November 2020

**ECPAT Sweden comments on the draft General Comment on children’s right in relation to the digital environment**

**1.** ECPAT Sweden has argued for the need of a General Comment that guides the States when interpreting the rights of a child in the digital environment and welcomes this general comment and is grateful for the opportunity to provide comments.

ECPAT Sweden is a child rights organisation working to prevent sexual exploitation against children in Sweden and by Swedish offenders abroad. ECPAT Sweden contributes to preventing and counteracting all forms of sexual exploitation of children through awareness-raising, advocacy, and lobbying efforts. ECPAT Sweden is a member of the global ECPAT network.

ECPAT Sweden’s submission is limited to online child sexual exploitation.

**2**. In providing these comments, ECPAT Sweden seeks to draw attention to two important points:

1. ECPAT Sweden would like to stress the importance of the Committee clearly stating that the gravity of sexual exploitation of children online and offline is equally severe and to encourage states to enforce legislation, which does not differentiate between “hands on” acts and exploitation using ICT. In the same way, ECPAT encourages the Committee to recommend the state parties that all children regardless of their age must have equal legal protection against sexual exploitation and abuse. Children after the national age of consent and/or after puberty often have a decreased legal protection, since crimes committed against these children may be dealt with in paragraphs written for adult crime victims. This is not in compliance with the Convention on the Right of the Child.

2. In order to work effectively against online sexual abuse and exploitation of children the states must ensure a proactive, global multi-stakeholder, cross-sector approach with the involvement of among others: civil society, Law Enforcement Agencies, other government agencies, Healthcare and Education and all relevant companies to work together in a transparent and equal cooperation. ECPAT also encourages the Committee to recommend that all entities providing internet services have a legal responsibility to detect and report all forms of child sexual exploitation to the national police.

**3. Online child sexual exploitation and children’s rights in the digital environment**

**3.1 “Hands on” acts and other legal challenges**

In Sweden, the legislation against sexual exploitation of children has rapidly evolved to adjust to the digital environment and the increased use of ICTs to commit sexual offences against children. The Swedish Supreme Court stated in the verdict *NJA2015 s. 501* that the fact that the perpetrator was not physically present in the room does not mean that he cannot be sentenced for rape nor that the lack of “hands on” act from the perpetrator makes the exploitation of the child less severe. ECPAT Sweden would like to stress the importance of the Committee clearly stating that the gravity of sexual exploitation of children online and offline is equally severe and to encourage states to enforce legislation, which does not differentiate between “hands on” acts and exploitation using ICT. The internet is not the crime scene, the use of ICT is a tool in the hands of the perpetrator. The crime scene is where the abuse of the child takes place whether or not the perpetrator is physically present.

**3.2 Pre-recorded sexual exploitation of a child**

A legal challenge that has been acknowledged in Sweden is how the courts view sexual exploitation of children that the perpetrator does not view in real time but that instead has been recorded by the child victim in beforehand. ECPAT urges the Committee to recommend states to view this form of exploitation equally as severe as abuse that the perpetrator experiences in real time. ECPAT Sweden stresses that this type of abuse needs to be considered from a child’s rights perspective focusing on how acts of the perpetrator, such as threats or other forms of manipulation, is directly linked, not separated, to the child recording the sexual exploitation and sending these images and videos forward.

**3.3 Not “just” images**

The term “child pornography” which is used in CRC and the Optional Protocol on the Sale of Children, child prostitution and child pornography (OPSC) is misleading and doesn’t depict the severity of the crime or the harm to the child’s health. Viewing pornography is an activity that is often legal and involves consenting adults. Child “pornography” is evidence of a child being sexually exploited and should therefore be handled as such. ECPAT Sweden therefore recommends the Committee to refrain from using this term and instead using the term that is recommended in the Luxemburg terminology guidelines child sexual exploitation material or child sexual abuse material.

In a recent study ECPAT found that in almost 50 % of the child pornography sentences the perpetrator had also committed other sexual crimes against children. Since there is an obvious linkage between possession of child sexual abuse material, evidence of sexual exploitation of a child, and other forms of sexual exploitation, ECPAT Sweden recommends the Committee to urge the states to view child sexual abuse images as a severe sexual crime against children and to assure equal protection of all children regardless of their age. We also want to high light that victim impact statements can be an important part of litigation in these crimes.

**3.4 The child’s right to compensation**

ECPAT would like to point out the need for the Committee to also encourage state parties to establish a system for victims to receive compensation from offenders in other countries. The system needs to be victim-centric and take inter alia transparency and anti-corruption measures into account. ECPAT also stresses the need for the Committee to advise countries on how to deal with compensation for the victims in other countries when the perpetrator is a family member or a part of the child’s extended family. This to avoid that the compensation for the child should not be given to the same person that exploited the child. This is of importance since the CRC acknowledges the rights and responsibilities of the child ́s parents, guardians, or other caregivers.

ECPAT also encourages the Committee to ensure that the child on the image has the right to compensation in a matter that is sensitive to the child and is based on the child’s right to express his or her views and the child’s right to access to justice. Images of sexual exploitation can be distributed years after the abuse has taken place and throughout the world and each time the image or other representation of their abuse is accessed online by others, the child is exploited. Calculations regarding the harm done to a child should be based on the child’s right perspective and the fact that each time the image is viewed it is a crime against that specific child. Although an important part of the child’s recovering process, legal and investigative processes needs to avoid the secondary victimisation of the child and confrontations with several perpetrators for the remaining period that the sexual abuse material is circulating on the internet.

**3.5 The responsibility of the private sector**

ECPAT would like to stress that the Committee recommends the state parties should ensure that internet service providers detect, block and remove online child sexual abuse material as soon as possible, but urges the Committee to consider that the scope of responsibility is broadened and includes all entities providing online services. ECPAT also encourages the Committee to recommend that all entities providing internet services have a legal responsibility to detect and report all forms of child sexual exploitation to the national police.

**3.6 Multi-stakeholder approach**

The amount of child sexual abuse and exploitation material on the Internet is vast and increasing. The dissemination and continuing circulation of the material means that the abuse never ends for the abused or exploited child in the image or video. In order to work effectively against online sexual abuse and exploitation of children the State must ensure a proactive, global multi-stakeholder, cross-sector approach with the involvement of among others: civil society, Law Enforcement Agencies, other government agencies, Healthcare and Education and all relevant companies to work together in a transparent and equal cooperation.

Important steps to increase Law Enforcement efficiency would include ensuring enough data retention and proactively work to prevent new regulations such as the e-Privacy regulation and similar regulations to impose hinders to investigations, detection and removal of child sexual exploitation material. Important steps to increase ICT efficiency and cooperation would include legal incentives to proactively prevent hosting of known illegal material as well as being in the forefront of technology to discover all forms of child sexual abuse or exploitation material.

**3.7 The right to education and information**

ECPAT encourages the Committee to recommend that adults actively involve themselves in the child’s use of ICT in order to support the child as s/he develops their abilities. ECPAT acknowledges the importance of providing parents and/or caregivers information about the safe use of ICTs and the child’s right to sexual education and education about relationships. However, ECPAT recognises the risks of involving parents ́ or caregivers’ views in the child’s right to sexual education and education about relationships since adults ́ views may infringe on the child’s right to information. It is important that the child is protected when participating in sexual education in school and not restricted from involvement due to the views of his/her parents. ECPAT is also concerned that a new trend of allegedly protecting children from pornography with internet filters might cause public institutions, such as schools, to install technology that prohibit information instead of discussing this topic with children and to have a constructive dialog and support the child while exploring his or her rights. ECPAT strongly advises the Committee from encouraging States to adopt new laws that prohibit children from accessing information based on “easy solutions” such as internet filters.

**3.8 Secure legal rights for children aged 15-17**

Children after the national age of consent and/or after puberty often have a decreased legal protection, since crimes committed against these children may be dealt with in paragraphs written for adult crime victims. This is not in compliance with the Convention on the Right of the Child. ECPAT encourages the Committee to recommend the state parties that all children must have equal legal protection.

**4. Recommendations for inclusion in the draft General Comment**

4.1 ECPAT would like to stress the importance of the Committee clearly stating that children’s participation and right to be heard is crucial in deciding the child’s best interest and suggest that paragraph 14 is reworded as follows:

When making decisions relating to the regulation of the digital environment, States shall consider the nature, scale and prevalence of potential harms and violations of children’s rights in such environments, contrasted with assumed interests and rights of others, and shall apply the best interests of the child as the determining principle. States shall ensure transparency in assessment of the best interests of the child and demonstrate what criteria have been applied. The child's own opinions should always be a guiding principle.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 35):

States should systematically involve civil society, including non-governmental organizations working both in the field of children’s rights and in the field of the digital environment, in the development, implementation, monitoring and evaluation of laws, policies, plans and programmes related to children’s rights and ensure that civil society organizations are able to implement their activities related to the promotion and protection of the rights of children.

* 1. ECPAT would like to stress the importance of how sexual exploitation material that is published online is harmful to the child and suggest that paragraph 47 is reworded as follows:

Appropriate reparation includes restitution, compensation and satisfaction, and may require apology, correction, prompt removal of unlawful content or other measures. Remedial mechanisms should take into account the particular vulnerability of children to the possible irreversible effects and lifelong damage of violations of their rights. Reparation should be timely to limit ongoing and future damage. The States should therefore institute time limits for removal of unlawful content.States should guarantee non-recurrence of violations, including by reform of relevant law and policy and their effective implementation.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 79):

Providers of preventive or counselling services to children in the digital environment should be exempt from any requirement for a child user to obtain parental consent in order to access such services.

* 1. ECPAT would like to stress the importance of the Committee clearly stating that the gravity of sexual exploitation of children online and offline is equally severe. We also want to stress the importance of the Committee clearly stating that all children regardless of their age have the right to the same protection against sexual exploitation and abuse. We therefore suggest that paragraph 83 is reworded as follows:

The digital environment opens up new ways for sexual offenders to solicit children for sexual purposes, participate in online child sexual abuse via live video streaming, distribute child sexual abuse material, and commit the sexual extortion of children. The States should acknowledge that sexual abuse and exploitation is as severe online and as it is offline. All children, regardless of their age, have the same right to legal protection and States should ensure this right in all aspects of the law.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 89):

Many parents and caregivers require support to build technological understanding, capacity and skills to assist children in relation to the digital environment. States should ensure that parents and caregivers have opportunities to gain digital literacy to learn how technology can support the rights of children and to recognize a child victim of online harm and respond appropriately.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 91):

In supporting and guiding parents and caregivers regarding the digital environment, States should promote their awareness to respect children’s growing autonomy and need for privacy, in accordance with their evolving capacities. States should take into account that children often embrace and experiment with digital opportunities, and may encounter risks, particularly at a younger age than parents and caregivers anticipate. Some children report wanting more support and encouragement in their digital activities, especially where they perceive parents’ and caregivers’ approach to be highly restrictive and not adjusted to their evolving capacities.

* 1. ECPAT would like to stress the importance of acknowledging that children with disabilities can be more exposed to sexual exploitation and suggest that paragraph 100 is reworded as follows:

Children with disabilities can be more exposed to online risks, including bullying and sexual exploitation in the digital environment. States should identify and address the safety risks faced by children with disabilities, taking steps to ensure that the digital environment is safe for them. Safety information, protective strategies, public information, services and forums relating to the digital environment forums should be provided in accessible formats.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 114):

It is of increasing importance that children gain an understanding of the digital environment including its infrastructure, business practices, persuasive strategies, uses of automated processing and personal data and surveillance. Teachers who undertake digital literacy education, including sexual and reproductive health education, should be trained on providing digital literacy education and on safeguarding as it relates to the digital environment.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 127):

The transnational nature of the digital environment necessitates strong international and regional cooperation to ensure that States, businesses and other actors effectively respect, protect and fulfil children’s rights in relation to the digital environment. To this end, States should engage with national and international NGOs, UN agencies, businesses and organisations specialised in human rights in the digital.

* 1. ECPAT would like to praise the Committee for the following paragraph (no. 128):

States should promote and contribute to the international and regional exchange of expertise and good practices, and establish and promote capacity-building, resources, standards, regulations and protections across national borders that enable the realization of children’s rights in the digital environment.