

Legal questionnaire completed by Consortium Legal El Salvador • March 2024

This document contains responses from the law firm listed above to a questionnaire distributed by NCMEC (questions are in **bold text**). Responses to the questionnaire may be limited to officially enacted legislation; it is possible that actual practice or enforcement of the law varies, and relevant court rulings or case law may also differ from legislative text. Responses have been reformatted and may have been slightly edited for clarity. Furthermore, responses may include commentary, paraphrasing, and unofficial translations of source material (e.g., national legislation) originally produced in other languages. Only official source documents in official languages should be relied upon as legally binding. This document serves to inform further research and does not constitute legal advice from NCMEC or the listed law firm.

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>)

Ley Crecer Juntos para la Protección Integral de la Primera Infancia, Niñez y Adolescencia (Appendix 1)

The aforementioned law came into force on January 1, 2023 and aims to guarantee the exercise and complete enjoyment of the rights of all children and adolescents and facilitate the fulfillment of their duties, regardless of their nationality, for which purpose a National System of Integral Protection of Early Childhood, Childhood and Adolescence is established with the participation of the family, society and the State, based on the Constitution of the Republic and International Treaties on human rights in force in El Salvador, especially in the Convention on the Rights of the Child. Art. 4 of this law defines the delimitation of Early Childhood, Childhood and Adolescence:

Article 4. Delimitation of Early Childhood, Childhood and Adolescence

Childhood includes from conception to before the age of twelve, and adolescence, from the age of twelve to the age of eighteen.

Within childhood there is a stage of development called Early Childhood, which includes boys and girls from gestation until their eighth birthday.

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>)

CODIGO PENAL (Appendix 2)

The penal code is the current and supreme legislation in criminal matters in El Salvador. This entered into force on April 30, 1997, and has had many reforms, updating the code. In spite of being the regulatory norm that prevails, in cases of specific crimes, as in the specific case of this investigation, crimes against children, we can be guided by specific laws, which will be mentioned in the course of the investigation.

Within the penal code, the crime of human trafficking is typified as follows:

HUMAN TRAFFICKING

Art. 367.- Whoever, by himself or as a member of an international organization, engages in the trade of persons for any purpose, shall be punished with imprisonment from four to eight years.

If the commerce is carried out with Salvadoran women or children, the sanction may be increased up to one third of the maximum indicated.

LEY ESPECIAL CONTRA LA TRATA DE PERSONAS (Appendix 3)

The Special Law against human trafficking became effective on October 16, 2014 and its purpose is the detection, prevention, prosecution and punishment of the crime of human trafficking, as well as the comprehensive care, protection and restitution of the rights of victims, dependents or responsible persons, providing the mechanisms that enable this purpose. Within this law, we can find the definition of criminal acts related to human trafficking:

Modalities of Human Exploitation.

Art. 5 b) Sexual Exploitation: all actions aimed at inducing or forcing a person to perform acts of a sexual or erotic nature, with the purpose of obtaining an economic or other type of benefit for oneself or a third party. This includes acts of prostitution and pornography;

Art. 5 i) Trade of Pornographic Material: includes the distribution, reproduction, possession and use of pornographic material of victims of the Crime of Trafficking in Persons by any means and of any nature, particularly by computer.

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

Currently, there is no legislation in force that regulates this conduct.

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

PENAL CODE:

Within the Penal Code, the following crimes related to the sexual abuse of children and adolescents are typified and sanctioned:

RAPE OF A MINOR OR INCAPABLE PERSON

Art. 159.- Whoever has vaginal or anal carnal access with a minor under fifteen years of age or with another person, taking advantage of his mental derangement, state of unconsciousness or incapacity to resist, shall be punished with imprisonment of



fourteen to twenty years.

Whoever by means of deception places the victim in a state of unconsciousness or incapacitates him to resist, shall incur the same penalty, if he carries out the conduct described in the first paragraph of this article.

SEXUAL ASSAULT ON A MINOR AND INCAPACITATED PERSON

Art. 161.- Sexual aggression carried out with or without violence that does not consist of carnal access, on a minor under fifteen years of age or on another person, taking advantage of his mental derangement, state of unconsciousness or incapacity to resist, shall be punished with imprisonment of eight to twelve years.

Whoever by means of deceit places the victim in a state of unconsciousness or incapacitates him to resist, shall incur the same penalty if he carries out the conduct described in the first subsection of this Article.

If any of the circumstances indicated in the second subsection of the preceding article are present, the penalty shall be fourteen to twenty years of imprisonment.

STATUTORY RAPE

Art. 163.- Whoever has vaginal or anal carnal access by means of deception with a person over fifteen years of age and under eighteen years of age, shall be punished with imprisonment of four to ten years.

STATUTORY RAPE BY PREVALENCE

Art. 164.- Whoever has carnal access through vaginal or anal intercourse with a person over fifteen and under eighteen years of age, taking advantage of the superiority originated by any relationship, shall be punished with imprisonment from six to twelve years.

INDUCEMENT, PROMOTION AND FAVORING OF SEXUAL OR EROTIC ACTS.

Art. 169.- Whoever promotes, facilitates, administers, finances, instigates or organizes in any way the use of persons under eighteen years of age in sexual or erotic acts, in an individual or organized manner, publicly or privately, shall be punished with three to eight years of imprisonment.

The same liability shall be incurred by whoever knowingly authorizes the use or leases the property to carry out any of the activities described in the preceding paragraph.

REMUNERATION FOR SEXUAL OR EROTIC ACTS.

Art. 169-A.- Whoever pays or promises to pay with money or any other advantage of any nature to a person under eighteen years of age or a third person so that the underage person performs sexual or erotic acts, shall be punished with a penalty of three to eight years of imprisonment.

DETERMINATION TO PROSTITUTION

Art. 170.- Whoever coercively or abusing a situation of need, determines a person to practice prostitution or to remain in it, shall be punished with imprisonment from six to ten years.

The prison sentence shall be from eight to twelve years when the victim is under eighteen years of age.

When any of these modalities is executed taking advantage of the superiority originated by any relationship, the penalty shall be aggravated by up to one third of the maximum limit.

- e. **child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8), <https://www.law.cornell.edu/uscode/text/18/2256>)**

PENAL CODE:

The penal code has also criminalized crimes related to pornography.

PORNOGRAPHY

Art. 172.- Whoever by any direct means, including electronic means, manufactures, transfers, disseminates, distributes, rents, sells, offers, produces, executes, exhibits or shows films, magazines, pamphlets or any other pornographic material among minors under eighteen years of age or mentally handicapped persons, shall be punished with imprisonment of three to five years.

The same sanction shall be incurred by the person who does not warn, in a visible manner, about the content of films, magazines, pamphlets or any other material, including that which may be transmitted through electronic means, when it is inappropriate for minors under eighteen years of age or mentally handicapped.

USE OF MINORS UNDER EIGHTEEN YEARS OF AGE AND PERSONS UNDER THE AGE OF EIGHTEEN AND INABILITY OR MIND DEFICIENTS IN PORNOGRAPHY.

Art. 173.- Whoever produces, reproduces, distributes, publishes, imports, exports, offers, finances, sells, trades or disseminates in any form, images, uses the voice of a MINOR under eighteen years of age, incapable or mentally deficient, whether directly, by computer, audiovisual, virtual or by any other means in which they exhibit, in sexual, erotic or unequivocal activities of a sexual nature, explicit or not, real or simulated, shall be punished with imprisonment of six to twelve years.

The same sanction shall be imposed on whoever organizes or participates in public or private shows in which the MINORS mentioned in the preceding paragraph are made to participate in pornographic or erotic actions.

POSSESSION OF PORNOGRAPHY.



Art. 173-A.- Whoever possesses pornographic material in which the image of MINORS under eighteen years of age, incapable or mentally deficient persons is used in pornographic or erotic activities, shall be sanctioned with a penalty of two to four years of imprisonment.

LEY ESPECIAL CONTRA LOS DELITOS INFORMÁTICOS Y CONEXOS. (Appendix 4)

The purpose of this law is to protect the legal assets of those criminal conducts committed by means of Information and Communication Technologies, as well as the prevention and sanctioning of those criminal conduct committed by means of the Information and Communication Technologies, as well as the prevention and sanction of the crimes committed to the detriment of the data stored, processed or transferred; the systems, their infrastructure or any of their components, or those committed through the use of such technologies affecting interests associated with the identity, property, intimacy and image of natural or legal persons in the terms applicable and foreseen in the present Law. It came into force on February 26, 2016, and within it we can find the definition of "Pornographic Material"; this definition is important to delimit what type of illicit activities are typified as a crime. It also typifies and sanctions crimes related to child pornography, which will be explained below, all of which are based on the present law.

Definitions:

Pornographic Material of Girls, Boys and Adolescents is any auditory or visual representation, whether in image or video, adopting sexually explicit, real or simulated behavior of a MINOR appearing to be a girl, boy or adolescent adopting such behavior. Realistic images depicting a child or adolescent engaging in sexually explicit behavior or real or simulated images of the genitalia or nudity of a child or adolescent for sexual purposes shall also be considered pornographic material.

CHAPTER IV COMPUTER CRIMES AGAINST CHILDREN, ADOLESCENTS OR MINORS WITH DISABILITIES

Pornography through the Use of Information and Communication Technologies

Art. 28.- Whoever by any means involving the use of Information and Communication Technologies manufactures, transfers, disseminates, distributes, distributes, rents, sells, offers, produces, executes, exhibits or shows pornographic or sexual material among children, adolescents or MINORS, shall be sanctioned with a prison term of four to eight years.

Whoever does not visibly warn of the content of pornographic or sexual material that is transmitted through the use of Information and Communication Technologies, unsuitable for children, adolescents or MINORS or persons with disabilities, shall be punished with imprisonment of three to five years.

Use of Children, Adolescents or person with Disabilities in Pornography Through the Use of Information and Communication Technologies

Art. 29.- Whoever by any means involving the use of Information and Communication Technologies produces, reproduces, distributes, publishes, publishes, imports, exports, offers, finances, sells, trades or disseminates in any way, images, videos or exhibits in sexual, erotic or unequivocal activities of a sexual nature, explicit or not, real or simulated, or uses the voice of children, adolescents or persons with disabilities, shall be punished with imprisonment of eight to twelve years.

The same sanction shall be imposed on whoever by means of Information and Communication Technologies organizes or participates in public or private shows, in which the persons mentioned in the preceding paragraph are made to participate in pornographic or erotic actions.

Acquisition or Possession of Pornographic Material of Children, Adolescents or person with Disabilities through the Use of Information and Communication Technologies

Art. 30.- Whoever acquires for himself or for a third party through any means involving the use of Information and Communication Technologies, or possesses pornographic material in which a child, adolescent or person with disabilities or their image has been used for its production, shall be punished with imprisonment of two to five years.

The same sanction shall apply to whoever possesses in computer data storage devices or through any means involving the use of Information and Communication Technologies, pornographic material in which a child, adolescent or person with disabilities or their image has been used for its production.

Corruption of Children, Adolescents or person with disabilities through the Use of Information and Communication Technologies

Art. 31.- Whoever maintains, promotes or facilitates the corruption of a girl, boy, adolescent or person with disability for erotic, pornographic or obscene purposes, by means of the Information and Communication Technologies, even if the girl, boy, adolescent or person with disability consents to it, shall be sanctioned with a prison term of eight to twelve years.

The same sanction shall be imposed on whoever makes implicit or explicit proposals to hold sexual or erotic encounters, or for the production of pornography through the use of Information and Communication Technologies for himself, for another or for groups, with a child, adolescent or person with disabilities.

Harassment of Children and Adolescents or person with disabilities through the use of Information and Communication Technologies (ICTs)

Art. 32.- Whoever torments, harasses, humiliates, insults, denigrates or any other type of conduct that affects the normal development of the personality, threatens the psychological or emotional stability, endangers the life or physical safety of a



child, adolescent or person with disabilities, by means of the use of Information or Communication Technologies, shall be punished with imprisonment of two to four years.

The penalty shall be aggravated with imprisonment of four to eight years, for whoever performs conduct involving phrases, signs or other unequivocal action of a sexual nature or content against a child, adolescent or person with disabilities, through the use of Information and Communication Technologies.

- 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>)**

Currently, there is no legislation in force that regulates this conduct.

- 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>)**

The crimes related to grooming are typified in the following articles of the PENAL CODE:

SEXUAL HARASSMENT

Art. 165.- Whoever performs sexual conduct undesired by the person who receives it, which implies phrases, touching, signs or other unequivocal conduct of a sexual nature or content and which does not constitute by itself a more serious crime, shall be punished with imprisonment of three to five years.

Sexual harassment against a minor under fifteen years of age shall be punished with a prison sentence of four to eight years.

If the sexual harassment is carried out taking advantage of the superiority originated by any relationship, a fine of one hundred to two hundred days fine will also be imposed.

CORRUPTION OF MINORS AND INCAPABLE PERSONS

Art. 167.- Whoever promotes or facilitates the corruption of a MINOR under eighteen years of age or of a mentally handicapped person, through sexual acts other than carnal access, even if the victim consented to participate in them, shall be punished with imprisonment of six to twelve years.

Any familiar or private person who favors what is described in the preceding paragraph shall be punished with the maximum penalty increased by one third.

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

The legal age of sexual consent in El Salvador is 18 years old. A child is any person from the moment of conception until the age of twelve, and an adolescent is any person from the age of twelve until the age of eighteen; any person within this age range is considered a minor,



according to the law “LEY DE PROTECCIÓN INTEGRAL DE LA NIÑEZ Y ADOLESCENCIA” (Appendix 5).

According to the penal code, it is considered a crime to "promote or facilitate the corruption of a person under eighteen years of age in sexual or erotic acts, whether individually or organized, publicly or privately." Any person found guilty of such actions "shall be punished with a penalty of three to eight years in prison."

- i. **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>)**

Currently, there is no legislation in force that regulates this conduct.

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:**

Currently, there is no legislation in force that regulates this conduct.

- a. **review, screen, moderate, or detect content to identify child pornography or CSAM content**
- b. **review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child**
- 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**
- d. **remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about**
- e. **review content by human moderators to screen or moderate for child pornography or CSAM**
- 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**
- 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.**
- 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.?**

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?

Currently, there is no legislation in force that regulates this conduct.

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?

According to our current legislation, based on the law “Ley Crecer Juntos para la Protección Integral de la Primera Infancia, Niñez y Adolescencia”, we find an article that regulates parental control for online platforms.

Article 103. Protection against harmful or inappropriate information in virtual environments.

Internet service providers shall make available to users who request it, a free parental control service to manage content, applications or computer services.

The State must adopt the necessary measures to prevent, investigate and punish the commission of computer crimes against children and adolescents and establish mechanisms for the restitution of their rights.

Mothers, fathers or guardians have the duty to guide and inform children and adolescents about the benefits and risks in the virtual environment according to their evolutionary development.

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:

Currently, there is no legislation in force that regulates this conduct.

- a. The ability to stop the publication of the pornography or CSAM imagery by the Online Platform?
- b. An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?
- c. An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?
- 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?
- 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?
- 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?
- g. notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted?

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.

Currently, there is no legislation in force that regulates this conduct.

- a. **Are Online Platforms legally required to incorporate “Safety by Design” into their systems?**
 - i. **If so, must these steps be taken before the launch of an Online Platform?**
 - ii. **If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?**
 - iii. **For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.**
- 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”?**

Lastly, we have researched international treaties that have been ratified by El Salvador, therefore, they are legislation in force and applicable within our national territory. Below we share a detail of the treaties that may be useful for research:

1. Convención sobre los Derechos del Niño. (Appendix 6) El Salvador ratified this convention on June 14, 1990. This is a United Nations treaty that establishes the fundamental rights of children, including the right to life, health, education and protection against violence, exploitation and abuse.
2. Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la venta de niños, la prostitución infantil y la utilización de niños en la pornografía (Appendix 7)

El Salvador ratified this protocol on June 11, 2002. The purpose of this protocol is to protect children against sale, child prostitution and pornography, as well as to ensure the criminalization of these crimes.

3. Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer (Appendix 8) El Salvador ratified this convention on November 6, 1995. Although it does not focus exclusively on children, this convention is relevant because it recognizes that violence against women can affect children who are witnesses or victims of such violence. These international treaties ratified by El Salvador establish commitments to protect the rights of children and adolescents, as well as to prevent and punish crimes committed against them.