

In the Name of God, the Most Compassionate, the Most Merciful

Concept Note

Presented by the Islamic Republic of Iran on Articles 14 and 16

of

the Draft Convention on Countering the Use of ICT for Criminal Purpose

3 July 2024

A. General Observations

The rapid advancement of Information and Communication Technologies (ICTs) has revolutionized the way we live, work, and communicate. However, this technological progress has also brought about new challenges. One of the most alarming and pervasive issues we face today is heinous crime of child sexual exploitation online, facilitated by the misuse of various digital platforms and tools.

The use of animation and cartoons has emerged as a concerning trend in the exploitation of children online. Perpetrators have increasingly turned to the use of cartoons and animations to lure and groom young victims, creating a false sense of security and trust. Animated characters and cartoon-style imagery can be used to normalize and desensitize children to inappropriate sexual content, making them more vulnerable to sexual exploitation while enticing criminals to commit further horrendous crimes against children.

Effective protection of children against sexual exploitation should be an integral component of the comprehensive convention and a zero-tolerance policy should be adopted in combating child sexual exploitation online and dissemination of other obscene materials. The United Nations should send a strong signal on the unwavering will of the international community in protecting children and fight criminals who lurk online and offline to commit unspeakable crimes. There should be no exception or loophole which would allow for commission of any form of such crimes or otherwise normalize such criminal conduct.

The future convention, as the first-ever international legal framework on combating the use of information and communications for criminal purposes, should indeed have due regard to the differences among various domestic legal systems. It should not opt for imposing legal theories of specific legal frameworks on domestic legal systems that adopt a broader approach in countering dissemination of intimate images.

In the light of the foregoing, it is necessary to incorporate essential elements and amend the current formulations reflected in Articles 14 and 16 of the draft convention to ensure that the anticipated convention will have robust provisions on countering child sexual exploitation online and is in harmony with various legal systems. Such modifications could ensure that this important legal framework will not be misused to justify criminal acts against children, will not undermine domestic legal systems of many countries with respect to criminalization of the dissemination of intimate images while also commensurate with the magnitude and scale of such horrendous crimes.

This is particularly important considering that rapid transformations in the ever-evolving digital technologies sphere potentially could result in various new instrumentalities for the commission of crime and anonymity of criminals maximizing the scale and intensity of such criminal acts. The convention should withstand the test of time and protect our children for generations to come in the face of malicious intent of criminals and should pave the way for its universal acceptance.

B. Proposals on Article 14

- **Article 14(3)**

The current formulation of article 14(3) limits criminalization of child sexual exploitation online to content depicting a real child. Such formulation might be misinterpreted as unduly excluding other representations of explicit sexual exploitation of children, and engagement of children in sexual activity. The present formulation not only is not conducive to an effective fight against child sexual exploitation online but would practically defeat the very purpose sought in elaboration of the convention and inclusion of Article 14 in the convention.

In order to create a safer online environment for children and ensuring that they can harness the benefits of technology without falling victim to the malicious exploitation of their innocence and vulnerability, the convention should demonstrate the determination of State Parties in effective fight against all forms of sexual exploitation of children online, *inter alia*, through identifying and removing content involving the sexual exploitation of children online.

In the light of the foregoing, we oppose the creation of any possibility or loophole that might give freedom of operation to criminals and thus propose to delete Article 14(3). Throughout previous meetings of the Ad hoc Committee a minority

of states were inclined to support this paragraph, the observations of these states should not come at the expense of undermining the provisions of the convention, the convention should be intact, clear and robust in fighting child sexual exploitation.

Along similar lines, it should be noted that terms such as “without right” remains redundant and unnecessary. During the previous meetings of the Ad hoc Committee, it was contended on the part of certain delegations advocating for exceptions in countering this heinous crime that the inclusion of “without right” is needed to ease regulations and provide law enforcement and judiciary with the necessary authorities and to investigate, prosecute and adjudicate related offences.

However, such rationale is misplaced since: (1) domestic criminal laws of various legal systems have already enabled law enforcement with necessary rights and obligations (2) reference to “intentionally” which indicates a general intent reflects the unlawfulness of the conducts referred to in Article 14(1) precluding the lawful acts of law enforcement authorities, (3) the present convention, as its purpose evinces, is essentially being negotiated to counter criminals and support law enforcement and cooperation not to undermine their valuable. (4) if the real concern of certain delegations is to safeguard the work of law enforcement, a clause could be discussed to be placed in the article such as the following:

The provisions of paragraph 1 of this article do not prejudice the lawful exercise of functions by law enforcement and other competent authorities in accordance with domestic laws in investigation and prosecution of crimes referred to in this article.

As for the term “intentionally”, it is understood that a general intent would suffice for attaching *mens rea* to the criminal conduct in question.

- **Article 14(4)**

Article 14(4) excludes the criminalization of children for self-generated material. Criminal laws of many countries include provisions that either exclude minors from criminal responsibility or stipulate minimum age for attaching such responsibility. However, this does not preclude the wrongfulness of these conducts in many countries which still would categorize such conducts as juvenile delinquency. At minimum, if such conducts are not disapproved in some other countries, still the rationale for such inclusion is lacking as this language while prejudicing domestic legal system of many countries, have no added value and is thus superfluous. Moreover, this paragraph includes certain notions that are not found in many domestic legal systems.

As such, it is necessary to rectify the flaws of the current formulation of Article 14(4). Taking into account the principle of *nullum crimen sine lege* and whereas the exclusion of criminal acts of children with respect to many crimes have been addressed in domestic legal systems, Article 14(4)(a) could remain as a basis for negotiation if the said Article does not proscribe correctional measures of domestic laws. The article does not preclude other measures that a state party may take, however, to improve the article in this area, discretionary provisions that encourages adopting corrective measures for such conducts when committed by children could be added to the current draft article.

C. Proposals on Article 16

The term “non-consensual dissemination of intimate images” is a very specific term that reflects a specific area of criminal conducts and does not prejudice domestic laws of state parties including related to criminalization of dissemination of intimate images where the consent of persons are immaterial as well as dissemination of other obscene material. As such, it is important not to focus on this matter as solely privacy offences in article 16 rather to have due regard to morality offences by way of which it is necessary to delete the word “non-consensual” and not to make the criminalization of such acts contingent upon the consent of parties. It is self-evident that in many instances of crime, consent of parties does not amount to exclusion of their criminal responsibility. Nonetheless, if this option could not in any manner bridge the gaps among delegations, the only viable solution would be to insert appropriate provisions that could be construed as latitude for other measures in the area of combating dissemination of intimate images.

Article 16 should not and does not prejudice state’s prerogative to enact laws criminalizing the dissemination of intimate images, regardless of consent from the parties involved, in order to maintain *ordre public* and morals. To that end, new provisions should be added to article 16 to pronounce possible latitude for domestic legal systems to take other necessary measures where that legal system requires so; such provisions could be couched in exhortatory language. Similar to article 14, deletion of the phrase “without right” from paragraph 1 of Article 16 follows the same logic. The term “intentionally” is sufficient to demonstrate the general intent which makes the term “without right” redundant. Such deletion is significant for ensuring legal certainty, avoiding ambiguity and taking effective measures in countering such crimes.
