



Legal questionnaire completed by Bufete Rosa y Asociados, S.A. • December 2024

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1. What laws and regulations contain legal definitions of the following terms or corresponding terms in your local jurisdiction (links to existing U.S. legal definitions are included, where relevant, as background for comparison – please include definitions of any corresponding terms in your country):

a. child or minor (18 U.S.C. 2256(1), <https://www.law.cornell.edu/uscode/text/18/2256>)

In Honduras, the terms “child” and “minor” are explicitly defined in the following legal instruments:

- Article 1 Definition: Decree No. 75-90 of May 31, 1990, approving the International Treaty (Convention) on the Rights of the Child.

Definition: *“Para los efectos de la presente Convención, se entiende por niño todo ser humano menor de dieciocho años de edad, salvo que, en virtud de la ley que sea aplicable, haya alcanzado antes la mayoría de edad.”*

Unofficial English translation: “For the purposes of the present Treaty, a child is defined as any human being under eighteen years old, unless, under the applicable law, they have reached the age of adulthood.”

https://siteal.iiep.unesco.org/sites/default/files/sit_accion_files/decreto_numero_75-90_ratificacion_convenio_derechos_del_nino.pdf

Comments: An international treaty known as the “Treaty on the Rights of Children” (*Convención de los Derechos del Niño*) was approved in Honduran law on May 31, 1990, through Decree No. 75-90. Treaties signed by the Republic of Honduras are treated as Honduran law under the Constitution.

- Article 1 Chapter I - Decree No. 73-96, Code of Childhood and Adolescence

Definition: *“Para todos los efectos de este Código, se entenderá por niño o niña a todas las personas hasta los dieciocho (18) años de edad. Las disposiciones contenidas en este Código son de orden público y los derechos que establecen a favor de los niños y niñas son irrenunciables, intransigibles y de aplicación obligatoria en todo acto, decisión o medida administrativa, judicial o de cualquier naturaleza que se adopte respecto de las personas hasta los dieciocho (18) años de edad, las que para todos los efectos legales se*



considerarán como niños y niñas. En caso de duda sobre la edad de un niño o niña, se presumirá mientras se establece su edad legal efectiva que es menor de dieciocho (18) años.”

Unofficial English Translation: “For the purposes of this Code, a child is defined as any person who is up to eighteen (18) years of age. The provisions in this Code are of public order, and the rights established for children are inalienable, non-transferable, and must be applied in all acts, decisions, or measures—whether administrative, judicial, or otherwise—adopted with regard to individuals up to the age of eighteen (18). These individuals are legally recognized as children. If there is any doubt about a child’s age, it will be presumed that they are under eighteen (18) years old until their actual legal age is confirmed.”

https://escuelajudicialpva.poderjudicial.gob.hn/pluginfile.php/21999/mod_data/content/1757/113_C%C3%B3digodelaNi%C3%B1ezylaAdolescencia%28ActualizadoalNuevoCodigoPenal%29.pdf

Comments: The definition of child in this Code applies universally to all legal matters in Honduras. It serves as a foundation for addressing criminal offenses and provides guidelines for determining when a child reaches the level of mental maturity necessary to be regarded as having rights and responsibilities.

b. child sexual exploitation (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(9), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)

In Honduras, the term “child sexual exploitation” is explicitly defined in the following legal instruments:

- Penal Code, article 257 Decree 130-2017 Title IX Chapter 2.

Definition: “*EXPLOTACIÓN SEXUAL. Se entiende por explotación sexual la utilización de una o varias personas en la prostitución, la pornografía, las exhibiciones de naturaleza sexual o cualesquiera otras actividades con fines sexuales que se realizan mediante precio, recompensa o promesa remuneratoria.*”

Unofficial English Translation: “Sexual Exploitation: Sexual exploitation is defined as the act of using one or more individuals in prostitution, pornography, or any sexual exhibition or any other activity for sexual purposes, performed in exchange for a price, reward, or the promise of compensation.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

Comments: The definition of sexual exploitation extends beyond just prostitution; it also includes the use of individuals for the production of pornographic material. The law aims to punish not only those who directly engage in exploitation but also those who profit from these activities.

- Penal Code, article 259 Decree 130-2017 Title IX Chapter 2



Definition: *"EXPLORACIÓN SEXUAL DE MENORES O PERSONAS CON DISCAPACIDAD: Quien de cualquier modo promueve, favorece o facilita la explotación sexual de persona menor de dieciocho (18) años o con discapacidad necesitada de especial protección, o se beneficia directa o indirectamente de dicha explotación a sabiendas de tales circunstancias, debe ser castigado con la pena de prisión de seis (6) a ocho (8) años y multa de cien (100) a mil (1000) día"*

Unofficial translation: *"SEXUAL EXPLOITATION OF MINORS OR PERSONS WITH DISABILITIES: Anyone who promotes, supports, or facilitates the sexual exploitation of a person under eighteen (18) years of age, or of a person with disabilities who requires special protection, and who benefits directly or indirectly from such exploitation while being aware of these circumstances, shall face imprisonment for a period of six (6) to eight (8) years. Additionally, they will be subject to a fine ranging from one hundred (100) to one thousand (1000) days' worth of payment."*

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

Comments: Although this article does not specifically define the term "child sexual abuse" it is essential to the topic because the legislator categorizes a crime directly related to the sexual exploitation of a minor. This categorization imposes a harsher penalty than that for the sexual exploitation itself.

- Law Against Human Trafficking, article 6 Chapter II Clause 10, Decree No. 59-2012

Definition: *"Explotación Sexual Comercial: La utilización de personas en actividades con fines sexuales donde existe un pago o promesa de pago para la víctima o para un tercero que comercia con ella."*

Unofficial English Translation: "Commercial sexual exploitation: The use of individuals in activities of a sexual nature, where a payment or promise of payment is made either to the victim or to a third party who engages in transactions involving the victim."

https://www.tsc.gob.hn/web/leyes/Ley_Contra_la_Trata_de_Personas.pdf

Comments: Although this law does not explicitly address the sexual exploitation of children, it offers a more precise definition of sexual exploitation. This clarification helps establish guidelines for how to respond when we encounter individuals who have been victims of this crime, including children.

- Code of Childhood and Adolescence, Decree No. 73-96, article 173, third paragraph, section six.

Definition: *"Sin perjuicio de las penalidades establecidas para el (la) autor (a) de maltrato infantil y las impuestas por el Código Penal, todo niño o niña que resultare víctima de abuso sexual, explotación sexual en espectáculos pornográficos, turismo sexual, trata de personas, u otras prácticas sexuales ilegales, recibirá atención médica, psicológica y/o psiquiátrica por parte del Estado, a través del Instituto Hondureño de la Niñez y la Familia (IHNFA), en el marco de un Programa orientado a lograr la prevención y rehabilitación de niños (as) víctimas"*.



Unofficial English Translation: “Without affecting the penalties set for those who commit child abuse, as outlined in the Penal Code, any child who is a victim of sexual abuse, sexual exploitation in pornographic performances, sexual tourism, human trafficking, or other illegal sexual activities shall receive medical, psychological, and/or psychiatric care from the State. This support will be provided through the Honduran Institute for Children and the Family (IHNFA) as part of a program dedicated to the prevention and rehabilitation of child victims.”

https://escuelajudicialpva.poderjudicial.gob.hn/pluginfile.php/21999/mod_data/content/1757/113_C%C3%B3digo%20de%20la%20Ni%C3%B1ez%20y%20la%20Adolescencia%28Actualizado%20al%20Nuevo%20Codigo%20Penal%202017.pdf

Comments: The article outlines the state’s obligation to provide all necessary support to minor victims of this crime. It also designates the responsibility for these matters upon a specific office: IHNFA.

c. sexually explicit conduct (18 U.S.C. 2256(2), <https://www.law.cornell.edu/uscode/text/18/2256>)

Honduras does not have a legal definition for the term “sexually explicit conduct”. However, the definition of pornography in the Penal Code implies that this term refers to conduct with the “purpose of sexual arousal”.

See Penal Code, Decree 130-2017, Title X, Ch. 2, art. 262:

“CONCEPTO DE PORNOGRAFÍA INFANTIL. A los efectos de lo dispuesto en este capítulo, se entiende por pornografía infantil cualquier material audiovisual que, con finalidad de excitación sexual, recoge cualquier clase de actos sexuales o conductas sexualmente explícitas, realizados por menores de dieciocho (18) años con otras personas, mayores o menores de edad, o con ellos mismos, así como la reproducción de sus órganos sexuales o, eventualmente, de otras partes del cuerpo en un contexto sexual.”

Unofficial English Translation: “DEFINITION OF CHILD PORNOGRAPHY. For the purposes of the provisions of this chapter, child pornography is understood as any audiovisual material that, for the purpose of sexual arousal, includes any kind of sexual acts or sexually explicit conduct, performed by minors under eighteen (18) years of age with other persons, adults or minors, or with themselves, as well as the reproduction of their sexual organs or, eventually, of other parts of the body in a sexual context.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

d. child sexual abuse (18 U.S.C. 2243(a), <https://www.law.cornell.edu/uscode/text/18/2243>)

Honduras does not have a legal definition for the term “child sexual abuse”. However, the term “sexual abuse” is defined and the law specifically refers to instances where the crime of “sexual abuse” is committed against a minor, as detailed below.

- Penal Code, Decree No. 130-2017, art. 611



Definition: “*NIÑOS, PERSONAS CON DISCAPACIDAD, ABANDONADAS O EN RIESGO SOCIAL. Cuando la autoridad gubernativa tenga conocimiento de la existencia de un menor de dieciocho (18) años de edad o de un incapaz que sea víctima de un delito sexual, sea o no por su voluntad, pero con anuencia de las personas que sobre él ejerzan autoridad familiar, ético-social o de hecho, que carece de ellas o éstas lo tienen en abandono y no se encargan de su custodia, lo comunicará de inmediato a la autoridad competente en materia de Niñez, Adolescencia y Familia así como al Ministerio Público (MP) para que actúen de conformidad con sus respectivas competencias. En los supuestos en que el Órgano Jurisdiccional Competente acuerde la inhabilitación especial para el ejercicio de la patria potestad, tutela, guarda o curatela, lo comunicará de inmediato a la autoridad competente en materia de la Niñez, Adolescencia y Familia así como al Ministerio Público (MP) para que actúen de acuerdo con sus respectivas competencias*”

Unofficial English Translation: “CHILDREN, DISABLED, ABANDONED OR AT SOCIAL RISK PERSONS. When the government authorities have knowledge of the existence of a person under the age of eighteen (18) or a disabled person victim of a sexual crime, committed with or against their will, but with the consent of persons that exercise family or ethical-social authority, or authority in fact, or when there is no person of authority and these have left the person abandoned or without custody, they will notify the competent authority in matters of Childhood, Adolescence, and Family, as well as the Public Prosecutor’s Office (MP), so that these act pursuant to their respective responsibilities. When the competent tribunal agrees to suspend guardianship or custody, it shall communicate this to the competent authorities in matters of Childhood, Adolescence, and Family as well as the Public Prosecutor’s Office (MP), so that these can act pursuant to their respective responsibilities”.

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf.

Comments: Child abuse is not specifically defined in the Penal Code, but this article generally covers the specific procedure with regards to sexual crimes committed against children by persons with authority over them. This article also recognizes that any crime of a sexual nature, when committed against a minor (person under 18 years of age), has no defense because of consent.

- Penal Code, Decree No. 130-2017, art. 32, title III, chapter I

Definition: “*CIRCUNSTANCIAS AGRAVANTES. Son circunstancias agravantes comunes las siguientes: 1) ... 2) Ejecutar el hecho mediante abuso de superioridad o de confianza...*”

Unofficial English Translation: “AGGRAVATING CIRCUMSTANCES. The following are common aggravating circumstances: 1) ... 2) Committing the act by abusing superiority or trust...”.

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf.

Comments: Child sexual abuse is not specifically defined under the Penal Code. However, this article complements article 611 of the Penal Code. Pursuant to this article, if a sexual crime is committed against a minor in a situation of power or trust, this constitutes an aggravating factor that warrants the imposition of the most severe penalty.

e. child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8),



<https://www.law.cornell.edu/uscode/text/18/2256>)

In Honduras, the term “child pornography” is explicitly defined in the following legal instruments. “Child sexual abuse material”, on the other hand, is not a term that has a legal definition in Honduras. However, there are closely related terms to this conduct, like “child economic exploitation”, as also indicated below.

- Penal Code, Decree 130-2017, art. 262, Title IX Chapter 2

Definition: “*CONCEPTO DE PORNOGRAFÍA INFANTIL. A los efectos de lo dispuesto en este capítulo, se entiende por pornografía infantil cualquier material audiovisual que, con finalidad de excitación sexual, recoge cualquier clase de actos sexuales o conductas sexualmente explícitas, realizados por menores de dieciocho (18) años con otras personas, mayores o menores de edad, o con ellos mismos, así como la reproducción de sus órganos sexuales o, eventualmente, de otras partes del cuerpo en un contexto sexual.*”

Unofficial English Translation: “CONCEPT OF CHILD PORNOGRAPHY. For the purposes of the provisions of this chapter, child pornography shall be understood as any audiovisual material that, for the purpose of sexual arousal, includes any kind of sexual acts or sexually explicit conduct, performed by minors under eighteen (18) years of age with other persons, adults or minors, or with themselves, as well as the reproduction of their sexual organs or, eventually, of other parts of the body in a sexual context.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

- Penal Code, Decree No. 130-2017, art. 261 Title IX Chapter 2.

Definition: “*ELABORACIÓN Y UTILIZACIÓN DE PORNOGRAFÍA INFANTIL. La elaboración, venta, distribución o difusión de material pornográfico en cuya elaboración hayan sido utilizados menores de dieciocho (18) años o personas con discapacidad necesitadas de protección, debe ser castigada con la pena de prisión de cuatro (4) a seis (6) años y multa de cien (100) a quinientos (500) días, sin perjuicio de las que proceda imponer, además, por los actos delictivos realizados para elaborar el material pornográfico.*”

Unofficial English Translation: “Production and Use of Child Pornography: The production, sale, distribution, or dissemination of pornographic material involving minors under the age of eighteen (18) or disabled persons in need of protection will be punishable by a prison sentence of four (4) to six (6) years. Additionally, there may be a fine ranging from one hundred (100) to five hundred (500) days [of salary]. This does not exclude any additional penalties that may be imposed for the criminal acts involved in the creation of the pornographic material.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

Comments: The Penal Code sanctions those who acquire, produce, and profit from child pornographic material.

- Penal Code, Decree No. 130-2017, art. 265, Title IX, Chapter 2.



Definition: “*PROVOCACIÓN SEXUAL. Quien por cualquier medio directo vende, difunde o exhibe entre menores de dieciocho (18) años o personas con discapacidad necesitadas de especial protección, material pornográfico que puede afectar gravemente al normal desarrollo de su sexualidad, debe ser castigado con la pena de prestación de servicios de utilidad pública o a las víctimas de seis (6) meses a dos (2) años y multa de doscientos (200) a quinientos (500) días.*”

Unofficial English Translation: “SEXUAL PROVOCATION: Anyone who directly sells, distributes, or displays pornographic material to minors under eighteen (18) years of age or to individuals with disabilities requiring special protection, such that it may gravely affect their sexual development, shall be punished by requiring them to perform public benefit services for a period of six (6) months to two (2) years, along with a fine ranging from two hundred (200) to five hundred (500) days of the minimum wage. This law aims to protect the normal development of sexuality in these vulnerable groups.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

- Code of Childhood and Adolescence, Decree No. 73-96, art. 134, Clause C, Section 4, Chapter V.

Definition: “*Incurrirán en el delito de explotación económica y serán sancionados con reclusión de tres (3) a cinco (5) años: a)... b)... c) Quien promueva, incite o haga que un niño realice actividades deshonestas tales como la prostitución, la pornografía, la obscenidad y la inmoralidad.*”

Unofficial English Translation: “Economic exploitation is a crime punishable by imprisonment for a period of three (3) to five (5) years. This includes anyone who a) ... b)... c) promotes, incites, or coerces a child into engaging in dishonest activities such as prostitution, pornography, obscenity, or other immoral acts...”

https://escuelajudicialpva.poderjudicial.gob.hn/pluginfile.php/21999/mod_data/content/1757/113_C%C3%B3digodelaNi%C3%B1ezylaAdolescencia%28ActualizadoalNuevoCodigoPenal%29.pdf

Comments: The article defines child economic exploitation.

- f. **computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed) (18 U.S.C. 2256(8) & (9),**
<https://www.law.cornell.edu/uscode/text/18/2256>)

There is no specific legal definition in Honduras for “computer-generated images or videos of child pornography or CSAM (created by artificial intelligence)”. On the contrary, the Penal Code specifically excludes it from its definition of pornography. The Penal Code, art. 262 states that “For audiovisual material to be considered pornography, it is necessary that the images or voices of the children must be at least partially real, irrespective of whether they have effectively participated or not in the pornographic activity” (“*Para que el material audiovisual sea considerado pornografía infantil es necesario que las imágenes o voces de los niños sean al menos parcialmente reales, con independencia de que además hayan participado o no efectivamente en la actividad pornográfica de que se trate*”)



- g. enticement or grooming (encouraging, persuading, or coercing a child to engage in sexual activity or to create child pornography or CSAM) (18 U.S.C. 2422(b), <https://www.law.cornell.edu/uscode/text/18/2422>)

In Honduras, there is not a specific definition for “enticement” or “grooming”, but this conduct is known under other terms, as indicated below.

- Penal Code, Decree No. 130-2017, art. 253, Title IX, Chapter I.

Definition: “*CONTACTO CON FINALIDAD SEXUAL CON MENORES POR MEDIOS ELECTRÓNICOS. Quien, a través de las tecnologías de la comunicación e información, propone a un menor de catorce (14) años concertar un encuentro físico para realizar actividades sexuales, siempre y cuando tal propuesta se acompañe de actos materiales encaminados a dicho encuentro, debe ser castigado con la pena de arresto domiciliario de uno (1) a tres (3) años. Cuando la aproximación se obtenga mediante coacción o intimidación, debe ser castigado con prisión de dos (2) a cuatro (4) años. La pena establecida en el primer párrafo de este artículo se debe rebajar en un cuarto (1/4) cuando el contacto con la persona menor de catorce (14) años consista, únicamente, en pretender obtener imágenes o vídeos de contenido sexual en los que aparezca el menor.*”

Unofficial English Translation: “SEXUAL CONTACT WITH MINORS BY ELECTRONIC MEANS. Whoever, through communication and information technologies, proposes to a minor under fourteen (14) years of age to arrange a physical encounter for sexual activities, provided that such proposal is accompanied by material acts aimed at such encounter, shall be punished with the penalty of house arrest from one (1) to three (3) years. When the approach is obtained by means of coercion or intimidation, he shall be punished with imprisonment from two (2) to four (4) years. The penalty established in the first paragraph of this article shall be reduced by one-fourth (1/4) when the contact with the person under fourteen (14) years of age consists, solely, of seeking to obtain images or videos of sexual content in which the minor appears.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

Comments: This article defines enticement but not necessarily grooming and does not mention CSAM.

- Code of Childhood and Adolescence, Decree No. 73-96, art. 134, Chapter V, Section 4, clause C.

Definition: “*Incurrirán en el delito de explotación económica y serán sancionados con reclusión de tres (3) a cinco (5) años: c) Quien promueva, incite o haga que un niño realice actividades deshonestas tales como la prostitución, la pornografía, la obscenidad y la inmoralidad.*”

Unofficial English Translation: “Anyone who engages in economic exploitation will face imprisonment for a period of three (3) to five (5) years. This includes individuals who promote, incite, or cause a child to participate in dishonest activities such as prostitution, pornography, obscenity, and immorality.”



https://escuelajudicialpva.poderjudicial.gob.hn/pluginfile.php/21999/mod_data/content/1757/113_C%C3%B3digo%20de%20la%20Ni%C3%B1ez%20y%20la%20Adolescencia%28Actualizado%20al%20Nuevo%20Codigo%20Penal%202017.pdf

Comments: This article may be applicable to enticement (but not likely grooming) as its definition of inducement of a minor into illegal activities is broad.

h. legal age of consent for sexual activity – are there laws and regulations, if so, what ages are specified?

In Honduras, the age of consent for sexual activity is defined in the legal instruments below.

- Penal Code, Decree No. 130-2017, art. 249, Title IX Chapter I Clause 2

Definition: “*VIOLACIÓN. Constituye delito de violación el acceso carnal no consentido por vía vaginal anal o bucal con persona de uno u otro sexo, así como la introducción de órganos corporales u objetos por cualquiera de las dos (2) primeras vías. En todo caso, se debe considerar no consentido cuando se ejecuten concurriendo alguna de las circunstancias siguientes: 1) ... 2) La víctima es menor de catorce (14) años, aún cuando se cuente con su consentimiento; o 3)...* Las penas anteriores se deben aumentar en un tercio (1/3) si concurre la circunstancia del numeral 1) del segundo párrafo y la víctima es menor de catorce (14) años...”

Unofficial English Translation: “RAPE. The crime of rape is the non-consensual carnal access by vaginal, anal or oral means with a person of either sex, as well as the introduction of bodily organs or objects by any of the first two (2) means. In any case, it shall be considered non-consensual when they are executed with any of the following circumstances: 1) ... 2) The victim is under fourteen (14) years of age, even with his or her consent; or, 3) ... The above penalties shall be increased by one third (1/3) if the circumstance of numeral 1) of the second paragraph occurs and the victim is under fourteen (14) years of age...”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

Comments: In summary, the legal age of consent is 14, subject to the limitations indicated in the following.

- Penal Code, Decree 130-2017, art. 251, Title IX, Chapter I, Clause 2.

Definition: “*CONSENTIMIENTO DEL SUJETO PASIVO. Las penas previstas en los dos artículos anteriores, deben ser de seis (6) a nueve (9) años de prisión, en aquellos casos en los que habiendo consentimiento de la víctima resulte nulo por ser ésta menor de catorce (14) aunque mayor de doce (12) años, siempre que el autor no haya cumplido los veintiuno (21) años y sea una persona próxima a su víctima por grado de desarrollo, madurez y circunstancias sociales.*”

Unofficial English Translation: “Consent of the Passive Subject: The penalties specified in the previous two articles shall range from six (6) to nine (9) years of imprisonment for cases in which the victim's consent is considered null and void. This is applicable when the victim is



between twelve (12) and fourteen (14) years of age, provided that the perpetrator is under twenty-one (21) years old and has a close relationship with the victim in terms of development, maturity, and social circumstances.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

- Penal Code, Decree No. 130-2017, art. 611

Definition: “*NIÑOS, PERSONAS CON DISCAPACIDAD, ABANDONADAS O EN RIESGO SOCIAL. Cuando la autoridad gubernativa tenga conocimiento de la existencia de un menor de dieciocho (18) años de edad o de un incapaz que sea víctima de un delito sexual, sea o no por su voluntad, pero con anuencia de las personas que sobre él ejerzan autoridad familiar, ético-social o de hecho, que carece de ellas o éstas lo tienen en abandono y no se encargan de su custodia, lo comunicará de inmediato a la autoridad competente en materia de Niñez, Adolescencia y Familia así como al Ministerio Público (MP) para que actúen de conformidad con sus respectivas competencias. En los supuestos en que el Órgano Jurisdiccional Competente acuerde la inhabilitación especial para el ejercicio de la patria potestad, tutela, guarda o curatela, lo comunicará de inmediato a la autoridad competente en materia de la Niñez, Adolescencia y Familia así como al Ministerio Público (MP) para que actúen de acuerdo con sus respectivas competencias*”

Unofficial English Translation: “CHILDREN, DISABLED, ABANDONED OR AT SOCIAL RISK PERSONS. When the government authorities have knowledge of the existence of a person under the age of eighteen (18) or a disabled person victim of a sexual crime, committed with or against their will, but with the consent of persons that exercise family or ethical-social authority, or authority in fact, or when there is no person of authority and these have left the person abandoned or without custody, they will notify the competent authority in matters of Childhood, Adolescence, and Family, as well as the Public Prosecutor’s Office (MP), so that these act pursuant to their respective responsibilities. When the competent tribunal agrees to suspend guardianship or custody, it shall communicate this to the competent authorities in matters of Childhood, Adolescence, and Family as well as the Public Prosecutor’s Office (MP), so that these can act pursuant to their respective responsibilities”.

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf.

Comments: This article recognizes that any crime of a sexual nature, when committed against a minor (person under 18 years of age), has no defense because of consent.

- Sextortion (extorting money or sexual favors from a child by threatening to share sexually explicit, child pornography or CSAM images of the child) (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(8), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)**

In Honduras, there is no legal definition for the term “sextortion”. However, conduct that may be considered extortion, may be addressed through other related crimes that are defined under the laws, for example, extortion, as detailed below.

- Penal Code, Decree No. 130-2017, art. 373, Title XX, Chapter VII.



Definition: “*EXTORSIÓN. Quien, con violencia o intimidación y ánimo de lucro, obliga o trata de obligar a otro a realizar u omitir un acto o negocio jurídico en perjuicio de su patrimonio o el de un tercero, debe ser castigado con la pena de prisión de diez (10) a quince (15) años y multa de quinientos (500) a mil (1000) días, sin perjuicio de las que pudieran imponerse por los actos de violencia física o de intimidación realizados. Si se llega a causar, dolosa o imprudentemente la muerte al extorsionado, al conyugue, compañero de hogar, o un miembro de su familia dentro del cuarto grado de consanguinidad o segundo de afinidad o cualquier persona que tenga una relación laboral con la víctima o con la persona jurídica extorsionada, se debe imponer la pena de prisión a perpetuidad.*”

Unofficial English Translation: “EXTORTION. Whosoever, through violence or intimidation and profit motive, forces or tries to force another to perform or omit an act or legal business to the detriment of his patrimony or that of a third party, shall be punished with a prison sentence of ten (10) to fifteen (15) years and a fine of five hundred (500) to one thousand (1000) days, without prejudice to those that may be imposed for the acts of physical violence or intimidation carried out. If the death of the extorted person, spouse, domestic partner, or a member of his family within the fourth degree of consanguinity or second degree of affinity or any person who has an employment relationship with the victim or with the extorted legal person is caused, the penalty of life imprisonment shall be imposed.”

https://www.tsc.gob.hn/web/leyes/Decreto_130-2017.pdf

Comments: Honduran legislation does not provide a specific definition of “sextortion”. However, sextortion could be covered by the general definition of extortion.

2. Please explain any legal or regulatory requirement or recommendation for Online Platforms to undertake any of the following activities on their systems to protect children online from sexual exploitation:

a. review, screen, moderate, or detect content to identify child pornography or CSAM content

There is no specific provision in Honduran law expressly referring to protecting children online from sexual exploitation. However, the Penal Code, art. 14, defines responsibility by commission or omission. Specifically, it states that “crimes by omission are committed when their avoidance, in breach of a personal legal duty, results in its causation”. In the case of online platforms that allow public access to third-party content, a breach of duty would occur if the third-party content were facilitated by the online platform’s omissions. Therefore, routing review, screening, moderation, and detection of child pornographic content should be necessary to avoid criminal liability. However, there is no specific degree to which these processes must show effectiveness, so due diligence would likely be measured by market standards.

b. review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child

There is no specific provision in Honduran law expressly referring to protecting children online from sexual exploitation. However, as indicated in 2 a), an online platform may be criminally liable for omission in breach of its duties. However, in the case of direct contact



between individuals, the breach would be much more difficult to prove, as there are conflicting duties, for example, the online platform's obligation to respect the privacy of communications. Therefore, adhering to market standards in this regard is recommended.

- c. report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization**

There is no specific provision in Honduran law expressly referring to protecting children online from sexual exploitation. However, there is a duty under Honduran law for a private third party to notify of a crime being committed, whenever it is "of no risk to itself or to third parties" (*see*, Penal Code, art. 207, Code of Criminal Procedure, art. 269 n. 3).

Also, both collaboration with the authorities in a criminal investigation (*see*, Penal Code, art. 105 n. 2) and taking due measures to prevent or report the commission of a crime (*see, id.*, art. 105 n.4) are mitigating circumstances against criminal liability. Therefore, online platforms should report potential criminal activities to the authorities to avoid and mitigate criminal liability.

- d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about**

There is no specific provision in Honduran law expressly referring to protecting children online from sexual exploitation. However, keeping content that may be criminal in nature, could be grounds for being an accessory to a crime due to "omission" as indicated in literal b *supra*, as well as waiving any defenses and mitigating circumstance indicated in literal c *supra*.

- e. review content by human moderators to screen or moderate for child pornography or CSAM**

There is no specific provision in Honduran law expressly referring to protecting children online from sexual exploitation. However, an online platform may consider whether it is acting within market standard, because going beyond legal requirements or market standards would be a mitigating circumstance against any potential criminal liability (*see*, Penal Code art. 105 n. 4).

- f. remove child pornography, CSAM, enticement, grooming, or sextortion from their systems when notified of its presence by a victim, nongovernmental organization, law enforcement, or government agency**

There is no specific provision in Honduran law expressly referring to protecting children online from sexual exploitation. However, with respect to private parties, the response in literal d) would apply. With regards to government authorities, the online platform would risk criminal liability as an accomplice for disobeying a lawful order of government authorities, as well as additional liability for disobedience of government orders (*see*, Penal Code, arts. 572, 610).

- g. use any specific technology to detect, remove, block, or take down any child pornography,**



CSAM, enticement, grooming, or sextortion, including:

- i. "Hashing technology" (<https://www.thorn.org/blog/hashing-detect-child-sex-abuse-imagery/>). Many Online Platforms hash and tag images and videos of child pornography or CSAM and then use hashing technology to scan content on their systems to detect the distribution of child pornography or CSAM online so it can be removed.
- ii. Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.

No such activities are required under Honduran law. Please refer to the answer in literal e *supra*.

- h. if the applicable laws or regulations require some, but not all, Online Platforms to perform any of the above activities, describe how the differing requirements apply. For example, are differences based on the number of online users, types of services offered, etc.?

No such activities are required under Honduran law. Please refer to the answer in literal e *supra*.

3. Are Online Platforms legally required or recommended to implement any method to verify the age of a user before allowing access to an online platform?

Unless the activity of an online platform specifically requires under Honduran law that the user must be an adult (like accessing censored content, purchase of restricted goods or services like alcohol), online platforms are not required to ask for age verification. Social media itself is not regulated, and likely it is protected speech under the Law for the Emission of Thought (Ley de Emisión del Pensamiento, art. 5:

"Todo habitante de la República podrá libremente, sin censura previa, expresar su pensamiento, dar y recibir información y discutir sus opiniones o las ajenas, por medio de la palabra escrita o hablada o por cualquier otro procedimiento gráfico, oral o visual."

Unofficial English Translation: *"Any inhabitant of the Republic may freely, without prior censorship, express their thoughts, provide and receive information, and discuss his opinions or the opinions of others, through written or spoken work, or any other graphic, oral or visual procedure."*

https://www.foprdeh.org/wp-content/uploads/2020/10/honduras_emision_pensamiento.pdf

In the case of paid online platforms, where there is a commercial relationship by the parties (as opposed to a free service, which could be construed as a civil and not commercial obligation), then the online platform must keep in mind that only persons above the age of 21 can consent to enter into a commercial agreement (*see*, Commercial Code, art. 6, available at <https://honduras.eregulations.org/media/codigo%20del%20comercio.pdf>), otherwise it is null and void. However, persons over 18 can also enter into commercial relationships with express, written parental consent.

4. Are Online Platforms legally required or recommended to implement any method to obtain parental consent before a child uses the services of such Online Platforms?

There is no specific requirement under Honduran law to verify the age of a person or obtain parental



consent. However, please note that the only way to legally verify a person's age in Honduras is through their national identification (DNI), their birth certificate, and, in the case of foreign citizens, their passport. Also, parental consent must be express and written. Also, please refer to the answer provided *supra* in numeral 3.

5. Are there legal remedies for children who have been victimized by online child sexual exploitation? This may include children who are victimized by the distribution of child pornography or CSAM imagery in which they are depicted, or children victimized by enticement, grooming or sextortion. If such legal remedies exist, do they include:

Victims of a crime, generally, have a right to seek civil damages, whenever these can be attributed to the crime, from the persons convicted of that crime (*see*, Penal Code, art. 124 n. 1). Honduran law, however, does not recognize damages for "psychological" issues, like pain and suffering or reputational damages, only material damages. *See, e.g.*, Civil Code, art. 1365:

"La indemnización de daños y perjuicios comprende no solo el valor de la pérdida que haya sufrido, sino también el de la ganancia que haya dejado de obtener el acreedor..."

Unofficial English Translation: *"Indemnification for damages includes not only the value of the losses suffered, but also the loss of profit that the creditor has suffered..."*

https://www.oas.org/dil/esp/codigo_civil_honduras.pdf).

Protective measures are also available as indicated below.

There are also government agencies that may assist a minor in seeking protection of its rights, and may have faculties to seek legal remedies themselves, like the Bureau of Childhood, Adolescence, and Family ("*Dirección Nacional de la Niñez, Adolescencia y Familia*" or DINAF) and the Commissioner for Human Rights.

Executive Order, PCM-27-2014, art. 6: The faculties of DINAF include

"Atender en sede administrativa los trámites relativos a la declaración de abandono de niñas y niños, de la misma forma lo relativo a la vulneración de derechos"

Unofficial English Translation: *"To address the declaration of abandonment of girls and boys in administrative proceedings, as well as any vulneration of their rights"*

<https://faolex.fao.org/docs/pdf/hon138150.pdf>

Organic Law of the Commission for Human Rights of Honduras, art. 9

http://app.conadeh.hn/portaltransparencia/doc/PDF/Ley_Organica_del_CONADEH.pdf

a. The ability to stop the publication of the pornography or CSAM imagery by the Online Platform?

While this measure is not specifically indicated in the relevant laws, the civil and criminal courts have both general faculties to order injunctions to prevent the performance of certain



activities or to order certain actions to be taken to secure evidence and avoid imminent harm to a potential defendant or victim. (*see*, Criminal Procedure Code, arts. 217-225, *available at*, <https://criterio.hn/wp-content/uploads/2021/12/Codigo-Procesal-Penal-Honduras.pdf>; Civil Procedure Code, art. 355 *et seq.*, *available at*, https://www.tsc.gob.hn/web/leyes/Codigo_Procesal%20Civil_.pdf)

- b. An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?

Please refer to the answer in literal a) *supra*.

- c. An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?

Please refer to the answer in literal a) *supra*.

- d. A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?

Please refer to the answer in literal a) *supra*.

- e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child's image or video, either in a civil or a criminal proceeding?

Please refer to the answer in numeral 5) *supra*.

- f. the ability to seek any other forms of victim compensation/recovery/services provided for under the law and/or by a government-funded source?

Honduran law does not provide any other forms of compensation nor government-funded sources of compensation.

- g. notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted?

No, there is no specific legal requirement to notify the victim of the arrest, although it would be implicitly required by other victims' rights, like the right to participate in the investigation and the right to participate in the proceedings (*see, e.g.*, Code of Criminal Procedure, arts. 16, 384, *listing victims' rights*, *available at* <https://criterio.hn/wp-content/uploads/2021/12/Codigo-Procesal-Penal-Honduras.pdf>). However, in practical terms, it is very difficult to think of a circumstance where the victim will not be contacted at that time, provided that the child can be identified and located.

6. "Safety by Design" is defined as tools or processes that are built into an Online Platform to protect children by making it easier for the relevant Online Platform to detect or prevent the distribution of child pornography or CSAM.

- a. Are Online Platforms legally required to incorporate "Safety by Design" into their systems?



There is no legal norm under Honduran law that requires such a tool nor process. However, please refer to the answer provided *supra* in numeral 2 e).

“Internet Service Provider Regulations” issued by the telecommunications regulator (Comisión Nacional de Telecomunicaciones or Conatel) apply to internet service providers, not online platforms. These regulations stipulate some minimum user safety features that should be provided by internet service providers, but these may only be referenced as analogous regulations and not as applicable norms to online platforms, specifically.

<https://www.tsc.gob.hn/web/leyes/Reglamento%20del%20Servicio%20de%20Internet%20o%20Acceso%20a%20Redes%20Inform%C3%A1ticas.pdf>

i. If so, must these steps be taken before the launch of an Online Platform?

Please refer to the answer *supra* in literal a).

ii. If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?

Please refer to the answer *supra* in literal a).

iii. For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.

Please refer to the answer *supra* in literal a).

b. Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform’s incorporation of “Safety by Design”?

Please refer to the answer *supra* in literal a).