

May 15th, 2024

Ms. Mama Fatima Singhateh

Special Rapporteur on the sale and sexual exploitation of children

Subject: Alana Institute's written contribution to the Call for input to the Existing and Emerging Sexually Exploitative Practices against Children in the Digital Environment.

Dear Special Rapporteur,

The Alana Institute [www.alana.org.br] is a Brazilian-based global organization that focuses on promoting integral development and children's rights through advocacy, litigation, and communication at national and international levels. In addition, the Alana Institute acts as an advisor to the National Council for the Rights of Children and Adolescents (Conanda), the National Council for Food and Nutrition Security (Consea), the National Environment Council (Conama), the Senate's Social Communication Council, the Human Rights Observatory of the National Justice Council and has consultative status with ECOSOC. The Alana Institute works in defense of the human rights of children and adolescents based on three thematic axes: equity and inclusion, nature, and digital, based on the inclusion of children in the first place in social and judicial policies.

This contribution¹ will focus on elucidating the main issues relevant to the care of children and adolescents regarding this theme, based on three main axes: (i) Sexual Violence and Artificial Intelligence; (ii) Non-discrimination; and (iii) Platform Responsibility and Duty of Care.

¹ To prepare the Contribution, Instituto Alana consulted the **Brazilian Coalition to End Violence against Children and Adolescents**, a national, supra-partisan, secular and independent organization made up of sixty-eight entities, universities, networks and collectives working throughout the country to prevent and respond to violence against children.

I. Introduction

Implementing specific legislation tailored to address the unique challenges children and adolescents face in the digital realm is crucial. Robust public policies and laws are essential to ensure the safety of children online. Countries should enact and enforce laws that impose severe penalties on perpetrators of online child sexual exploitation crimes, thereby ensuring justice for victims and safeguarding their rights.

II. Sexual Violence and Artificial Intelligence

The Committee on the Rights of the Child, through General Comment No. 25², highlights the ever-evolving dynamics of the digital environment, which encompasses a variety of information and communication technologies, including artificial intelligence. It also underscores how these innovations have a profound and interconnected impact on the lives of children and their rights. As users, especially the younger ones, immerse themselves in this virtual landscape, the challenge arises to ensure they are protected against threats such as cyberbullying, online abuse, and sexual abuse.

According to a report issued by SaferNet Brazil, a non-governmental organization that works to defend and promote human rights on the internet and runs since 2005 the Brazilian National Cybertipline, there has been a notable 77% increase in the volume of reports related to images of child abuse and exploitation in 2023 compared to the previous year. This increase represents the highest record of such reports for this period since 2008³. Furthermore, according to the 2023 Global Threat Assessment by the We Protect Global Alliance, the growing insecurity of children's online presence is exacerbated by the lack of due diligence by digital platforms over content distribution and amplification, emerging technologies, generative AI, and extended reality, which create new trends in the practice of this abuse⁴.

²OHCHR. **General comment No. 25 (2021) on children's rights in relation to the digital environment.**

Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/25&Lang=en. Accessed on April 30/ 2024.

³ SaferNet. **Safernet recebe recorde histórico de novas denúncias de imagens de abuso e exploração sexual infantil na internet.** Available at:

<https://new.safernet.org.br/content/safernet-recebe-recorde-historico-de-novas-denuncias-de-imagens-de-abuso-e-exploracao-sexual>>. Accessed on May 14/ 2024.

⁴ We Protect. **Global Threat Assessment 2023.** Available at: <https://www.weprotect.org/wp-content/uploads/Global-Threat-Assessment-2023-English.pdf>>. Accessed on April 30/ 2024.

The production of forged images, videos and audio using AI with an unbelievably high degree of realism enables and facilitates the exploitation and sexual abuse of children. Through monitoring conducted by the British NGO Internet Watch Foundation, it is possible to better understand the magnitude of this growing phenomenon: in one of the virtual spaces examined, which stands out as the largest among thousands, more than 20,000 images of children produced by artificial intelligence were identified in just one month⁵.

On this basis, it is notable that digital platforms are neglecting to deal with the tools used to generate child sexual abuse material. The circulation of this type of content, which is often sponsored⁶, represents a risk to children's safety in the digital environment⁷. This is intensified by the lack of due diligence, allowing platforms to profit and enabling a lack of transparency on the subject, such as in relation to the time it takes to remove these images from social networks.

In Brazil, even before the popularization of artificial intelligence, the Child and Adolescent Statute (ECA) already considered a criminal offense activities related to the production, possession, dissemination and consumption of this type of content, with penalties ranging from one to eight years of imprisonment. Recently, a bill approved in the Chamber of Deputies, under urgent regime, brings amendments to the Penal Code and the ECA. For the first time, explicitly, the bill prohibits the creation of images of nude women using technology. The penalty, ranging from two to four years, is aggravated when the victim is a child or adolescent.

Promoting digital literacy and raising awareness about online risks among children and adolescents are essential steps in safeguarding their online experiences. Educational initiatives should provide resources and guidance to help young people and their families navigate the digital landscape safely. Topics such as online privacy, cybersecurity, and responsible internet behavior should be included in educational programs to empower children to recognize and respond to online threats.

⁵ Internet Watch Found. **How AI is being abused to create child sexual abuse imagery.** Available at: <<https://www.iwf.org.uk/about-us/why-we-exist/our-research/how-ai-is-being-abused-to-create-child-sexual-abuse-imagery/>>. Accessed on April 30/ 2024.

⁶ G1. **Instagram and Facebook show paid ads for apps that promise to take people's clothes off in photos.** May 7th, 2024. Available at: <<https://g1.globo.com/tecnologia/noticia/2024/05/07/instagram-e-facebook-mostam-anuncios-pagos-de-apps-que-prometem-tirar-roupa-de-pessoas-em-fotos.ghtml>>. Accessed on May 09/2024.

⁷ G1. **Teenagers suspected of creating fake artificial intelligence videos of naked schoolgirls in Rio Grande do Sul.** March, 19th, 2024. Available at: <<https://g1.globo.com/rs/rio-grande-do-sul/noticia/2024/03/19/policia-civil-investiga-videos-de-nudez-de-adolescentes-produzidos-por-inteligencia-artificial-em-porto-alegre.ghtml>>. Accessed on May 09/2024

III. Principle of non-discrimination

In this sense, we highlight the need for the principle of non-discrimination to be effective, with a close look at the disparities in the protection and promotion of rights between children in the Global North and South, whether in the face of national regulations - some more advanced than others - or the actions of the platforms themselves, which act differently in each country, both with regard to the moderation of dangerous or illegal content and the number of professionals assigned to such purposes in countries that do not have English as an official language, for example.

Rather than developing policy that speaks to the needs of children around the world, large tech companies have a history of discrimination against children from the Global South. A report by Fairplay showed that all Meta's policies and user agreements were less protective towards children in countries from the Global South compared to the Global North⁸. In a similar vein, despite an increase in school violence in Brazil in 2023⁹ linked to its use, Discord maintained no operational presence in Brazil, even though it's their second-largest market¹⁰.

Many crimes of sexual exploitation against children in the online environment take place across borders and therefore require the joint efforts of several countries. In this context, it is worth mentioning the Budapest Convention¹¹, which Brazil joined in 2023, with the intention of facilitating international cooperation in the fight against cybercrime. As a result, Brazil has more tools and resources for investigating these crimes, such as easier access to digital evidence that is under the control of other countries.

In this regard, it is necessary for countries to incorporate clear and constructive regulatory measures with reference to technology companies, in order to empower regulatory

⁸ Fairplay for kids. **Global Platforms, Partial Protections:** Design Discriminations on Social Media Platforms. 2022. Available at: <<https://fairplayforkids.org/wp-content/uploads/2022/07/design-discriminations.pdf>>. Accessed March 20/2024. <https://www.dataprivacybr.org/en/documentos/global-platforms-partial-protections/>.

⁹ Rodrigues, Leo. **Violence in schools is expected to increase by 50% in 2023.** 2023. Available at: <<https://agenciabrasil.etc.com.br/direitos-humanos/noticia/2023-11/violencia-nas-escolas-tem-aumento-de-50-e-m-2023>>. Accessed March 20/2024.

¹⁰ Romani, Bruno, and Arimathea, Bruna. **Discord:** Extremist and Hateful Content Runs Wild in Brazilian Channels on the Network Used by Gamers." Estadão. 2023. Available at: <<https://www.estadao.com.br/link/empresas/discord-conteudo-extremista-e-de-odio-corre-solto-em-canais-brasil-eiros-na-rede-usada-por-gamers>>. Accessed March 20/2024.

¹¹ Ministry of Justice and Public Security. **Budapest Convention is promulgated in Brazil.** April 4th, 2023. Available at: <<https://www.gov.br/mj/pt-br/assuntos/noticias/convencao-de-budapeste-e-promulgada-no-brasil>>. Accessed on April 30/ 2024.

organizations with adequate mitigation instruments¹², and it is also necessary for public authorities to implement and evaluate public policies so that they can make the internet a safer space for children and adolescents, so that they can have positive experiences in this environment. Important to highlight that the Business and Human Rights agenda already proposes a set of interventions that encourages companies to bring the respect for human rights to their business strategies.

Many countries, including Brazil, incorporated the Business and Human Rights Principles to its legislation¹³, which reinforces the possibility to use this agenda as a guide to bring governments and companies accountable to systematic human rights abuses and violations, specially against children and youth. Therefore, in order to develop effective policies, it is crucial to conduct global research to identify gaps in the receipt, processing and investigation of child sexual abuse materials (CSAM), with special attention to the Global South. This should be accompanied by ensuring reporting systems and equipment, shared protocols and analysis and processing capacities, with a specific focus on strengthening the countries of the Global South. In addition, it is essential to strengthen funding and invest equitably in improving investigative forces, facilitating the sharing of knowledge and technology. This includes strengthening keywords in different languages and promoting capacities and resources for preventive education. To ensure the necessary support for child victims and survivors, it is essential to provide emotional and health support equipment, as well as training health and care professionals on digital issues related to child abuse.

Furthermore, equally important is guaranteeing training on human rights to creators, influencers, and to the safety and moderation teams of the digital platforms, so these professionals will be able to understand the different dimensions and expressions of violence, as well as how it can be perpetuated through language and communication. As an example of this intention to align regulatory frameworks worldwide, we can mention UNESCO's draft guidelines on the regulation of digital platforms. This report, *Legislating for the Digital Age*,

¹² We Protect Global Alliance. **Global Threat Assessment 2023**. Available at: <https://www.weprotect.org/wp-content/uploads/Global-Threat-Assessment-2023-PT.pdf>. Accessed on May 07/2024.

¹³ Brazil. **Decree N. 11.772**, November 9, 2023. Available at: https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Decreto/D11772.htm#art10. Accessed on May 15/2024.

covers the minimum standards suggested for companies and organizations, elaborated in a more extensive set of guidelines¹⁴.

Another example is the Global Online Safety Regulators Network, which aims to develop a coherent global approach to online safety regulation and encourage cooperation between countries¹⁵. Therefore, they seek international collaboration between the sectors, so that regulatory organizations have a space to share knowledge, experiences and skills.

Therefore, it is worth emphasizing the need to strengthen multi sectionalism, broadening common visions, knowledge exchange, good practices and design guidelines that can be applied in different countries, guaranteeing minimum standards of protection and taking into account the opinions and experiences of young people in governance processes. There is still a lot to be done, but putting children at the center is a political strategy that takes into account the present and future of the digital environment.

IV. Platforms Responsibility and Duty of Care

The article 3 of the Convention on the Rights of the Child states that both public and private institutions, such as companies, must consider the best interests of the child in their actions. In addition, the Committee on the Rights of the Child details and provides recommendations regarding this responsibility in General Comment No. 16 on State obligations in relation to the impact of the business sector on children's rights. As well, the General Comment No. 25 clarifies guidance on the measures that should be adopted to ensure full implementation of the obligations imposed by the Convention on the Rights of the Child, in relation to the risks and challenges within the digital environment.

The Convention on the Rights of the Child and its General Comments are legally binding on countries that have signed and ratified it, and must also be observed by corporations. The rights outlined in the Convention along with its General Comments, particularly General Comment No. 25, already encompass the essence of the best interest principle in the digital realm, and must be applied to ascertain the specific details in individual or collective cases. Moreover, best interest and impact assessments must be guided by the established legal framework of children's rights and their syntax, encompassing

¹⁴ UNICEF. **Legislating for the digital age**. Available at: <https://www.unicef.org/media/121261/file/Legislating%20for%20the%20digital%20age%20.pdf>. Accessed on May 07/2024.

¹⁵ eSafety Commissioner. **The Global Online Safety Regulators Network**. Available at: <https://www.esafety.gov.au/about-us/who-we-are/international-engagement/the-global-online-safety-regulators-network>. Accessed on May 07/2024.

protections against all forms of violence and exploitation, including those of a commercial or economic nature.

In this sense, the duty of care of digital platforms towards children and adolescents stands out, through the commitment of the companies involved in this business model. With this in mind, the duty of care must take into account the extent of the responsibilities of digital platforms in relation to violations of the rights of children and adolescents, the prevention of commercial exploitation of this group and, considering the Brazilian context, the interpretation of Law No. 13,709 (General Data Protection Law) regarding the processing of personal data and vigilantism related to children and adolescents¹⁶.

This digital protection must be guaranteed for children, especially in relation to the dangers of sexual exploitation. It should be noted that children and adolescents make up a third of the world's internet users and, in Brazil, 95% of children and adolescents between the ages of 9 and 17 access the internet¹⁷. These statistics show that children are exposed to a dangerous environment, a fact that can be seen in the number of complaints of child sexual abuse and exploitation reported by SaferNet: 54,840 complaints were received between January and September 2023, compared to 29,809 in the same period in 2022¹⁸.

A recent study investigating the influence of social media in violent behaviours among Brazilian youth¹⁹ raised several questions of concern. Among them, we highlight how the easy access to violent content on social media has made some young people less sensitive to violence, including sexual abuse. Furthermore, artificial intelligence is one of the tools applied to circumvent guardrails that aims to moderate violent content and apart from normalising violence, the algorithms have contributed to influence child and youth addiction to online violent content. With this in mind, it can be seen that the shared responsibility for guaranteeing the safety of children and adolescents, set out in Article 227 of the Brazilian

¹⁶ FRAZÃO, Ana. **Platforms' general duty of care towards children and adolescents**. Available at: <<https://criancaeconsumo.org.br/wp-content/uploads/2021/11/dever-geral-de-cuidado-das-plataformas.pdf>>. Accessed on April 30/ 2024.

¹⁷ UOL. **Protecting children and adolescents online: the X of the question**. April 13th, 2024. Available at: <<https://www.superacesso.info.br/supervisualizador/visualizador.aspx?idanalisesubcanal=30588526&idemai=5406&idempresa>>. Accessed on April 30/2024.

¹⁸ SaferNet. **Reports of child sexual abuse and exploitation reported by SaferNet to the authorities have grown by 84% in one year**. October, 25th, 2023. Available at: <<https://new.safernet.org.br/content/denuncias-de-imagens-de-abuso-e-exploracao-sexual-infantil-reportadas-pel-a-safernet>>. Accessed on April 30/2024.

¹⁹ Think Twice Brasil (2024). **Algorithms, Violence, and Youth in Brazil: towards an educational model for peace and human rights**. 2024. Available at: <https://www.ttb.org.br/files/ugd/94e810_74b5a11d790b4022a16a7dbba37effb7.pdf>. Accessed on April 30/2024.

Federal Constitution, between the state, the family and society, including companies and digital platforms, must be respected. Currently, this responsibility falls solely on fathers, mothers and guardians. In a country where there are more than 12 million single-parent families, who are confronted on a daily basis with a lack of time and the burden of care duties, it is urgent to implement this device in reality. It is also important to consider the children and youth perspectives, who must be also invited to actively contribute to the policies and process that aims to improve the safety and security of the digital environment.

Efforts in this direction are being developed on the Brazilian legal scene, such as Resolution 245 of the National Council for the Rights of Children and Adolescents (Conanda), which addresses the rights of children and adolescents in the digital environment. This resolution seeks to reinforce the duty of digital platforms to act transparently and with due diligence, so that social control can be exercised over their activities, which must always be guided by the best interests of the child²⁰.

It is therefore essential to address the duty of care of companies and digital platforms from the perspective of the rights of children and adolescents, as well as the responsibility of states to guide and communicate to society on issues such as data protection, media education and safe use of the internet, so that situations of sexual exploitation are stopped and children's access to the internet is safe.

²⁰ Portal Lunetas. **Stronger protection for children and adolescents in the digital environment**. April 10th, 2024. Available at: <<https://lunetas.com.br/mais-protECAo-para-criancas-e-adolescentes-no-ambiente-digital/>>. Accessed on April 30/ 2024.