An exploratory research study on knowledge, attitudes and practices of ICT use and online protection risks by adolescents in Namibia conducted in 2016 showed that 68% of respondents reported having seen sexual content they did not wish to see, while 31% had been sent sexually explicit images of people they didn’t know, and 29% had seen sexual content including children.
1. INTRODUCTION

This Advocacy Brief provides a series of recommendations on how to address the legislative gaps and weaknesses in the current legislative framework dealing with child pornography\(^1\) in Namibia.\(^2\)

The discussion on strengthening child online safety comes at an opportune time as Namibia is currently developing legislation in the field of child protection. Namibia in 2015 adopted the Child Care and Protection Act\(^3\), which provides comprehensive protection from violence, abuse and exploitation, including trafficking, of all children in Namibia. The Act is expected to enter into force in 2016. The Child Care and Protection Act, however, provides only minor protection from child pornography and does not define the term or provide for a comprehensive catalogue of offences.

This Advocacy Brief locates the discussion on child pornography within a broader framework of child protection by acknowledging the risks and potential abuse of internet based communication technology and its impact on child safety. It provides an overview of international law dealing with the issue of child online safety, followed by an analysis of the gaps in current legislation in Namibia. The Advocacy Brief concludes with a series of recommendations, drawn from international best practice, on how to strengthen the existing legislative framework on child pornography in Namibia. The recommendations proposed are in line with international standards and seek to address the challenges in the regulation of online child pornography.

2. PROBLEM STATEMENT

Globally there is a debate on the term “child pornography” as opposed to the more broadly accepted term “child sexual abuse material”. Child pornography may create the impression that “pornography” and “child pornography” are closely related and hence implies that the child could give consent to “child pornography”. However, “child pornography” is always considered child abuse material and therefore no consent can be given. Nevertheless, in international law and also in many national legislations, the term “child pornography” is still prevalent. Therefore, this legal advocacy brief will use the term “child pornography.”

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\(^2\)UNICEF Namibia, Regulation of Child Online Sexual Abuse. Legal Analysis of International Law and Comparative Legal Analysis, 2016.

\(^3\)Child Care and Protection Act, Act No. 3 of 2015.

\(^4\)Government of the Republic of Namibia, A Namibia Fit for Children. 25 years of Progress, 2015.

\(^5\)Government of the Republic of Namibia, Namibia Demographic and Health Survey, 2013.


Approximately 45% of the Namibian population is below the age of 18 years\(^4\), who stand to benefit from measures to address child safety.

Research conducted in Namibia has shown that violence against children is a significant problem in the country. 31.5% of girls aged between 15 and 19 have experienced physical violence since the age of 15\(^5\); one fifth of all learners reported to have been physically forced to have sexual intercourse, one out of every 10-14 year olds have experienced one or more forms of sexual abuse.\(^6\) An exploratory research study
on knowledge, attitudes and practices of ICT use and online protection risks by adolescents in Namibia\(^1\) conducted in 2016 showed that 68% of respondents reported having seen sexual content they did not wish to see, while 31% had been sent sexually explicit images of people they didn’t know, and 29% had seen child sexual abuse material online. These findings reveal that violence and exploitation of children in Namibia frequently have an online component and contribute to creating an unsafe environment for children.

Emerging issues in the field of child protection are closely connected to the rise in accessibility and usage of information and communication technologies (ICTs). The use of technology and the accessibility to internet services have increased worldwide. There is an acknowledgement of the need to address the upcoming dangers related to technology which impose new risks for the exploitation and abuse of children, as perpetrators exploit the use of modern communication technologies to facilitate child sexual abuse. Internet access and usage offers many benefits for children and youth including: building professional contacts and friendships, learning and information gathering and the opportunity to exchange ideas with people from all over the world. On the other hand, violence and abuse are no longer restricted to homes, schools and communities, but can also happen online: scale, scope, opportunity and forms are different. Therefore, states have to develop tailor-made instruments to tackle the specific dangers related to the use of ICTs by children. This includes exploring new tools and software to protect vulnerable children and detect those involved in online child sexual abuse.

Namibia has signed and ratified various international instruments, which compel states to take action to protect children from various forms of exploitation.

### Table of International Instruments dealing with states obligations to protect children

<table>
<thead>
<tr>
<th>INSTRUMENT</th>
<th>DATE OF RATIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography (OPSC)</td>
<td>16 Apr 2002</td>
</tr>
<tr>
<td>International Labour Organization (ILO) Convention No. 182 (Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour)</td>
<td>15 Nov 2000</td>
</tr>
<tr>
<td>African Youth Charter</td>
<td>17 Jul 2008</td>
</tr>
</tbody>
</table>

3. INTERNATIONAL INSTRUMENTS DEALING WITH CHILD SAFETY

**“Child pornography means 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.”**

3.1 Convention on the rights of the Child

Art 34 of the CRC deals with the protection of children from all forms of sexual abuse and sexual exploitation. According to Art 1 CRC, a child is defined as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Art 34 CRC does neither describe the exact measures to be undertaken by state parties nor provide a definition of the term.
“child pornography”. However, it has to be noted that the most important international children’s rights instrument explicitly mentions child pornography and identifies it as sexual exploitation, in addition to requiring member states to undertake various measures to combat child pornography.

3.2 Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC)

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC) contains a specific provision on child pornography providing greater clarity on the provision on child sexual exploitation in the CRC.

Definition of child

The term “child” is not defined in the OPSC, but as it is an optional protocol to the CRC, it can be referred to the respective provision in the CRC.8

Definition of child pornography

Art 2 c) OPSC defines child pornography as follows:

“Child pornography means 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.”

This definition is very comprehensive as it is not limited to visual depiction, but also includes non-visual depictions, such as text and sound. However, the definition does not cover virtual child pornography or the case in which the actor is made to appear to be a minor.9 Virtual pornography is the production of morphed or blended artificially created images of children involved in sexual activities.10 The realization of such images creates the illusion that children are actually involved. The term “simulated” does not aim to cover virtual pornography, it rather refers to the sexual conduct, which can be real or simulated.

This definition covers most cases of child pornography. However, nude or semi-nude pictures in sexually suggestive postures but not showing the genitals of the child (“erotic posing”) are not covered by the current definition. The term “erotic posing” hence includes deliberately posed pictures of fully, partially clothed or naked children in sexualised or provocative poses, which do not show the sexual parts of a child. In contrast, “explicit erotic posing”, which describes pictures emphasising genital areas, where the child is either naked, partially clothed or fully clothed, are covered by the provision.11 Erotic posing, it is argued, should also be included in the definition as it is also child exploitation: a child should never be the object of sexual satisfaction.12

Art 3 (1) (c) of OPSC defines the conduct which state parties should criminalise:

“Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

[...] Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.”

This provision covers a variety of actions related to child pornography. However, the mere possession without the intention of using the material for the purposes of producing, distributing, disseminating, importing, exporting, offering or selling the material are not covered by the provision. Furthermore, the language used is unclear in cases where knowingly viewing/accessing child pornography without downloading it (e.g. streaming, life streaming), would be...
covered by this definition. These offences are not explicitly included in the catalogue. One could argue that viewing/accessing child pornography can be subsumed under the term “possession” due to the fact that viewing pictures online includes the copying of images into computer memory and/or temporary internet cache files or the website automatically initiates a downloading process – often without the knowledge of the offender. However, in some cases, where the received information is not buffered but is discarded straight after transmission due to the technical configuration of the streaming process and is therefore neither copied nor saved, there is technically no “possession” of child pornography. Hence, these cases are not covered by the definition.

Obligations on states to enact measures to protect children

States parties may undertake any action or adopt any measure necessary to ensure full protection of children. The Committee on the Rights of the Child likewise encourages the state parties to prohibit mere possession of child pornography. Member states should have compelling interests in protecting the physical and psychological wellbeing of minors and in destroying the market for the exploitative use of children by penalising those who possess and view the offending materials. However, state parties are not obliged to undertake these measures as the recommendations of the CRC Committee do not have the same binding authority as the CRC itself. The statements of the CRC Committee should be taken serious though as they serve as guidelines for the highest standard of child protection and should therefore be implemented at the earliest convenience.

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography provides for a detailed regulation on child pornography. As Namibia ratified this Optional Protocol, the provision on child pornography is binding for Namibia and serves as a minimum standard for the national legislation in this field.

3.3 African Charter on Rights and Welfare of the Child (ACRWC)

Art 27 ACRWC provides for a provision on the protection of children from all forms of sexual exploitation and sexual abuse. According to Art 2 of the ACRWC, the term “child” shall apply to all persons under the age of 18. The wording of Art 27 ACRWC is very similar to Art 34 CRC and hence, the explanatory notes regarding Art 34 CRC (above) have relevance.

3.4. Key Lessons from non-binding international law/other jurisdictions

Even though the OPSC provides for a broad criminalisation of child pornography, other international and regional instruments are exceeding these standards. Recommendations in this Advocacy Brief therefore take into account conventions which have not been ratified by Namibia (yet). Even though these instruments have not been signed/ratified by Namibia, they provide valuable guidelines to highly harmonise and apply an internationally comparable standard to national legislation. This is particularly significant as cybercrime tends to be a transnational crime, and state parties are dependent on international collaboration in order to guarantee comprehensive investigation and prosecution of these crimes. This collaboration is significantly easier when the national legislation is harmonised and aligned with international standards.

a. Definition

In some international and regional conventions, child pornography is not only defined by depicting a child and therefore a person below the age of eighteen years, but also includes the depiction of persons who appear to be children or who are represented as children (virtual pornography).
The reason for the inclusion of virtual pornography in the child pornography definition is that virtual images may also be traded as real images, driving the market for child pornography and could solicit the response of paedophiles. Virtual pornography can also be used to force children into participating in such acts. Furthermore, technology makes it almost impossible to distinguish between a real child and a morphed image, which also makes the prosecution of child pornography more difficult (see above). This argument is also applicable for pornography depicting persons who appear to be minors. As the victims of child pornography are unknown in the most cases, the prosecution agency might struggle to prove that – at least not in obvious cases – the depicted person is a minor. Hence, it is highly recommendable not to limit the definition to actual minors.

b. Catalogue of Offences

As already discussed above, the OPSC does not criminalise the mere possession and accessing of child pornography as defined in Section 2 c) OPSC.

In order to provide for a comprehensive criminalisation of child abuse material for the “private” use and to keep track with recent development such as the coming up of streaming services, other regional instruments included the mere possession, and obtaining access of child pornography, in their catalogue of offences. 16

The OPSC provides for a broad criminalisation of child pornography, however, other international and regional instruments which have not been ratified by Namibia are exceeding these standards. Namibia should aim to live up to the highest standard of protection provided for by international law as only a comprehensive legislation serves the best interest of the child.

In some international and regional conventions, child pornography is not only defined by depicting a child and therefore a person below the age of eighteen years, but also includes the depiction of persons who appear to be children or who are represented as children (virtual pornography).

16Art 9 Budapest Convention (“possessing”); Art 20 Lanzarote Convention (“possessing”, “knowingly obtaining access”).
4. NAMIBIAN LEGISLATIVE FRAMEWORK

4.1. Constitution of Namibia

Art 144 of the Namibian Constitution states that international agreements binding upon Namibia under the Constitution shall form part of the law of Namibia. This means that both national and international law ultimately regulate the behaviour of the individual and hence do not require the enactment of national legislation in order to make international law nationally applicable. However, it is important that Namibia enacts national legislation which is consistent with international law. First of all, in cases of conflict between international and national law, national legal orders take a subordinate position, and hence Namibia should ensure that national legislation is consistent with international standards in order to avoid a conflict in legal interpretation. Furthermore, international treaties are largely drafted in vague and general terms and hence might require legal specification.

With regard to children’s rights, Art 15 (2) of the Namibian Constitution states that:

“Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development.”

Child pornography is deemed to be harmful to every child’s physical, mental, spiritual, moral and social development and therefore, children are entitled to be protected from this form of sexual exploitation under the Namibian Constitution. Child pornography also violates the child’s right to liberty (Art 7), dignity (Art 8), privacy (Art 13), and expression (Art 21 (1) a Namibian Constitution). According to Art 5 Namibian Constitution, it is the duty of the Executive, Legislative and Judicative to uphold the freedoms and rights enshrined in the Namibian constitution. With regard to child pornography, this means that the Legislature is obliged to enact legislation to protect children’s rights and comprehensively criminalise child pornography, the Executive is required to ensure that state institutions have the requisite skills and resources to investigate such crimes and the Judiciary, the power to prosecute offenders.

A review of existing legislation in Namibia indicates limitations in the current legislative framework dealing with sexual exploitation of children and child pornography in particular and argues for a comprehensive provision on child pornography in order to ensure the best interests of the child.

The Namibian Constitution obliges the state to uphold the fundamental rights of children and protect them from sexual exploitation. This means that the state has to enact comprehensive legislation in the field of child pornography and ensure its enforcement.

4.2. Current legal responses dealing with child exploitation and abuse

There are a number of legal instruments in place which deal with the issue of child exploitation in Namibia.

Child Labour

Section 3 of the Labour Act (Act No. 11 of 2007) regulates the prohibition and restrictions of child labour, but does not provide for a definition of the term “child pornography” or a catalogue of offences.

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Statutory rape of a minor

Section 14 of the Combating of Immoral Practices Act, Act No. 21 of 1980, and Section 2 (2) d) of the Combating of Rape Act, Act No. 8 of 2000, criminalise sex with minors under certain circumstances, but both laws do only criminalise the sexual act per se. Therefore, filming or taking pictures of this act, which would be considered child pornography, is not covered by these Bills.

Prohibition of “undesirable publications”

The Publications Act (Act No. 42 of 1974) (abbr.: PA) provides control over various publications. Section 8 prohibits the production, distribution, importation or possession of certain publications or objects. This requires that the publication is either “undesirable” or is prohibited under Section 9 (2) PA (“undesirable publication”). Section 27 (2) PA criminalises the exhibition, publication and possession of prohibited or not approved films. Section 47 defines the term “undesirable” as – amongst others - offensive or harmful to public morals. Even though child pornography can be subsumed under this term, there is no clear definition of the term “child pornography” as required by international law and hence the Publications Act does not meet the international standards.

Crimen injuria

Furthermore, a child pornography offender could be charged with crimen injuria, which requires the impairment of the dignity of another person and that this impairment is considered serious, unlawful and intentional. However, this offence does not provide for a clear definition of the term “child pornography” and does hence not meet the international standards.

Assault

Assault could allow for the prosecution of a child pornography offender, but is limited to the actual producer of child pornography, which actually abuses the child. Therefore, it does not cover the person distributing or possessing child pornography as this person does not cause direct physical harm to the child.

Defamation

Criminal defamation cannot serve as basis for a prosecution in a child pornography case, as the intention of child pornography offenders is not to injure the reputation of the child, but to evoke sexual arousal.

As stated above, the current legislative measures do not provide for a definition and catalogue of offences in line with international standards and hence, the current legislative framework requires further legislative amendment.

Namibia lacks a comprehensive legislative framework for the criminalisation and prosecution of child pornography offences. Therefore, a comprehensive legislation has to be put in place which is in line with the highest international standards.

4.3. New Legislative Developments in Namibia

In order to respond to the current gaps in the legislative framework, Namibia put in place (draft) legislation which responds to the need of a comprehensive regulation of child sexual abuse online.

4.3.1. Childcare and Protection Act (Act No 3 of 2015)

The Child Care and Protection Act, Act No. 3 of 2015 (CPPA), has already been enacted but is not yet operational due to the pending Regulations of the CCPA. Section 234 (1) (d) CCPA regulates child pornography as follows:

“A person may not induce, procure, offer, allow or cause a child to be used for purposes of creating child pornography, whether for reward or not.”

The CCPA does not define the term “child pornography”. The provision itself is too narrow as it only criminalises the creation of child pornography and various support actions to the creation of child pornography, but fails to criminalise distributing, disseminating, importing, exporting, offering, selling and possessing of child pornography.

So far, in the Draft Regulations of the CCPA there is no reference to child pornography. Even though such a reference is possible as the CCPA is making provision for child pornography, the Draft Regulations CCPA can only specify what is already in the CCPA, but not add substantive content which has no “hook” in the CCPA. Hence, a definition of child pornography in the Draft Regulation CCPA might be unusual, but still acceptable, as the CCPA regulates child pornography in principal and therefore offers a link for a definition in the Regulations. However, a further inclusion of criminalised conduct such as distributing, disseminating etc. in the Draft Regulation CCPA is not possible as there is no provision regarding these actions in the CCPA.

The CCPA is therefore not consistent with the international standards and the deficit in the CCPA can also not be eliminated by adding provisions to the Draft Regulation CCPA.

4.3.2. Draft Electronic Transactions and Cybercrime Bill

Namibia is in the process of finalising the Draft Electronic Transactions and Cybercrime Bill. This Bill, in addition to other cybercrimes, will also provide for a provision on online child pornography and hence offers the opportunity to address the gap in the current legislation by strengthening the legislative framework. Respective recommendations are discussed below.

The Draft Electronic Transactions and Cybercrime Bill offers the fundament to incorporate a comprehensive child pornography provision which lives up to the highest international standard.

5. RECOMMENDATIONS ON HOW TO STRENGTHEN LEGISLATIVE FRAMEWORK TO ENHANCE PROTECTION FOR CHILDREN

An analysis of international law provides a broad overview of the regulatory options available to Namibia, with regard to child pornography. Namibia has now the opportunity to draft a provision which combines the high standards of international law and the lessons from other countries which can serve as a model law for the continent and the rest of the world. The recommendations discussed below are drawn from best practices and suggest an inclusive provision which provides for the highest standard of child protection worldwide in the field of child pornography.

5.1 Defining child pornography

As shown in the analysis above, the definition of the term “child pornography” has to be very detailed and precise in the wording in order to include all possible scenarios. It is proposed that the definition covers at least four elements, which do not necessarily have to be phrased in the way proposed in this report, as long as the respective content is covered:

- **Material**: Any depiction, no limitation to visual depiction;
- **Subject**: Minors (definition of “child”), virtual pornography, persons made to appear to be minors;
- **Conduct**: Real or simulated sexually explicit conduct, depiction of the sexual parts of a child for primarily sexual purposes, nude or semi-nude depiction of a child in an unnatural or sexually suggestive posture.
5.2 A Comprehensive Catalogue of Offences

As pointed out above, the catalogue of offences should also include the mere possession of and obtaining access to child pornography and could read as follows:

A person, who – without right -

i. produces child pornography;
ii. offers or makes child pornography available;
iii. distributes or transmits child pornography;
iv. procures child pornography for oneself or for another person;
v. possesses child pornography;
vi. knowingly obtains access to child pornography,

is guilty of committing an offence and is on conviction liable for [sentence to be included]

5.3 Including an Exemption Clause regarding sexting between minors

An arising problem in many countries which enacted child pornography provisions is the criminalisation of consensual “sexting” between minors. The term is a combination of the words “sex” and “texting” and concerns the digital recording of sexually suggestive or explicit images and texts and distribution thereof by cell phone messaging, internet messenger, social networks et al.\(^21\). The consensual sharing of nude or semi-nude pictures between minors can be subsumed under the child pornography provision, this has resulted in children in some countries being prosecuted as child pornography offenders.

Such a prosecution has to be avoided as it does not serve the best interest of the child, which is always the guiding principle in the field of child protection. The child pornography provisions are intended to protect children from sexual exploitation by adults, not vilify or turn them into sex offenders. Hence, the challenge is to draft a provision which protects the child/youth from being labelled a perpetrator, and exposing minors to prosecution under these laws only under exceptional and appropriate circumstances.

5.3.1 Assessment of the dangers of sexting

It should not be doubted that sexting poses dangers for children, who may lack the competency or appreciate the full consequence of such actions. Firstly, children could be pressured into sending nude or semi-nude pictures as a result of peer pressure. Furthermore, even if pictures are shared consensually within a relationship, there is always the risk that one of the partners nevertheless shares the picture with friends or school mates (without consent), or after the relationship ends in order to take “revenge” on a former partner.

However, the prosecution of children as child pornography offenders is not the right response to sexting, an appropriate balance must be sought. Sexting could be regarded as part of sexual experimentation by children - a normal part of the child’s development, but now these social interactions have shifted to the online world, and have far greater repercussions.\(^22\) Prosecuting a child for “normal” sexual behaviour might have severe psychological and developmental impact on the child. Categorising sexting as a form of child pornography results in a contradiction within the legal system. According to Namibian law, children are legally allowed to have consensual sex below the age of eighteen years, however, as soon as this occurs or is discussed via ICTs and/or transmitting explicit pictures to each other, they may be categorized as child pornography offenders.

Therefore, it has to be ensured that the child is not prosecuted as child pornography offender. The objective of the child pornography regulations, namely to protect children from exploitation and abuse, would be taken ad absurdum if the subject of the protection clause, the child, would be turned into the offender for exploring its sexuality.

Even though "sexting" is a dangerous practice for minors, prosecution of minors as child pornography offenders does not serve the best interest of the child and hence, has to be prevented by law.

### 5.3.2 Striking the balance: including an exemption clause

A proposal to exclude minors from prosecution while still providing full prosecution mechanisms for the “typical” child pornography offender is to include an exemption clause. This exemption clause has to be drafted broad enough to allow for a full exemption of minors with regard to consensual sexting but also not to create a loophole for perpetrators.

Art 20 (3) Lanzarote Convention is the only international instrument providing for such an exemption clause. The phrasing can be used as a basis and then be further adjusted to the Namibian context. An exemption clause could read:

\[
\text{[Section x] shall not apply to acts of persons related to child pornography produced or possessed by them solely for their own private use and with the consent of the persons therein depicted and while under eighteen years of age, but not if one person is under the age of sixteen years and the other person is more than three years older.}
\]

This exemption clause only exempts a minor from prosecution if all these conditions are fulfilled simultaneously:

- Possession and production of child pornography;
- Minors who have reached the age of consent;
- Content possessed and produced with their consent and only for private use.

The exemption clause proposed above only decriminalises consensual sexting ("with the consent of the person therein depicted") and only minors who can also legally give consent to sex. Hence, this exemption clause strikes the balance of protecting minors from prosecution but at the same time does not mitigate the prosecution mechanisms for “real” child pornography offenders.

An exemption clause allows for excluding minors from prosecution for consensual “sexting” in very specific cases. This exemption clause exempts a minor from prosecution as child pornography offender with regard to possession and production of child pornography, if both minors have reached the age of consent to sex and if the content is possessed and produced with their consent and only for private use.

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23 Art 20 (3) Lanzarote Convention: “Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material […] involving children who have reached the age set in application of Article 18, paragraph 2 [age of consent], where these images are produced and possessed by them with their consent and solely for their own private use.”

24 Age of consent is aligned with Section 14 of the Combating of Immoral Practices, Act 21 of 1980, which regulates that it is only a “sexual offence with youths” if the child is below the age of sixteen years and the perpetrator is more than three years older than the child.
Conclusion

Cybercrime offences pose new and complex challenges for both legislative and prosecution authorities. From the legislative perspective, Namibia has the opportunity to enact a very comprehensive and progressive legislative provision which tackles both primary and secondary sexting and comes up with a child friendly legislation. Issues which require further attention in the legislative reform process are the regulation of the admissibility of electronic evidence, extraterritorial jurisdiction and law enforcement collaboration with other prosecution authorities. Even though the admissibility of electronic evidence is regulated in section 24 of the Draft Electronic Transactions and Cybercrime Bill, it should also be addressed in legislation dealing with criminal procedure.

However, having legislation on (online) child pornography in place does not alone guarantee the safety of the Namibian child online. Child Online Safety requires a holistic approach and must be integrated into a comprehensive strategy which addresses prevention and response. Educating children on the dangers they might encounter online, training prosecutors on the specifics of child-related cybercrime, reporting mechanisms for the population and children, responsibilities and obligations of Internet Service Providers, effective blocking and taking down of child abuse material, international collaboration and prosecution mechanisms are just among a variety of approaches required to prevent and prosecute child online sexual abuse.

As many countries struggle with this holistic approach, Namibia has the unique chance now to serve as a role model in the region and beyond. With the definitive rising of Internet accessibility and usage within the country, Namibia should be ready to address child online protection and ensure that important steps are undertaken to guarantee the safety of the Namibian child online.

Recommendations at a glance

1. The definition of the term child pornography should include the following components:
   - Material: Any depiction, no limitation to visual depiction;
   - Subject: Minors (definition of “child”), virtual pornography, persons made to appear to be minors;
   - Conduct: real or simulated sexually explicit conduct, depiction of the sexual parts of a child for primarily sexual purposes, nude or semi-nude depiction of a child in an unnatural or sexually suggestive posture.

2. The Catalogue of Offences should include the following components with regard to child pornography:
   - Producing;
   - offering or making available;
   - distributing or transmitting;
   - procuring for oneself or for another person;
   - possessing;
   - knowingly obtaining access.

3. An exemption clause with the following components has to be included in the legislation:
   - Possession and production of child pornography;
   - Minors who have reached the age of consent are involved;
   - Content possessed and produced with their consent and only for private use.