\\_violence\\_and\\_its\\_consequences.pdf](https://www.achpr.org/public/Document/file/English/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf)).

6 Report of the thirty-third ordinary session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) par 53-54.

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and the unwillingness or inability of children to speak out, due to their vulnerability or inadequate reporting and response mechanisms. The actual extent of CSEA remains unknown, as neither a global nor African estimation of its prevalence exists. Although girls are mainly victims, the sexual exploitation of boys appear to be increasing.

10. In addition to physical (contact) and non-physical (non-contact) CSEA, the growth of information and communication technology has introduced the challenge of online CSEA. This is a constantly evolving phenomenon that is shaped by developments in digital technologies. UNICEF's 2017 State of the World's Children Report specifically targeted children in a digital world. Noting that the lives of children are mediated by the digital environment in ways that impact how they can enjoy their rights and how their rights may be improved or transgressed, it is clear that the effect of the digital environment for children needs to be considered in the context of rights set forth under the African Charter on the Rights and Welfare of the Child. The relevant rights include not only children's rights to protection from all forms of violence, but also their rights to participation and provision. In the absence of proper mechanisms of protections, thus, children will be susceptible to greater online risks of harm. OCSE reflects the dangers that children have been facing in their homes, schools, communities and the society at large. This General Comment offers the possibility to extend the understanding of the implications of article 27 of the ACRWC to the online world of CSEA.

11. However, as the ACHPR has recorded, sexual violence remains widespread both in time of conflict and crisis, and in times of peace. It takes place in public, in the street and on public transportation, but also in private, in schools, in the workplace or in intimate relationships. 'Sex for grades' scandals in educational systems continue to surface at an alarming rate.

12. The statistics reflected are alarming: in Sub-Saharan Africa almost 39 per cent of girls are married before the age of 18. In certain African countries, up to 95 per cent of girls are the victims of genital mutilation; more than 70 per cent of women report having been the victims of domestic violence, including sexual violence; and more than 90 per cent report having been the victims of sexual harassment and not feeling safe in public places. In addition, in several countries where conflict prevails, in several countries where conflict prevails, rape and other forms of sexual violence are used on a wide scale. Globally, 120 million girls are estimated to have suffered some form of

sexual violence.<sup>7</sup> A 2018 report indicates that in Africa, a third of girls suffer sexual violence, and that this is often repeatedly experienced. It crosses all social classes.<sup>8</sup> A six country study showed that sexual violence takes place across the age range. Of the girls who suffered sexual violence, a median of 19% across the six countries experienced this for the first time at the age of 13 or younger, 36% at ages 14-15 and 43% at ages 16-17.

13. The growth of travel and tourism in Africa have increased the prevalence of CSEA, which implies that higher levels of vigilance and improved safeguarding practice need to be put in place. The levels of conflicts and crises in various countries in Africa has also been a fertile ground for CSEA, such as where girls are kept as “sex slaves” and wives of fighters. CSEA is also a challenge for children living in refugee camps as well as children in street situations. Girl children are expectedly at higher risk than boys. In the online space, one recent international study<sup>9</sup> relating to online sexual exploitation found that among the 72.5% of cases where victims of gender exploitation were documented, 64.8 per cent of unidentified victims were girls, and 31.1% depicted male children. It has been highlighted that while most victims of sexual abuse and exploitation are girls, the substantial proportion of boys depicted in unidentified images and videos in the International Child Sexual Exploitation Database (ICSE, hosted by Interpol) calls closer attention to this group. When boys were depicted in the abuse, it was more likely to be severe. Even though current evidence suggests that girls are disproportionately at risk of online sexual abuse and exploitation, there is a need to better understand the vulnerabilities of boys in the online context. The age profile of victims in the ICSE database (in case where the unidentified victim’s age could be determined) shows that 56.2% of cases depicted prepubescent children, 25.4 % were pubescent children, and 4.3% were very young children. There is an evident link between the age of the victim and the severity of abuse; the abuse was more likely to be severe when victims were younger. Very young children were more likely to be subjected to abuse and exploitation than pubescent victims.

7 UNICEF *Global Status Report on preventing violence against children 2020*.

8 Big Win (2018) *Violence against children: A review of evidence relevant to Africa on prevalence, impacts and prevention*. Reporting on six country studies, the report notes that one in seven girls have recently experienced sexual violence. The median prevalence of sexual violence experienced recently among 13-17 year olds is 15% for girls and 6% for boys. The percentages for girls range from 11% in Kenya to 23% in Malawi. The figures for boys are much lower, from 2% in Zimbabwe to 12% in Malawi.

9 By ECPAT and Interpol, the findings of which were presented at the ACERWC Day of General Discussions. See Report of the thirty-third ordinary session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) par 61.

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14. Another important challenge in Africa is the lack of a consistent, comprehensive and agreed legal framework that specifically addresses all of the issues concerning CSEA; usually the issue is subsumed under sexual violence, but it is often scattered in different laws, leading to a piecemeal approach. Unless the different issues/crimes are specifically named and defined, their perpetrators cannot be held accountable. Legal frameworks are often infused with gender stereotypical understandings of sexual violence, which hampers the comprehensive protection of girls and boys. A dedicated section of this General Comment is devoted to legal responses to CSEA.
  
  15. There is also a challenge of the limited focus on prevention on the continent. Furthermore professionals may not always identify or register concerns around CSEA. Professionals seldom have adequate training, including on child development, trauma, memory, interviewing of children, disclosure, how to solicit children's evidence and the nuances of children's behaviour during criminal justice interventions. Lack of social support services such shelters and psychological treatment to mitigate the impact of sexual exploitation and abuse is another challenge. Many countries do not have child and adolescent friendly health services (including trained healthcare professionals) that provide services to victims. This includes the provision of emergency contraceptives and safe abortion services which are important to address resulting pregnancies. Restrictive laws that do not allow victims of violence to access safe abortions; put age-based restrictions for accessing reproductive health services; require parental consent to access to these services; and place reporting the sexual violence to law enforcement authorities as a requirement to accessing the health services and vice-versa all contribute to the problem.
  
  16. There is a severe risk of secondary trauma being suffered by child victims and witnesses, in part due to the absence of adequate protective mechanisms under procedural law to prevent this.
  
  17. For much of the continent, entry into the digital world has been relatively fast without the time for countries to develop and evolve their educational and support services, law enforcement and regulatory responses. There has been a rapid increase in mobile device ownership and internet access, which amongst other is facilitating greater use of online gaming, cashless payments, e-commerce and Internet of Things (IOT) devices

such as baby monitors, internet-connected toys, and webcam-enabled devices. These developments have occurred rapidly, leaving legislators and regulators little time to develop responses. A practical impediment, further, is the fragmented nature of each nation's online safety response, typically spanning policing, social services, regulation and education. WeProtect notes that technological development continues to outpace the ability of governments to support, educate and regulate the technology sphere, and that is most profound in, but not exclusive to, the Global South, where large numbers of users are achieving device ownership and internet access in a context where such factors as poverty and inequality heighten children's exposure to sexual exploitation.<sup>10</sup> There is a gap in holding internet service providers accountable, as some countries have no specific obligation to report child sexual abuse material (CSAM) to authorities for investigation and there is no consistent definition of what constitutes CSAM. There is a very poor culture of cyber security. There are few African States who have enacted laws to protect themselves from cyber insecurity and often they do not implement them unless they face cyber-attacks; they are reactive rather than proactive. There are also 30 States in Africa who have no law or policy on cyber security, not even a draft. Furthermore not all countries in Africa have set up cybercrime law enforcement units. Some countries remain to ratify the UN CRC Optional Protocol on the sale of children, child prostitution and child pornography.

### III. PURPOSE

18. The main purpose of this General Comment is to expound upon the nature of the State's obligations under section 27 of the Charter to prevent, combat, and protect children from sexual abuse and exploitation, including both offline sexual exploitation and OCSE. The ACERWC recognises that NGOs and civil society are often at the forefront of efforts to combat and provide redress for victims of CSEA; some recommendations that follow implicate these organs of society, however, the primary obligations incurred under article 27 rest on State Parties to the Charter.

### IV. DEFINITIONS AND CONCEPTUAL CLARIFICATIONS

19. CSEA, as contemplated in the heading to article 27, includes any actual or attempted abuse of a position of authority, differential power or trust, for sexual purposes,

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<sup>10</sup> We Protect "Global Threat Assessment" (2019), p 34 available at <https://www.weprotect.org/>.

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including but not limited to profiting monetarily, socially or politically from the sexual exploitation of another. Sexual exploitation of children can be commercial or non-commercial. It may include exploitation of children in prostitution, the use of children in pornography, child trafficking for sexual exploitation and child marriage.<sup>11</sup> Exploitation of children in prostitution has been deemed to be one of the worst forms of child labour for the purposes of ILO Convention 182 of the worst forms of child labour.<sup>12</sup> According to CRC Committee General Comment no 13 on Freedom from all forms of Violence, the use of children in commercial sexual exploitation; the use of children in audio or visual images of child sexual abuse; the use of children in prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes as well as forced marriage are subsumed in this definition, but this is not a finite list. CSEA can amount to a form of torture or cruel, inhuman, or degrading treatment.<sup>13</sup> CSEA committed during armed conflict has been held to constitute a war crime,<sup>14</sup> a crime against humanity, or a constitutive act with respect to genocide.<sup>15</sup>

20. Sexual abuse is a subcategory of CSEA. Sexual abuse is traditionally defined as ‘actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions’. “Child sexual abuse has been defined as 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. Many children experience sexual abuse which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic. It incorporates both contact and non-contact sexual activity, and may take place in person or virtually. 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

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11 These are terms used in the text of article 26, although it is recognised that they are increasingly criticised as stigmatising, and are being replaced with alternatives: See the Terminology Guidelines (2016) referred to earlier.

12 Terminology Guidelines p 18.

13 Terminology Guidelines p 16.

14 See Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06 OA5, Judgment, 1-2 (June 15, 2017), [https://www.icc-cpi.int/CourtRecords/CR2017\\_03920.PDF](https://www.icc-cpi.int/CourtRecords/CR2017_03920.PDF).

15 The Statute of the Special Court of Sierra Leone lists rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence as a crime against humanity (article 2(g)), and Article 3(e) lists outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault as serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977.

exchange.<sup>16</sup> Both contact and non-contact forms of sexual abuse are harmful and can result in long term negative impacts on the child.

21. “Sexual abuse/activity” includes both explicit and non-explicit sexual activities that cause harm, such as penetration, or acts that harm the sexual integrity of the child, such as lascivious exhibition of children’s genitals.<sup>17</sup> 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.<sup>18</sup>
  
22. “Grooming” means befriending and establishing an emotional connection with a child, and sometimes the family, to lower the child’s inhibitions with the objective of sexual abuse. Enticement of children is sometimes used as a synonym of the “solicitation of children for sexual purposes” or “grooming”.<sup>19</sup>
  
23. “Sexual harassment” is 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.<sup>20</sup>
  
24. “ICT” for the purposes of this General Comment, encompasses any communication device or application, including radio, television, cellular telephones and computer and computer networks, including both hardware and software.
  
25. “Safeguarding” refers to the actions taken and measures and procedures put in place to protect children from harm and prevent any abuse.

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16 Terminology Guidelines p 18.

17 Terminology Guidelines p 15.

18 Terminology Guidelines p 21.

19 Terminology Guidelines p 51.

20 Terminology Guidelines p 21.

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26. “Due diligence” means the totality of the obligation on the State to take responsibility for preventing CSEA, prosecuting and punishing perpetrators, and protecting and providing redress for victims.
27. “Age of maturity” for the purposes of this General Comment is the age below which a child is regarded as being incapable of consenting to sexual intercourse.
28. “Age of sexual consent” is the age established by law at which age a person is deemed to be able to express informed consent to engage in sexual activity. Many argue that the age of sexual consent should mirror the age of marriage, despite considerable evidence of adolescents below the age of 18 engaging in sexual activity.
29. “Age of consent to marriage” is the age at which a person is legally regarded as competent to provide free, full and informed consent to marriage, and according to the African Children’s Charter should be specified to be a minimum of 18 years.
30. “OCSE” means online child sexual exploitation. Reference to OCSE 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.<sup>21</sup>

## **V. GENERAL NATURE OF STATE OBLIGATIONS**

31. Article 27 of the Charter requires States Parties, in particular, to take all appropriate national, bilateral and multilateral measures to protect children from all forms of sexual exploitation and sexual abuse and 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.”

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21 Terminology Guidelines p 27.



32. The scope of applicability of this General Comment is to all persons aged below 18 years, in accordance with the definition of a child in the Charter. Implementation of article 27 in the context of the Charter as a whole involves taking a wide range of measures to provide protection, enhance access to quality basic social support and health services and to justice, and improve the overall safety and wellbeing of every individual child. Implementation covers the process whereby governments take the necessary legal, policy, budgetary, administrative and other appropriate measures to ensure the full realisation of all children's rights stipulated in the CRC, the African Children's Charter and other relevant national, regional and international human rights laws and instruments pertaining to children, to ensure the wellbeing of all children.<sup>22</sup> Whatever their economic circumstances, States Parties are required to undertake all possible positive measures towards the realization of the rights of the child contained in the African Children's Charter, paying special attention to the most disadvantaged and marginalised groups.
33. The obligation contained in article 27 is one that is capable of immediate fulfilment, and is not subject to the availability of resources or to progressive realisation. The ACERWC expects that States Parties show rapid progress in extending the reach and impact of rights and protections contained in article 27, with a special focus on the most marginalised and excluded groups. State Parties are further reminded that any retrogressive measures, which dilute or cut back on rights and protections already enjoyed, are regarded as being contrary to international law, unless, during times of significant recession or emergency, sound justification can be provided and the previous position re-established as soon as circumstances permit.
34. The obligations in article 27 are reinforced by those contained in article 16, which deal with the protection of the child from all forms of torture, inhuman or degrading treatment and abuse, including sexual abuse.

## VI. KEY PRINCIPLES UNDERLYING THE IMPLEMENTATION OF ARTICLE 27

### 6.1. Best interests of the child

35. Article 4 of the ACRWC requires that States have the obligation to take into consideration the best interests of the child in implementing the Charter. It is in children's best interests

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<sup>22</sup> ACERWC General Comment No 5 (General Measures of Implementation of the Charter and systems strengthening for child protection), par 2.1

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that States take all necessary measures to prevent all forms of sexual violence and its consequences, particularly by eliminating the root causes of that violence, including sexist conceptions and remarks, patriarchal preconceptions and stereotypes about women and girls, preconceptions and stereotypes based on gender identity, certain preconceptions of masculinity and virility.<sup>23</sup> Ending child marriage/union, which has been regarded as synonymous with sexual violence,<sup>24</sup> is a key obligation in the best interests of children.

36. The obligation to protect and guarantee children's best interests extends to the adoption of adequate legislative and regulatory measures, and to prompt, adequate and diligent responses by all stakeholders to complaints of violations received. Psychosocial support to victims and redress for infringements are also part of ensuring children's best interests.

37. States must ensure that the potentially negative consequences for victims and witnesses, of procedures to investigate acts of sexual violence and efforts to prosecute perpetrators, are reduced as much as possible. The principle of "do no harm" must be uppermost,<sup>25</sup> and States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide a remedies to victims. The necessity of the due diligence principle in pursuing sexual violations has been emphasised by this Committee in the Cameroon case.<sup>26</sup> In cases where the violence has already occurred, the Committee requires that Governments undertake exhaustive investigations and ensure that commensurate compensation is rewarded to the victims.<sup>27</sup>

38. As contemplated in this Committee's General Comment no 5 (General Measures of Implementation and Systems strengthening for child protection), child protection systems which contain the full array of measures to prevent and respond to child abuse,

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23 African Commission on Human and Peoples' Rights "Niamey Guidelines on combatting sexual violence and its consequences in Africa" p 18.

24 The African Union's Goodwill Ambassador on Ending Child Marriage Nyaradzayi Gumbonzvanda has argued this: <https://www.devex.com/news/devexplains-do-we-need-a-new-term-for-child-marriage-90039>.

25 Niamey Guidelines p 17.

26 The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon No. 006/Com/002/2015.

27 As above, par 45.

neglect and sexual exploitation are integral to the implementation of the Charter, in the best interests of all children. This includes support services to victims, such as psychological treatments, health services and shelters, and redress for infringements are also part of ensuring children's best interests.

## 6.2. Non-discrimination

39. Article 3 of the ACRWC enshrines children's rights to be free from discrimination. Therefore, States Parties must take the necessary measures to ensure that the rights of the child victims of sexual violence are guaranteed, irrespective of their race, colour, national origin, citizenship, ethnicity, profession, political opinions, and any other opinions, and health including HIV status, disability, age, religion, culture, marital status, socio-economic status, status as a refugee, migrant, or any other status, sex, gender, or any other factor that could lead to discrimination against them.<sup>28</sup>

40. The non-discrimination principles includes that targeted measures shall be taken to provide protection to those who are most vulnerable to being victims of sexual violations, including children with a disability, children in care institutions, children in conflict situations, children in street situations, and displaced and migrant children. That girl children are at heightened risk is axiomatic, but States should also ensure that responsive measures are tailored to, and cater for, boy children when they report sexual violations. States should, in accordance with article 11(6) of the Charter, ensure that girls who become pregnant are enabled to complete their education.

## 6.3. Survival, life and development

41. States must ensure that investigations into acts of sexual violence and the prosecution of the perpetrators of sexual violence against children are carried out without unjustified delays; independently, impartially and effectively; and in a manner that will lead to the identification and sentencing of the perpetrators.<sup>29</sup> Victim's rights should at all times be upheld, guaranteeing their wellbeing and safety. Remedial services to ensure the full psychological and physical recovery of child victims is essential to ensuring their survival and development. The right to health under the African Children's Charter and other regional and global human rights instruments includes reproductive health. Thus,

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28 Niamey Guidelines p 17.

29 Niamey Guidelines p 18.

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post exposure prophylaxis and access to anti- retroviral treatment at no cost must be made available, and access to confidential sexual and reproductive health services, including termination of any pregnancy caused by sexual violations, must be regarded as essential right in ensuring victims' survival and development.

42. As this Committee has previously noted, such practices as trafficking in children, sexual exploitation, child marriage, which give rise to sexual exploitation, are less likely to occur, and easier to prevent, when effective birth registration systems are in place.<sup>30</sup> State Parties are therefore urged to expedite the development of free, universal and accessible birth registration systems.

#### **6.4. Participation of children**

43. Article 4 (2) of the Charter requires that children be given the opportunity to be heard during judicial and administrative proceedings, and that their views are taken into consideration. The Charter also requires that children are informed of their rights in an age-appropriate manner, that children have the right to express their views freely in all matters affecting them, and that such views are given due weight in accordance with the age and maturity of the child. Child victims of sexual violations should be afforded legal advice and where appropriate, legal representation at no cost to enable them to assert their rights.

44. Child participation is to be implemented at all stages of the process of responding to complaints of violations of rights, from the time of first reporting, to the provision of health services, to investigative processes and subsequent criminal and civil actions.<sup>31</sup> Children should also be engaged in the design and implementation of support services such as health care services.

45. States parties should make efforts to include child participation in drafting processes and policy development, and in the implementation of legislative and policy measures, ensuring that the views of children are considered without discrimination.

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30 ACERWC General Comment no 2 par 18.

31 Civil actions could include claims for damages and reparations, applications for protection orders, interdicts, and so forth.

46. It goes without saying that child victims should be afforded the maximum assistance when participating in criminal and civil justice processes, such as having recorded testimony presented, through victim impact statements, and through other measures designed to facilitate their optimal participation.

### 6.5. Evolving capacity

47. It must be noted that there is no international treaty that establishes a legal age for sexual activities. The ACRWC, CRC, the OPSC, and ILO C182 are silent with regard to the age of sexual consent, leaving it up to the States to establish this age.<sup>32</sup> The establishment of an age of consent relates, to protective goals, recognising that very young children are incapable of consenting to sexual acts (below the age of maturity), and that older adolescent children must be protected from predatory adults. Globally, at least half of all adolescents are sexually active before turning 18 and in Africa, most adolescents engage in sexual intercourse for the first time between the ages of 15 and 18. A significant number of adolescents are having sexual intercourse by the age of 17 on the continent.<sup>33</sup>

48. Even though children need to be protected from sexual abuse and exploitation, it needs to be acknowledged that adolescents often times start exploring their sexuality and engaging in consensual sexual activity with their peers before they turn 18.

49. 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>34</sup> Many national legal

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32 The CRC Committee has addressed this issue in General Comment no 16 on the Rights of the child during adolescence: [40] ..... States parties should take into account the need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent. States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.

33 Godfrey Kangaude "Policy brief challenging criminalisation of adolescent sexuality in Africa" Accountability International (not dated). According to MacQuarrie K, Mallick L, and Allen C. Sexual and reproductive health in early and later adolescence: DHS data on youth age 10–19. DHS comparative reports No. 45. Rockville, MD: ICF, 2017, sexual debut occurs during adolescence for most women in all West African, Southern and Middle African, and in most countries in East Africa. Women's youngest median age at sexual debut appears in Mozambique (16.1), Chad (16.5), Congo (16.3), Liberia (16.2), and Niger (16.2). The highest adolescent median age of Africa countries in this study is Gambia and Burundi (19.8). In Comoros and Rwanda, sexual debut is not a part of women's adolescent experience (p 19).

34 Terminology Guidelines p 19. The age at which a person is considered mature enough to consent to receiving health services related to sex and reproduction without a guardian is in many States tied to the age of sexual consent. The higher the age of sexual consent, the more barriers exist in accessing sexual health services before that age. Having to obtain consent from a guardian or a parent to access services related to sexual health is a hurdle many adolescents will choose to avoid. This provides an argument for not making the age of sexual consent unduly high.

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systems make a distinction between sexual relations among peers (under 18) and sexual relations between a child and an adult. Equally, many countries do not, leading to the prosecution and imprisonment of children, usually boys, for consensual sexual activities.

50. To acknowledge the evolving capacities of the child, and the fact that children who have reached the age of maturity have the right to engage in sexual relationships (provided these are not exploitative or abusive), many countries have introduced an exception to the obligation of State Parties to criminalise certain conduct. This entails decriminalisation of peer to peer consensual sexual conduct, provided that the child is above the age of maturity, and the adolescents are close in age. In line with this, State Parties should decriminalize consensual, non-abusive and non-exploitative sexual activities among child peers. Some States apply a “close-in-age” exception to age of consent provisions (sometimes known as the “Romeo and Juliet defence”) where one or both participants are under the age of consent. This exception is usually available as a defence to child sexual assault charges to avoid criminalising genuinely consensual sexual activity between young people who are close in age. This applies, for example, where one person is 16 years and the other is only a few years older, e.g. 2–5 years, provided there is no relationship of trust, authority or dependency between the two people.<sup>35</sup> Sexual activity between adolescents is not as such harmful, as long as both adolescents give informed consent and have access to sexual and reproductive information and services.

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<sup>35</sup> In 2015, South Africa introduced an amendment to the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007, that allows adolescents aged 12 to 15 to engage in consensual sex with peers of the same age, or between the age of 16 to 17 if there is no more than a 2-year age difference between them. Prior to this, the law allowed prosecution of adolescents engaging in consensual sex. In a Constitutional challenge, it was argued that the law had various harmful effects on adolescents, such as exposure to the criminal justice system, and a negative effect on their understanding of, and healthy attitudes towards, sexuality. The challenge succeeded. Namibia, similar to South Africa, has implemented an age of consent to sexual activity and reproductive health services of 14 years. In addition, the country has adopted a ‘close in age’ exception in the Combating of Rape Act, preventing prosecution of adolescents having consensual sex if the younger person is under 14 years and the older person is not more than 3 years older (Zimbabwe report p 6). In High Court of Kenya at Nairobi, *Eliud Waweru Wambui v Republic* (2019), the High Court called for a national discussion on the ‘age of discretion’, and overturned a conviction for defilement of a girl purportedly 17 years and 5 months. In Mauritius, Zimbabwe and Malawi the age of consent is set at 16 years, in Burundi, Eritrea and Ethiopia at 18 years, and In Madagascar it is 14 years. Allegedly the age of consent in Nigeria is 11 years. These are some examples. However, the pluralistic nature of legal systems which recognise customary law is a variable that can make a determination of the age difficult. Many countries have different ages for boys and girls. See *Harmonising the legal environment for Adolescent sexual and reproductive health rights* (UNFPA 2017) in general, though some of their facts are disputed.

51. In general, criminalising adolescents as sexual offenders does not prevent them from engaging in sexual activity – it merely drives it underground. It can serve to prevent them from accessing education, and sexual and reproductive health services. This can, in turn, lead to higher unsafe abortion rates, STDs and unwanted pregnancies. Mandatory reporting systems should also not interfere with adolescent right to reproductive health services.
52. Beyond this, the age of sexual consent as defined by law must mean that adults engaging children below that age in sexual activities is prohibited under all circumstances, and that the consent of such a child is legally irrelevant. It should be criminalised. For age of consent laws to meet human rights standards, they must at the very least be non-discriminatory and equal for everyone, regardless of the gender, disability status, and marital status of those involved.<sup>36</sup>
53. In contrast, sexual activity between adolescents is not as such harmful, as long as both adolescents give informed consent and have access to sexual and reproductive information and services.
54. In general, criminalising adolescents as sexual offenders does not prevent them from engaging in sexual activity – it merely drives it underground. It can serve to prevent them from accessing education, and sexual and reproductive health services. This can, in turn, lead to higher unsafe abortion rates, STDs and unwanted pregnancies. State parties should therefore carefully construct criminal justice systems which take account of these concerns.
55. A child acting in the online environment is not different from a child offline, and her/his right to access certain online services without parental consent may well be allowed before the child turns 18; even though all young persons under the age of 18 years are entitled to special protection, this must necessarily be balanced against the child's right to information, and his or her right to participation when engaging with the digital world, also in the context of evolving capacity of the child.

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36 Good Practice Guide in Human Rights Compliant sexual offence laws 2017 par 10.11.

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## 6.6 Interdependence and indivisibility of the rights within the African Children's Charter (article 16, article 21 in particular)

56. As has been noted in previous General Comments of the ACERWC,<sup>37</sup> Charter rights are interdependent, indivisible and mutually reinforcing. Closely related to article 27 of the Charter are articles 16 and 21.
57. Article 16 provides protection to the child against all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. States are required to take specific legislative, administrative, social and educational measures to protect the child from all forms of these. Protective measures, under article 16(2), shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow up of instances of child abuse and neglect.
58. This array of measures is equally relevant to CSEA. Two main strands can be discerned: victim support services (which include psychosocial support, medical and health services support, and avenues for redress and compensation<sup>38</sup> for victims). The second is specialised detection, investigative and follow up units, requiring dedicated and well trained staff with modern era skills and competencies.
59. Article 21<sup>39</sup> of the Charter is also implicated, for two reasons: first, the general injunction to States Parties to eliminate harmful social and cultural practices affecting the welfare, dignity normal growth and development of the child is implicated by harmful practices around sexual exploitation generally, and by social practices around children's which may include sexualised dimensions. Second, article 21(2) prohibits marriage of boys and girls whilst aged below 18, and child marriage constitutes a form of (sexual) violence against children. In addition, the rights contained in Article 3 (non-discrimination) and article 14 (the right to health) are implicated, as highlighted in the text above.

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37 General Comment no 5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection," par 5.3.1.

38 See the finding of the ACERWC in *The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) V. The Government of Republic of Cameroon* (no 006/Com/002/2015).

39 See Joint ACERWC and ACHPR General Comment on ending Child Marriage no 3 of 2018.



### 6.7. Role of parents and other care-givers

60. Article 20 of the Charter provides for parents or other persons responsible for the child to have the primary responsibility for the upbringing and development of the child, concomitant with ensuring their best interests. States parties are to assist parents in the fulfilment of their duties. This is most directly relevant to children's online activity which occurs largely in the confines of personal space such as the home or in educational settings.

61. Ordinarily, parents and other caregivers act in the best interest of their children, in the exercise of their child rearing function. However, there can be a tension between the exercise of parental responsibility and the duty to guide children in their behaviour, and children's right to freedom of expression and to privacy, as well as their evolving capacity and need to engage increasingly with the adult world as they near the end of childhood. Managing these tensions requires sensitive approaches. Parents should be equipped to educate and advise their children about online safety, rather blocking children from entering the online space altogether, as increasingly the online and offline domains are intertwined and not easily separated. Nevertheless, States parties must play a supportive role to enable parent to fulfil their obligations, including with educational programmes and easy to use guides for parents.

62. Moreover, many African parents are ill-equipped to intervene in matters related to cyberspace, due to the generational divide. Hence an added duty rests on State Parties to assist parents and caregivers to provide guidance to their children about online sexual predatory and inappropriate or risky behaviour and the forms that it may take. Children too should be provided with educational programmes about how to safely use and interact with cyberspace. Life skills programmes in educational settings should include a component related to this.

63. In the case that the alleged perpetrator of CSEA is a parent, a family member, another child in the family or a primary caregiver, any measures should involve careful consideration of the fact that a child's disclosure should not worsen her or his situation and that of the other non-offending members of the family, and should not aggravate the trauma experienced by the child. For many reasons, child victims who allege sexual abuse by parents or caregivers should not be interviewed in their presence. For

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instance, there is a concern that prevailing taboos in Africa about talking about sexual behaviours may play an inhibiting role, or that parents or caregivers could intervene to prevent a child's accurate testimony.

64. Furthermore, in the above situations, the Committee encourages States parties to consider removing the alleged perpetrator rather than the child victim, since removal can be experienced by the child as a punishment, unless there are circumstances which indicate that removal of the child victim is in his or her best interests.<sup>40</sup> Criminal justice actors should consider whether the pre-trial release of any offender who is a member of the child victim's household will put in jeopardy the child's safety.

## VII. CONTENTS OF THE RIGHT

### 7.1. Inducement, coercion and encouragement of child to engage in any sexual activity

65. Physical coercion of children is a common characteristic of forced sexual activity, which is an extreme manifestation of gender based violence. But coercion can also be the result of psychological pressure, undue influence, detention, abuse of power or someone taking advantage of a coercive environment, or the inability of an individual to freely consent.<sup>41</sup>

66. States Parties must take all measures that have been proven to be effective in reducing exposure to inducement and coercion of children to engage in sexually exploitative activities, and preventing it from occurring. Many of these steps are outlined in detail in the remainder of this General Comment, including through gender sensitive urban planning, provision of safe learning and leisure environments, education and awareness raising, girls' empowerment and so forth.

67. There is an expressed need to describe the 'in kind' element of commercial sexual exploitation, taking into account the cultural context of various African Communities. 'In kind' rewards for sexual services can include food and supplies, humanitarian donations, as well as clothes, personal accessories, and even airtime and data.

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40 CRC Guidelines OPSC par 97.

41 Niamey Guidelines page 14.

68. Inducement and encouragement can take many forms, including by propagating transactional sexual violations (‘in kind’ sexual exploitation), and grooming of children so that their resistance to unwanted sexual violations weakens and dissipates. Child grooming (or solicitation of children for sexual purposes)<sup>42</sup> is also regularly used to lure minors into various illicit businesses such as child trafficking, child prostitution, or the production of child sexual abuse material. “Localised grooming” is a form of sexual exploitation – previously referred to as “on street grooming” in the media – where children have been groomed and sexually exploited by an offender, having initially met in a location outside their home. This location is usually in public, such as a park, on the street or at a friend’s house. One abuser might present himself as the “boyfriend”; this person abuses this position by arranging for the child to have sex with other members of the peer group.
69. The impact of grooming in the context of CSEA can be extensive: it often results in non-disclosure by the child as he or she feels that he or she has actively contributed to the situation; and it leads to well documented feelings of shame and lack of self worth/self-blame, which can endure for years. Criminal Justice professionals and other responders to reports of sexual violations should be made fully aware of these aggravating factors.
70. Sexual grooming of children also occurs on the Internet. Some abusers will pose as children online and make arrangements to meet with them in person. Online grooming of children is most prevalent within the 13–17 age group (99% of cases), and particularly 13–14 (48%). The majority of targeted children are girls (though boys are also at risk), and most victimisation occurs with mobile-phone support.<sup>43</sup> This can be prevented not only on platform level but also on the point of entry; therefore it is recommended that parents and teachers establish safe environments for their children to use the Internet, to reduce the risk of children encountering cyber grooming individuals.
71. Acts which tend towards grooming may constitute an offence, for instance, where it involves the production and dissemination of child sexual abuse material. Offenders may also convince a victim to migrate from offline to online platforms, or between online platforms in the grooming phase, to evade detection.<sup>44</sup>

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42 Terminology Guidelines p 52.

43 As above.

44 Voluntary principles March 2020 principle 3.

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72. An image, depiction or recording of a child online remains that of a child even when the person depicted has moved into adult age.<sup>45</sup> Offences can be committed both online and offline, such as where grooming potential child victims takes place online, with a view to exploiting them sexually, even though the acts that follow are then carried out offline.

## 7.2 The use of children in prostitution or other sexual practices.

73. “Sexual exploitation of children in/for prostitution” is frequently referred to as “child prostitution”.. 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>46</sup>

74. The term “child prostitution” does not accurately cover what really happens to the child and could be interpreted as implying that it represents a legitimate form of sex work, or could contribute to shifting the blame onto the child. The Committee encourages State Parties to avoid the use of the term “child prostitution” as much as possible, and to use instead the term “sexual exploitation of children in prostitution”. It is a form of sexual exploitation of children. The acts of offering, obtaining, procuring or providing a child for prostitution should be criminalised, whether committed for remuneration or for any other form of consideration.<sup>47</sup> Criminal law should extend to include prohibitions on children being advertised for prostitution through websites or mobile phone applications. However, children who are victims of sexual exploitation in prostitution should never be subject to criminal justice processes or sanctions.

75. Relationships in which sexual acts are exchanged for cash, goods or benefits, often linked to economic survival or opportunities, educational achievement or social status involve children below the age of 18 are a form of exploitation of the child, on the basis that children cannot legally consent to engaging in commercial or commodified sexual activities which include a remuneration or any other form of consideration (the exception being the normal exchange of gifts amongst adolescents involved in consensual and

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45 Terminology Guidelines p 23.

46 Terminology Guidelines p 29.

47 CRC OPSC Guidelines Par 56.

non-exploitative sexual relationships with peers, as provided for above).<sup>48</sup> Any potential argument of the offender that the child consented to this form of sex is legally irrelevant.<sup>49</sup> A child does not under international law have the capacity to consent to her or his own sexual exploitation. Therefore terms such as “voluntary child prostitution”, “transactional sex” and “child sex workers” should be avoided, as they obscure the exploitation at stake.

76. The AU and this Committee takes the stance that as regards peacekeeping missions, sexual activity involving children of the local population, participants and/or beneficiaries of assistance is prohibited, regardless of the age of majority or age of consent locally. Mistaken belief as to the age of a child is not a defence. Moreover, in the same context all sexual exploitation is prohibited, since it is based on inherently unequal power dynamics, and such relationships undermine the integrity and credibility of Mission Personnel, Peace Support Operations and the AU at large.<sup>50</sup>

### 7.3 The use of children in pornographic activities, performances and materials<sup>51</sup>

#### 7.3.1 Child sexual abuse material

77. “Use of children in pornographic performances and materials”, “child sexual abuse material” and “child sexual exploitation material” are terms nowadays preferred to child pornography. They include as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.<sup>52</sup> States parties should ensure that the relevant provisions of their criminal or penal codes cover all forms of material, whether

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48 “Transactional sex” means sexual relationships where the giving of gifts or services, such as rent, phones, clothes, drinks, drugs, grades, or education, support to the family and employment is an important factor. Transactional sex relationships are distinct from prostitution, in that the exchange of gifts for sex includes a broader set of (usually non-marital) obligations that do not necessarily involve a predetermined payment or gift, but where there is a definite motivation to benefit materially from the sexual exchange: African Union

Policy on Prevention and Response to Sexual Exploitation and Abuse for Peace Support Operations (2017) p5.

49 CRC Guidelines OPSC par 58.

50 African Union Policy on Prevention and Response to Sexual Exploitation and Abuse for Peace Support Operations (2017) p11.

51 Terminology Guidelines p 30 notes that this wording is preferable to that of the CRC (term used in the CRC is the “exploitative use of children in prostitution”, which might be understood suggesting that there also being a non-exploitative use of children in prostitution.

52 CRC Guidelines OPSC par 60.

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offline or online. “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.<sup>53</sup> “Simulated explicit sexual activities” includes any material, online or offline, that depicts or otherwise represents a child appearing to engage in sexually explicit conduct. States parties are to include in their legal provisions regarding child sexual abuse material a prohibition of any representations of non-existing children or of persons appearing to be children, in particular when such representations are used as part of a process to sexually exploit children.<sup>54</sup>

78. State Parties should ensure that the producing, distributing, disseminating, importing, exporting, offering, selling or possessing, for the purposes of sexual exploitation of child sexual abuse materials, as well as ensuring that save for clearly defined professional purposes, mere possession is also made a criminal offence. Even where child sexual abuse materials are not ‘possessed’ – such as where they are live streamed or viewed on a webcam show in real time – a criminal sanction should be provided for. Penalties indicative of the severity of the offences should be spelled out by law to guide sentencing officers. Civil forfeiture of equipment, premises, monies received and so forth should be a routine reaction by law enforcement authorities.

79. There is no international uniformity about whether child erotica, ie material which represent a child’s (semi-) nudity or erotic posing with no explicit sexual activity or display of the sexual organs of a child, but which sexualises the child directly or indirectly but, constitutes child abuse material.<sup>55</sup> The Committee is of the view that State parties are advised to outlaw child erotica in their definition of child sexual abuse materials, because they underpin the belief of some persons that the sexualisation of children is normal.

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53 Terminology Guidelines p 36.

54 CRC Guidelines OPSC par 62 and 63, IWG p 41: 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. This type of material is also commonly referred to as “virtual child pornography” or “pseudo child pornography”. Because it sexualises children, it is harmful and should be proscribed.

55 Terminology Guidelines p 37.

### 7.3.2 Performances

80. States must criminalise the acts of recruiting, or coercing a child into participating in pornographic performances or causing a child to participate in such performances, profiting from or otherwise exploiting a child for such purposes, and knowingly attending pornographic performances involving children.<sup>56</sup>
81. Children are sometimes made to witness sexual activities, and the Committee encourages States parties to criminalize the intentional causing, for sexual purposes, of a child to witness sexual abuse or sexual activities, even without having to participate.<sup>57</sup>
82. It has been noted that the age of consent is irrelevant in the context of pornographic performances, and age of consent laws (see 4.5 above) are not the same as consent to participate in pornographic performances.<sup>58</sup>

### 7.3.3 Sexting between minors

83. “Sexting” refers to the situation whereby self-generated sexual content in the form of images or the exchange of sexual messages is sent via mobile phone to others. Sexting often appears to be a product of youth peer pressure and, to a certain extent, teenagers increasingly consider sexting to be normal. While this conduct in and of itself is not necessarily illegal, it involves a number of risks. Sexualized images of children can easily spread online or offline beyond or against the will of the child, can be very difficult to remove and can be used in the context of bullying and for sexual extortion, which can have serious and traumatizing consequences for children, including suicide.<sup>59</sup>
84. International guidance teaches that 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 depicting themselves.<sup>60</sup> 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. Sexting can be a mechanism for grooming.

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56 CRC Guidelines OPSC par 64.

57 CRC Guidelines OPSC par 70.

58 Terminology Guidelines p 34.

59 CRC Guidelines OPSC par 42.

60 Terminology Guidelines p 43.

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85. Children should not be held criminally liable for producing images of themselves. It should therefore not be regarded as child sexual abuse materials where such images are made consensually, for private use, unless such images are produced as a result of coercion, blackmailing or other forms of undue pressure against the will of the child.<sup>61</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. If such self-generated images are subsequently distributed, disseminated, imported, exported, offered or sold as child sexual abuse material, those responsible for such acts should also be held criminally liable. The authorization of the child to distribute should not exempt this liability.<sup>62</sup>

86. Finally adults (not peers) who send self-generated images with sexual content to children should be criminally liable, even where no coercion, blackmail or undue pressure is evidenced.

#### 7.3.4 Sexual Extortion

87. Sexual extortion (sometimes referred to as “sextortion”) is a practice whereby a child is forced into agreeing to give sexual favours, money or other benefits under the threat of sexual material depicting the child being shared on, for example, social media. This practice is often linked to grooming and sexting.<sup>63</sup> 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.

88. 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>64</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 materials. The use of the phrase “sextortion” risks trivialising behaviour which could have serious consequences, and therefore international guidance suggests that the term should be replaced with “sexual extortion of children”.<sup>65</sup> See further 6.3.3 above relating to the manner in which self-generated sexual images should be handled.

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61 Lanzerote Convention 20(3).

62 CRC Guidelines OPSC par 67. Terminology Guidelines p 43.

63 CRC Guidelines par 69.

64 Terminology Guidelines p 51.

65 Terminology Guidelines p 52.



### 7.3.5 New and emerging forms of online sexual exploitation

89. New ways of committing sexual offences may involve online “premises”, such as chat rooms, online forums and other online spaces that are not physical premises in the traditional sense of the term. Livestreaming is particularly complex because it allows offenders to interact with child sexual abuse production in real-time and leave limited evidence. Adult offenders may direct the child abuse to occur elsewhere whilst the acts are streamed live to an audience of offenders. Alternatively, offenders may entice or coerce children into using livestreaming platforms to produce child sexual abuse material. Offenders may also stream their sexual abuse of children through livestreaming platforms. In some cases, a livestream is captured and distributed.<sup>66</sup>

90. These new and emerging forms of online sexual exploitation require that both substantive criminal law and investigative and evidence collection techniques be developed to accommodate them. As mentioned, “possession” as the offence classification will not suffice due to the real time nature of the offence; entrapment rules may be implicated; and evidence leaders such as police and prosecutors will need to be specialised in computer and digital media analysis.

### 7.3.6 Extraterritoriality and international mutual legal assistance and cooperation

91. It bears noting that perpetrators will constantly adapt their behaviours to exploit gaps in law and in enforcement methods. Technology is permitting offender communities to attain unprecedented levels of organisation, which in turn creates new and persistent threats as these individuals and groups exploit online ‘safe havens’ and ‘on-demand’ access to victims.<sup>67</sup> The result is an ever-shifting landscape and the need for vigilance, including with respect to accessing encrypted communication channels and tracking payments sought and made in cryptocurrencies.

92. Legislation must found the jurisdiction to prosecute alleged offenders for all offences committed on the territory of the State, and also allow the State to investigate and prosecute all these offences regardless of whether the alleged perpetrator or the victim is a national of that State.

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<sup>66</sup> Voluntary principles to counter online child sexual exploitation and abuse (WeProtect, March 2020) annotated commentary to principle 5.

<sup>67</sup> WeProtect Global Threat analysis 2018.

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93. Each State party should also establish its jurisdiction over sexual abuse offences that are committed outside its territory (extraterritorial jurisdiction) when the alleged offender is a national of that State or a person whose habitual residence is in its territory, or when the child victim is a national of that State. It is not necessary for the alleged offender to be present in the territory of the State for action to be taken, and an international arrest warrant can be sought where appropriate.<sup>68</sup> An offender can, for instance, be in one country, watching or even ordering the live streaming of a child being sexually abused in another country. The prosecution of such offences regardless of the nationality or habitual residence of the alleged offender and victim should be established.<sup>69</sup> Given the increased use of ICT to enable sexual offences against children and the new challenges to territoriality, States are encouraged to establish universal jurisdiction for these offences, and if this is not possible, to pursue the adoption of multilateral and regional instruments to facilitate prosecutions.

94. Given the transnational reach of the digital world, it is possible that multiple jurisdictions might have a claim to jurisdiction to prosecute. In such instances, jurisdictional conflict should be resolved by taking into account the best interests of the child victim or victims, taking into account their identity, needs, family and community situation, and the overall child friendliness of the intended measure or measures.

95. Extraterritorial jurisdiction is particularly important for offences constituting the sale or sexual exploitation of children where the offender is likely to travel to another country, such as in the case of sexual exploitation in travel and tourism. As the exploitation may not be detected until the offender has departed the country in which the offence took place, it is essential to ensure that States parties have the capability to prosecute the offender.<sup>70</sup>

96. Whilst the formulation of extradition treaties on a bilateral basis between States is encouraged, States are also encouraged to adopt legislative measures that would make extradition for the commission of specified child sexual abuse offences possible without the prior existence of a treaty between the respective countries.

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68 CRC OPSC Guidelines par 82.

69 CRC OPSC Guidelines par 87.

70 CRC Guidelines par 85.

97. Interstate and international cooperation should cover, inter alia, effective detection and reporting systems, information-sharing, and safeguarding and transmission of evidence of crimes, including electronic evidence, in a timely manner. Cooperation should also cover assistance to victims in their recovery, reintegration and repatriation, as appropriate.<sup>71</sup> International cooperation should be guaranteed in regard to asset seizure and forfeiture, and any requests from another State party for such seizure or confiscation should be granted. In situations of porous borders, where offenders can easily move and cross back and forth between different countries, regional law enforcement and judicial cooperation is essential to fight impunity.
98. State Parties should leverage existing mutual legal assistance treaties or other international collaboration clauses, with due respect to the principle of sovereignty of States. In the absence of legal frameworks, State Parties should nevertheless afford requesting states the highest level of assistance in the fight to combat all forms of sexual exploitation. Where the principle of the best interests of the child is not an express feature of mutual legal assistance arrangements, it should be incorporated by proxy, in line with article 4 of the ACRWC.
99. The detection of online sexual exploitation and abuse does not necessarily lead to identifiable offenders and child victims. States parties should adopt clear measures to strengthen the identification of victims, including through mutual legal assistance and international cooperation and INTERPOL, and to guide their rescue and repatriation. States parties should also use similar means, including image analysis systems, to identify offenders.<sup>72</sup>
100. Interstate and international co-operation can increase the number of “hashes”, a kind of “digital fingerprint” of each child sexual abuse image, available to industry, civil society organisations and law enforcement agencies to assist in preventing the circulation of child sexual abuse material, and increasing the identification of victims and both crime and criminals.<sup>73</sup> Thus, States parties should employ to the maximum extent technological means to make the prevention and investigation of online sexual exploitation and abuse more efficient and to improve cross border collaboration.

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71 CRC Guidelines OPSC par 109.

72 CRC Guidelines OPSC par 101.

73 We Protect 2017.

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### 7.3.7 Investigations and prosecutions of child sexual abuse cases

101. Various dimensions of sexual exploitation of children, both online and offline, pose challenges to the investigation and prosecution of criminals. As regards sexual exploitation, States parties experience difficulties with the collection, storage, and analysis of forensic and physical health evidence. Many countries have inadequate or uncertain and dated rules concerning the assessment of children's evidence and competence of children to testify in court. Rarely are court settings and procedures child adapted or sufficiently child friendly. Attention is drawn to the Guidelines on Action towards Child Friendly Justice in Africa (2011) endorsed by the African Committee of Experts on the Rights and Welfare of the Child in 2012, and the pressing need to operationalise these principles in practice. A core principle of child-friendly justice is the speediness of the procedures; cases concerning sexual exploitation and sexual abuse of children should be expedited through priority tracking, continuous hearings or other methods, and delays should be approved only after considering the child's views and best interests.

102. In order to reduce reliance on the testimony of child victims, States parties are advised to make full and effective use of crime scene evidence, including digital evidence. State parties should ensure that the possibility of commencing a prosecution without the consent of the child victim exists.<sup>74</sup> The possibility of the victim being confronted with the alleged offender should be avoided, and multiple interviews should be avoided. It is recommended that the child's testimony be taken under conditions of due process outside the court room and be admissible as evidence in court. Where possible, appropriate communication technology should be employed to enable child victims to be heard during the trial without being present in the courtroom. Special measures should be employed in facilitating testimony by children with disabilities. Interpretation should be provided so that children can testify in their mother tongue. Police officers, judges, prosecutors and lawyers should be trained in children's rights and child-friendly justice measures. States should ensure that social workers and psychologists with specialised training in child development are available during interviews if these are to

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<sup>74</sup> CRC Guidelines OPSC par 94.

be conducted by justice personnel.<sup>75</sup>

103. As regards online sexual exploitation more specifically, evidentiary issues are legion due to (amongst others), the virtual (and hence volatile) nature of the evidence, the requirement of expert witnesses to present and analyse evidence, and the multiborder and transnational nature of online child sexual abuse material offences. Clear rules and procedures should be established for how evidence may be collected during investigations into these offences, how, where and for how long it must be stored and who may have access to it. States parties should also set forth clear rules regarding the destruction of evidence, in particular child sexual abuse material, the circulation of which can continue to revictimise the victims long after the initial offence was committed.<sup>76</sup>

104. Where a child exercising the right to participate retracts a complaint during the investigative or prosecution stage of the criminal justice process, the reasons for this should be carefully explored. Whilst prosecutors are *dominis litis*,<sup>77</sup> it remains that exposing a child to undesired criminal justice processes can be harmful and cause harmful and long-lasting secondary victimisation and trauma, and therefore imperil a child's best interests. If the retraction appears to be the results of undue influence or coercion, additional protective measures might be required. Moreover, it should be explored whether a prosecution can nevertheless succeed based on other circumstantial evidence. In any event, the reasons for the child's retraction should be recorded in writing and kept on file, in the event that the child withdraws the retraction at a later date. However, prosecutions should never be discontinued solely on the grounds that compensation for the violation has been offered to the victim or his or her family.

105. States must take measures to prohibit the use of alternative methods of conflict resolution, such as mediation or conciliation, in dealing with cases involving sexual violence before and during civil and criminal proceedings, when those methods do not respect the rights of victims, especially girls. Legislation should specify that decision making on the pursuit of cases involving sexual exploitation and abuse of children be taken only at senior levels within the prosecution service.<sup>78</sup>

106. Sanctions and penalties should be proportionate to the gravity of the types of offences envisaged by article 27, and in particular should take account of specific vulnerabilities of the

75 CRC Guidelines OPSC par 97. "The hearing of the child should be recorded to avoid trauma related to multiple hearings; Interviews should be conducted in such a manner that the child has a clear understanding of the process, by simplifying discourse and using age-appropriate representations and any other method of communication that can help the child understand the questions and avoid any further trauma; Alternative methods of expression, such as art, should be used to encourage the child to express himself/herself (drawing, theatre, etc.); Accessible psychological support provided by personnel specialized in listening to and assisting child victim or witnesses of sexual violence" (Niamey Guidelines p36.)

76 CRC Guidelines OPSC par 76.

77 In charge of the progress or withdrawal of the case for the State.

78 Niamey Guidelines p 36.

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victim: this could be the result of age, disability, status as a displaced person or refugee, socio-economic status, physical or psychological violence that preceded the act of sexual violence or occurred concurrently, the kidnapping of the victim, and the use of or threat to use a weapon; the relationship between the victim and the attacker: the existence of a family relationship, or abuse of authority.<sup>79</sup> Applicable penalties must not take any “extenuating” circumstances into consideration, such as the sexual behaviour of the victim before or after the attack or the victim’s status as a member of a given group.

### 7.3.8 Technical assistance

107. In order to achieve the aims of this General Comment, such as adequate legislation, investigation and prosecution responses, States Parties are encouraged to seek technical assistance from African and other States Parties who can share good practice, provide specialised training and advise on the collection, presentation and evaluation of evidence. Partnerships should also be established with UN Agencies, the private sector and specialized non-governmental organizations to develop the technological tools and general capacity and skills necessary to enable the identification, investigation and prosecution of offenders before the courts, as well as the identification of victims and establishment of effective victim support services.<sup>80</sup> State are encouraged to make use of the specialized skills and resources developed by the International Criminal Police Organization (INTERPOL) and, where appropriate given the context, EUROPOL, to tackle crimes against children involving child sexual abuse materials.

### 7.4 Child sexual abuse as weapon of war

108. In armed conflicts or crisis situations, sexual violence can be used as a strategy to serve military goals or for the purpose of repression, and as a means to terrorise, punish and exact reprisals against a presumed enemy in order to force that enemy to flee, or to commit acts of destruction. In spite of the fact that sexual violence is extremely frequent in armed conflicts and crisis situations, the perpetrators of these crimes are rarely held responsible for their actions. Sexual violence can constitute an international crime. Certain acts of sexual violence can constitute war crimes, crimes against humanity or crimes of genocide, such as rape, sexual slavery, forced prostitution and sterilisation, or forced pregnancy.<sup>81</sup>

109. Children associated with armed conflict, both boys and girls, are often sexually abused, held as “sex slaves”, and forced into marriage. They suffer very harmful health effects,

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79 Niamey Guidelines p 36.

80 CRC Guidelines OPSC par 111.

81 Niamey Guidelines. P 38

including unwanted pregnancy and the acquisition of sexually transmitted diseases, for which no remedy is provided. Part of demobilisation programmes should necessarily entail the provision of sexual and health reproductive services, trauma and other counselling, and where appropriate other forms of support, including material and financial support.

110. States must take the necessary measures to guarantee that members of security and defence forces, non-State actors and their respective superiors who are responsible for the perpetration of acts of sexual violence during times of conflict can be held liable for their actions before the criminal courts. No official should be absolved from criminal liability due to his or her official status. If it is alleged that members of a peacekeeping operation have committed acts of sexual violence during their mission, the personnel must immediately be repatriated to their country of origin to face prosecution and be sentenced according to the laws of that country.<sup>82</sup>

111. Member States should adopt safeguarding principles and protocols during peacekeeping operations, and follow the guidance agreed by the African Union.<sup>83</sup> Troops should be compulsorily trained on child protection issues by contributing member states, with support and guidance from the African Union. Interstate co-operation between member states of the African Union is also highly desirable.

112. Humanitarian workers during times of conflict must be appraised of the risks of engaging with children sexually, and that sexual activity involving children of the local population, participants and/or beneficiaries of assistance is prohibited, regardless of the age of majority or age of consent locally. Mistaken belief as to the age of a child is not a defence, Humanitarian workers should preferably be screened to ensure that they are suitable to work with children including criminal record checks.

## VIII. CHILDREN IN VULNERABLE SITUATIONS

### 8.1 Girls

113. While all children can be victims of sexual violence and exploitation, research indicates that girls are much more vulnerable to such types of violence. The mere fact of being a girl is thus a pre-disposing factor to sexual violence. Apart from all the detailed measures outlined throughout this General Comment, States parties must continue and increase efforts to stamp out the root causes of patriarchy, conservative and traditional attitudes, and the reduction

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<sup>82</sup> Niamey Guidelines p 38

<sup>83</sup> African Union Policy on Prevention and Response to Sexual Exploitation and Abuse for Peace Support Operations (2017).

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of stereotypical attitudes about masculinity. In addition, States must the eliminate extreme poverty and enhance women's economic empowerment, as these are known to be able to address some of the societal conditions that precipitate girls' vulnerability. Human rights education can play a valuable role in equipping girls with knowledge of their rights, and of the strategies that they can employ to protect themselves. In addition, knowledge of reporting and legal remedies can assist in ending impunity for perpetrators and increasing criminal justice responses to violations. The availability of professional cost free legal services can assure another channel of recourse for girls.

114. States should also ensure that the impact of sexual violence does not affect the future opportunities of girls and end up contributing to the cycle of poverty which is making them vulnerable to abuse in the first place. They should ensure that those who become pregnant have access to sexual and reproductive health information and services, including safe abortion services, and those who choose to continue with the pregnancy have access to maternal health services and are allowed and supported to continue with their education.

### **8.2 Children in street situation**

115. Children living on the street are especially vulnerable to becoming victims of sexual exploitation, whether coerced or induced by their needs for survival. They are also more visible to sexual predators due to their street presence, and due to their distrust of law enforcement and other agencies, less likely to disclose instances of victimisation. When they do disclose, they face heightened risks of being disbelieved, of being denied services, and of experiencing child unfriendly justice processes. These factors should be brought to the attention of all law enforcement authorities and embedded in child sensitive training and official curricula.

### **8.3 Children with a disability**

116. Children with a disability have been shown to be at heightened risk of sexual violations. They have a weakened ability to resist physically and psychologically, and are less able to disclose abuse and provide suitable testimony. They are often more societally isolated than able bodied children. All these factors, amongst others, render them more enticing as prospective victims. In the online environment, some disabilities make it more likely that such children will be targeted or groomed. Responsibility nevertheless lies with the perpetrator.

117. Services and responses to child victims of sexual exploitation who have a disability should take account of their special needs, and adopt disability-sensitive strategies to collect evidence and to present this in criminal justice processes that might ensue. Training should take account of, and highlight, the particular vulnerabilities to sexual exploitation of children with disabilities.



#### 8.4 Children on the move

118. Children on the move, those in refugee camps and placement centres for displaced persons are known to be at heightened risk of sexual exploitation. This can be at the hands of law enforcement authorities, including migration control officials, of traffickers, transport operators and migration mules, as well as camp officials and relief workers.
119. State Parties should ensure that reports of such incidences are followed with thorough investigations and prosecutions. It is necessary for comprehensive anti-human trafficking laws to be put in place where these do not exist, providing not only from criminal prosecutions and appropriately severe penalties, but also for civil asset forfeiture of means of conveyance (for instance) where appropriate.

#### 8.5 Children living in tourist 'hotspots'

120. Both domestic and international tourism can result in an increased vulnerability to sexual exploitation of children, affecting those living in tourism hotspots disproportionately. Such children should be seen solely as victims, and not themselves brought into criminal justice processes (eg on prostitution charges). Tourism industry operators should be drawn into the fight to combat child sexual exploitation, as detailed elsewhere in this General Comment.
121. State Parties should ensure that specific protocols, guidelines or codes of conduct are developed and implemented in the context of the risks of sexual exploitation of children in the tourism industries. Local communities should also be made aware of these risks, and drawn into the fight to actively resist this issue.
122. Although children affected by sexual exploitation may still be in school, it remains a sound preventive measure to ensure that added attention is given to measures to reduce school dropout rates in tourism areas where children live, as premature dropping out of school may heighten the risk of such children being drawn into sex tourist activities.

#### 8.6. Children living in rural areas

123. Children living in rural areas may not necessarily be more vulnerable to sexual exploitation than their urban and peri-urban counterparts, but when they do suffer such violations, they are demonstrably less likely to be able to benefit from avenues of recourse, including

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access to reporting and complaints mechanisms, channels for competent investigations and prosecutions, services to address the harm caused, and redress.

124. State Parties are urged in General Comment no 5 of this Committee to support the development of specialised anti-gender based violence police units which are child sensitive and responsive. These should extend services to rural areas to mitigate the negative effects outlined in the preceding paragraph.

### **8.7. Children of parents without formal education**

125. Children of uneducated parents may enjoy less guidance, or no guidance, on proper usage of online technologies which facilitate promote or allow online sexual exploitation. Whilst digital literacy is not necessarily a corollary of formal education (or the other way round), State Parties should take into account the special vulnerability that children of parents without formal education might experience, and counter this with educational and other programmes which reach those children and their parents too.

### **8.8 Children in out of home care, children deprived of their liberty, or living in child headed households**

126. Children without parental care, or in out of home care, may be at heightened risk of CSEA, as numerous commissions of enquiry into child abuse in institutions in recent times have illustrated. Orphanages and alternative care institutions can be a magnet for child abusers seeking to get access to children for sexually exploitative purposes. This Committee has previously addressed matters pertinent to measures required for child protection systems, including relating to children in alternative care (in General Comment no 5).

127. Children deprived of their liberty are extremely vulnerable to CSEA, as they may be isolated and lack access to complaints mechanisms. State parties should ensure that place where children can be deprived of their liberty are held to strict accountability standards, are subject to regular independent inspections, and have in place effective systems for children to report any violations. Perpetrators should speedily face criminal sanctions, and be declared unsuitable to fulfil their jobs.

128. Children living in child headed households may be vulnerable to many forms of exploitation,

including CSEA. Lacking parental guidance, they are more vulnerable to online exploitation as well. They must be deliberately targeted in community education and other initiatives, as well as being given maximum assistance in all responses to CSEA. States parties must pay special attention to this vulnerable population in programme and policy design.

### **8.9 Children in low income household**

129. Children from poor income households may be especially vulnerable to sexual exploitation which may be occasioned by deprivation and transactional sexual exploitation to fulfil needs for access to basic resources. Further, they may have less access to protective facilities and be more exposed to sexual predators. Victims may also be less able to report violations (eg due to lack of resources to reach reporting authorities). State parties should target this vulnerable group and consider adding education and awareness raising about CSEA to existing social protection programmes.

### **8.10 Children affected by harmful cultural and religious practices**

130. CSEA is at times associated with harmful traditional practices, rendering potential victims especially vulnerable. State parties must root these out, targeting community education and awareness programmes, enlisting the support of traditional and religious leaders, and empowering girls and their families, in particular, with the ability to assert their rights and resist violations.

## **IX. OBLIGATIONS OF THE STATE**

### **9.1 Legislative measures**

131. States have the obligation to implement legislative and policy measures to prevent and address all aspects of sexual violence and exploitation, which should be fully compliant with human rights standards. As regards sexual assault and rape laws, characteristics of modern and human rights compliant laws have the following features: they do not require corroboration of the evidence of the victim as a pre-requisite to a conviction; they are gender neutral, providing also for the sexual assault or rape of boys; consent must be proved by the defendant rather than disproved by the complainant (or the notion of consent is removed altogether and replaced with coercive circumstances, which emphasise the conduct of the perpetrator and not that of the victim); the law should be broadened beyond requiring some form of penetration (“rape”), to encompass “sexual assault”, which includes sexual acts that do not involve penetration; archaic terms such as “defilement” which perpetrate harmful gender stereotypes should be eliminated; there should be no prerequisite that the victim must provide a medical certificate or any other type of proof that the sexual violence has taken place in order to file a complaint or for the complaint to be admissible; the law should envisage special methods of testifying (in

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camera, behind one way mirrors, without coming face to face with the defendant, assistance of intermediaries, replacement of oral testimony with recorded interviews, permitting questioning only by the presiding officer and not the accused or legal representative, and the availability of safe and adequate witness protection programmes). These must be legislated and available in practice throughout the jurisdiction of the State party..

132. Legislative measures should in addition to criminal liability, establish precise conditions and rules for extradition, for extra territorial jurisdiction, for mutual legal assistance, and for the seizure and confiscation of goods. Legislation is required to ensure access to redress and secure the availability of child- and gender-sensitive, confidential and safe counselling, reporting and complaint mechanisms to address incidents of sexual exploitation and sexual abuse and protect victims. Legal and policy frameworks should be reviewed and where necessary adapted to rapidly changing realities concomitant with developments in the digital world. Legislation should address online grooming, and provide a mandatory reporting obligation for internet service providers. To improve the chances of victims receiving compensation from convicted offenders, States parties are encouraged to enable the identification and attachment of defendants' assets early in the proceedings and to amend money laundering laws to allow victims to be paid from forfeited property.<sup>84</sup>

133. Legislation should also contain clear and specific provisions regarding gathering, preserving and archiving, analysing and presenting in court evidence of acts of sexual violence.

134. Where children are found to have been involved in sexual abuse and exploitation, the law should differentiate their level of responsibility, with particular emphasis on the reintegrative potential of children. It is important to avoid drawing children and adolescents into the criminal justice system, due to their special status, wherever feasible and appropriate. Children should always be dealt with in specialized systems, which should divert them to therapeutic services where appropriate and avoid criminal records or inclusion in registers.<sup>85</sup>

135. Distinctions should be made between complicity in an offence, participation in the offence and an attempt to commit the offence. Each of these different roles in the commission of an offence covered by this General Comment should be criminalized under national criminal or penal law. Where corporations or companies facilitate or participate in the commission of offence related to sexual exploitation, such as with the distribution offline or online of child sexual abuse materials, States parties are required to ensure that such legal persons can

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84 CRC Guidelines par 106.

85 CRC Guidelines OPSC par 71 and 73.

be held liable, under criminal, civil or administrative law, for having committed, attempted to commit, been complicit in or participated in the relevant offences.<sup>86</sup>

136. Because victims often times do not report the commission of sexual abuse offences until well into adulthood, for various reasons, it is recommended that State Parties avoid establishing a statute of limitations in respect of such offences. Where such statutes exist, State Parties are urged to adjust them to the particular nature of the crime and ensure that they begin to run only when the victim reaches the age of 18.<sup>87</sup>

137. States Parties should establish by law the responsibility of ICT companies to block, remove and report child sexual abuse material hosted on their servers, if needs be in collaboration with website owners, and of financial institutions to block and refuse financial transactions intended to pay for any such offences.

## **9.2 Administrative measures and role of ICT service delivery businesses, as well as other business implicated in child sexual exploitation**

138. It is recognised that a variety of business entities might be affected by the need to combat child sexual abuse. An obvious example is businesses linked to the tourism industry, including but not limited to airlines, travel companies, hotels, places of entertainment and food outlets. They all have a role to play in limiting the potential of child sexual exploitation by travelling sex offenders. Various practices – such as enforceable codes of conduct – can mitigate the risk of sexual exploitation of children going undetected or being concealed. States must adopt appropriate regulatory frameworks to hold accountable businesses which are found to have participated in sexual abuse and exploitation.

139. States must adopt measures required to guarantee effective, sufficient and timeous remedies to victims of sexual exploitation and violence violations, including reparation. Remedies must be affordable and accessible without unjustified delays. Reparation must include individual and collective measures, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>88</sup>

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86 CRC Guidelines OPSC par 79.

87 CRC Guidelines OPSC par 95.

88 Niamey Guidelines p 19.

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140. States must provide fast and effective procedures for blocking and removing harmful material involving children, in order to prevent such material from continuing to be accessed and shared. Such procedures should be established in collaboration with law enforcement and reporting hotlines, as well as the private sector, in particular Internet service providers and social networks.<sup>89</sup>

141. Digital industry delivers many benefits through its services and ability to connect people. This industry is also instrumental in preventing online services and platforms from being used to facilitate online child sexual exploitation and abuse. Platforms and services, including but not limited to social media, gaming, livestreaming, messaging services, app stores and devices, and infrastructure providers such as internet service providers, web-hosting and virtual private networks can all play a part in combating online child sexual exploitation and abuse.<sup>90</sup> Governments should put measures in place (through codes of conduct, establishment of regulatory authorities, legislation or principles of licensing, to list some possible avenues) to make it obligatory for companies to prevent known CSEA material from being made available to users or accessible on their platforms and services, to take appropriate action under their terms of service to remove such material, and to report instances to appropriate authorities.<sup>91</sup> Companies must be required to identify and combat advertising, recruiting, soliciting, or procuring a child for sexual exploitation or abuse, or organising to do so, take appropriate action under their terms of service, and report to appropriate authorities.<sup>92</sup> It must be born in mind that the threat is greater when it comes to new materials, hence added attention must be devoted to these.<sup>93</sup>

142. Further to the above, companies should seek to prevent search results from surfacing CSEA, and seek to prevent automatic suggestions for such activity and material. Searching for CSEA using related terms gives current or potential offenders an easy way to access child sexual abuse material.<sup>94</sup> Companies should be made aware of the fact that material that may not be illegal on its face, but with appropriate context and confirmation, may be connected to CSEA, and this should be included in the regulatory frameworks proposed above. Reporting of this too should be made explicit.

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89 CRC Guidelines OPSC par 103.

90 Voluntary principles 30 March 2020.

91 Voluntary principles principle 1.

92 Voluntary principles principle 4.

93 Voluntary principle 2.

94 Voluntary principle 5.

### 9.3 Protective measures

#### 9.3.1 Reporting

143. States must create toll-free national emergency numbers that are available 24 hours a day, seven days a week, to make it possible for victims or any other person to report cases of sexual violence, obtain information on how to access protection and support services for victims, and get referrals to the appropriate services. These emergency help lines must be confidential and must guarantee the anonymity of those reporting the sexual violence.<sup>95</sup> Warning and reporting mechanisms for acts of sexual violence must be available and accessible throughout the entire territory, especially in remote areas. The information on the existence and operations of these mechanisms, and on the procedures that will follow once they are activated, must be available and accessible throughout the country in the main languages and dialects spoken there, and in child friendly language.<sup>96</sup>

#### 9.3.2 Supporting victims

144. Protection and support for the victims of sexual violence should be provided, regardless of whether they wish to engage in legal proceedings or testify against the perpetrator. This support must include services such as legal assistance, medical assistance (including access to a forensic medical examination), sexual and reproductive health care, and care for the prevention and treatment of HIV. It must also include psychological and financial support.<sup>97</sup>

#### 9.3.3 Sexual and reproductive health services

145. States should ensure health care facilities at all levels (primary, secondary and tertiary) are staffed with health care professionals that are trained in management of sexual violence victims including in providing a non-biased, judgement free, and child-friendly health services. States should ensure that victims of sexual violence and exploitation have access to free contraceptive services, including emergency contraceptives. States must develop a legal framework that allows for termination of pregnancies that result from sexual violence and exploitation. Such legal framework should not require the victim to present evidence of/prove the violence in order to access the health service. The government should further ensure that such laws are implemented in practice including by making safe abortion services available, accessible, affordable and of quality. States must also clarify that healthcare professionals who provide reproductive health services to victims of sexual violence and exploitation will not be prosecuted.

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95 Niamey Guidelines p 23.,

96 Niamey Guidelines p 31.

97 Niamey Guidelines p 25.

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146. States must also ensure that victims of sexual violence and exploitation can access post-abortion services and are not accused of or prosecuted for terminating a pregnancy outside of the law. For those who might carry forward the pregnancy, States must guarantee access to affordable and quality maternal health services.
147. States must take all necessary measures for victims of sexual violence and exploitation to have access to prophylaxis within 72 hours, especially post-exposure prophylaxis (PEP), including in rural areas, to prevent the transmission, spread and proliferation of STIs, especially HIV. High-quality test kits for HIV and all other STIs must be accessible and available to victims at no cost. States must also take the necessary measures for victims to have access to antiretroviral therapy (ART) programmes and prenatal care to reduce the risk of transmitting HIV and certain other STIs from mother to child.
148. States should ensure that third-party authorisations, including the need to obtain parental consent, are not requirements for adolescents to access sexual and reproductive health services. They should guarantee that laws that prescribe the age of consent to reproductive health services are not an impediment to adolescents' access to the aforementioned health services.

#### 9.3.4 Coordination and co-operation

149. States must cooperate with local authorities, community leaders, religious and traditional authorities and local civil society organisations to create and implement policies and measures, especially urban and rural planning measures, to prevent and combat sexual violence in both public urban and rural areas. They must identify areas that are not safe for children, particularly girls, and to establish where they are more susceptible to becoming victims of a sexual attack. States must take the necessary measures in spatial planning, public development and security (increasing police presence and improving public lighting, filling in vacant lots, etc.), to reduce the risk of sexual violence and exploitation.<sup>98</sup> States must devise ways in which families and communities themselves can contribute towards the creation of safe spaces for children. Measures include addressing the location of, and access routes to, public buildings, avoiding physical isolation, and ensuring that entrances are adequately monitored. Installation and maintenance of lighting has been shown to play an important role in promoting safety, and clearing bushes around ablution facilities is another strategy aimed at preventing CSEA from occurring.<sup>99</sup> In community settings, local authorities should be trained in, and encouraged to

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98 Niamey Guidelines p 22.

99 UN Women, 2013: Elimination and Prevention of all forms of Violence Against women and girls (Commission on the Status of Women, 2013).



implement, similar safety promoting measures by State parties.

150. State Parties must ensure that adequate and effective services and expertise are in place and that they are capable of rapid response whenever a child or adult reports suspicious online behaviour or cases of CSEA. They must put in place widely available, easily accessible, child- and gender-sensitive and confidential psychosocial counselling and reporting mechanisms for children, to facilitate the disclosure of abuse by child victims. Such mechanisms should be regulated by law and should define clearly the actors, services and facilities responsible for the care and protection of children. They should include reporting channels for children, such as online and telephone helplines and other points of contact, as well as child protection, law enforcement and judicial systems. Where cases follow a criminal justice route, pre- and post-trial counselling and care should be mandatory. They should enable children to seek help in any way that they feel most comfortable with (even anonymously) and report if they have been sexually abused, but also to seek advice or help regarding self-generated sexually explicit content.<sup>100</sup> Legislation providing for protection orders and anti-harassment legislation must be scrutinised to ensure that it covers online forms of exploitation and cyberstalking.

151. States Parties must ensure that Internet service providers control, block and remove such content as soon as possible as part of their prevention measures. This is because CSEA material, such as images and videos, can circulate indefinitely online, and perpetrate the continued perception of children as sexualised, and risks strengthening the belief among persons with a sexual interest in children that it is “normal”.

#### 9.4 Preventive measures

152. States must support civil society organisations that conduct programmes preventing and addressing sexual violence and its consequences, including awareness-raising measures, and providing training and support to the victims of sexual violence.

153. An important dimension of prevention relates to the demand for sexual exploitation of children by sex offenders and economic profiteers. Specific measures need to be put in place to limit this demand.

154. Preventing and ending all harmful practices such as child marriage, can contribute towards

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<sup>100</sup> CRC Reporting Guidelines par 96.

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diminishing the sexual exploitation or sexual abuse of children.

155. An important general preventive measure is the introduction of legal requirements for the screening of all people working with children. This should include volunteers. Voluntourism involving access to children should be strictly regulated, where it is permitted.
156. The travel and tourism industry, advertently or inadvertently, are risk areas for sexual exploitation and sexual abuse. Engaging with travel and tourism stakeholders, and laying down standards (eg through enforceable codes of conduct) can serve as preventive measures.
157. State Parties could consider measures to prevent convicted child sex offenders from reoffending in other countries, such as through cross-border exchange of information and travel restrictions on convicted offenders.<sup>101</sup>
158. Campaigns to educate the community about the prevalence and harmful consequences of CSEA constitute a powerful mobilising and socially beneficial tool. These should take into account all the various forms of media currently used by various populations, including social media. A dedicated budget should be set aside by State Parties to support these campaigns.
159. States must also adopt measures to promote compliance with regional and international standards of protection for the rights of women and girls within traditional justice systems, to guarantee the rights of the victims of sexual violence and to eliminate the discrimination that persists in these systems. States must raise awareness and provide training for traditional authorities and other stakeholders, the majority of whom are men, who are involved with traditional justice mechanisms, with a view to encouraging respect for equality between women and men as well as broader representation for women in these systems.<sup>102</sup>

## 9.5 Educational measures and training

160. States Parties should develop and conduct long-term educational and awareness-raising programmes and campaigns on preventive measures and the harmful effects of all offences covered by article 27, including when these offences are facilitated or committed through ICT.<sup>103</sup>

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101 CRC Guidelines OPSC par 36.

102 Niamey Guidelines p 22.

103 CRC Guidelines OPSC par 28.

161. Children should receive age appropriate and child sensitive information. Children at all levels of the educational system must receive comprehensive sexuality education. Schoolchildren should receive appropriate materials to learn about the risks of sale, sexual exploitation and sexual abuse as well as the means to protect themselves offline and online. The provision of sexuality education for in and out of school adolescents must be comprehensive and scientifically accurate. In line with this, States should develop a clear policy and curriculum for the delivery of the subject and provide adequate training and tools for teachers. Educational programmes should always include information on concrete and practical ways for children to seek help and support, and to signal sexual abuse safely and confidentially. Educational materials tailored to those in marginal and hard to reach situations should be prioritised (eg children in street situations, migrant children and children with a disability, and out of school children, for instance).

162. State Parties must ensure that law enforcement bodies are educated on interviewing child victims; and on investigating and prosecuting these types of crimes (including online sexual exploitation). Training on effective responses that are both victim-centred and survivor-led for child victims of offences should include regular in-service and refresher courses as technology advances change the landscape. Training should include at minimum issues around child development, trauma, disclosure, interviewing child witnesses, leading evidence and judicial management of child sexual abuse cases. The efficacy of training should be assessed to ensure that it translates to improved work practices. Police and the judiciary should specifically receive training on ICT and digital evidence.

163. Healthcare professionals must be trained on identifying sexual violence and treating victims in a manner that is non-judgmental and non-discrimination. They must be educated to provide reproductive health services such as emergency contraceptives and safe abortion services without requiring authorization from parents or legal guardians and proof of sexual assault.

164. Communities, and other stakeholders such as local authorities, parents, care-givers and traditional leaders (to name a few sectors) should be able to access training in appropriate formats and styles. Content should include debunking myths about CSEA, identifying signs of abuse in their children and better understanding the modus operandi of child sex offenders.

## 9.6 Other measures

165. Governments should develop integrated national plans for combatting CSEA (offline and online).<sup>104</sup> These plans should be multi-year, multisectoral, including private sector and civil

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<sup>104</sup> We Protect 2017.

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society organisations, and children should be consulted and their views taken in to account in the course of their formulation. Amongst others, they should promote information sharing, coordination of responses and service to victims, and serve as a channel for updating measures in response to new digital technology developments. Internationally, guidance is available on the key elements of the model national response in both the online,<sup>105</sup> and the offline environments.<sup>106</sup>

166. Data collection should be coordinated between all relevant stakeholders, including the national statistical bureau and child protection entities, and data should be centralised to avoid incoherent or contradictory data between different State agencies. States parties should implement a disaggregated approach to data, addressing how offences related to CSEA affect different groups of children. At a minimum, data should be disaggregated by sex, age and form of exploitation. States parties should also collect data on how children access and use digital and social media and their impact on children's lives and safety, and on factors that affect children's resilience as they access and use ICT. A crucial factor is the collection of data on the number of cases reported, prosecutions, convictions and sanctions, preferably including redress provided to victims, disaggregated by the nature of the offence including with regard to online and offline activity, the category of perpetrator and the relationship between the perpetrator and the victim, and the sex and age of the child victim. All data should be collected with due respect for children's right to privacy.<sup>107</sup>

167. Online-specific analyses, research and monitoring should be conducted to better understand these offences, and responses to online offences should be developed in close collaboration with the relevant industries and organizations.<sup>108</sup>

## **X. OVERARCHING RECOMMENDATIONS**

- i. For those countries which have not ratified the OPSC,<sup>109</sup> to do so, and for those that have, to ensure that they are compliant with their initial and periodic reporting requirements;
- ii. For countries which have not yet done so, to ratify the AU Malabo Convention;

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105 We Protect 2017 p 15.

106 INSPIRE framework.

107 CRC Guidelines OPSC par 20.

108 CRC Guidelines OPSC par 38.

109 This would seem to be only Somalia and Sao Tome et Principe.

- iii. For all State Parties to report on the implementation of this General Comment in their periodic reports to the ACERWC;
- iv. For all State parties to make the contents of this General Comment widely known amongst state officials, non-state actors, civil society, academia, educational settings, and to children and their parents.



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