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From concept to application: a critical reflection on child safeguarding from a children's rights perspective

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5 | Grooming and child sexual abuse in organisational settings

An expanded role for international human rights law¹

5.1 INTRODUCTION

‘Child sexual abuse and cultures that enable it still exist. Grooming and its lasting impacts are not widely understood. Predators manipulate all of us. Family, friends, colleagues, strangers, in every class, culture and community. They thrive when we fight amongst ourselves and weaponise all of our vulnerabilities.’²

The right for children to be free from sexual abuse became a recognised human rights issue with the adoption of the United Nations Convention on the Rights of a Child (CRC).³ Despite this milestone, child sexual abuse remains alarmingly prevalent worldwide. For instance, a meta-analysis of 217 studies between 1980 and 2008 found that 1 in 8 (12.7%) of the world’s children experience sexual abuse and/or exploitation before the age of 18.⁴

This article focuses on child sexual abuse in organisational contexts, with a particular emphasis on the role of ‘grooming’. While grooming is often associated with the internet and online behaviour, its origins precede the digital age. Consequently, this article aims to challenge the misconception of solely linking grooming to online platforms and emphasises its broader recognition. Not all cases of child sexual abuse in organisational contexts involve grooming but many do. There are organisational structures and cultures that can enable or endorse grooming behaviours.

The article is timely given the cases of child sexual abuse within organisational settings that continue to emerge, exemplified by high-profile cases involving the Catholic Church, USA Gymnastics, and Boy Scouts America. These incidents, along with the #MeToo movement, have prompted public

1 This chapter was originally published as Afroz Kaviani Johnson, ‘Grooming and Child Sexual Abuse in Organizational Settings – an Expanded Role for International Human Rights Law’ (2024) 16 *Journal of Human Rights Practice* 355. This chapter has had minor edits since publication.

2 Grace Tame, “‘Hear Me Now’”: Australian of the Year Grace Tame’s Speech in Full – ABC News’ (25 January 2021) <<https://amp.abc.net.au/article/13091710>>.

3 Van Bueren, ‘Child Sexual Abuse and Exploitation: A Suggested Human Rights Approach’ (1994) 2 *The International Journal of Children’s Rights* 17, 46.

4 Marije Stoltenborgh and others, ‘A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World’ (2011) 16 *Child Maltreatment* 79.

outcry and shifted the discourse on sexual violence from individual perpetrators alone to the wider systems that enable child sexual abuse to occur.

To address this pressing issue, this article poses two main research questions: First, what guidance can international human rights law offer to address the grooming of children for sexual abuse, including within organisational settings? Second, how can the international human rights law framework be used and enhanced to guide context-specific responses to combat grooming and protect children from abuse in organisational settings?

This article employs a legal and interdisciplinary research methodology. It analyses international human rights standards and norms set out in the CRC and other relevant instruments, including the Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Abuse (Lanzarote Convention). It draws on the interpretative guidance of the Committee on the Rights of the Child, the Committee of Parties to the Lanzarote Convention, and academic scholarship. Comprehensive desk research, using keyword searches for 'grooming' and 'solicitation' in databases, identified the sources reviewed and analysed, focusing on materials available at the time of writing the article in 2022. The article also examines examples of grooming legislation in three countries, selected due to their relevance to recent high-profile cases of organisational abuse and/or government inquiries. While existing analysis often focuses on how the law criminalises individual perpetrators, this article is concerned with how legislation may also catalyse change within organisations to foster conditions that keep children safe from harm.

By situating the issue within human rights discourse, this article challenges prevailing paradigms that prioritise risk aversion and compliance, urging practitioners to centre their efforts on recognising and respecting the rights and agency of children.⁵ A human rights-based approach opens avenues for enhancing state and organisational accountability. Moreover, it holds the potential to catalyse change within organisations fostering conditions supportive of children's rights.

This article is divided into three main parts. The first discusses sexual grooming, including in organisational contexts, based on scientific and theoretical literature, case reviews and government inquiries. The second section analyses international and regional human rights laws, along with authoritative guidance ('soft law') from treaty-based human rights mechanisms, to outline existing standards related to child sexual abuse and grooming. It also highlights opportunities for enhancing global norms and promoting state and organisational accountability. Finally, the article examines domestic legislation on grooming and elaborates on recommendations from Australia's Royal

5 Mary Ann Powell and others, 'Child Safety in Policy: Who Is Being Kept Safe and from What?' (2020) 54 *Social Policy & Administration* 1160.

Commission into Institutional Abuse (Australia's Royal Commission)⁶ in support of broad grooming offences. It emphasises the need for increased attention to grooming and proposes five key areas that require updated and comprehensive global guidance to build public consciousness in support of safer organisations as well as to hold perpetrators accountable. In conclusion, the article encourages practitioners to utilise the human rights system as an important tool for driving change, increasing state and organisational accountability, and ensuring every child's right to be free from sexual abuse.

5.2 SEXUAL GROOMING IN ORGANISATIONAL SETTINGS: DEFINITIONS AND COMPLEXITIES

The literature on grooming is still developing, mainly consisting of single studies with small sample sizes involving known or convicted perpetrators.⁷ Geographically, the literature is dominated by evidence from the 'Global North' particularly the United Kingdom, Canada, the United States of America and Australia. Grooming, also known as 'entrapment', 'engagement', 'subjection', 'emotional seduction', 'enticement' and 'solicitation', poses challenges in achieving consensus on its definition.⁸ Broadly, it refers to how some perpetrators interact with and engage a child, and sometimes others around the child, to enable sexual abuse while decreasing the likelihood of disclosure.

Though most grooming literature is not specific to organisational contexts, similarities exist across different typologies of offenders.⁹ Grooming is gen-

6 Australia's Royal Commission is one of the most comprehensive national inquiries on child sexual abuse in institutional contexts to date. The Royal Commission took over five years to complete its work, including a two-year extension, with a total estimated expenditure of AUD342.3 million. More than 680 people worked for the Royal Commission during its life. The Royal Commission held 57 public hearings and 8,013 private sessions across Australia. The Royal Commission's Final Report comprises 17 volumes Royal Commission into Institutional Responses to Child Sexual Abuse, 'Royal Commission into Institutional Responses to Child Sexual Abuse' (*Royal Commission into Institutional Responses to Child Sexual Abuse*, 2 September 2022) <<https://www.childabuseroyalcommission.gov.au/front>>.

7 Patrick O'Leary and others, 'Grooming and Child Sexual Abuse in Institutional Contexts: Research Paper' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 6 <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Grooming%20and%20child%20sexual%20abuse%20in%20institutional%20contexts%20-%20Prevention.pdf>>.

8 Natalie Bennett and William O'Donohue, 'The Construct of Grooming in Child Sexual Abuse: Conceptual and Measurement Issues' (2014) 23 *Journal of Child Sexual Abuse* 957; Georgia M Winters, Leah E Kaylor and Elizabeth L Jeglic, 'Toward a Universal Definition of Child Sexual Grooming' (2021) 43 *Deviant Behavior* 1.

9 Keith L Kaufman and others, 'Risk Profiles for Institutional Child Sexual Abuse: A Literature Review' (Royal Commission into Institutional Responses to Child Sexual Abuse 2016) 41 <<http://www.childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/risk-profiles-for-institutional-child-sexual-abuse>>.

erally understood as an incremental process, and several models have been proposed to explain it.¹⁰ Winters et al.¹¹ propose five overarching stages: victim selection; gaining access and isolating a child; trust development; desensitisation to sexual content and physical contact; and maintenance following the abuse. Initial stages may appear innocent and 'normal', but later ones may involve more explicit attempts to desensitise a child to sexual activity, such as offering alcohol, drugs, exposing them to pornography or sexually explicit dialogue.¹²

Identifying grooming behaviours is challenging as they may not be explicitly sexual or criminal when viewed in isolation.¹³ Some suggest that grooming is easier to identify retrospectively than before sexual abuse occurs.¹⁴ Grooming patterns are non-uniform and may vary depending on factors like perpetrator and victim characteristics, the context in which it occurs, and technology-usage.¹⁵

The widespread use and acceptance of technology in some organisational contexts have introduced new ways for adults to groom children for sexual abuse.¹⁶ It can facilitate the progression of grooming tactics from non-sexualised contact to sexual contact, especially when the perpetrator already knows the child. For instance, an analysis for the Independent Inquiry into Sexual Abuse for England and Wales found that alleged perpetrators used various social media platforms and emails for unsupervised and regular contact with children.¹⁷

Perpetrators may also groom significant people in the child's life, such as their parents, siblings, other family members, caregivers, and community members, to initiate and/or maintain abuse.¹⁸ For instance, Australia's Royal Commission uncovered cases where children were sexually abused by people in religious ministry after the perpetrator had groomed their family members. Perpetrators would ingratiate themselves into the family, assuming roles like a 'father figure', and exploiting vulnerable families such as those facing marital

10 O'Leary and others (n 7) 10.

11 'Validation of the Sexual Grooming Model of Child Sexual Abusers' (2020) 29 *Journal of Child Sexual Abuse* 855.

12 O'Leary and others (n 7) 10.

13 Commonwealth of Australia, 'Final Report, Volume 2: Nature and Cause' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 40.

14 Samantha Craven, Sarah Brown and Elizabeth Gilchrist, 'Sexual Grooming of Children: Review of Literature and Theoretical Considerations' (2006) 12 *Journal of Sexual Aggression* 287, 292.

15 Winters, Jeglic and Kaylor (n 11) 856.

16 Julienne Zammit and others, 'Child Sexual Abuse in Contemporary Institutional Contexts: An Analysis of Disclosure and Barring Service Discretionary Case Files' (Independent Inquiry Child Sexual Abuse 2021) 17 <<https://www.iicsa.org.uk/key-documents/26611/view/csa-contemporary-institutional-contexts-july-2021.pdf>>.

17 *ibid.* 46.

18 Craven, Brown and Gilchrist (n 14) 293; O'Leary and others (n 7) 11.

issues or mourning.¹⁹ This grooming of people within the child's circle can lead to the children's isolation and decrease the likelihood that a child is believed if they disclose the abuse.²⁰

In organisational contexts, perpetrators may also groom their professional environments to evade safety measures and exploit weaknesses, enabling them to sexually abuse children without detection.²¹ Perpetrators gain 'insider' status by manipulating their environment or position of trust, making it difficult to address concerns if detection or disclosure does occur.²² Secretive, autonomous, or poorly supervised organisations are particularly susceptible to 'organisational grooming'.²³ A review of cases involving 'powerful perpetrators' revealed common patterns of grooming within organisations, where individuals leveraged their power or celebrity status to manipulate the organisation's rules.²⁴

Certain organisational cultures can enable grooming behaviours, making it difficult to distinguish grooming from acceptable behaviours. For example, in sports clubs, physical contact with children and intimate psychological relationships may be viewed as necessary; in educational settings, extended time between teachers and students may be considered as going 'above and beyond the call of duty'; and in childcare institutions, showing affection through hugs and kisses may be seen as desirable.²⁵ Zammit et al. describe such cultures as 'informal' institutional cultures, where informal social relationships and contact with children are normalised.²⁶ This normalisation makes it challenging to distinguish between grooming, benign actions, or even desirable behaviours, allowing perpetrators to manipulate norms and sexually abuse children undetected.²⁷

Organisational cultures that discourage discussion of sex-related matters may hinder children from recognising grooming and delay abuse detection.²⁸

19 Commonwealth of Australia, 'Final Report: Preface and Executive Summary' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 51.

20 Craven, Brown and Gilchrist (n 14) 293.

21 Anne-Marie McAlinden, "'Institutional Grooming' and Abuse' in Anne-Marie McAlinden, *'Grooming' and the Sexual Abuse of Children: Institutional, Internet, and Familial Dimensions* (Oxford University Press 2012) 148.

22 O'Leary and others (n 7) 12.

23 McAlinden (n 21) 148.

24 Marcus Erooga, Keith Kaufman and Judith G Zatzkin, 'Powerful Perpetrators, Hidden in Plain Sight: An International Analysis of Organisational Child Sexual Abuse Cases' (2020) 26 *Journal of Sexual Aggression* 62.

25 Donald Palmer and others, 'The Role of Organisational Culture in Child Sexual Abuse in Institutional Contexts' (Royal Commission into Institutional Responses to Child Sexual Abuse 2016) 57–59 <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20The%20role%20of%20organisational%20culture%20in%20child%20sexual%20abuse%20in%20institutional%20contexts%20-%20Causes.pdf>>.

26 Zammit and others (n 16) 89.

27 *ibid.* 90.

28 Palmer and others (n 25) 60.

In some instances, children may be groomed to believe they are in consensual 'romantic' relationships with the perpetrator, making it harder for them to recognise and disclose the abuse.²⁹ For instance, a case file analysis for the Independent Inquiry into Sexual Abuse for England and Wales found that informal social relationships between adults and children created 'cultures of silence', leading children to refrain from reporting abuse due to fear of not being believed or of triggering a formal response that would get the perpetrator 'into trouble' or end the relationship.³⁰

Perpetrators accessing and sexually abusing children in contemporary organisational contexts closely resemble historical child sexual abuse cases, except for the increasing use of technology.³¹ This raises the crucial question of why states have been unable to improve safeguards for children in organisational settings, despite numerous government inquiries and high-profile scandals over the years. The enduring misperceptions surrounding child sexual abuse, including grooming, may be a contributing factor to this issue. Grooming challenges dominant stereotypes, such as 'childhood innocence' and 'predatory molesters',³² making it difficult for some professionals and community members to reconcile the concept of grooming with their idea of sexual violence.³³ These enduring misperceptions impact policy priorities and resource allocation and can lead to interventions based on misguided 'stranger danger' narratives. At an organisational level, these stereotypes may hinder the identification of warning signs and result in inadequate responses to cases of child sexual abuse. This information is relevant to practitioners as it sheds light on the barriers and challenges in addressing child sexual abuse, including in organisational contexts, urging a shift in approach and understanding to ensure every child's right to be free from sexual abuse.

5.3 CHILD SEXUAL ABUSE AND GROOMING AS A HUMAN RIGHTS CONCERN

5.3.1 United Nations Convention on the Rights of the Child

The right for children to be free from sexual abuse is enshrined in the CRC, adopted in 1989 and coming into force in 1990. The CRC requires states parties to take action to protect the child from all forms of sexual abuse and exploitation and opens state party action or inaction to international scrutiny.³⁴ It

29 Zammit and others (n 16) 90.

30 *ibid.*

31 *ibid.* 93.

32 Park Dietz, 'Grooming and Seduction' (2018) 33 *Journal of Interpersonal Violence* 28, 29.

33 Kenneth Lanning, 'The Evolution of Grooming: Concept and Term' [2018] *Journal of Interpersonal Violence* 12, 12.

34 Roger JR Levesque, 'Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights' (1994) 60 *Brooklyn Law Review* 41, 997-998.

marks a paradigm shift in viewing children as rights-holders entitled to non-negotiable rights to protection, rather than as 'objects' in need of assistance.³⁵ Today, the CRC has near-universal ratification, except for the USA.

Articles 34 and 19 of the CRC impose mandatory obligations for states to take measures to ensure the protection of children from sexual abuse. Article 34 requires states to protect the child from 'all forms' of sexual exploitation and abuse. This general obligation is complemented by a specific obligation to:

- '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.'

Article 19(1) requires states to 'take all appropriate legislative, administrative, social and educational measures to protect' children from all forms of exploitation and abuse, including sexual abuse. Subparagraph (2) elaborates on the protective measures as inclusive of:

'effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.'

Articles 19 and 34 are closely linked and their differences in scope appear to have diminished over time. Article 34 specifically addresses *sexual* abuse and exploitation, while article 19 covers all forms of violence *inclusive* of sexual abuse and exploitation. The drafting process suggests states were focused more on sexual exploitation in article 34 as sexual abuse had already been addressed in article 19.³⁶ At the same time, the legislative history indicates that the language in subparagraph (a) of article 34 was proposed by the USA to provide content to the term 'sexual abuse' and distinguish it from 'sexual exploitation' which had commercial connotations.³⁷ The Committee on the Rights of the Child (CRC Committee), responsible for monitoring state party compliance

35 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13 (2011) para 59.

36 Vitit Muntarbhorn, 'Article 34: Sexual Exploitation and Sexual Abuse of Children' in Andre Alen and others, *A Commentary on the United Nations Convention on the Rights of the Child*, vol 16 (Martinus Nijhoff Publishers 2007) 23.

37 Office of the United Nations High Commissioner for Human Rights, 'Legislative History of the Convention on the Rights of the Child, Volume II' (United Nations 2007) 720.

under the CRC, has used subparagraph (a) of article 34 to define sexual abuse and exploitation for interpreting article 19.³⁸

Neither article 19 nor 34 expressly mentions grooming or related terms. However, the obligation in article 34 to prevent the ‘inducement or coercion’ of a child in unlawful sexual activity could potentially be interpreted to protect children from grooming behaviours that compel them to engage in sexual activity. In their commentary on article 34, Tobin and Seow suggest that the ordinary meaning of inducement could ‘arguably extend to the manner of techniques used to induce a child to participate in an unlawful sexual activity, ranging from the offer of financial compensation to the promise of care and affection’.³⁹ Interestingly, neither they nor other existing major commentaries on article 34⁴⁰ explicitly reference grooming. Unfortunately, the legislative history of the CRC does not provide interpretative guidance for this phrase.

Articles 19 and 34 should be considered alongside other articles of the CRC and the guiding principles that underpin a child rights approach. These principles include non-discrimination (article 2), the best interests of the child as a primary consideration (article 3(1)), and the child’s right to direction and guidance from caregivers and parents in accordance with their evolving capacity (article 5), the child’s inherent right to life, survival and development (article 6), and the child’s right to be heard (article 12).

Additionally, the specific obligations in articles 19 and 34 are reinforced by general obligations under article 4. Similar to provisions in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights, article 4 of the CRC requires that states take ‘all appropriate legislative, administrative, and other measures’ to implement the rights enshrined in the CRC. The right to protection from sexual abuse, being a civil right and freedom, requires immediate implementation.⁴¹ In light of article 4, states must undertake all possible measures towards the realisation of the rights of the child, irrespective of their economic circumstances, and use available resources to the maximum extent.⁴²

38 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 25.

39 John Tobin and Florence Seow, ‘Art.34 Protection from Sexual Exploitation and Sexual Abuse’ in John Tobin, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 1320.

40 e.g., Muntarhorn (n 36); Adem Arkadas-Thibert, ‘Article 34: The Right to Protection from All Forms of Sexual Exploitation and Sexual Abuse’ in Ziba Vaghri and others, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes*, vol 25 (Springer International Publishing 2022).

41 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 65; Tobin and Seow (n 39) 1330.

42 United Nations Committee on the Rights of the Child, General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6), UN Doc CRC/GC/2003/5 (2003) para 8; United Nations Committee

In the analysis of relevant provisions of the CRC, articles 3(3) and 25 are worth mentioning, especially in the context of sexual abuse in organisational contexts. Article 3(3) requires states to ensure that the ‘institutions, services and facilities responsible for the care or protection of children...conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.’ Article 25 is an overarching right for children that are placed in alternative care by ‘competent authorities’ for their ‘care, protection or treatment’ to a periodic review of the treatment provided to the child and all other circumstances.

5.3.2 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), adopted in 2000 and entered into force in 2002, enhances the provisions under the CRC, particularly relating to articles 34 and 35. As of March 2022, the OPSC has 177 states parties.⁴³ Article 1 of the OPSC defines practices which must be prohibited by states, namely ‘child prostitution’, ‘child pornography’, and the sale of a child. It also specifies acts associated with these practices that must be criminalised domestically (article 3). The OPSC covers the circumstances in which states must exercise jurisdiction over these offences (article 4), extradition (article 5), forms of mutual assistance (article 6), measures to protect the rights of child victims (article 8), and preventive measures and international cooperation obligations (article 10).

In 2019, the CRC Committee published guidelines on the implementation of OPSC. According to these guidelines, grooming is defined as ‘the process of establishing a relationship with a child either in person or through the use of ICT to facilitate online or offline sexual contact’.⁴⁴ While grooming for sexual purposes is not covered explicitly in the OPSC, the guidelines state that it is a form of child sexual exploitation that ‘may’ constitute an OPSC offence if it involves the production and dissemination of child sexual abuse material

on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 65.

43 United Nations Human Rights Office of the High Commissioner, ‘Status of Ratification Interactive Dashboard: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’ (OHCHR, 9 March 2022) <<https://indicators.ohchr.org/>>.

44 United Nations Committee on the Rights of the Child, 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 Doc CRC/C/156 (2019) para 68.

(i.e. 'child pornography').⁴⁵ However, this interpretation raises some questions as producing or disseminating child abuse material should not be regarded as grooming, as it is abuse in itself. This interpretation may reflect earlier research that viewed sexual grooming as an element of offending behaviour and focused on the link between specific offences and child sexual abuse material, rather than viewing online grooming as an 'offence-specific process'.⁴⁶

5.3.3 CRC Committee guidance and recommendations

5.3.3.1 General comments

The CRC Committee issues 'general comments' to help guide the interpretation of the CRC and states parties' implementation. Although grooming is not explicitly mentioned in the CRC or the OPSC, the CRC Committee has referred to grooming in various general comments. In General comment No. 13 on the right of the child to freedom from all forms of violence, grooming for sexual activities is recognised as a child protection risk in the digital environment.⁴⁷ General comment No. 16 on state obligations regarding the impact of the business sector on children's rights mentions 'cyber-grooming' as one of the criminal acts in which companies may be complicit.⁴⁸ General comment No. 20 on the implementation of the rights of the child during adolescence includes 'grooming for sexual exploitation' as one of the risks that adolescents may face in the digital environment.⁴⁹ Most recently, General comment No. 25 on children's rights in relation to the digital environment highlights that perpetrators may use digital technologies to 'solicit children for sexual purposes'.⁵⁰

45 *ibid.*

46 International Centre for Missing & Exploited Children, 'Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review (1st Edition)' (2017) 11 <https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf>.

47 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 3.

48 United Nations Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights (2013) para 60.

49 United Nations Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, UN Doc CRC/C/GC/20 (2019) para 48.

50 United Nations Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, UN Doc CRC/C/GC/25' (2021) para 81.

The CRC Committee's general comments to date seem to focus solely on grooming within the digital environment, leaving a gap in addressing grooming behaviours outside of this context. A clear and authoritative interpretation of 'inducement or coercion' in article 34 is needed to explicitly protect children from grooming practices across all settings.

5.3.3.2 Concluding observations and recommendations

States parties must submit regular reports to the CRC Committee, detailing their efforts to implement the CRC and the progress of children's rights within their jurisdictions (article 44). Non-state party stakeholders, including non-governmental organisations, children's organisations, national human rights institutions, UN agencies, and others including academics and civil society, can also submit written reports on the situation of children's rights in a country. Upon reviewing these reports, the CRC Committee provides recommendations to the state Party in the form of 'concluding observations'. A review of concluding observations from the past decade indicates that the CRC Committee has acknowledged instances of domestic legislation criminalising grooming (or 'solicitation') of children for sexual purposes, primarily focusing on online grooming.

Despite some ambiguity in the OPSC guidelines regarding grooming, the CRC Committee has made repeated recommendations for state parties criminalise online grooming to achieve 'full compliance' with the OPSC.⁵¹ The CRC Committee has recommended state parties amend their criminal law to criminalise online grooming of all children up to the age of 18, in countries where

51 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Portugal under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2014) CRC/C/OPSC/PRT/CO/1 paras 25, 26; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Switzerland under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2015) CRC/C/OPSC/CHE/CO/1 paras 21, 22; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Angola under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2018) CRC/C/OPSC/AGO/CO/1 para 26; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by the Russian Federation under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2018) CRC/C/OPSC/RUS/CO/1 paras 27, 28; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Saudi Arabia under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2018) CRC/C/OPSC/SAU/CO/1 para 27; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia' (2019) CRC/C/AUS/CO/5-6 para 50.

the offence of online grooming does not cover children between 16 and 18 years of age.⁵² In recent concluding observations, the CRC Committee has urged state parties to criminalise online grooming in domestic legislation as part of their efforts to address all forms of child sexual exploitation and abuse.⁵³ The CRC Committee has also recommended the development of guidelines and other practical measures to improve the investigation and prosecution of cases of online grooming.⁵⁴

The recent concluding observations for Cambodia present the most expansive view of grooming so far. The CRC Committee expresses concern over the absence of a specific prohibition on grooming and urges the state party to criminalise grooming explicitly. They emphasise the need for 'effective investigation of and intervention in all cases of sexual exploitation and abuse of children in and outside the home, and in the digital environment, including cases involving grooming'.⁵⁵ While addressing sexual offences facilitated by technology is critical, the CRC Committee's latest framing ensures that grooming is not limited to the digital environment. It emphasises the importance

52 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Initial Report of the Republic of Moldova Submitted under Article 12 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2013) CRC/C/OPSC/MDA/CO/1 paras 22, 23; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Report Submitted by Georgia under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2019) CRC/C/OPSC/GEO/CO/1 paras 28, 29.

53 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Republic of Korea' (2019) CRC/C/KOR/CO/5-6 paras 28, 29; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Belarus' (2020) UN Doc CRC/C/BLR/CO/5-6 para 23; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Second to Fifth Periodic Reports of the Cook Islands' (2020) UN Doc CRC/C/COK/CO/2-5 para 30.

54 e.g., United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Austria' (2020) CRC/C/AUT/CO/5-6 para 25; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Switzerland, UN Doc CRC/C/CHE/CO/5-6' (2021) para 28; United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Kingdom of the Netherlands, UN Doc CRC/C/NLD/CO/5-6' (2022) para 22.

55 United Nations Committee on the Rights of the Child, 'Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Cambodia, UN Doc CRC/C/KHM/CO/4-6 (2022) paras 27, 28.

of addressing grooming in all settings, including organisational contexts, whether or not it is partially or fully enabled by technology.

5.3.3.3 *Individual communications and inquiries*

The CRC Committee can initiate an inquiry procedure under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) if it receives reliable information indicating grave or systematic violations of any rights in the CRC, or its Optional Protocol on the involvement of children in armed conflict, or the OPSC by a state party. The CRC Committee has conducted only one investigation so far, focusing on the situation of children and adolescents in residential care centres in Chile. In addition to other violations of the CRC, the investigation found that the state party breached article 34 by failing to prevent sexual violence, respond in a timely and effective manner to reported sexual violence, implement specific protocols for dealing with sexual abuse in some centres, and train staff in sexual abuse prevention.⁵⁶

Grooming is not mentioned in the CRC Committee's findings, and it may not have been used by the perpetrators. In certain institutional settings (for example 'closed' institutions such as detention facilities and children's homes) where there is less supervision and infrequent contact with family or supportive adults, perpetrators may not need to groom their victims and could rely on threats or force instead.⁵⁷ Nevertheless, the CRC Committee's observations have significant ramifications for children in care and potentially for other organisational contexts.⁵⁸ The CRC Committee clearly holds the state responsible for violations occurring in the centres under its direct control, those administered by partner organisations, and other centres. The state's responsibility derives from its failure to exercise oversight and its delegated capacity to privately managed centres.⁵⁹

56 United Nations Committee on the Rights of the Child, Inquiry Concerning Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/CHL/IR/1 (2020) para 102.

57 Commonwealth of Australia, 'Final Report, Volume 2: Nature and Cause' (n 13) 46.

58 Nicolás Espejo Yaksic, 'Case Note 2018/2: Report of the Investigation in Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, CRC/C/CHL/INQ/1' <<https://www.childrensrightsobservatory.nl/casenotes/casenote2018-2>>.

59 United Nations Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, (n 48) para 25; United Nations Committee on the Rights of the Child, Inquiry Concerning Chile under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (n 56) para 108.

The CRC Committee can also receive and consider individual communications from individuals or groups within the jurisdiction of a state party to OPIC. While the Committee's views (or decisions on merit) of individual communications have not yet substantively addressed child sexual abuse and exploitation, this could be a potential avenue for clarifying state party obligations and increasing accountability in the future.

5.3.4 European human rights frameworks and mechanisms

This sub-section analyses European human rights frameworks, which expressly consider online and in-person grooming, which can potentially clarify or enhance the international framework.

5.3.4.1 *Lanzarote Convention*

The Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), which opened for signature in 2007 and entered into force in 2010, is regarded as the most comprehensive standard concerning child sexual abuse. It is open for accession by both the European Union and non-member states of the Council of Europe and has 48 ratifications or accessions as of August 2022.⁶⁰

The Lanzarote Convention requires states parties to criminalise all forms of sexual offences against children, aiming to enhance the protections afforded by the CRC and OPSC (article 42). Moreover, it is the first international instrument expressly requiring states to criminalise the grooming of children for sexual purposes. Article 23 provides:

'Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.'

The Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee) is responsible for monitoring implementation of the Convention,

⁶⁰ Council of Europe, 'Chart of Signatures and Ratifications of Treaty 201: Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)' (*Council of Europe*, 28 August 2022) <<https://www.coe.int/en/web/conventions/full-list>>.

facilitating information exchange, and expressing opinions on the Convention's implementation (article 41). In 2015, the Lanzarote Committee acknowledged that 'no static definition of online grooming is possible' and recommended that parties consider extending criminalisation in cases where sexual abuse occurs online without in-person meetings.⁶¹ In their 2017 interpretative opinion, the Committee affirmed that the offences 'remain criminalised by national law in the same way, whatever the means used by sexual offenders to commit them, be it through the use of ICTs or not, even when the text of the Lanzarote Convention does not specifically mention ICTs'.⁶²

Article 18 of the Convention is relevant in the context of abuse in organisational settings. It ensures that children in certain relationships are protected from sexual abuse, even when they have already reached the legal age for sexual activities and the person involved does not use coercion, force, or threat. The Explanatory Report gives examples of relationships where such protection applies, including family members, caretakers, persons who provide education, emotional, pastoral, therapeutic or medical care, as well as individuals who employ or have financial or other control over a child. Specific reference is also made to volunteers, such as those involved in holiday camps or youth organisations.⁶³ Abuse of authority is also considered an aggravating circumstance in sentencing for sexual offences against a child (article 28).

In 2019, the Lanzarote Committee adopted a Declaration on protecting children in out-of-home care from sexual abuse and exploitation. The Declaration considered articles 18 and 28 and acknowledged extensive research on sexual abuse by volunteers and professionals in residential care and institutional settings. Among other things, the Committee called for states parties to ensure comprehensive screening procedures for all caregivers, specific measures to prevent abuse due to children's increased vulnerability and dependence, mechanisms to support children in disclosing sexual violence, protocols for effective follow-up in case of disclosure, clear procedures for removing alleged perpetrators from the out-of-home care setting during

61 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Opinion on Article 23 of the Lanzarote Convention and Its Explanatory Note: Solicitation of Children for Sexual Purposes through Information and Communication Technologies (Grooming)' (2015) para 20 <<https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html>>.

62 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 'Interpretative Opinion on the Applicability of the Lanzarote Convention to Sexual Offences against Children Facilitated through the Use of Information and Communication Technologies (ICTs)' (2017) <<https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>>.

63 Council of Europe, 'Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse' (2007) para 124 <<https://rm.coe.int/16800d3832>>.

investigations, and effective monitoring of practices and standards to prevent and combat child sexual abuse.⁶⁴

5.3.4.2 *Child Sexual Abuse Directive*

Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (the Directive) provides additional guidance on grooming offences. The Directive aims to combat child sexual abuse and exploitation, building on the provisions of the Lanzarote Convention.⁶⁵ The Directive ‘encourages’ member states to criminalise grooming occurring outside of the digital environment where the solicitation ‘takes place in the presence or proximity of the child’ (recital 19). It also requires the criminalisation of ‘solicitation’ through information and communication technology by an adult to meet a person who has not yet reached the age of sexual consent, where the proposal to meet in person is followed by material acts leading to such a meeting (article 6). Aggravating circumstances include abuse of a recognised position of trust or authority (article 9).

During the negotiations for the Directive, policymakers highlighted the importance of addressing ‘real-life’ solicitation of children for sexual purposes. Member states were asked ‘to check carefully their criminal law definitions as regards the criminalisation of ‘real-life’ solicitation of children for sexual purposes and to improve and correct their criminal law, if necessary’, in line with recital 19 of the Directive.⁶⁶ While in-person grooming was not mandatory, many member states chose to criminalise this practice as well.⁶⁷

64 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, ‘Declaration of the Lanzarote Committee on Protecting Children in Out-of-Home Care from Sexual Exploitation and Sexual Abuse’ (2019) <<https://rm.coe.int/declaration-of-the-lanzarote-committee-on-protecting-children-in-out-o/1680985874>>.

65 European Parliament, Directorate General for Parliamentary Research Services, ‘Combating Sexual Abuse of Children: Directive 2011/93/UE: European Implementation Assessment’ (Publications Office 2017) 22 <<https://data.europa.eu/doi/10.2861/23810>>.

66 European Parliament, ‘Annex: Joint Statement of the European Parliament and of the Council on Solicitation of Children for Sexual Purposes, P7_TA(2011)0468’ (27 October 2011) <https://www.europarl.europa.eu/doceo/document/TA-7-2011-0468_EN.html>.

67 European Parliament, Directorate General for Parliamentary Research Services (n 65) 26. The European Commission is presently undertaking an evaluation of the 2011 Directive for possible revision.

5.4 DOMESTIC LEGISLATIVE RESPONSES AND AN EXPANDED ROLE FOR INTERNATIONAL HUMAN RIGHTS LAW

This section briefly examines some examples of domestic legislation before discussing a possible expanded role for international human rights law.

5.4.1 Grooming legislation in the US, UK and Australia

This sub-section provides an overview of grooming legislation in different jurisdictions, focusing on the USA, UK and Australia. The article delves into Australian legislation in more detail, as government inquiries into institutional abuse have prompted significant reforms in some Australian jurisdictions, making them particularly pertinent to this discussion.

In the USA, the federal 'coercion and enticement' statute, section 2422(a) of the Criminal Code, makes it an offence to knowingly persuade, induce, entice, or coerce a person to travel over state lines or out of the country to engage in any sexual activity that constitutes a criminal offence. Although the phrase 'grooming' is not explicitly used in the federal law, but the tactics associated with grooming are encompassed in the offence of 'coercion and enticement'. It is also illegal for a person to attempt to engage in such behaviour. Section 2422(b) makes it an offence to use the mail or internet, or any other means of interstate commerce, to intentionally persuade, coerce, or entice a child to engage in illegal sex acts. In addition to the federal statute, 42 states have enacted grooming legislation.⁶⁸ Both federal and state statutes primarily apply to cases of sexual grooming which involve an electronic device or travel.⁶⁹ While the federal statute appears to require travel for the offence, case law has clarified that the crime is complete at the point of persuasion or attempted persuasion, even if no travel occurs.⁷⁰ However, there remains some ambiguity across the different legislative schemes, and in-person grooming does not seem to be adequately covered.

In the UK, section 14 of the Sexual Offences Act 2003 criminalises arranging a meeting with a child under 16, whether for oneself or another person, with the intention of sexually abusing the child. A person commits this offence if they intentionally arrange or facilitate something they intend to do, intend for another person to do, or believe another person will do, anywhere in the world, that would involve committing an offence under specific sections of the Act. Section 15 makes it an offence to meet a child on one or more occasions following sexual grooming. In 2017, section 15A was added to the law,

68 Leah E Kaylor and others, 'An Analysis of Child Sexual Grooming Legislation in the United States' (2022) 29 *Psychology, Crime & Law* 1, 4.

69 *ibid.* 9–10.

70 *ibid.* 10.

making it an offence for a person aged 18 or over to communicate sexually with a child under 16 to obtain sexual gratification. The addition allows authorities to intervene earlier to prevent more serious offending against children and applies to both online and offline communications.⁷¹

The Sexual Offences Act includes civil preventative orders that can prohibit specified behaviours, including grooming of children that do not meet criminal thresholds. The orders can apply to individuals convicted or cautioned for sexual or violent offences, posing a risk of sexual harm, or to anyone posing a risk of harm, even without relevant convictions or cautions. The risk of harm may relate to the public in the UK and/or children or vulnerable adults abroad. The orders may impose restrictions like limiting internet use or travel and require a careful balancing of the human rights of persons subject to them and children's rights to protection. This could be particularly challenging in the context of grooming, where distinguishing between innocuous and predatory behaviour can be difficult. The government guidance specifies that befriending or sharing hobbies with a child is not sufficient for a civil order unless 'there is explicitly sexual content or other disturbing aspects to the behaviour such as excessive secrecy, activities taking place in a locked room etc.'⁷² The use of civil orders in sexual offending cases is still relatively new, with limited evidence regarding their effectiveness.⁷³

In Australia, all jurisdictions have grooming offences. The Commonwealth (federal) Criminal Code Act 1995 includes various grooming offences related to 'using a carriage service' and targeting children under 16 years of age (section 474.27). There are arrangements between Australian states and territories and the Commonwealth to prosecute online grooming under Commonwealth provisions and to use state or territory offences for attempts to meet children in person following online grooming.⁷⁴ State and territory legislation falls into three main categories: conduct involving online or other electronic communication; specific conduct such as sharing indecent images or supplying the child with drugs or alcohol (for example state of New South Wales); and broader grooming offences criminalising any conduct that aims to groom a

71 Ministry of Justice, Criminal Law and Sentencing Policy Unit, 'Circular No. 2017/01 – SEXUAL COMMUNICATION WITH A CHILD: IMPLEMENTATION OF SECTION 67 OF THE SERIOUS CRIME ACT 2015' 5 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604931/circular-commencement-s67-serious-crime-act-2015.pdf>.

72 Home Office, 'Guidance on Part 2 of the Sexual Offences Act 2003' (2018) 49 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755142/11.18guidanceonpart2ofthesexualoffencesact2003.pdf>.

73 Sarah Kingston and Terry Thomas, 'The Sexual Risk Order and the Sexual Harm Prevention Order: The First Two Years' (2018) 65 *Probation Journal* 77.

74 Commonwealth of Australia, 'Criminal Justice Report: Parts III to VI' (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 78.

child for later sexual activity (for example in the states of Victoria and Queensland).⁷⁵

Victoria's Crimes Act 1958 includes a broad grooming offence, introduced following recommendations from a government inquiry into child abuse by religious and other non-government organisations.⁷⁶ The offence encompasses communication by 'any words or conduct' with a child under the age of 16 with the intention of facilitating their engagement or involvement in a sexual offence with the person or another person who is 18 years of age or over. 'Communication' includes electronic communication. The offence also covers the grooming of a person who has care, supervision, or authority over the child (section 49M), such as a parent, stepparent, teacher, legal guardian, religious leader, employer, youth worker, sporting coach, foster parent or corrections officer (section 37). The extension to persons around the child was included in the legislation due to the inquiry's findings that child sexual abuse often involves multiple secondary victims, typically parents and other family members who allowed and encouraged the perpetrator to develop a relationship with the child, leading to long-term trauma.⁷⁷

Victoria's legislation also includes an offence of 'encouraging' sexual activity of a child under the age of 16 (section 49K), targeting sexualised grooming behaviour. Unlike the grooming offence, this provision does not require a connection to sexual activity, touching or penetration offences with the perpetrator.⁷⁸ A similar offence applies to children aged 16 or 17 who are under care, supervision or authority (section 49L). However, there is no equivalent section 49M grooming offence covering children aged 16 or 17 years of age, which has been highlighted as an issue in a recent report by the Victorian Law Reform Commission on improving the justice system response to sex offences.⁷⁹

75 *ibid.* 77.

76 Parliament of Victoria, Family and Community Development Committee, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non Government Organisations, Volume 1 of 2' (Victorian Parliament 2013).

77 Parliament of Victoria, Family and Community Development Committee, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non Government Organisations, Volume 2 of 2' (Victorian Parliament 2013) 470 <https://www.parliament.vic.gov.au/file_uploads/Inquiry_into_Handling_of_Abuse_Volume_2_FINAL_web_y78t3Wpb.pdf>.

78 Commonwealth of Australia, 'Criminal Justice Report' (n 74) 83–85.

79 Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report' (2021) 317 <https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

5.4.2 Utility of a broader grooming offence

As discussed in the review of scientific and theoretical literature, grooming is not only about behaviours that precede sexual abuse but also includes actions that conceal abuse and prevent detection. However, legislation has tended to focus on the former aspect.⁸⁰ Even with this focus, it remains challenging for legislators to determine the threshold for when a crime has been committed. Initially, legal definitions concentrated on the intent to meet, but they have evolved in many jurisdictions to include communications with the intent to commit a sexual offence.⁸¹ While in-person communication is technically covered by these offences, available information suggests that the focus has been on charging grooming offences in relation to online communications, as they tend to be easier to charge and prosecute due to a record of the communication.⁸² Other specific conduct grooming offences, such as sharing indecent images or the supply of drugs or alcohol, may also be more easily detected and relatively easy to prove.⁸³ In the absence of a contact offence being committed following grooming, other grooming behaviour is more difficult to prosecute, especially where those behaviours may in themselves be harmless, appropriate, and even desired behaviours.⁸⁴

Despite these challenges, the Australian Royal Commission recommended that each state and territory government amend its criminal legislation to adopt a broad grooming offence that captures any communication or conduct with a child undertaken with the intent to groom the child to be involved in a sexual offence. The Royal Commission acknowledged that this broader offence would likely only be prosecuted in narrower circumstances of online grooming, including police uncover operations, but concluded that a broader offence would emphasise the 'wrongfulness of grooming behaviour' and perform an educative function for institutions, their staff, parents, children and the broader community.⁸⁵ Additionally, the Royal Commission saw the potential for this broader offence to provide the criminal law context for institutional codes of conduct, which could prohibit risky conduct that creates the opportunity for abuse.⁸⁶

The Royal Commission also recommended states and territories adopt an offence that covers grooming persons other than the child. While they did not expect frequent charges under this provision, they considered it important

80 Commonwealth of Australia, 'Final Report, Volume 2: Nature and Cause' (n 13) 40.

81 Sections 49K and 49L of Victoria's *Crimes Act* and section 15A of the UK Sexual Offences Act go even further in targeting sexualised grooming behaviour that does not require intent for the sexual activity to occur.

82 Commonwealth of Australia, 'Criminal Justice Report' (n 74) 42.

83 *ibid.*

84 Winters, Kaylor and Jeglic (n 8) 3.

85 Commonwealth of Australia, 'Criminal Justice Report' (n 74) 42-43.

86 *ibid.* 43.

to acknowledge the damage grooming behaviour can cause to those around a child.⁸⁷

Australia's Royal Commission suggests a broader role for the law, going beyond criminalising predatory behaviour. The approach recognises the law's potential to articulate and shape community expectations and societal norms. By adopting a broader grooming offence, the law underscores the wrongfulness of such behaviour and its impact on individuals and communities, sending a clear message to institutions, staff, parents, children, and society at large. It recognises the harm caused by grooming and offers victims and survivors a way to address their trauma and find support on their path to healing.⁸⁸ While this expanded approach may not lead to frequent charges and prosecutions for grooming without electronic communications, it serves a crucial purpose in affirming the gravity of such behaviour and its consequences and the potential for fostering a safer environment for children.

5.4.3 Enhancing the global human rights framework

Human rights instruments and treaty bodies are instrumental in advancing our collective understanding of child sexual abuse and the right of every child to be free from sexual abuse. Though not legally binding, the recommendations of bodies like the CRC Committee hold significant weight and often act as a catalyst for action, influencing political and legal processes in countries.⁸⁹ However, as this analysis has shown, there has been limited discussion of grooming by the treaty body, despite the growing scientific and theoretical literature, state inquiries and high-profile cases. To address this gap, this article proposes five key areas that require updated and elaborated global guidance: the scope of criminal law offences, the right to protection for all children up to the age of 18, addressing grooming in organisational settings, setting standards for staff and volunteers, and ensuring children's right to be heard. Practitioners can leverage these recommendations in their work to advocate for comprehensive laws to address grooming and preventive measures at both local and global levels.

⁸⁷ *ibid.* 43.

⁸⁸ Nicole van Zyl, 'Sexual Grooming of Young Girls: The Promise and Limits of Law' (2017) 31 *Agenda* 44, 52.

⁸⁹ Julia Sloth-Nielsen, 'Monitoring and Implementation of Children's Rights' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer Nature Singapore Pte Ltd 2019) 14–16.

5.4.3.1 *Scope of criminal law offences*

The CRC Committee's guidance on grooming focuses mainly on the digital environment, except for recent concluding observations for Cambodia. However, the absence of legislative measures to address in-person grooming may hinder effective implementation of articles 19 and 34, specifically the obligation to prevent the 'inducement or coercion' of a child in unlawful sexual activity (article 34(a)).

Comprehensive guidance on using criminal law to address grooming in all contexts is critical. Such guidance should acknowledge the challenges in charging and prosecuting grooming behaviour before a contact offence occurs, particularly without online communications. Nevertheless, having a specific offence that can be charged and prosecuted, even after a contact offence, is vital to recognise the harm to victims and survivors. Additionally, considering offences that include grooming persons other than the child would acknowledge the damage of grooming behaviour to parents and other caregivers. Conducting independent research, continuous monitoring, and evaluation of legislation are vital to building collective understanding other functions of broader grooming offences, such as their potential educative impact on organisations, staff, parents, children, and the broader community.

5.4.3.2 *The right to protection for every child*

The CRC Committee's guidance indicates that legislative measures should, at a minimum, criminalise online grooming as a standalone offence and apply to children up to the age of 18. Addressing the complexities of cases involving children above the age of consent, where they may be groomed to believe they are in a consensual relationship, requires further attention. While the examples of domestic legislation examined above have made progress in tackling grooming, there remains a gap in addressing the grooming of children above the age of sexual consent. Reference to article 18 of the Lanzarote Convention, which protects children in certain relationships, even when they have reached the age of consent and no coercion, force or threat is used, could be beneficial. The CRC Committee has been unambiguous in other contexts that state parties must recognise that persons up to the age of 18 are entitled to 'continuing protection from all forms of exploitation and abuse'⁹⁰ and that respecting the evolving capacities of adolescents 'does not obviate States' obligations to guarantee protection'.⁹¹ The level of legal protection for all children up until the age of 18 will greatly influence how victims and survivors are treated and

90 United Nations Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence (n 49) para 40.

91 *ibid.* 19, 20.

their experiences of justice and the justice system. Accordingly, guidance is needed to ensure that children over the age of consent are not left unprotected.

5.4.3.3 *Organisational settings and change*

The CRC Committee has yet to comprehensively address grooming and abuse in organisational contexts and by persons in 'positions of trust'. The Lanzarote Committee's elaboration of offences relating to abuse of a position of trust and child sexual abuse in organisational contexts, as discussed in section 5.3.4, offer helpful guidance in this regard. While the CRC Committee's findings on Chile reiterated state responsibilities in protecting children from sexual abuse by non-state actors, further elaboration on state party and organisational responsibilities could drive positive change across multiple state parties. At a minimum, state parties should be encouraged to ensure adequate oversight, compel organisations to take proactive steps before children are harmed, and ensure appropriate responses to disclosures of abuse by organisations and other duty-bearers. To achieve this effectively, widespread understanding of how perpetrators groom children, families, communities, and organisations is crucial. Alongside existing scientific and theoretical literature on grooming, additional research is needed to understand the similarities and differences in perpetrators' modus operandi in various contexts, including in the 'Global South'. This evidence can inform effective prevention and intervention strategies to combat grooming and protect children.

5.4.3.4 *Standards for staff and volunteers*

Organisations can take proactive steps to protect children from sexual abuse and grooming by implementing intra-organisational policies and codes of conduct. The CRC Committee has emphasised the importance of developing and implementing intra- and inter-agency child protection policies, professional ethics codes, protocols, memoranda of understanding, and standards of care for all childcare services and settings, for all levels of government and civil society institutions.⁹² Legislation can provide the criminal law context for these policies and codes, but explicitly incorporating grooming behaviours as inappropriate or harmful within child protection policies and codes of conduct sets a clear standard for staff and volunteers, reducing the risk of fostering organisational cultures and environments that enable grooming. To ensure a comprehensive approach, staff and volunteers working with children should receive training on child sexual abuse and grooming behaviours. It is essential that staff, volunteers, parents, caregivers, and the wider community are aware of grooming tactics to create organisational conditions supportive

⁹² United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 42(b).

of children's rights. By equipping all stakeholders with knowledge about grooming and child sexual abuse, organisations can create safer environments for children and deter potential perpetrators.

5.4.3.5 *Children's right to be heard*

Creating cultural conditions to improve children's protection includes recognition of children as having rights and agency. The CRC Committee has emphasised the significance of children's right to be heard, especially in cases of sexual abuse and other forms of violence.⁹³ However, the application of this right in organisational contexts remains relatively unexplored. This could involve supporting children's active participation in decision-making that affects their rights, such as legislative or policy development at national and/or organisational levels as well as providing an organisational environment where children can speak up, be supported, and receive appropriate responses to their concerns. It should also include informing children about their rights and empowering and equipping them with skills necessary to protect and defend those rights, in accordance with their evolving capacities.

The CRC Committee has recommended providing children with 'accurate, accessible and age-appropriate information and empowerment on life skills, self-protection and specific risks'.⁹⁴ However, it should be acknowledged that teaching children about grooming behaviours may be particularly complex. This complexity arises from the nature of grooming, where some tactics appear to be appropriate or even desired behaviours. Additionally, the extreme power imbalance between perpetrators and children, often amplified by the grooming process, further complicates the matter. Dealing with these complexities requires investing in empirically tested curricula and interventions to ensure meaningful empowerment of children as rights-holders.

5.5 CONCLUSION

This article aimed to explore how international human rights law addresses grooming for child sexual abuse and how it can be further used and enhanced to combat this issue effectively. While the scientific and theoretical literature on grooming is still developing, it offers crucial evidence for legislators, policymakers, and practitioners seeking to improve responses to child sexual

93 United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) The Right of the Child to Be Heard, UN Doc CRC/C/GC/12 (2009) paras 118–121; United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 63.

94 United Nations Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from All Forms of Violence (n 35) para 44.

abuse. To improve legislative and policy measures, additional research is necessary to deepen our understanding of grooming, particularly in the 'Global South'.

The findings of this article highlight that current global human rights guidance on sexual grooming is predominantly focused on the digital environment and overlooks the broader impact of grooming on individuals and environments beyond the child. At a national level, such narrow perspectives on grooming could influence legislative decisions, policy formulations, and resource allocation, potentially leading to missed opportunities in preventing child sexual abuse and inadequate responses when abuse is disclosed or discovered.

Drawing on this broader understanding, practitioners can advocate for more comprehensive approaches at both local and global levels to catalyse change within organisations and create conditions supportive of children's rights. The human rights system offers additional avenues for advocates to drive change, fostering greater state and organisational accountability and ensuring the right of every child to be free from sexual abuse.