



LEGISLATION ADDRESSING ONLINE CHILD SEXUAL EXPLOITATION AND ABUSE



About the *Data Insights* series from *Disrupting Harm*

Disrupting Harm is a research project conceived and funded by the End Violence Fund through its Safe Online Initiative. The project is implemented by ECPAT, INTERPOL and UNICEF and generates national evidence on online child sexual exploitation and abuse. This publication is part of a series of thematic briefs that explores pressing issues emerging from the research and recommends ways for key entities and individuals to improve prevention and response.

So far, new evidence about online child sexual exploitation and abuse has been collected through *Disrupting Harm* in thirteen countries: seven in Eastern and Southern Africa (Ethiopia, Kenya, Mozambique, Namibia, South Africa, Tanzania, Uganda), and six in Southeast Asia (Cambodia, Indonesia, Malaysia, Thailand, the Philippines, Viet Nam). Up to nine primary research activities were undertaken in each country including surveys and interviews with more than 13,000 children, as well as caregivers, and other professionals with child protection mandates. Thirteen country reports were published in 2022, presenting the consolidated findings of all activities conducted within each country, along with targeted recommendations developed together with national stakeholders. Country reports can be found [here](#).

Data collected by ECPAT, INTERPOL and UNICEF are used as the basis for the *Disrupting Harm* Data Insights series. Authorship is attributed to the organisation(s) that produced each brief. While the *Disrupting Harm* project is a close collaboration between ECPAT, INTERPOL and UNICEF, the findings, interpretations and conclusions expressed in this publication are those of the authors and do not necessarily reflect the views of the three organisations ECPAT, INTERPOL and UNICEF, individually or as a collaborative group.

- A crucial gap remains between the existence of legal provisions and their effective enforcement. *Disrupting Harm* data frequently indicates limited awareness of existing laws relevant to online child sexual exploitation and abuse among relevant professionals.
- ‘Child sexual abuse material’ is not comprehensively defined in law. Moreover, the outdated and inappropriate term ‘child pornography’ is still predominantly used.
- Grooming via online technology has rarely received the legislative treatment it needs at national level and frequently requires in-person sexual abuse to have occurred before prosecution can proceed.
- Live-streaming of child sexual abuse may be classified and addressed using some existing national laws, however there is a need to explicitly criminalise it and to directly address the unique circumstances that this technology presents.

These insights are drawn from detailed, country-specific research and legal analysis conducted by the *Disrupting Harm* team throughout 2020 and 2021. A range of national laws and draft laws were identified which define and address child sexual exploitation and abuse and intersections with digital, internet and communication technologies. Thorough documentary analysis by experts in international law was cross-referenced and validated by primary research activities such as interviews with 101 justice professionals, 119 government representatives and 104 children and caregivers seeking justice for online sexual exploitation and abuse in the 13 countries where *Disrupting Harm* was conducted. The combination of these data sources provides a comprehensive understanding of the legal framework for online child sexual exploitation and abuse at national levels and identifies priorities for amendments and updates to address these evolving crimes.



According to international and regional human rights instruments like the Convention on the Rights of the Child,¹ signatory States have responsibilities to ensure that children fully enjoy their rights and live lives free of violence. One of the most important prerequisites for effective government actions to protect children is adequate and tailored, child-focused legislation.

In an effort to provide a comprehensive understanding of existing legislation addressing online child sexual exploitation and abuse, *Disrupting Harm* research included a detailed analysis of how national laws in the 13 countries addressed online child sexual exploitation and abuse, including how they align with international standards and their interpretation guidance.

Figure 1: Scope of legislation addressing online child sexual exploitation and abuse in the 13 countries where *Disrupting Harm* was conducted

Country	Ethiopia	Kenya	Mozambique	Namibia	South Africa	Tanzania	Uganda	Cambodia	Indonesia	Malaysia	Philippines	Thailand	Viet Nam
Definition of child sexual abuse material in line with international standards ⁱ	○	○	○	●	●	○	○	○	○	●	○	○	● ⁱⁱ
Criminalisation of mere possession of child sexual abuse material (not requiring intent to distribute)	●	●	●	●	●	○ ⁱⁱⁱ	●	●	●	●	●	●	● ^{iv}
Online grooming of children for sexual purposes is explicitly criminalised ^v	○	●	●	●	●	●	●	○	●	○	●	●	●
Live-streaming of child sexual abuse is explicitly criminalised ^{vi}	●	●	●	●	●	●	●	●	●	●	○	●	○

- Fully in line with international standards.
- Some elements of international standards are met.
- Not in line with international standards.

Defining online child sexual exploitation and abuse
 Situations involving *digital, internet and communication technologies* at some point during the continuum of abuse or exploitation. It can occur fully online or through a mix of online and in-person interactions between offenders and children.

i. Please note that country legislation on this point is assessed as being **fully** in line with international standards when, the definition of child sexual abuse material: 1) is directly in line with the guidance provided by Article 2(c) of the OPSC; 2) covers any type of material (i.e. visual – images, videos, drawings – and audio material); 3) also covers material depicting a person appearing to be a minor engaged in sexually explicit conduct (Budapest Convention, Article 9(2)); 4) covers computer/digitally generated child sexual abuse material including realistic images of non-existent children (Budapest Convention, Article 9(2)). When some of these requirements are not met, the country legislation is assessed as being **partially** in line with international standards.

ii. In Viet Nam all pornography is criminalised, however a definition of child sexual abuse material is lacking. Socialist Republic of Viet Nam. (2015). [Criminal Code Law No.100/2015/QH13](#) (as amended by [Amendment Law No.12/2017/QH14 of 2017](#)), Article 326(1).

iii. Mere possession of child sexual abuse material is criminalised only in Zanzibar. Government of Zanzibar. (2011). [Children’s Act No. 6 of 2011, Section 110\(3\)](#).

iv. In Viet Nam possession of any type of pornography is criminalised, however this provision is not specific to child sexual abuse material. Socialist Republic of Viet Nam. (2015). [Criminal Code Law No.100/2015/QH13](#) (as amended by [Amendment Law No.12/2017/QH14 of 2017](#)), Article 326(1).

v. Please note that country legislation on this point is assessed as **partial** when although no legal provision *explicitly* criminalising online grooming of children for sexual purposes exist, existing provisions do cover to a certain extent the actions constituting the online grooming of children for sexual purposes (e.g. arrangement of a meeting, sexually communicating with a child, etc.)

vi. Please note that country legislation on this point is assessed as **partial** when although no legal provision *explicitly* criminalising live-streaming of child sexual abuse exist, judicial interpretations have indicated how existing provisions on ‘pornographic performances’ also include ‘performances’ which are live-streamed. Hence, live streaming of child sexual abuse is criminalised but *implicitly*.

Defining ‘child sexual abuse material’

‘Child sexual abuse material’, refers to various forms of materials – photos, videos, audio, any other recording or representation – that depict acts of sexual abuse and/or focus on the genitalia of a child. It is important to note that child sexual abuse material is the preferred term, subsuming older outdated and inappropriate terminology such as ‘child pornography’, yet the older term will frequently still be encountered in legislation. Moves to update this legal terminology are underway, as ‘child pornography’ is misleading and undermines the gravity of these crimes by suggesting that recordings/images of child sexual abuse are merely a form of pornography. The term distracts from the fact that they are actually recordings/images of serious crimes of child abuse.²

The first international instrument comprehensively prohibiting and defining child sexual abuse materials was the 2000 **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**, which defined child sexual abuse material as “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 In 2001, the **Council of Europe’s Convention on Cybercrime** extended the definition to also include depictions of a “person appearing to be a minor engaged in sexually explicit conduct”⁴ and “realistic images representing a minor engaged in sexually explicit conduct.”⁵ The latter type of material is also known as computer-generated or digitally-generated child sexual abuse material and refers to material that although it may be depicting non-existent children are so realistic as to create the illusion for the viewer that real children are involved in the abuse.⁶

In most countries where *Disrupting Harm* was conducted, the above definitions of ‘child sexual abuse material’ are not yet fully reflected in national laws, moreover the outdated and inappropriate term ‘child pornography’ is still predominantly used.

A common recurring issue across the legislation of some countries is the use of vague and obsolete wording to refer to child sexual abuse material.

South Africa provides a strong example of a clear and comprehensive definition of child sexual abuse material with its **2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act**.⁷ This definition covers “images, descriptions and presentations” of a sexual nature of a child, or a person appearing to be a child.⁸ Such material is considered abusive even when not intended to stimulate erotic feelings.⁹ In addition, the definition covers materials portraying real as well as simulated persons, thereby criminalising digitally generated child sexual abuse material.¹⁰ Although not explicitly specified, the use of the words “description” and “presentation” could expand the scope of the definition not only to visual material, but also audio and written material. The provision encompasses both materials depicting sexual acts as well as the sexual parts of a child for primarily sexual purposes.

Qualifiers such as ‘obscene’ or ‘indecent’ are sometimes used but are rarely defined by the law and therefore are open to judicial interpretation which can vary widely.

Another common gap is that national provisions do not include explicitly naming representations of the genitalia of a child for primarily sexual purposes in the definition of what constitutes child sexual abuse material.

Notably, the criminal laws of some countries included an all-encompassing ban on pornography, including pornographic material depicting adults.¹¹ Although these provisions can be used to prosecute offenders of crimes related to child sexual abuse material, they are not specific to this purpose. Often when a total ban on pornography exists – for example in Viet Nam – specific provisions that include a definition and criminalisation of child sexual abuse material are lacking. Thus, laws might not afford any special protection to children and the penalties may not be commensurate to the severity of sexual crimes involving children.

No matter the legal status of pornography in a country and the reasons why a ban exists, it is misleading to qualify child sexual abuse material as pornographic material under law, as the former is both a form of sexual abuse against a child in itself as well as recorded evidence of child abuse and therefore requires specific legislation and appropriate penalties.

Under a law that appropriately outlaws child sexual abuse material, actions that should be criminalised include the production, distribution, dissemination, import, export, offer, sale, possession (with or without any particular purpose or intent),^{12, 13, 14} as well as knowingly obtaining access to such material.¹⁵

Across the countries included in *Disrupting Harm*, the criminalisation of conduct related to child sexual abuse material is relatively comprehensive. As noted in Figure 1, just a few examples exist where the criminalisation of possession is limited to situations where intent to either distribute or profit from the materials is provable. In some cases, the intended purpose of the possession by the offender is taken into account by both/either the legislators and the judges when deciding on penalties. For example, the **Mozambican Penal Code**, although comprehensively punishing a range of conducts related to child sexual abuse material, provides for differing punishments depending on the acts and their purpose. Indeed, whoever distributes, imports, exports, displays or transfers professionally or for-profit child sexual abuse material is punished with imprisonment up to two years plus a fine proportional to the convicted offender's earnings.¹⁶ The mere sharing, exhibition, transfer, import, export or distribution of such material, with no professional or profit purpose, is punished with imprisonment from one to two years and a fine.¹⁷ The mere possession for personal use of child sexual abuse materials incurs a penalty of up to a year of imprisonment.¹⁸

The approach of establishing lower penalties for mere possession may stem from the mistaken beliefs that 'possessing' and 'viewing' images of child sexual abuse does not cause harm to children and these actions are not connected with the production of such material. *Disrupting Harm* data across 13 countries illustrates that strictly categorising child sexual exploitation and abuse as 'online' or 'offline' does not accurately reflect the realities of sexual violence that children are experiencing. The research findings illustrate that abuse and exploitation can, and often does, involve interactions of online technology and multiple forms of abuse. In addition, the mere possession and viewing of child sexual abuse material may also contribute to increased demand for offenders to produce more materials and victimise more children.

In summary, national provisions need to include a comprehensive definition of child sexual abuse material as indicated by international standards. All conduct related to this material should be criminalised regardless of intent.

Online grooming of children for sexual purposes

The **Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse** (also known as the Lanzarote Convention)¹⁹ and the **European Union Directive 2011/93**²⁰ are the only two legally binding international instruments containing an obligation to criminalise the grooming of children, through information and communication technologies, for sexual purposes – referred to as "solicitation of children for sexual purposes". Both instruments refer to grooming as the proposal, through information and communication technologies, from an adult to a child, who has not reached the age of sexual consent, to meet with the purpose of sexually abusing and/or exploiting the child.

Under both of these international legal instruments an act can only be qualified as grooming if it takes place with the intent to meet the child in person. It has however become increasingly common for offenders to sexually abuse children without an explicit intention to meet and abuse them in person, by, for example, manipulating them into self-generating and sharing sexual content through digital technologies.

Positively, in 2015 the Lanzarote Committee issued an opinion recommending that states should extend the crime of grooming for sexual purposes to include "cases when the sexual abuse is not the result of a meeting in person, but is committed online."²¹

In the vast majority of countries where *Disrupting Harm* was conducted, online grooming of children for sexual purposes is not specifically criminalised. However, *Disrupting Harm* research did find that in some countries, other existing provisions are utilised to apprehend and prosecute offenders for these behaviours. For example, a Kenyan investigator explained that police "rely on the *Computer Misuse Act* which penalises exposing a child to sexualised content, and the *Sexual Offences Act* where we use the child pornography section. But we cannot directly charge grooming as an offence." Similarly, a senior legal officer from the Uganda Law Reform Commission explained: "Right now we are using the existing legislation regarding 'defilement' to charge online grooming of children for sexual purposes." Unfortunately, this appears to indicate that cases of online grooming which do not result in an in-person meeting where sexual abuse takes place would not be brought to court.

The lack of specific legislation on grooming and the need for in-person sexual abuse to happen in order for other provisions to apply, may also prevent law enforcement from intervening to prevent abuse occurring even though grooming for sexual purposes can be clearly observed.

Despite this frequent lack of specific provisions, recent and current legislative efforts in some of the countries in which *Disrupting Harm* research took place aim at addressing this gap. For example, insights received through the *Disrupting Harm* research and consultation process in **Namibia** indicate that the **draft Combating of Sexual Exploitation Bill** will criminalise those who engage or communicate with a child with the purpose of committing any sexual offences (both in-person sexual abuse as well as abuse occurring online).²² Offenders would be liable for the crime of grooming even if the child does not reply to the communication and whether or not a sexual offence is ultimately committed.²³

Although **Thai** law does not specifically criminalise the grooming of children for sexual purposes, according to an interview with a Public Prosecutor from the Attorney General’s office, this offence has been included in a draft law that is yet to be approved by the National Assembly. Insights received through the research and consultation process conducted by *Disrupting Harm* suggest that the provision on grooming of children for sexual purposes included in the draft law provides for an increased penalty when the grooming is done through technology. The definition provided by the draft provision would potentially cover grooming of children for any “inappropriate act”, and therefore would be applicable both to cases where the grooming process is aimed at sexually exploiting children through an in-person meeting and to cases when the sexual abuse is committed online only.

In **Cambodia**, although the legislation does not explicitly criminalise online grooming of children for sexual purposes as a standalone offence, the Criminal Code does criminalise “the arrangement, by an adult, of meetings involving indecent exposure or sexual relations at which minors are present or participate.”

Grooming needs specific legislative attention. The law must criminalise the process of building trust between offenders and children as well as situations where the sexual abuse happens online, for example, if a child is coerced, manipulated or convinced to send sexual content to an offender via online platforms.

Live-streaming of child sexual abuse

In the *Disrupting Harm* research, the live-streaming of child sexual abuse refers to child sexual abuse that is perpetrated and viewed simultaneously in real-time via communication tools, video conferencing tools, and/or chat applications. In most cases, the offender requesting the abuse in exchange for payment or other material benefits is physically in a different location from the children and the offender facilitating the abuse.

While the live-streaming of child sexual abuse is not yet explicitly defined in any international conventions, a number of these documents recognise how behaviours involved in this form of online child sexual exploitation and abuse are illegal. In particular, the **Convention on the Rights of the Child**²⁴ and the **International Labour Organisation Convention No. 182 on the Worst Forms of Child Labour**,²⁵ recommend States to prohibit “pornographic performances” involving children. Similarly, the **Lanzarote Convention** contains a specific article criminalising all actions concerning the participation of a child in pornographic performances.²⁶ This form of online child sexual exploitation may be read as falling within this description as a “pornographic performance” involving children.

Although the live-streaming of child sexual abuse material may be charged under various existing provisions outlawing child sexual abuse material, a difficulty emerges. Live-streaming features do not necessitate downloading or storage of the images being transmitted in the stream. Hence, often no material as such is produced. Interviews conducted in the course of *Disrupting Harm* research with prosecutors and police identified that this presents difficulties in applying existing legal provisions to convict offenders.

“Live-streaming is not defined in our law; so prosecuting such a case is difficult.”

Investigator from the Anti-Human Trafficking & Child Protection Unit, Kenya

None of the countries involved in *Disrupting Harm* explicitly criminalise the live-streaming of child sexual abuse. A few countries have provisions referring to live pornographic performances,²⁷ but without clarifying that these provisions may apply to performances live-streamed online, offenders may avoid being prosecuted under these provisions.

Two positive exceptions are the Philippines and Viet Nam where although the law still fails to explicitly define and criminalise the live-streaming of child sexual abuse, official interpretations of existing legal provisions have indicated how they could be used to prosecute.

The **Philippines' Cybercrime Prevention Act** establishes the offence of "cybersex", which involves "the wilful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favour or consideration."²⁸ In the words of the Supreme Court of the Philippines, "the Act actually seeks to punish cyber prostitution, white slave trade, and pornography for favour and consideration. This includes interactive prostitution and pornography, i.e., by webcam."²⁹

According to the **Implementing Rules and Regulations of the Cybercrime Prevention Act**, the offence of cybersex involving a child would be punished as per the provisions relating to child sexual abuse material under the Cybercrime Prevention Act.³⁰ Consequently, the live-streaming of child sexual abuse has been criminalised under this Act, albeit implicitly.

In **Viet Nam**, the **Criminal Code** makes it an offence for any person aged 18 or over to persuade, entice or force a child under 16 to participate in a pornographic performance or watch a pornographic performance.³¹ According to a 2019 resolution by the Justice Council of the Supreme People's Court³² this provision includes pornographic performances which are live-streamed online. However, this prohibition does not afford protection for 16-17-year-old children.

States should ensure that live-streaming of child sexual abuse is explicitly criminalised either through standalone provisions or by directly indicating that existing provisions on child sexual abuse material and/or 'pornographic performances' also apply when the abuse is live-streamed online and materials are not downloaded or stored.

Such provisions should clearly criminalise both those who request the sexual abuse to be live-streamed as well as those who facilitate and/or commit the in-person abuse. However, it is important not to over-specify the focus on the technological aspect – i.e. the streaming tools – since information and communication technologies are fast-changing and new devices and tools will continue to emerge.³³

Conclusions

The comprehensive analysis of national legislation conducted as part of *Disrupting Harm* highlights that countries still have a lot of work to do when it comes to the comprehensive criminalisation of online child sexual exploitation and abuse. Despite the existence of some dedicated legal provisions on child sexual abuse material, more work needs to be done for these to be defined comprehensively and using appropriate terminology. Further, it is important that all forms of online child sexual exploitation and abuse (such as online grooming of children for sexual purposes or live-streaming of child sexual abuse) get addressed individually by tailored laws. Clear and comprehensive legal provisions will afford greater protection of children, as well as functioning as deterrence and resulting in appropriate punishment for offenders.

They will also strengthen efforts to challenge the common misconception that sexual crimes against children via technology and within online environments are less severe than in-person abuse. Each of the *Disrupting Harm* country reports provide specific recommendations detailing how governments can amend national legislation to meet these goals.

Finally, a crucial gap remains between the existence of legal provisions and their effective enforcement. *Disrupting Harm* data frequently indicates lacking awareness and understanding of laws regarding online child sexual exploitation and abuse among relevant professionals, as well as difficulties applying available legislation due to loopholes and a lack of cross-referencing between related laws when key legal provisions are found in multiple Acts. These issues and their consequences are also detailed in the *Disrupting Harm* country reports.

It is expected that many of the challenges identified through the first set of Disrupting Harm national assessments are present in other parts of the world, but with important differences both in children's experiences, and in each countries' capacity and readiness to prevent and respond effectively.

This reinforces the need for high-quality, comprehensive, national evidence-generation efforts to determine the extent to which children are exposed to online sexual exploitation and abuse in any given country, and how prevention and response capabilities can be improved.

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