

SUMMARY

Legislating for the digital age

Global guide on improving legislative frameworks to protect children from online sexual exploitation and abuse



Federal Ministry
for Economic Cooperation
and Development

giz

Deutsche Gesellschaft für
Internationale Zusammenarbeit

This document provides a brief overview of the publication, 'Legislating for the digital age: Global guide on improving legislative frameworks to protect children from online sexual exploitation and abuse' (the Global Guide). This Summary should not be read in isolation but read in conjunction with the Global Guide which is available at <https://www.unicef.org/reports/legislating-digital-age>. Readers should check the text of the Global Guide for the details about the minimum and recommended standards articulated in the consolidated checklist. Readers should also check the text of the Global Guide for updates to the international and regional instruments as it is intended that the Global Guide will be periodically updated to reflect current law.

Disclaimer: This Summary and the Global Guide are provided for general informational purposes only. Neither the Summary nor the Global Guide contain legal advice and neither publication should be relied upon as such. In certain instances, research and analysis of Laws and Bills were completed by researchers not registered to practice in the jurisdictions to which those Laws or Bills relate and unofficial translations of the texts have, in some instances, been relied upon. While the authors have endeavoured to verify the contemporaneity and accuracy of the Laws and Bills when developing and finalizing this Summary and the Global Guide, it is possible that the Laws and Bills have undergone amendments which are not reflected in this Summary and Global Guide.

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Introduction and context

Purpose of the Global Guide

The purpose of the Global Guide is to provide guidance on how to strengthen legislative frameworks to protect children from online sexual exploitation and abuse in accordance with international and regional conventions, general comments and guidelines of treaty bodies, model laws and good practices. It is intended for use by governments, country offices of international organizations, civil society and business organizations to assist in ensuring that all aspects of online sexual exploitation and abuse of children are explained and contained in legislation, in line

with international and regional standards and good practices.

The Global Guide is based on the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as well as other international and regional conventions, general comments and guidelines of treaty bodies, model laws and good practices concerning the protection of children from online child sexual exploitation and abuse.

Context

The ‘digital environment,’ as it is referred to by the Committee on the Rights of the Child, has increasingly become an important part of children’s lives.¹ The COVID-19 pandemic has reinforced and increased the reliance on and importance of the internet and information and communication technologies in children’s lives, as lockdowns of schools and other communal areas have pushed routine face-to-face interactions online.²

While the digital environment may provide ‘new opportunities’ for the realisation of children’s rights, it also presents risks,³ and ‘may open up new ways to perpetrate violence against children, by facilitating situations in which children experience violence and/or may be influenced to do harm to themselves or others.’⁴ An area of specific concern is the use of the internet and other forms of information and communication technologies to sexually exploit and abuse children, referred to in the Global Guide as ‘online child sexual exploitation and abuse.’



The Global Guide uses the phrase ‘online child sexual exploitation and abuse’ to describe child sexual exploitation and abuse that is facilitated by information and communication technologies, though the limitations of this term are acknowledged. Further, given that the distinction between ‘online’ and ‘offline’ is often blurred,⁵ much of the material contained in the Global Guide is also relevant to child sexual exploitation and abuse that is not facilitated by the use of information and communication technologies (i.e., ‘offline’).

A robust legal framework is necessary to respond to all forms of child sexual exploitation and abuse, inclusive of those forms facilitated by information and communication technologies. UNICEF’s programmatic learning in this field has reiterated the importance of ensuring that online sexual abuse and exploitation is not addressed in isolation, but rather is integrated into broader responses to combat violence against children and child protection efforts more broadly.⁶

Year on year, there are increasing reports of various forms of online child sexual exploitation and abuse. The reported increase in the scale, severity and complexity of online child sexual abuse and exploitation, particularly during the COVID-19 pandemic, is also of particular concern.⁷ For example, in 2021, the US-based National Center for Missing & Exploited Children received 29.3 million reports of suspected child sexual exploitation, an increase of 35 per cent from 2020.⁸

The true extent of child online sexual abuse and exploitation, however, remains unknown, in part due to barriers to disclosure and reporting. Interviews with children across 12 countries in the East Asia and Pacific and Eastern and Southern Africa regions during 2020-2021 indicated that between one to 20 per cent of children suffered online sexual exploitation and abuse in the past year, one in three of whom did not tell anyone about this experience.⁹

Duty of States to protect children from online child sexual exploitation and abuse

Online child sexual exploitation and abuse is a violation of children’s rights, particularly the right of the child to protection from all forms of sexual exploitation and abuse. Article 34 of the Convention on the Rights of the Child places a clear obligation on States parties to take action to protect children from these violations.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography elaborates on States parties’ obligations to combat particular forms of child sexual exploitation and abuse, namely ‘child prostitution’, ‘child pornography’ and the sale of children.



It is generally accepted under international standards that the term ‘child pornography’ should be avoided to the extent possible and replaced by terms such as ‘child sexual abuse material’,¹⁰ as the term ‘pornography’ does not appropriately reflect the abusive aspect of the issue and risks undermining its severity.¹¹

Although the Convention on the Rights of the Child and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography do not expressly refer to ‘online’ child sexual exploitation and abuse, the Committee on the Rights of the Child’s General Comment No. 25 (2021) on children’s rights in relation to the digital environment affirms the obligation of States parties to protect children from all forms of violence in the digital environment, including through legislative measures.



Article 34 of the Convention on the Rights of the Child

‘States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.’

'States parties should take legislative and administrative measures to protect children from violence in the digital environment, including the regular review, updating and enforcement of robust legislative, regulatory and institutional frameworks that protect children from recognized and emerging risks of all forms of violence in the digital environment. Such risks include...**exploitation and abuse, including sexual exploitation and abuse**..... States parties should implement safety and protective measures in accordance with children's evolving capacities.'¹² (Emphasis added)

The Committee on the Rights of the Child has published 'Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (OPSC Guidelines). The OPSC Guidelines confirm the application of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography to the sale of children, child prostitution and child pornography with links to the digital environment

and recommends that States parties should prevent and address online sexual exploitation and abuse of children through their measures to implement the Optional Protocol.¹³

'States parties should prevent and address online sale, sexual exploitation and sexual abuse of children through their implementation measures. National legal and policy frameworks should be assessed to ensure that they adequately cover all manifestations of the sale, sexual exploitation and sexual abuse of children, including when these offences are committed or facilitated through ICT.'¹⁴

The increase in online child sexual abuse and exploitation and calls from country-level stakeholders for practical guidance have reinforced the urgent need to elaborate the minimum and recommended standards that should be incorporated into legislation to protect children from such violence. It is against this backdrop that the Global Guide was developed.

Development of the Global Guide

The Global Guide is based on international conventions, regional conventions, guidelines and model laws as well as the views of United Nations organisations, national governments, international experts, civil society and business representatives from across the world. The key instruments are listed here and are referred to in the text.

Key international conventions¹⁵

- United Nations Convention on the Rights of the Child;¹⁶
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;¹⁷
- International Labour Organization Convention 1999 No. 182 on the Worst Forms of Child Labour;¹⁸

- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).¹⁹

Key regional conventions

- African Charter on the Rights and Welfare of the Child;²⁰
- African Union Convention on Cyber Security and Personal Data Protection;²¹
- Arab Convention on Combating Information Technology Offences;²²
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual

Abuse (Lanzarote Convention), which is also open to accession by non-Council of Europe States;²³

- Council of Europe Convention on Cybercrime (Budapest Convention) and its Protocols, which are also open to accession by non-Council of Europe States;²⁴
- Declaration on the Protection of Children from All Forms of Online Exploitation and Abuse in the Association of Southeast Asian Nations;²⁵
- Economic Community of West African States' Directive C/DIR 1/08/11 on Fighting Cyber Crime;²⁶
- EU Directive 2011/93 of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography;²⁷
- EU Directive 2016/680 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data (Directive 2016/680/EU).²⁸

General comments of the Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child

- The general comments of the Committee on the Rights of the Child, including:
 - General Comment No. 25 (2021) on children's rights in relation to the digital environment;²⁹
 - General Comment No. 24 (2019) on children's rights in the child justice system;³⁰ and
 - General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights;³¹
- African Committee of Experts on the Rights and Welfare of the Child's General Comment No. 7 (2021) on Article 27 of the African Charter on the Rights and Welfare of the Child;³²
- OPSC Guidelines.³³

Key guidelines and model laws

- Caribbean Community, Model Policy Guidelines and Legislative Texts on Cybercrime/e-Crime;³⁴
- Council of Europe, Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment;³⁵
- International Centre for Missing and Exploited Children, Model Legislation on Combatting Grooming of Children for Sexual Purposes;³⁶
- International Centre for Missing and Exploited Children, Model Legislation on Child Sexual Abuse Material;³⁷
- Regional Plan of Action for the Protection of Children from All Forms of Online Exploitation and Abuse in the Association of Southeast Asian Nations 2021-2025;³⁸
- Southern African Development Community Model Law on Computer Crime and Cybercrime;³⁹
- Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, also known as the 'Luxembourg Guidelines';⁴⁰
- WeProtect Global Alliance's Model National Response Framework and the Global Strategic Response (2016).⁴¹

The Global Guide also draws on examples of legislative drafting from a range of countries. While the authors have endeavoured to verify the contemporaneity and accuracy of the Laws and Bills when developing and finalising the Global Guide, it is possible that these texts have undergone amendments which are not reflected in the Global Guide.



The international and regional conventions, guidelines and model laws have different legal authority under international law. Conventions create binding obligations for States parties while ‘soft law’ standards such as guidelines and principles, though not legally binding, can provide authoritative interpretations of treaty obligations or reflect binding customary international law. To reflect these varying levels of legal authority, the Global Guide adopts the following approach:

For obligations under international conventions which States have ratified, most notably the Convention on the Rights of the Child, the Global Guide recommends that States **‘ensure’** the incorporation of the standard in their national legal frameworks.

For regional conventions, which some States have ratified, and general comments and guidelines of treaty bodies, most notably the Committee on the Rights of the Child, the Global Guide recommends that States **‘should’** incorporate the standard into their national legal frameworks.

For other international and regional guidelines or principles and model laws, which are not necessarily explicitly mentioned in international or regional conventions but are regarded as good practice or are an emerging practice, the Global Guide recommends that States **‘consider’** the incorporation of the standard into their national legal frameworks.

In any event, stakeholders should familiarize themselves with relevant international and regional conventions to which their State is a party, as these create binding international legal obligations on their State. It is noted, however, that international and regional conventions contain the minimum standards for the protection of human rights, including children’s rights. States may therefore consider integrating higher standards for the protection of human rights which go beyond their minimum obligations under international and regional conventions.⁴²

The digital environment is also constantly evolving, raising new and emerging opportunities and risks for the protection of human rights, including children’s rights. International and regional standards are likely to evolve over time to reflect these developments. Therefore, consideration should be made to any amendments made to international and regional conventions, general comments and guidelines and model laws introduced after the date of this Summary and Global Guide and their implications for domestic legal reform.

Refer to this colour coding in the checklist on [page 18](#) to understand the varying levels of authority

Definitions and terminology

A potential challenge with drafting legislation on online child sexual exploitation and abuse is defining the acts which fall within its scope and agreeing on universally accepted terminology. The Committee on the Rights of the Child has recognized that terms used in international treaties and optional protocols, such as the use of the term ‘child pornography’ in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, are gradually being replaced.⁴³ The Committee on the Rights of the Child therefore encourages States parties and other relevant stakeholders ‘to pay attention’ to the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Abuse (the Luxembourg Guidelines) regarding the terminology to be used in laws and policies to combat the sexual exploitation and abuse of children.⁴⁴

The Luxembourg Guidelines provide some clarity and interagency consensus on the use of terms

relating to child sexual exploitation and abuse but, however, they do not reflect a global consensus of these terms.⁴⁵ In addition, the Luxembourg Guidelines mostly provide general descriptions rather than ‘legal’ definitions that can be adopted in legislation and do not necessarily capture the new or emerging means of online child sexual exploitation and abuse or terminology.

The Council of Europe’s Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment also address the challenges of defining online child exploitation and abuse and recommend that when drafting definitions of online child sexual exploitation and abuse, it is important to ensure that the terms are ‘where possible formulated in a technology-neutral manner, leaving room for the emergence of new technologies’.⁴⁶ For the purposes of this Summary and Global Guide, the terms used are defined as follows:

Child	A person under the age of 18 years. ⁴⁷
Child sexual abuse	The involvement of a child in sexual activity that they do not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent. ⁴⁸ Child sexual abuse does not necessarily involve physical contact and can take the form of non-contact abuse. ⁴⁹
Child sexual abuse material	Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes, ⁵⁰ including live-streaming. As recommended by the Committee on the Rights of the Child and in the Luxembourg Guidelines, the term ‘child pornography’ should be avoided to the extent possible and replaced by terms such as ‘child sexual abuse material’, ⁵¹ which is the approach taken in this Summary and Global Guide. The main reason for this approach is that the term ‘pornography’ does not appropriately reflect the abusive aspect of the issue and risks undermining its severity. ⁵²
Child sexual exploitation	This occurs when a child takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such) from a third party or the perpetrator. A child may be coerced into a situation of sexual exploitation through physical force or threats or be persuaded to engage in the sexual activity as a result of human or situational factors, such as a power imbalance between the victim and the perpetrator. ⁵³

<p>Child victim</p>	<p>A child who has been subjected to or experienced online child sexual exploitation and abuse.</p> <p>In accordance with the Luxembourg Guidelines, this terminology does not take into account how the child feels about her/his situation and is not intended to label the child. Rather, it is used to reflect the fact that the child has experienced or been subjected to online child sexual exploitation and abuse. Further, in the context of legislative drafting, particularly police investigations and judicial proceedings, this term is necessary in order for the child to be recognised by law as eligible for redress and to clarify that the child is not responsible and should not be blamed for the violence.⁵⁴ It is for these reasons why the Global Guide adopts the term ‘victim’ instead of ‘survivor’.</p>
<p>Digital environment / online</p>	<p>This encompasses ‘information and communications technologies, including digital networks, content, services and applications, connected devices and environments, virtual and augmented reality, artificial intelligence, robotics, automated systems, algorithms and data analytics, biometrics and implant technology’.⁵⁵</p>
<p>Information and communication technology or ‘ICT’ / digital technologies</p>	<p>A ‘diverse set of technological tools and resources used to transmit, store, create, share or exchange information. These technological tools and resources include computers, the Internet (websites, blogs and emails), live broadcasting technologies (radio, television and webcasting), recorded broadcasting technologies (podcasting, audio and video players and storage devices) and telephony (fixed or mobile, satellite, visio/video-conferencing, etc.)’.⁵⁶</p>
<p>Legislation</p>	<p>Legislation refers to primary legislation and secondary legislation. Primary legislation refers to legislation that is passed by the full legislative body of the State, usually in the form of a Law, a Code or an Act. Secondary legislation refers to delegated or subsidiary legislation usually passed by a minister or other competent body given power under the primary legislation. It generally takes the form of regulations, rules, directives or statutory guidance or guidelines.</p>
<p>Online child sexual abuse</p>	<p>The term online sexual abuse of children is widely used to refer both to sexual abuse of children that is facilitated by information and communication technologies (for example, online grooming) and to sexual abuse of children that is committed elsewhere and then repeated by sharing it online. This latter scenario occurs where, for instance, a child is sexual abused offline but photos or videos of the abuse (constituting child sexual abuse material) are then uploaded, distributed and accessed online.⁵⁷</p>

Online child sexual exploitation

The sexual exploitation of children facilitated by the use of information and communication technologies.⁵⁸ It includes ‘all acts of a sexually exploitative nature carried out against a child that have at some stage, a connection to the online environment’.⁵⁹ 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’;⁶⁰
- Sexual exploitation that is carried out while the victim is online (such as enticing/manipulating/threatening a child into performing sexual acts in front of a webcam);⁶¹
- Identifying and/or grooming potential child victims online with a view to exploiting them sexually, whether or not the acts that follow are carried out online;⁶²
- The distribution, dissemination, importing, exporting, offering, selling, possession of, or knowingly obtaining access to child sexual exploitation material online, even if the sexual abuse that is depicted in the material was carried out offline.⁶³

A Glossary of other terms used in this Summary are included in the [Annex](#).

Overview of the guide

The Global Guide contains 11 parts. The introduction in Part 1 sets out the challenges faced by governments and the duty on the State to ensure that adequate legislation is in place to prevent, counter and address online child sexual exploitation and abuse. The introduction also sets out the structure and the major legal instruments that form the framework for the Global Guide and provides definitions and terminology.

Part 2 sets out the key standards in a consolidated checklist which States should address in their legislation. It is important to emphasise, however, that States are encouraged to integrate higher standards for the protection of human rights which go above and beyond their minimum obligations under international and regional conventions.⁶⁴

States are encouraged to integrate higher standards for the protection of human rights which go above and beyond their minimum obligations under international and regional conventions.

Part 3 deals with evidence-based legislation and the need to ensure that the State has high quality data on the trends and prevalence of child sexual exploitation and abuse to assist it in drafting legislation that focuses on children's lived experiences and the 'harms' caused by online sexual exploitation and abuse. The Part provides examples of good practice which States can draw on including mechanisms for integrating the voices of children, particularly those of victims of online child sexual exploitation and abuse.

Part 4 provides guidance on the legislative reform process, including potential entry points, techniques for engaging legislators, policymakers and other key stakeholders.

Part 5 reviews methods of legislative reform, and the framework within which new legislation can be introduced. This may be through a criminal justice

framework, a cybersecurity law or a child rights or child protection law. The Part considers some examples and the opportunities and challenges associated with these different strategies.

The criminalization of online sexual exploitation and abuse forms part of a State party's obligation to protect children under Article 34 of the Convention on the Rights of the Child, while the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, requires States parties to ensure as a minimum that certain acts and activities are criminalized. **Part 6** sets out the offences relating to online sexual exploitation and abuse which States parties are either required to integrate into their legislative frameworks or which are recommended under international and regional standards. It covers offences relating to the production, offering, distribution, dissemination, importing and exporting of child sexual abuse material, accessing or interacting with child sexual abuse material online, online sexual extortion of a child, online grooming of a child, offences to account for new or emerging issues such as 'cyberflashing' and 'cyberstalking' and complex issues such as self-generated sexual material.

Part 7 addresses the duties and responsibilities of businesses and the private sector in protecting children from online sexual exploitation and abuse. Businesses providing content rights, connectivity, user interfaces and online services (for example, e-commerce, entertainment, search services, social and community platforms, cloud and other e-services), are key stakeholders in the digital environment and are integral to protecting children from online child sexual exploitation and abuse. Enabling platforms, advertising services and managed bandwidth and content delivery providers also play an important role. The part emphasises the need to place child rights at the core in developing legislation and examines approaches to online safety in recent legislative reforms and proposals in Australia and the UK, respectively. It also addresses issues such as age assurance, notice and takedown

procedures and the detection, blocking and removal of child sexual abuse materials.

The investigation and prosecution of online child sexual exploitation and abuse raises a number of novel procedural and evidential issues due to the electronic nature of the evidence, the particular problems presented by the obtaining, retention and storage of evidence and the fact that the victim may be in a different jurisdiction to the perpetrator or even to the jurisdiction that identifies and reports the exploitation and abuse. **Part 8** deals with powers and procedures that need to be put into legislation, and the use of undercover investigations, child abuse image databases and obtaining evidence from other jurisdictions through mutual legal assistance.

Article 39 of the Convention on the Rights of the Child requires States parties to 'take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim.' The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography further provides

that States parties shall ensure that all child victims have access to adequate procedures to seek compensation for the offences committed against them. **Part 9** examines what should be provided in terms of support services and how children can access compensation through the justice system or State-run compensation schemes, as well as their limitations.

Part 10 of the Guide outlines the important role that independent monitoring and regulation of the digital environment plays in protecting children from online sexual exploitation and abuse and the need to integrate children's rights to safety in the digital environment into the legislative mandate and activities of the State's national human rights institution for children.

Finally, **Part 11** deals with the implementation of primary legislation to address online child sexual exploitation and abuse, the need to develop secondary legislation to ensure effective implementation and to raise awareness and educate, particularly children, parents, carers and law enforcement authorities, on its contents.



Minimum and recommended standards

The use of new, rapidly changing digital technologies to sexually exploit and abuse children, the wide reach of online services and the fact that such exploitation and abuse may involve victims and perpetrators from different jurisdictions, all pose challenges to States seeking to protect their children. Many States have yet to put in place or update the wide-ranging legislation that is required to deal with this phenomenon. The protection of children from online sexual exploitation and abuse through legislative measures requires *at the very least*:

- criminalization of online sexual exploitation and abuse and enforcement of those laws;
- new procedures for investigation, storage and preservation of electronic evidence;
- the regulation of businesses in the digital environment;
- child protection services for victims of online sexual exploitation and abuse;
- access to redress for child victims; and
- independent monitoring of children’s rights to protection in the digital environment.

States also need to legislate for new infrastructures, such as a central contact point to receive referrals, leads and tips regarding suspected cases (including CyberTip referrals from the National Center for Missing and Exploited Children), specialist police and prosecutorial units to follow up referrals, as well as connection to a child abuse image database, access to forensic laboratories, the provision of support services for victims, as well as training of police, prosecutors, judiciary and other relevant professionals and practitioners.

In addition, States will need to develop secondary legislation to ensure implementation of the newly developed laws.

In the context of many low- and middle-income countries, where fundamental child protection and justice capacities may be constrained, there is a need to strengthen basic structures and systems for protecting children from violence and integrate the specificities of responding to online child sexual exploitation and abuse within these broader frameworks.

The following page provides a consolidated checklist of minimum and recommended standards to strengthen legislative frameworks to protect children from online child sexual exploitation and abuse.



This consolidated checklist should be read in conjunction with the Global Guide, which provides detail about each of the minimum and recommended standards. The Global Guide sets out the relevant international and regional conventions, general comments and guidelines of treaty bodies, model laws and examples from different jurisdictions relating to each standard. The Global Guide is available at <https://www.unicef.org/reports/legislating-digital-age>.

Consolidated checklist

See the [key](#) on page 10 for an explanation of the colour coding

Evidence-based legislation

- High quality and disaggregated data on all forms of child sexual exploitation and abuse **should** be collected.
- Ensure** data on the trends and prevalence of online child sexual exploitation and abuse informs the development of primary and secondary legislation.
- Ensure** children and young people’s views are considered as a key element of the development of legislation related to online child sexual exploitation and abuse.
- Civil society expertise, including from NGOs, industry and academia, **should** be involved in the development of legislation related to online child sexual exploitation and abuse.
- Multi-sector monitoring bodies **should** share information and inform the development of policy and practice.
- Existing legislation should be monitored and evaluated to **ensure** it complies with international and regional standards and best practice.

Stakeholder engagement and catalysts for legal reform

- Advocacy and other communications strategies **should** raise awareness of child sexual exploitation and abuse including forms facilitated by the use of information and communication technologies, based on up-to-date research and information
- Links to broader and/or related initiatives concerning the protection of children, such as movements to address violence against women and/or children, or broader cybersecurity or digitalisation initiatives, **should** be identified and used as entry points for stakeholder engagement and legislative reform
- Collaboration with key strategic stakeholders within government **should** be strengthened in order for government to take the lead in the development of policy and legislative reforms
- Consider** leveraging the influence and leadership of regional and international inter-governmental organizations to promote national legal reforms

Methods of legislative reform

- The method of legislative reform (amending an existing law, developing a new law or a combination of both) and the thematic framework (criminal code, cybercrime, child protection, online safety, and/or other) in which to introduce the reforms **should** be identified
- Consequential amendments to other laws **should** be identified

Criminalization of online child sexual exploitation and abuse

- Ensure** that a child is defined as any person under the age of 18 years
- Ensure** the inclusion of a comprehensive definition of sexual abuse and exploitation of children, including where it is facilitated with the use of information and communication technologies
- Ensure** that presumed consent by the child to the abuse or exploitation is null and void

Adolescents who are close in age, maturity and development **should not** be criminalized for consensual and non-exploitative sexual activity, provided that there is no element of coercion, abuse of trust or dependency between the adolescents, regardless of whether or not it is facilitated by the use of information and communication technologies

Ensure that the law includes specific crimes relating to producing, offering, distributing, disseminating, importing, exporting, interacting with, accessing, possessing, and producing or disseminating material to advertise, child sexual abuse material, including live-streaming of child sexual abuse

A child **should not** be held criminally liable for the generation, possession, or voluntary and consensual sharing of sexual content of him/herself, solely for own private use, but instead States **should**:

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

Sexual extortion of children **should** be criminalized, regardless of whether or not it is facilitated by the use of information and communication technologies

Grooming of children **should** be criminalized, regardless of whether or not it is facilitated by the use of information and communication technologies

Ensure the criminalization of attempts, complicity and participation in offences contained within the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and consider criminalizing attempts, complicity and participation in other online child sexual exploitation and abuse offences

Consider including a specific offence of intentionally causing a child, for sexual purposes, to witness sexual abuse or sexual activities through the use of information and communication technologies, including where the child is not required to participate (subject to the standards above on self-generated sexual content)

Consider including other specific crimes relating to online child sexual exploitation and abuse, such as 'cyberflashing' or 'cyberstalking'

Consider introducing universal jurisdiction for all offences of child sexual exploitation and abuse, irrespective of whether or not they are facilitated with the use of information and communication technologies, and removing any requirement for 'double criminality' for such offences

Child sexual exploitation and abuse offences **should** be recognized by law as extraditable offences, regardless of whether or not they are facilitated by the use of information and communication technologies

Extradition **should** not be conditional upon the existence of an extradition treaty with the other concerned State(s)

Law enforcement authorities **should** be required to take suitable measures to submit the case to its competent authorities for the purpose of prosecution in the event that the alleged perpetrator is not extradited on the basis of the alleged perpetrator's nationality

The statute of limitations in respect of offences of child sexual exploitation and abuse, irrespective of whether or not it is facilitated by the use of information and communication technologies, **should** be removed

Ensure minimum penalties/sanctions for adult perpetrators and enhanced penalties/sanctions for aggravating factors including young age of the victim

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

Duties and responsibilities in relation to business

Duties and responsibilities of businesses **should** be approached using a rights-based approach, within the broader framework of the United Nations Guiding Principles on Business and Human Rights

Legislation to regulate businesses conduct, services and design of digital technologies **should** place children's rights at the core

Consider requiring businesses to adopt age assurance mechanisms, consistent with data protection and safeguarding requirements, to prevent children's access or exposure to pornography and other illegal or age-restricted sexual content

Consider introducing requirements for businesses to establish 'notice and takedown' procedures, including a requirement to block or remove child sexual abuse material notified to it by a trusted flagger recognized by law

Consider introducing provisions into relevant laws to enable businesses to detect proactively child sexual abuse material accessed or stored on their products and services for the purpose of blocking or removing such materials, provided that the law requires such measures to be legal, necessary and proportionate and the least intrusive option available, without impairing the essence of the individual's right to privacy

Consider making it mandatory for businesses to report online child sexual abuse material to law enforcement or other designated reporting body

Ensure the availability of a range of criminal, civil and administrative sanctions for legal persons for offences relating to online child sexual exploitation and abuse and violations of obligations to protect children from such harms

Procedures and methods of investigation of online child sexual exploitation and abuse

A point of contact **should** be designated in the legislation to receive referrals, leads and tips regarding suspected cases and to provide immediate assistance for the purpose of investigations or proceedings concerning online child sexual exploitation and abuse offences

A national specialized unit **should** be established with an explicit mandate to lead, support and coordinate investigations as well as specialist law enforcement investigation units at sub-national level dedicated to investigating online child sexual exploitation and abuse

Consider introducing a legal requirement for staff to have minimum qualifications and complete pre-service and regular in-service training before working on child protection and child sexual exploitation cases, the details of which may be elaborated in secondary legislation or determined by the relevant professional regulatory authority or training authority

Legislation **should** establish the powers and procedures for undertaking criminal investigations of online child sexual exploitation and abuse

Undercover investigations **should** be permitted but regulated by law and comply with international human rights standards

Ensure that it is possible to convict an alleged perpetrator of attempting to commit a child sexual exploitation and abuse offence, even where in fact it would have been impossible for the full offence to have been committed (to cover cases where undercover law enforcement pretends to be a child, another offender ("customer") or co-conspirator)

Legislation **should** allow law enforcement to 'triage' cases once reported

Ensure that legislation contains powers for law enforcement to enter a building and seize/remove stored computer data

Ensure that child victims found during search and seizure operations fall within the scope of child protection laws and are referred to the designated child protection authority

Standard operating procedures and inter-agency joint working protocols **should** be put in place to ensure effective coordination between law enforcement, child protection authority and other relevant agencies in safeguarding the child

Consider developing standard operating procedures for the police to assist investigators on the policies and procedures to be followed when undertaking search and seizure to ensure the admissibility of evidence in a court of law

Legislation **should** be adopted to enable competent authorities to order or obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, particularly where there are grounds to believe that the computer data is particularly vulnerable to loss or modification

Legislation **should** set out provisions relating to the 'chain of custody' of digital data and devices to maintain the integrity of evidence

Consider making formal arrangements to access secure international (and particularly Interpol) image databases and/or developing a national database

Legislation **should** set out rules on the admissibility of digital and forensic evidence

State law enforcement and criminal investigation and prosecution authorities in the State **should** cooperate and provide mutual legal assistance to equivalent bodies in other States to the widest extent possible for the purposes of investigating and prosecuting online sexual exploitation and abuse of children, including with regard to obtaining evidence, and to identifying and protecting child victims

Ensure that mutual legal assistance with another State is not conditional on the existence of a treaty for mutual legal assistance with that State

Victim support, rehabilitation, reintegration and redress

Ensure child friendly practices and support are applied to child victims and witnesses in the justice system

Rehabilitation and reintegration services **should** be strengthened to address the unique needs of child victims of online sexual abuse and exploitation

Services to prevent further victimization **should** be available to child victims and their families

Ensure specialist training on the digital context is provided to the workforce that responds to child victims of sexual abuse and exploitation

Collaboration and coordination between the different stakeholders involved in child sexual exploitation cases and child protection services **should** be formalized

Measures that ensure sufficient financial resources are allocated annually to victim support services **should** be introduced

Consider establishing a helpline that provides detailed information and referrals to the relevant service provider

Consider establishing clear procedures for the swift removal of child sexual abuse materials

Differing forms of and platforms for compensation **should** be offered to child victims

Independent monitoring and regulation

Ensure that children’s rights in relation to the digital environment, including their rights to protection, are integrated into the legislative mandate and activities of the State’s national human rights institution for children

Children’s online protection **should** be integrated within the mandate of independent regulatory systems for the digital environment, which **should** work in collaboration with other monitoring bodies, particularly the national human rights institution, to protect children from online child sexual exploitation and abuse

Consider the establishment of an independent regulator for online safety, including the protection of children from online sexual exploitation and abuse

Implementation of legislation

Secondary legislation, including Standard Operating Procedures and Guidelines, and other authoritative guidance to give effect to primary legislation **should** be developed to combat online child sexual abuse and exploitation

Ensure children are educated on their rights and responsibilities in the digital environment, including on the risks of online sexual exploitation and abuse, safe online practices and available support and reporting mechanisms

Ensure parents and caregivers are educated on the digital environment, including its benefits, the risks of online sexual exploitation and abuse, safe online practices and available support and reporting mechanisms

Professionals who work with and for children **should** receive training on the identification of children at risk, support services and reporting mechanisms, and opportunities and risks in relation to the digital environment, including different forms of technology

Law enforcement professionals **should** receive training in best practice that is contextualized to the countries’ legal framework for the effective investigation and prosecution of online offences

Ensure sufficient financial and human resources are allocated annually to give effect to legislation designed to combat online child sexual abuse and exploitation

Looking forward

Putting in place the many building blocks necessary to ensure effective protection from online sexual abuse and exploitation globally is a challenge. It is a challenge that requires:

- the political will to address it;
- the introduction of new legislation to criminalize and regulate the online environment to keep children safe;
- the establishment of specialist infrastructure and specialist capacity building in law enforcement and a range of other bodies;
- public awareness raising;
- ongoing training for those implementing the law; and
- an effective child protection system for the victims of child sexual abuse and exploitation.

Adequate financial and human resources are also essential. Putting in place such measures globally will clearly take time.

The aim of the Global Guide is to provide a starting point: to set out the essential foundations of the building blocks and to provide examples and assistance on how and where to start. Most governments have taken initial steps but those who have advanced further can provide valuable help and insight to others just starting on the process, particularly in relation to some of the more difficult debates relating to the nature and content of necessary legislation, privacy and protection and the responsibility of the online business sector to keep children safe. International cooperation is also key, given the multi-jurisdictional nature of online sexual exploitation and abuse. New instruments that make it easier for States to access data from one another, as proposed by the new Second Additional Protocol to the Budapest Convention for example, are to be welcomed.⁶⁵

International cooperation through the provision of databases and training on investigation and new technologies has increased the ability of law enforcement in an increasing number of countries to prevent and prosecute offenders. At present, however, such cooperation has not extended to all countries and there is an urgent need for cooperation to be extended to ensure that there is no possibility of impunity for those that carry out child sexual abuse or exploitation or those that facilitate it, whether knowingly or unintentionally.

Addressing online child sexual abuse and exploitation also requires a well-resourced child protection system that can provide support and services to children that cooperates and works closely with national law enforcement.

The digital environment is ever changing such that new ways and measures to prevent online child sexual abuse and exploitation need to be developed to address this. There is a continuing need for ongoing international and regional research on the impact of the digital environment on children to assist national governments to craft the necessary policy, legislative and practice responses.

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Annex: Glossary

Artificial Intelligence (AI)	The simulation of human intelligence in machines, through replicating traits associated with a human mind, such as learning and problem-solving. Machine learning, a subset of AI, refers to when computer programs automatically learn from and adapt to new data without human assistance. Deep learning techniques facilitate automatic learning through the absorption of data such as text, images or video. ⁶⁶
Bandwidth	A measure concerning 'the amount of data that can be transferred from one point to another within a network in a specific amount of time. Typically, bandwidth is expressed as a bitrate and measured in bits per second (bps)'. Bandwidth is vital factor in determining the quality and speed of a network. ⁶⁷
Content	All multi-media content found on online platforms, such as text, images, audio and video files etc.
Content rights	The ownership rights, i.e. copyright or other Intellectual Property rights, to content. ⁶⁸
Cyberbullying	Bullying (i.e. repeated behaviour aimed at scaring, angering or shaming) a person with the use of digital technologies. ⁶⁹
Cyberflashing	The unsolicited sending of images (including video) of genitals with the use of digital technologies.
Cybersecurity	Protecting against the criminal or unauthorized use of electronic data, or from other cyber related attacks.
Digital environment	Information and communications technologies, including 'digital networks, content, services and applications, connected devices and environments, virtual and augmented reality, artificial intelligence, robotics, automated systems, algorithms and data analytics, biometrics and implant technology'. ⁷⁰
Digital technologies	See 'Information and Communication Technologies'.
E-commerce	The buying and selling of goods and services or the transmitting of funds or data over the internet. ⁷¹
Helplines	Helplines provide confidential advice and assistance to callers, often acting as points of referral to other service providers.
Hotline	A telephone line that is able to provide immediate assistance, typically used for emergency interventions. In the context of the online sexual abuse of a child, this could entail contacting the police or securing the removal of a harmful content from a digital platform.
Information and communication technology / digital technologies	A 'diverse set of technological tools and resources used to transmit, store, create, share or exchange information. These technological tools and resources include computers, the internet (websites, blogs and emails), live broadcasting technologies (radio, television and webcasting), recorded broadcasting technologies (podcasting, audio and video players and storage devices) and telephony (fixed or mobile, satellite, visio/video-conferencing, etc.)'. ⁷²

Internet protocol / 'IP' address	A 'unique address that identifies a device on the internet or a local network'. ⁷³
Internet service provider	An organization that provides services for accessing and using the internet. ISPs may also provide other services such as email services, domain registration, web hosting, browser services and software packages. ⁷⁴
Live streaming	The transmission of a live video or audio coverage using digital technologies.
Notice and takedown	A 'company's procedures for receiving reports that may come from customers, employees, law enforcement or hotlines that child sexual abuse material has been discovered on the company's networks or services, and for preventing further access and distribution'. ⁷⁵
Online services	A 'diverse segment covering the range of consumer and business services provided over the internet through browsers or application platforms. It encompasses much of what most consumers probably perceive to be the actual 'internet''. ⁷⁶
Personal data	Any information relating to an identified natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. ⁷⁷
Processing (of personal data)	Any 'operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction'. ⁷⁸
Retention (of data)	The storing of data for a specific period of time. Data retained can be non-content data (i.e. IP address, date, duration etc.) or content data (i.e., the text of users' emails or messages, images, or videos).
Sexting	Self-generated sexual content sent via mobile phone text messaging or other online messaging to others. ⁷⁹
Traffic data	Data relating to a communication indicating the communication's origin, destination, route, format, time, date, size, duration or type, of the underlying service. ⁸⁰
Trusted flaggers	Individuals, government agencies or NGOs which have particular expertise and responsibilities for tackling illegal content online.
User interface	The 'point of human-computer interaction and communication in a device'. This includes display screens, keyboards, a mouse, the appearance of a desktop, as well as the way a user interacts with an application or a website. ⁸¹
Webcam	A 'digital camera' that is 'connected to a computer to stream live video in real time'. A webcam is usually connected by a cable to a computer or built into computer hardware. ⁸²

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To read the Global Guide, visit:
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