Chapter 34

Article 34: The Right to Protection from All Forms of Sexual Exploitation and Sexual Abuse

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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.

What Did Children Say?

‘There should be more information/training about the dangers of personal exposure on dating sites and apps, but this information should be transmitted according to the child’s level of maturity. Ex: When giving information in schools to younger students, this often causes more curiosity than protection.’ (Western Europe/Other).

Government and schools have communication activities to raise awareness on preventing sexual abuse against children. (Asia-Pacific).

(continued)

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School—Provide knowledge, life skills, self-protection from danger. (Asia-Pacific).

The government has serious measures to law enforcement of child protection. (Asia-Pacific).

Overview

Although protection from sexual abuse of children is mentioned in Article 19 of the Convention, Article 34 provides preventive and reactive measures that States Parties must take to tackle child sexual abuse and exploitation. The proposal in the first draft of the Convention was to offer one article combining Articles 34 (sexual exploitation of children), 35 (abduction, sale and trafficking of children) and 36 (all other forms of exploitation of children), to cover sexual and other related forms of exploitation. However, drafting delegates ultimately opted for separate articles in order to provide stronger protection for different forms of exploitation of children (Office of the United Nations High Commissioner for Human Rights and Rädna barnen (Society: Sweden), 2007, pp. 723–737).

Article 34 has been further elaborated in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography which imposes additional specific obligations on States Parties, and in the associated Committee Guidelines (UN Committee on the Rights of the Child, 2019). Article 34 must also be understood in the context of the many international instruments that have been developed to provide and extend protection in the field of sexual abuse and exploitation (see below).

The Convention does not provide a comprehensive definition of sexual abuse or sexual exploitation, but the Committee has defined sexual abuse as ‘any sexual activity imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State Party for consensual sexual activities.’ (2011, n. 9). Sexual exploitation is interpreted as sexual abuse that involves an exchange, whether financial or otherwise, between a third party, a perpetrator, or the child (Greijer et al., 2016, para. 19). In its General Comment on Article 19, the Committee elaborated its interpretation of sexual abuse and exploitation to include:

- The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity
- The use of children in commercial sexual exploitation
- The use of children in audio or visual images of child sexual abuse
- Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual

purposes and forced marriage. Many children experience sexual victimisation which is not accompanied by physical force or restraint, but which is nonetheless psychologically intrusive, exploitive and traumatic (2011, paras. 25, 31).

The Committee has subsequently recognised that 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 (Livingstone et al., 2016, p. 23; UN Committee on the Rights of the Child, 2019, para. 2, 2020). Furthermore, forms of digitally mediated sexual exploitation may be perpetrated within the child's circle of trust, for instance by family and friends or, for adolescents, by intimate partners (UN Committee on the Rights of the Child, 2019, para. 97 (e), 2020).

With its focus on the physical and bodily integrity of the child, Article 34 is best understood as a civil right and thereby subject to immediate implementation (Tobin & Seow, 2019, p. 1330). Indeed, the Committee has argued explicitly that resource constraints are not a justification for failure on the part of the State Party to adopt any or sufficient measures required for child protection (2011, para. 73). Implementation therefore requires States Parties to introduce a comprehensive protection strategy, which includes preventive and reactive measures, such as laws and policies, effective actions fostering awareness through education, socialisation, and mobilisation at the national, bilateral, and multilateral levels (UN Committee on the Rights of the Child, 2011, paras. 61–69).

General Principles

Article 2 All children are equally entitled to protection from sexual abuse and exploitation. However, the Committee has identified many risk factors, or groups of children who are at particular risk, including girls, internally displaced children, street children, orphans, children from rural areas, refugee children and children belonging to more vulnerable castes, LGBTQ children, aboriginal children, children with disabilities, and children in armed conflict (2011, para. 65 (g)). Accordingly, States Parties must introduce specific measures to identify, prevent, and protect such children from sexual abuse and exploitation.

Article 3 The child's safety is one of the fundamental tenets of the child's best interests. Effective protective interventions for children must be introduced to guarantee the best interests of the child. The Committee has emphasised that the child's best interests require States Parties to make 'adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system' (2011, para. 54).

Article 6 Sexual abuse and exploitation severely impede children's optimum development, resulting in profound and long-term negative consequences for

physical, emotional and psychological well-being.¹ States Parties therefore have an obligation to provide comprehensive protection from sexual violence and exploitation, which are a threat to the fulfilment of the child's right to life, survival and development, and 'implementation measures should be aimed at achieving the optimal development for all children (UN Committee on the Rights of the Child, 2011, para. 62).'

Article 12 The right of children to be heard is integral to their right to protection (UN Committee on the Rights of the Child, 2009, para. 120). Violence perpetrated against children often goes unchallenged because certain types of abusive behaviour are seen by children as accepted practices, and due to the lack of child-friendly reporting mechanisms. Therefore, children must be provided with information about their right to be heard and to grow up free from all forms of violence as well as given the life skills and the knowledge to protect themselves from sexual abuse and exploitation, and how to seek assistance and justice when needed (UN Committee on the Rights of the Child, 2009, para. 120).

Children must be recognised not merely as victims and objects of protection but also as agents in their own lives with a right to contribute to the development, implementation, and evaluation of protection programmes (UN Committee on the Rights of the Child, 2009, para. 121). Accordingly, their views must be invited and given due weight as a mandatory step at every point in a child protection process (UN Committee on the Rights of the Child, 2009, para. 118, 2011, para. 56).

Articles Related or Linked to Article 34

Article 5 proclaims the child's right to guidance from their parents and family in the exercise of their rights to protection from any form of sexual exploitation.

Article 9 guarantees the child's right to not be separated from one's parents unless it is necessary in one's best interests, such as in the case of sexual exploitation, abuse, or neglect by one's parents.

Article 11 protects children from illicit transfer and non-return from abroad for any purposes of sexual exploitation.

Article 19 guarantees a child's right to protection from all forms of violence including any form of sexual exploitation in all settings.

Article 35 ensures the prevention of abduction, sale, and trafficking for sexual purposes.

Article 39 provides for physical and psychological recovery and social reintegration of survivors of sexual exploitation of children.

¹ See, for example, *Report of the Special Rapporteur on Sale of children, child prostitution and child pornography* (Calcetas-Santos, 1996, paras. 24–28), 'Stockholm Declaration and Agenda for Action' (World Congress Against Commercial Sexual Exploitation, 1996).

Article 32 protects children against economic exploitation, such as trafficking, forced labour, and slavery-like sexual exploitation.

Article 36 provides for protection from all other forms of exploitation that are not fully defined or understood, especially ones involving information and communication technologies involving sexual exploitation.

Article 17(e) provides that States Parties are under obligation to provide information, education, and guidelines for the protection of the child from injurious information and material, including new and emerging forms of sexual exploitation of children, such as online.

Article 24 (3) requires that States Parties must take measures to effectively abolish traditional practices, such as genital mutilation and child marriage which may be treated as sexual abuse and sexual exploitation of children, which are detrimental to the rights and well-being of children.

Article 26 requires that States Parties provide the child with available, accessible, and quality social security in accordance with their circumstances, taking into account the resources of their care providers, with a view to minimising the risk of sexual exploitation of children.

Article 27 provides that States Parties must provide the child with adequate living conditions, and assistance to parents and care providers, for the child's physical, mental, spiritual, moral, and social development as a preventive and protective measure from all forms of sexual exploitation of children.

Optional Protocol on the involvement of children in armed conflict, Article 4 (prohibition of use of children in armed conflict by non-state actors) and Article 7 (rehabilitation, reintegration, international cooperation).

Optional Protocol on the sale of children, child prostitution, and child pornography, Article 2(b) and (c).

Relevant Instruments

UN Universal Declaration of Human Rights (1948), Article 4, requires generally that: 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'.

International Covenant on Civil and Political Rights (1966), Article 8, prohibits 'forced and compulsory labour.' The Human Rights Committee, in the General Comment on Article 24 of the International Covenant (which recognises children's right to protection), notes the need to protect children 'from being exploited by means of forced labour or prostitution' (Committee on the Rights of the Child, 2007, p. 184).

International Covenant on Economic, Social and Cultural Rights (1966), Article 10(3), states 'Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law'.

UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 6, requires States Parties to ‘take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women’.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), Article 3(a), which provides a definition of ‘trafficking of children for sexual purposes’.

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), definition in Article 1 (b).

ILO Convention 182, Worst Forms of Child Labour (1999), definition in Article 3 (b).

Rome Statute of International Criminal Court (1998), Articles 2 (c), 6, 8 (b).

American Convention on Human Rights ‘Pact of San Jose, Costa Rica’ (B-32) (1978), Article 6, freedom from slavery.

African Charter on the Rights and Welfare of the Child (1990), Articles 27, sexual exploitation, 29, trafficking, and 16, abuse and torture.

Inter-American Convention on International Traffic in Minors (1994), definition in Article 2 (c).

Council of Europe Convention on Cybercrime (Budapest Convention) (2001), Article 9.

Council of Europe Convention on Action against Trafficking in Human Beings (2005).

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007).

Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), especially Articles 25, support to victims of sexual violence, 36, sexual violence, and 37, forced marriage.

Attributes

Attribute One: Legislative Protection from Sexual Exploitation and Abuse

The obligation to protect children from all forms of sexual exploitation and abuse requires adequate national legal frameworks to address unlawful sexual activity and practices. Both the Convention and subsequent legal and policy documents emphasise law reform in the criminal and penal law contexts to protect children from sexual abuse and exploitation. Effective protection requires that the measures introduced by States Parties address the following three broad areas.

First, while there is discretion as to the particular legislative framework States Parties can adopt, they must introduce comprehensive provisions to criminalise all

sexual abuse and exploitation of children (UN Committee on the Rights of the Child, 2013a, para. 30 (a), 2015a, para. 34 (a)), including the potential to penalise those committing offences domestically and transnationally, and by individuals or groups (UN Committee on the Rights of the Child, 2019, Article 3). Bilateral and multilateral measures are essential given the extent to which sexual abuse and exploitation is increasingly transnational. Such legislation must take account of the increasing potential for the sexual abuse and exploitation of children in the digital environment (Buquicchio-de Boer, 2014, para. 87 (a)). It needs to address a commitment to international cooperation involving information sharing, learning from good practice, joint prevention networks and harmonisation of legislation (Maalla M'jid, 2013, para. 109). The necessary legislation measures are elaborated in the Optional Protocol and other international instruments (noted above).

However, it is important that children who are survivors of such exploitation are not subjected to criminal procedures or sanctions for offences related to their situation.² In addition, the Committee has expressed concern that many legal frameworks fail to provide protection for boys and has therefore stressed that frameworks must be gender neutral (2014a, para. 32, 2014b, para. 33).

Secondly, States Parties must ensure that legislation is adequately enforced and that sufficient investment is made to ensure effective investigations, prosecution, and punishment of offenders (UN Committee on the Rights of the Child, 2013b, paras. 52–53, 2014c, paras. 43–44). In this regard, the Committee has stressed the importance of measures such as mandatory reporting and civil remedies for children who have been victims of sexual abuse and exploitation (2001a, para. 52, 2015b, para. 35 (a)). The Committee and other agencies also emphasise the importance of confidential, safe, and accessible complaints mechanisms for children to report cases of abuse and exploitation, and for the criminal justice system at all stages to respond to any complaints in a child and gender sensitive and timely manner (Council of Europe, 2012; UN Committee on the Rights of the Child, 2019, Article 8.1 (a)).³ Children must be provided with appropriate support services, protection, and privacy throughout the legal process (UN Committee on the Rights of the Child, 2019, Article 8.1).

Finally, States Parties must introduce measures to address the physical, psychological and social recovery, rehabilitation and reintegration of survivors of sexual abuse and exploitation, including compensation for damage suffered, livelihood, housing, counselling and information, and education (Council of Europe, 2012, Article 14; UN Committee on the Rights of the Child, 2019, Article 8.5, 9.3; World Congress Against Commercial Sexual Exploitation, 1996).

²See, for example, Concluding Observations: India (2000, para. 75) and CRC 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 (UN Committee on the Rights of the Child, 2019, para. 18).

³See also Concluding Observations: Czech Republic (2003, para. 62 (b)).

Attribute Two: All Other Measures to Prevent Sexual Abuse and Exploitation

Article 34 also requires that administrative, economic, social and educational measures are introduced to prevent sexual abuse and exploitation of children, consistent with Article 4 of the Convention, General Comment no. 5 on the General Measures of Implementation, and the Stockholm Declaration and Agenda for Action. Such measures include national strategies for gender-sensitive national social and economic policies and programmes to assist vulnerable children (Hodgkin et al., 2007, p. 525), together with coordination and monitoring mechanisms, which must all be accompanied by the necessary budgetary and human resources (Council of Europe, 2012, Articles 10.2 (a) and 45.1; World Congress Against Commercial Sexual Exploitation, 1996).

Education is consistently identified as a vital dimension of prevention. States Parties must invest in programmes of public awareness raising (UN Committee on the Rights of the Child, 2001b, para. 73, 2015c, para. 34 (d)), and training for all professionals working with children (UN Committee on the Rights of the Child, 2002, para. 67 (c), 2014d, para. 47 (a)). Education and information must be provided for children themselves, not only on their rights under the Convention but also, for example, on identifying abuse, negotiating skills, self-confidence, resisting peer pressure, and navigating the digital environment safely (Council of Europe, 2012, Articles 5, 6, 8, 9; UN Committee on the Rights of the Child, 2019, Article 9.2; World Congress Against Commercial Sexual Exploitation, 1996).

The root causes of sexual abuse and exploitation of children are complex. While poverty can be a key factor, multiple other factors serve to facilitate the abuse, including gender bias, racial and social discrimination, lack of education, migration, harmful traditional practices and armed conflict (World Congress Against Commercial Sexual Exploitation, 1996, para. 6). A broad range of measures in response to all these factors is required if States Parties are to successfully prevent sexual abuse and exploitation (World Congress Against Commercial Sexual Exploitation, 1996, para. 3 (a)-(l)). In addition, States Parties must engage and regulate the private sector, including the media, the travel and tourism industry, and online technology businesses in order to fulfil their obligations under Article 34.⁴

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⁴For a detailed elaboration of the necessary measures, see 'Protection from sexual exploitation and sexual abuse' (Tobin & Seow, 2019, pp. 1347–1350).

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