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

**Introduction**

**1.1 ECPAT Sweden (ECPAT)**

ECPAT welcomes the possibility to submit ECPAT’s submission for the General Comment on children’s right in relation to the digital environment.

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

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

**1.2 Methodology**

ECPAT gathers information on sexual exploitation of children in Sweden, and exploitation which is linked to Sweden. ECPAT acquires facts and figures of exploitation through first-hand information, reports, research, dialogue with experts - foremost individuals working directly with the issues such as law enforcement representatives, decision-makers at various levels (local, regional, national, global), private sector representatives in the tourism-, transportation-, IT- and finance industries, and through direct information as acquired through the ECPAT Hotline.

1. **Online child sexual exploitation**

The Convention on the Rights of the Child (CRC) was adopted at a time when the internet was much less developed and widespread throughout the world. Children didn’t have the close linkage to the digital environment and the internet was not a part of their everyday life. The internet has brought children together in a way that was not possible before and children are enjoying their rights in a new arena. At the same time this development has exposed children the risk on being exploited sexually online. Both the CRC and its Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) is relevant and applicable in the digital environment, ECPAT 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.

**2.1 “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 **NJA 2015 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 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.

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

Another legal challenges that has been acknowledged in Sweden is how the courts view sexual exploitation of children that has been recorded without the perpetrator in the room in person or via the use of ICT. The Supreme court in Sweden (B 1858 – 18) has decided that a perpetrator cannot be sentenced for pre-recorded sexual exploitation of a child. ECPAT urges the Committee to recommend states to view this form of exploitation that is equally as severe as abuse that is recorded live before the perpetrator. ECPAT 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 treats or other forms of manipulation, is directly linked, not separated, to the child recording the sexual exploitation and sending these images forward.

**2.3 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 therefore recommends the Committee to refrain from using this term and instead using the term that’s recommended in the Luxemburg terminology guidelines *child sexual exploitation material or child sexual abuse material.*

In Sweden the provisions for child sexual abuse material, come under child pornography crime in the Swedish Penal Code Chap. 16, crimes against the public order §10a, not in the Chap. 6 where the sexual crimes against children is placed. One of the direct consequences of the current placement of the crime is that the Swedish Police is focusing less resources to investigate these crimes and finding the child on the picture than other sexual exploitation of children. 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 recommends the Committee to urge the States to view child sexual abuse images a severe sexual crime against children and to assure equal protection of all children regardless of their age.

**2.4 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. It has proven difficult for courts in countries where compensation is required by states to calculate the compensation for the child based on the viewers act and the child’s harm. Such calculations should be based on the child’s right perspective and the fact that each time the image is viewed it’s 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. There is a need for a global response to this legal challenge and although there are some recent developments in some countries such as victim impact statements and opt-in or opt-out systems that enable the child to make an informed decision on how to deal with future investigations and legal processes there needs to be further collaboration and research on these matters.

1. **The responsibility of the private sector**

ECPAT would like to stress that the Committee recommends the State parties should ensure that internet service providers control, 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 internet service providers have a clear mandate to report all forms of child sexual exploitation to the national police.

From a child’s rights perspective documentation and dissemination of images of the abuse online can be more severe for the physical wellbeing of the child. The dissemination can, and does go on, long after the abuse has taken place and affects the child’s health and recovering process.

1. **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.

Important steps to increase Law Enforcement efficiency would include ratifying The Convention on Cybercrime of the Council of Europe, ensuring enough data retention and proactively working to prevent new regulations such as the e-Privacy regulation to impose hinders to investigations.

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.

1. **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. However, ECPAT recognises the risks of involving parents´ or caregivers’ views in the child’s right to sexual education 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.

In Sweden there is an ongoing debate over the use of various forms of internet filters allegedly protecting children from pornography in schools. To date there is no research that proves that filtering pornography in schools will strengthen the child’s resilience, protect children from being sexually exploited or themselves exploiting other children. Furthermore, these filters are installed in school computers which means that the child can easy access these sites by using his/her smartphone. The filters can also filter more than pornography and make it harder for children to access information about for instance puberty, sex or sexuality. 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.

ECPAT is concerned that this new trend of prohibiting information with filters might cause public institutions, such as schools, to prohibit pornography instead of discussing this topic, having a constructive dialog and supporting the child *while* exploring his or her rights instead or protecting the child *from* exploring his or her rights.