**Commission on Human Rights of the Philippines**

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**Inputs to the DRAFT Guidelines on 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**

**4 April 2019**

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1. Paragraph 4: “Moreover, the recent increase in migrant, internally displaced and refugee children who are vulnerable to sexual exploitation…
2. Paragraph 13: “whether facilitated by ICTs or not.
3. Paragraph 17: “…confidential and safe counselling and/or other interventions, reporting and complaint mechanisms…”
4. Paragraph 24: “…the travel and tourism industry; and to recognize that non-governmental organisations can play in enhancing child protection policies and strategies;”
5. Paragraph 28: “…Specific resources should be allocated to entities…”
6. Paragraph 29 (d) : comment – proper use of ICTs should be specified.
7. Paragraph 34: “situations such as but not limited to migrant, internally displaced and refugee children, children in street situations…”
8. Paragraph 38 (a) : comment - Perhaps there can be an additional paragraph encouraging States to partner with CSOs and the private sector in conducting capacity building trainings to make the communities aware and capable of preventing and addressing SECTT, and possibly address the root causes the victimisation through SECTT, such as but not limited to poverty.
9. Paragraph 47: “**Sale of children** is defined by the OPSC as the transfer of a child, whether physically or by legal instrument, by any person (e.g. a parent) or a group of persons (e.g. a family) to another person in exchange for remuneration or any other consideration.”
10. Paragraph 48 (c) : “For the purpose of engaging a child in forced labour, debt bondage or involuntary servitude.”
11. Paragraph 53: comment - Perhaps it should consider persons beyond the age of majority who are unable to fully take care of themselves; Sexual activities should also include stimulation of the genital or anal area using an object.
12. Paragraph 56: comment - This should also include hiring, employing, persuading, inducing, coercing a child.
13. Paragraph 58: comment – *“child under the age of 18”* seems to be redundant. It can be deleted.
14. Paragraph 64: comment - *“primarily sexual purposes”* may lead to confusion as “primarily sexual purposes” is vague. Would having an anatomically correct doll represent par. 63 when it is used for “primarily sexual purposes” in court, as to help a child witness elaborate in sharing to the court how a person has been sexually abused?

In Philippine law, Republic Act No. 9775 or the Anti-Child Pornography Act defines explicit sexual activity as:

actual or simulated -

(1) As to form:

(i) sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex;

(2) bestiality;

(3) masturbation;

(4) sadistic or masochistic abuse;

(5) lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus; or

(6) use of any object or instrument for lascivious acts

The term “lascivious exhibition” may be sufficient to describe the representation of sexual parts.

1. Paragraph 65: comment – on “pornography”, we are of the view that the word pornography alone, although often legal, is not be equivalent to the term child pornography.
2. Paragraph 67: “…the Committee encourages States parties to criminalise the acts of recruiting, inducing, causing or coercing…”
3. Paragraph 68: comment - Pandering should also be considered. Under R.A. No. 9775 (Anti-Child Pornography Act), pandering is defined as “the act of offering, advertising, promoting, representing or distributing through any means any material or purported material that is intended to cause another to believe that the material or purported material contains any form of child pornography, regardless of the actual content of the material or purported material.”
4. Paragraph 70: comment – on “undue pressure”, What does “undue pressure” mean? Does it include undue influence, such as moral ascendancy? If a child is convinced with the use of the offender’s relationship with the child, such as if the offender is a teacher, is it covered in this paragraph?

What if it was peer pressure? If a group of children pressured each other to produce the sexual content/material, how should it be treated? Technically, because a child does not want to be left out, what they do is not necessarily against their will.

1. Paragraph 71: comment - Should “cybersex” be included?

In Republic Act No. 10175 or the Cybercrime Prevention Act, the Philippine law defines cyber sex as “The willful 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 favor or consideration.”

1. Paragraph 86: “…the State of which the alleged offender is a national or in which he/she has her/his habitual residence…”
2. Paragraph 103 (a) : “…Police officers, judges, prosecutors and lawyers should be sensitized…”
3. Paragraph 111: “…abuse of child are committed or facilitated through the use of ICTs…”