



Child sexual abuse

This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.

Definitions in legally binding instruments

- i. 1989: The CRC refers to “*all forms of sexual exploitation and sexual abuse*” in its Article 34, which elaborates on the requirement for State Parties to protect children from sexual exploitation and abuse as follows: “*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.*”
- ii. 1999: The ACRWC refers in Article 27 to “all forms of sexual exploitation and sexual abuse”.
- iii. 2007: The Lanzarote Convention refers to both the “sexual exploitation and [the] sexual abuse of children”. The Preamble sets forth that “[a]ll forms of sexual abuse of children, including acts which are committed abroad, are destructive to children’s health and psycho-social development.” The Convention further states in Article 3(b) that “[s]exual exploitation and sexual abuse of children shall include the behaviour as referred to in Articles 18 to 23 of this Convention.” This includes sexual abuse, offences concerning child prostitution, child pornography, the participation of a child in pornographic performances, corruption of children, and solicitation of children for sexual purposes. Article 18(1) refers specifically to “sexual abuse”, which it defines for the purposes of criminalisation as follows: “(a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities”⁸¹ and: “(b) engaging in sexual activities with a child where: use is made of coercion, force or threats; or abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.”
- iv. 2011: EU Directive 2011/93 sets forth, in its Article 3, a thorough definition of offences concerning sexual abuse, and includes in that definition the fact of causing a child to witness sexual activities or sexual abuse, engaging in sexual activities with a child, and coercing, forcing, or threatening a child into sexual activities with a third party.

Non-binding instruments

The term “child sexual abuse” is often used in resolutions of the UNGA and of the HRC on the rights of the child (known as Omnibus Resolutions) and other non-binding international or regional documents (e.g. of the Council of Europe).

Terminology considerations

The CRC does not make clear what the distinction is between child sexual abuse and child sexual exploitation. However, it is noteworthy that the sexual abuse of children requires no element of exchange and can occur for the mere purpose of the sexual gratification of the person committing the act, whereas the sexual exploitation of children can be distinguished by an underlying notion of exchange (for more details on sexual exploitation of children, see *infra*, Section D). A recurrent (although not indispensable) feature of child sexual abuse is that it is committed by someone who is not a stranger to the victim and who has some form of authority

or power over them.⁸² Such authority can be based on family ties (e.g. a relative), a position of authority or control (e.g. a teacher, coach), or other factors. The power a person can have over a child can also derive from the establishment of a relationship of trust or dependency, for the purpose of manipulating the child to engage in sexual activities.⁸³

In accordance with major dictionaries, abuse refers to the cruel or violent, including sexual, treatment of someone, especially regularly or repeatedly.⁸⁴ The fact that a person who sexually abuses a child more often than not is someone familiar to the child also facilitates the repetition of the act.⁸⁵

The UN has provided a general, very broad definition of sexual abuse (not particularly relating to children), referring to *“the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions”*.⁸⁶

Child sexual abuse has been defined as *“any sexual activity between a child and closely related family member (incest) or between a child and an adult or older child from outside the family. It involves either explicit force or coercion or, in cases where consent cannot be given by the victim because of his or her young age, implied force”*.⁸⁷

WHO provides a detailed definition of “child sexual abuse”: *“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.”*⁸⁸

While most forms of child sexual abuse are contact abuse, it must be acknowledged that child sexual abuse can also be committed without physical contact (so-called “non-contact abuse”). Common examples of “non-contact sexual abuse” are sexual harassment of children, including verbal harassment such as unwanted sexual comments.⁸⁹ With the surge of child sexual abuse occurring through the Internet or other ICT, it becomes increasingly necessary to pay attention to such non-contact forms of abuse—and the consequences they have for young victims.

Conclusion: The sexual abuse of children requires no element of exchange, and can occur for the mere purpose of the sexual gratification of the person committing the act. Such abuse can be committed without explicit force, with other elements, such as authority, power, or manipulation being determining factors. Moreover, it is noteworthy that, when the child has not reached the age of sexual consent, there is no legal requirement to establish any of these elements. The mere fact of the sexual activity taking place is sufficient to constitute abuse. Furthermore, child sexual abuse can take the form of both contact and non-contact abuse. Child sexual abuse is a broad category that, at its core, defines

⁸¹ It should be noted that Article 18(3) sets forth that Article 18(1)(a) does not cover consensual sexual activity between children.

⁸² See for instance Pinheiro, *World Report on Violence against Children*, supra 55, Chapter 3. The Explanatory Report to the Lanzarote Convention (paragraph 48) also explains that statistics demonstrate that the perpetrators of child sexual abuse are usually persons close to the victim.

⁸³ Ibid.

⁸⁴ See Oxford British and World English Dictionary.

⁸⁵ There appears to be a clear correlation between the fact that the perpetrator of child sexual abuse is often a known and trusted caregiver and the fact that child sexual abuse often occurs repeatedly over longer periods of time, in an increasingly sexually invasive manner. See, for instance, WHO, “Guidelines for Medico-Legal Care for Victims of Sexual Violence”, Geneva, WHO, 2003, Chapter 7, p. 76.

⁸⁶ UN Secretariat, “Secretary-General’s Bulletin on Special Measures for Protection for Sexual Exploitation and Abuse”, 9 October 2003, Section 1 <https://oios.un.org/resources/2015/01/ST-SGB-2003-13.pdf>. IASC, “Guidelines for Integrating Gender Based Violence Interventions in Humanitarian Action” (supra 61) use the same definition (p. 322) http://www.europarl.europa.eu/meetdocs/2014_2019/documents/femm/dv/gbv_toolkit_book_01_20_2015_/gbv_toolkit_book_01_20_2015_en.pdf

⁸⁷ N. Dominguez, C. Nelke, and B. Perry, “Child Sexual Abuse”, *Encyclopaedia of Crime and Punishment*, Vol. 1, 2002, cited in IASC, *Guidelines for Integrating Gender-Based Violence Interventions*, supra 61, p. 321.

⁸⁸ WHO Guidelines http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf

⁸⁹ See infra, Section C.4.V on “Sexual harassment of a child”.



the harm caused to children by forcing or coercing them to engage in sexual activity, whether they are aware of what is happening or not. As such, it is an appropriate umbrella term for many of the other terms referred to in this document. The terms “child sexual abuse” and “sexual abuse of children” are used interchangeably in English and pose no particular problem. Linguistically speaking, “abuse” as a word in this context already implies the mistreatment *of someone else*, and appears sufficiently clear on its own to ensure no confusion arises. Both “child sexual abuse” and “sexual abuse of children” thus clearly refer to the fact that someone else is subjecting the child to the abuse.