

# Barriers to Access to Justice for Child Victims of Sexual Exploitation:

Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova





ECPAT International is a global network of civil society organisations working together to end sexual exploitation of children. We aim to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of sexual exploitation.



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# Barriers to Access to Justice for Child Victims of Sexual Exploitation:

## Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova



### Access to Justice and Right to Remedies for Child Victims of Sexual Exploitation Research Project

is a multi-country initiative focusing on child survivors' experiences in accessing judicial remedies and other reparations for sexual exploitation. With its unique focus and prioritization of the voice of the child survivor, the Project empowers children to be active agents in their protection, strengthening access to judicial remedies; identifying the specific recovery and reintegration needs of child victims of sexual exploitation; and improving the opportunity of monetary relief for victims to rebuild their lives.

The Research findings and recommendations are pre-sented in thematic papers and reports focusing on Access to Criminal Justice; Access to Recovery and Reintegration; Access to Compensation.

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# FOREWORD

Although the First World Congress against the Commercial Sexual Exploitation of Children (CSEC) drew attention to the victimization of children over 20 years ago, current studies demonstrate that children still constitute approximately one-third of all human trafficking victims worldwide; with the majority of victims being trafficked for the purpose of sexual exploitation.

Meanwhile, the explosion of internet and mobile technologies not only afford perpetrators both unprecedented anonymity and hidden pathways for grooming and seducing children via social media, but also provide offenders easier access to sexual abuse materials and images. Likewise, the expanding sectors of travel and tourism services such as home-stays, volun-tourism and the sharing economy, increase anonymity and heighten children's vulnerability to abusers. Together, changing avenues therefore increasingly contribute to demand for both child sexual abuse materials and direct-contact offenses.

However, significant progress was also made since the 1996, First World Congress in Stockholm. For example, twenty years later, recognizing that "sexual violence is one of the most unsettling of children's rights violations", world leaders developed the Sustainable Development Goals and approved global targets to eliminate the sexual exploitation of children.

Under international law, a child who is subjected to sexual exploitation is entitled to seek and obtain a remedy for that violation under international law. However, many child victims of sexual exploitation are often revictimized when the justice system in place fails to adequately address and compensate the trauma they have endured. Pursuant to the 2013 report on "Access to justice for children" by the UN High Commissioner for Human Rights,<sup>1</sup> "access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child.

In order to gain a better understanding of the experience of sexually exploited children in the criminal justice system, ECPAT International conducted this study as way to identify the special challenges child victims of sexual exploitation face when seeking access to justice and remedies. Within the context of Moldova, the study highlighted both the successes and improvements to be made in order to ensure not only access to the criminal justice system, but more specifically, to a child-friendly justice system; one that balances the rights of child victims and witnesses with those of the accused offenders and takes into account the child's individual needs and views.

The findings demonstrate that Moldova has a strong legal framework when it comes to enabling victims of SEC to access justice. However, this is no way guarantees its effective implementation, due in large part to the lack of knowledge of the law amongst professionals in the justice system, in addition to a lack of substantial human and financial resources.

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1 Human Rights Council, "Access to justice for children", Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/25/35, 16 December 2013, para. 4.



This report strives at not only presenting access to justice in the context of Moldova, but to learn from its findings and conclusions as a mean to improve access to justice beyond Moldovan's borders. SEC has been shown to transcend national and regional borders, and thus, the experience of one country's criminal justice system, including both successes and failures, may guide the efforts of other national legislations. Although the findings and recommendations in this report were made in the context of Moldova, ultimately, SEC is a global issue ECPAT continues to fight against, notably through encouraging collaborative efforts are made and lessons are drawn from country and region-specific experiences.

It is our hope that the findings and recommendations included in this report will inspire national governments to enact legislations in order to achieve child-friendly justice.



Junita Upadhyay,

Deputy Executive Director, Programmes  
ECPAT International Secretariat



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- Independent consultant and external reviewer, Catherine Beaulieu
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  - Mariana Yevsyukova, Global Coordinator for Children’s Participation
  - Andrea Varrella, Research Associate
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# GLOSSARY

## Access to justice

Pursuant to the 2013 report on “Access to Justice for Children” by the UN High Commissioner for Human Rights,<sup>1</sup> “access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child. It applies to civil, administrative and criminal spheres of national jurisdictions . . . and covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognized as having infringed the penal law, victims and witnesses or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection.” For purposes of this report, “access to justice” refers only to the ability of child victims of sexual exploitation to obtain a just and timely remedy through State criminal justice systems.<sup>2</sup>

## Best interests of the child

Pursuant to Article 3(1) of the *Convention on the Rights of the Child* (CRC), in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>3</sup> As confirmed by the UN Committee on the Rights of the Child in General Comment No. 14 (2013), the best interests principle is flexible and must be determined on a case-by-case basis, taking into account each child’s specific characteristics, context, situation and needs, as well as the opinions of the child him/herself.<sup>4</sup>

## Child

Pursuant to Article 1 of the CRC, a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

## Child-friendly justice

Pursuant to Article II(c) of the Council of Europe (COE) *Guidelines on Child-Friendly Justice* (2010), “‘child-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level . . . giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”<sup>5</sup>

1 Human Rights Council, “Access to justice for children,” Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/25/35, 16 December 2013, para. 4.

2 See: para. 4, *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN Doc. A/RES/40/34, 29 November 1985 (victims of crime are “entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered”); para. 12, *United Nations Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles on the Right to Remedy and Reparation), UN Doc. A/RES/60/147, 21 March 2006 (“victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law”).

3 UN Convention on the Rights of the Child (CRC) (1989).

4 Committee on the Rights of the Child (2013), “General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para.1)”, UN Doc. CRC/C/GC/14, 29 May 2013, para. 32.

5 Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (COE Guidelines on Child-Friendly Justice), adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.



## Child pornography/Child sexual abuse materials

Pursuant to Article 2(c) of the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (OPSC), child pornography means “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”<sup>6</sup> According to Article 3(1)(c), “each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law...producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the [purpose of sexual exploitation of the child] child pornography.”<sup>7</sup> According to the 2016 *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (Luxembourg Guidelines), “[t]he term ‘child pornography’ is still used when addressing legal issues and contexts, in particular when reference is made to international and domestic legal treaties that explicitly include this term. However...this term should be avoided to the extent possible, in particular when referring to non-legal contexts. In such contexts, ‘child sexual abuse material’ or ‘child sexual exploitation material’ should be the terms of choice.”<sup>8</sup>

## Child prostitution/Sexual exploitation of children in prostitution

According to Article 2(b) of the OPSC, child prostitution means “the use of a child in sexual activities for remuneration or any other form of consideration.”<sup>9</sup> According to Article 3(1)(b), “each State Party shall ensure that, at a minimum, the following acts and activities are fully covered under its criminal or penal law...offering obtaining, procuring, or providing a child for child prostitution.”<sup>10</sup>

Although the term “child prostitution” is defined under international law, according to the Luxembourg Guidelines, “it may arguably be interpreted in a manner to imply that the phenomenon represents a legitimate form of sex work or that the child has given her/his informed consent to prostitute her/himself.” Therefore, “[i]n order to avoid the risk of stigmatising children exploited in/for prostitution, or of inadvertently legitimising such practices,” it is preferable to use terms such as “exploitation in prostitution” or “exploitation for prostitution.”<sup>11</sup>

6 UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)(2000), Article 2(c).

7 *Ibid.*, Article 3(1)(c).

8 Interagency Working Group on Sexual Exploitation of Children (2016), “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse,” (Luxembourg Guidelines), adopted on 28 January 2016, p. 40, accessed 30 June 2016, <http://luxembourguidelines.org/>. The Guidelines point out that “[p]ornography is a term primarily used for adults engaging in consensual sexual acts distributed (often legally) to the general public for their sexual pleasure. Criticism of this term in relation to children comes from the fact that ‘pornography’ is increasingly normalised and may (inadvertently or not) contribute to diminishing the gravity of, trivialising, or even legitimising what is actually sexual abuse and/or sexual exploitation of children. Furthermore...the term ‘child pornography’ risks insinuating that the acts are carried out with the consent of the child, and represent legitimate sexual material.”

9 Article 2(b), OPSC.

10 *Ibid.*, Article 3(1)(b).

11 Luxembourg Guidelines, p. 30.



## Child-sensitive

Pursuant to paragraph 9(d) of the UN Economic and Social Council's *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (UN Guidelines on child victims and witnesses of crime) "[c]hild-sensitive' denotes an approach that balances the child's right to protection and that takes into account the child's individual needs and views." In this paper, it is used interchangeably with "child-friendly."<sup>12</sup>

## Commercial sexual exploitation of children (CSEC)

According to the Luxembourg Guidelines, "a distinction can...be made between 'sexual exploitation' [defined below] and 'commercial sexual exploitation', with the latter being a form of sexual exploitation where the focus is specifically on monetary benefit, often relating to organized criminality where the primary driver is economic gain."<sup>13</sup> ECPAT International recognises four primary and interrelated forms of CSEC: sexual exploitation of children in prostitution, child sexual abuse materials, trafficking of children for sexual purposes and sexual exploitation of children in travel and tourism.

## Compensation

Article 9(4) of the OPSC states that "State parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible."<sup>14</sup> The Basic Principles on the Right to Remedy and Reparation recommend to provide compensation for "any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case,"<sup>15</sup> including compensation for physical or mental harm; lost opportunities, including employment, education and social opportunities; material damages such as loss of earning potential; moral damage, and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.<sup>16</sup>

## Criminal justice process

As defined by paragraph 9(c) of the UN Guidelines on child victims and witnesses of crime, the criminal justice process encompasses "detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice."<sup>17</sup>

## Criminal justice system

For purposes of this paper, the criminal justice system refers to the official justice system of the State, including the police, prosecution, judiciary and penal systems, as well as any professionals or agencies that provide services to victim-witnesses during criminal cases.<sup>18</sup>

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12 UN Economic and Social Council (2005), *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (UN Guidelines on child victims and witnesses of crime), UN Doc. E/RES/2005/20, 22 July 2005, para. 9(d).

13 Luxembourg Guidelines, p. 27.

14 OPSC, Article 9(4).

15 Basic Principles on the Right to Remedy and Reparation, para. 20.

16 *Ibid.*

17 UN Guidelines on child victims and witnesses of crime, para. 9(c).

18 See: Oxford Dictionary (2016), accessed 12 June 2016, [http://www.oxforddictionaries.com/us/definition/american\\_english/criminal-justice-system?q=criminal+justice+system](http://www.oxforddictionaries.com/us/definition/american_english/criminal-justice-system?q=criminal+justice+system), defining criminal justice system as "the system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offenses."



## ECPAT (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes)

ECPAT International is a global network of civil society organisations dedicated to ending the sexual exploitation of children. As of July 2016, ECPAT International consisted of 90 member groups in 82 countries around the world.<sup>19</sup>

### Exploiter

For purposes of this paper, “exploiter” is used interchangeably with “offender” and “perpetrator,” and refers to individuals who receive the benefits of a child’s sexual exploitation. These individuals include facilitators, such as pimps, traffickers and other intermediaries, and users, sometimes referred to as clients, customers or johns.<sup>20</sup>

### Guardian *ad litem*

Guardians *ad litem* (GALs) are independent representatives, often legal professionals or social workers, who represent the best interests of children during legal proceedings. They are appointed by a court only for the duration of the legal action and are sometimes appointed to assist children involved in child neglect, abuse and exploitation cases.<sup>21</sup>

### In camera hearing

In criminal proceedings, an “*in camera* hearing,” refers to a private hearing, usually held in the judge’s chambers or in a courtroom closed to the public and the press.<sup>22</sup>

### Official

Official (or “justice official”) refers to any individual interviewed for purposes of this report, including prosecutors, judges, law enforcement and other criminal justice professionals.

### Professionals

Pursuant to paragraph 9(b) of the UN Guidelines on child victims and witnesses of crime, “[p]rofessionals refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system . . . . This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers.”<sup>23</sup>

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19 See: ECPAT International’s website (2016), “About us”, accessed 30 June 2016, <http://www.ecpat.org/about-ecpat/>.

20 See: Luxembourg Guidelines, p. 90; advising against the use of the terms “client,” “customers,” and “johns” in favour of the terms “child sex offender,” “perpetrator of child sex offences,” or “child abuser,” which are terms that underline the criminal nature of exploited children through prostitution.

21 Wex Legal Dictionary, Legal Information Institute, accessed 12 June 2016, [https://www.law.cornell.edu/wex/guardian\\_ad\\_litem](https://www.law.cornell.edu/wex/guardian_ad_litem); see also: COE Guidelines on Child-Friendly Justice, para. 105.

22 Collins Dictionary of Law, W.J. Stewart, 2006.

23 UN Guidelines on child victims and witnesses of crime, para. 9(b).



## Recovery and reintegration

Article 39 of the CRC states that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse....”<sup>24</sup> Article 9(3) of the OPSC states that “States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.”<sup>25</sup> This assistance can include physical health services, psychosocial support and assistance with reintegration where children have been removed from their families or communities.

## Remedies

Paragraph 19 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Declaration on Justice for Victims of Crime)<sup>26</sup> states that crime victims have a right to legal remedies, which include reparation in the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>27</sup> According to the UN Guidelines on child victims and witnesses of crime, “[c]hild victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive...Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed.”<sup>28</sup>

## Restitution

According to paragraph 8 of the Declaration on Justice for Victims of Crime, “[o]ffenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights.”<sup>29</sup> Paragraph 9 further provides that “[g]overnments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.”<sup>30</sup>

## Safe harbour laws

In general terms, a safe harbour is a statutory or regulatory provision that specifies that certain conduct will be deemed not to violate a given rule. In the context of the sexual exploitation of children, safe harbour laws protect children from being prosecuted for prostitution or other crimes related to their exploitation.<sup>31</sup>

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24 CRC, Article 39.

25 OPSC, Article 9(3).

26 *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Declaration on Justice for Victims of Crime), UN Doc. A/RES/40/34, 29 November 1985, para. 19; see also: para. 11, Basic Principles on the Right to Remedy and Reparation (remedies shall include “(a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms”).

27 Basic Principles on the Right to Remedy and Reparation, para. 18.

28 UN Guidelines on child victims and witnesses of crime, paras. 35 and 37.

29 Declaration on Justice for Victims of Crime, para. 8.

30 *Ibid.*, para. 9.

31 See: Polaris Project (2015), “Human Trafficking Issue Brief: Safe Harbour”, accessed 7 June 2016, <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.



## Sale of children

According to Article 2(a) of the OPSC, the sale of children means “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”<sup>32</sup> According to Article 3(1)(a)(i), “each State party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law...offering, delivering or accepting, by whatever means, a child for the purpose of: (a) sexual exploitation of the child.”<sup>33</sup>

## Sexual exploitation of children (SEC)

A child is a victim of sexual exploitation when the child takes part in a sexual activity in exchange for something (a monetary or non-monetary gain or benefit or even the promise of such), which is received by a third party, the perpetrator, or by the child him/herself. The notion of an exchange is what distinguishes SEC from other forms of sexual violence and abuse of children.<sup>34</sup>

## Sexual exploitation of children in travel and tourism (SECTT)

According to the 2016 Global Study on Sexual Exploitation of Children in Travel and Tourism, SECTT is defined as “acts of sexual exploitation of children embedded in the context of travel, tourism or both.” This definition includes tourists, business travellers, expatriates, voluntourists or pseudo-caregivers abroad. It also focuses not only on Western offenders, but includes local and regional travellers and tourists as well.<sup>35</sup> The OPSC refers to the term “child sex tourism” in its preamble as well as in article 10(1), where it is set forth that “States Parties shall take all necessary steps to strengthen international cooperation . . . for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.”<sup>36</sup>

## Survivor

For the purposes of this paper, the term “survivor” is used interchangeably with “victim” and refers to an individual who experiences sexual exploitation when he/she is under the age of 18. In the criminal justice context, survivors are referred to as “victim-witnesses” when they participate in a criminal case. It should be recognised that “whether a child moves or not from victim to survivor status will depend on the measures and services provided to her/him to address and overcome the consequences of her/his victimisation. ‘Victim’ and ‘survivor’ would then distinguish between situations where there has been a (effective) process and situations where no such process has taken place.”<sup>37</sup> Any distinction made between “victims” and “survivors” is an evolving process and cannot be rigidly defined; it depends upon individual contexts including, for example, how the child sees themselves.

32 OPSC, Article 2(a).

33 *Ibid.*, Article 3(1)(a)(i).

34 The term “commercial sexual exploitation of children” or CSEC is often used interchangeably with the term “sexual exploitation of children” or SEC. CSEC, however, tends to refer to the sexual abuse of a child in exchange for money, while SEC tends to refer more broadly to the sexual abuse of a child in exchange for both monetary and non-monetary benefits. See: Luxembourg Guidelines, pp. 24-27.

35 See: Hawke, Angela and Raphael, Alison (2016), “Offenders on the Move: Global Study on sexual exploitation of children in travel and tourism,” Bangkok: ECPAT International and Defence for Children-ECPAT Netherlands, p. 106.

36 OPSC, Article 10(1).

37 Luxembourg Guidelines, p. 80.



## Trafficking in persons

According to Article 3(a) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (Palermo Protocol), trafficking in persons “shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Article 3(c) further states that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth” above.<sup>38</sup>

## Victim

Pursuant to paragraph 1 of the Declaration on Justice for Victims of Crime, “[v]ictims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”<sup>39</sup> According to the UN Guidelines on child victims and witnesses of crime, “Child victims and witnesses’ denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.”<sup>40</sup> For the purpose of this paper, “victim” refers to anyone who suffered from sexual exploitation as a child.

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38 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) (2000), Article 3(a) and (c).

39 Declaration on Justice for Victims of Crime, para. 1.

40 UN Guidelines on child victims and witnesses of crime, para. 9(a).



# ACRONYMS

<b>CCCC:</b>	Centre for Combating Cyber Crimes
<b>CCTP:</b>	Centre for Combating Trafficking in Persons
<b>CNPDC:</b>	National Council for Child Rights Protection
<b>COE:</b>	Council of Europe
<b>CPTW:</b>	Centre for Prevention of Trafficking in Women
<b>CRC:</b>	United Nations Convention on the Rights of the Child
<b>CSEC:</b>	Commercial Sexual Exploitation of Children
<b>ECOSOC:</b>	United Nations Economic and Social Council
<b>ECPAT:</b>	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
<b>GRETA:</b>	Council of Europe's Group of Experts on Action against Trafficking in Human Beings
<b>ICSE:</b>	International Child Sexual Exploitation Database
<b>ILO:</b>	International Labour Organization
<b>INHOPE:</b>	International Association of Internet Hotlines
<b>MDT:</b>	Multidisciplinary Teams
<b>NGO:</b>	Non-governmental Organisations
<b>NRC:</b>	National Roma Centre
<b>NRS:</b>	National Referral System
<b>OHCHR:</b>	Office of the United Nations High Commissioner for Human Rights
<b>OPSC:</b>	Optional Protocol on the sale of children, child prostitution and child pornography
<b>SEC:</b>	Sexual Exploitation of Children
<b>SECTT:</b>	Sexual Exploitation of Children in Travel and Tourism
<b>SoL:</b>	Statute of Limitations
<b>TIP:</b>	Trafficking in Persons
<b>UN:</b>	United Nations
<b>UNICEF:</b>	United Nations Children's Emergency Fund
<b>UNODC:</b>	United Nations Office on Drugs and Crime



# EXECUTIVE SUMMARY

Twenty years have passed since the First World Congress against the Commercial Sexual Exploitation of Children (CSEC) focused the world's attention on the fact that children were being exploited worldwide through prostitution, child sexual abuse materials and trafficking for sexual purposes. Despite significant efforts made since that time, the sexual exploitation of children (SEC) continues to threaten children in all parts of the globe. This was confirmed in 2015 with the adoption of the United Nations (UN) Sustainable Development Goals, which included four targets related to the elimination of the sexual exploitation of children.

## Access to Justice for Sexually Exploited Children

A child who is subjected to sexual exploitation is entitled to seek and obtain a remedy for that violation under international law. The right of children to legal remedy for human rights violations is well-established in international law; however, in order to secure these remedies, sexually exploited children must be able to access the justice systems entrusted to uphold and enforce these rights.

Access to justice for children is defined as “the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child.” Children exploited in prostitution and sexual abuse materials, therefore, have a right to access justice for violations of their rights under Article 34 of the UN *Convention on the Rights of the Child* (CRC) which protects children against all forms of sexual exploitation and sexual abuse.

While the concept of access to justice is sometimes misunderstood to apply only to juvenile justice – or children in conflict with the law – guaranteeing them fair treatment during criminal proceedings, in the report of the United Nations High Commissioner for Human Rights on “Access to justice for Children,” it was established that access to justice applies to child victims as well. This understanding is confirmed by multiple international treaties and standards which give victims of human rights violations the right to access justice and obtain remedies for the violations committed against them.

### Access to Justice

For purposes of this report, “access to justice” refers to the ability of sexually exploited children to obtain a just and timely remedy through State criminal justice systems, including their ability to secure the compensation and services they need to recover and rebuild their lives.

Child victims face unique challenges when they try to access justice and secure remedies. As observed by the UN Economic and Social Council (ECOSOC) in its *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, there are “serious physical, psychological and emotional consequences of crime and victimisation for child victims and witnesses, in particular in cases involving sexual exploitation.”

Because child victims are particularly vulnerable, ECOSOC continued, they “need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process.” As explained by the Committee on the Rights of the Child, “[c]hildren’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights [and] States need to



give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives.”

Enabling child victim-witnesses to participate and to navigate safely and effectively through criminal proceedings to secure remedies is sometimes referred to as providing “child-friendly justice.” International and regional law and standards impose a duty on States to take steps to make their systems “child-friendly” and provide justice that takes into consideration the needs and rights of the child. It is an approach to justice that balances the rights of child victims and witnesses with those of the accused offenders and takes into account the child’s individual needs and views.

### Child-Friendly Justice

“‘Child-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level...and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”

Article II, *Council of Europe Guidelines on Child-Friendly Justice* (2010)

### Methodology

While countries around the world, including Moldova, have made significant efforts in recent years to improve access to justice for child victims of crime, there has been little research into how these efforts impact child victims of sexual exploitation. As the only global network dedicated to protecting children from all forms of commercial sexual exploitation, ECPAT International conducted this Study to gain a better understanding of the experience of sexually exploited children in the criminal justice system and identify the special challenges they face when seeking access to justice and remedies.

This study was conducted from May-August 2015 to assess the ability of sexually exploited children to access the criminal justice process in Moldova. Nine criminal justice officials were interviewed from various different sectors, including judges, prosecutors, representatives from government agencies/centres and investigators. These interviews were conducted in order to gain insight into the criminal justice procedures in cases involving SEC victims, the successes of such procedures as well as their gaps and challenges. The interviews were conducted at the various offices of the criminal justice professionals in Chisinau and were based on a questionnaire adapted to the legal framework of the country.

These interviews were supplemented by a desk review of national laws, policies and practices that impact the child’s experience of the justice system, from initial contact with police to award of post-trial remedies.

### Research Limitations

While the Study highlights the State’s obligation to provide child-friendly justice and includes examples of ways in which it has complied, it is neither a comprehensive analysis of the State’s incorporation of international standards or implementation of child-sensitive procedures nor a mapping of SEC survivors’ experiences at every stage of the criminal justice system. Instead, the Study focuses on the access-to-justice issues that were most important to the adult professionals interviewed, as well as problem areas identified in ECPAT International’s other Access to Justice Studies.



The justice officials interviewed were a non-random sample of professionals in Moldova. As a result, the findings of the Access to Justice Study cannot and should not be seen as representative of the larger population. ECPAT engaged lawyers specialising in cases involving child victims in Moldova to select criminal justice professionals based on their experience working with SEC cases. Because of their background, it is likely that these professionals were more familiar with applicable child-friendly laws, procedures and policies than other criminal justice professionals and are not representative of the level of knowledge or implementation in Moldova as a whole. In addition, the fact that the professionals had experience working with SEC cases may have created a bias among these professionals, causing them to be more sympathetic to survivor's interests or, conversely, more antagonistic. It is not clear if or how any bias affected this Study.

Interviews were translated into English after they took place. Transcripts sometimes contained errors in English, which were mostly left unchanged in quotes used in this paper (when terminology was changed, it has been noted within the quotations). When an informant's testimony was paraphrased, rather than translated directly, no quotations are used.

Some legal materials were also unavailable in English or only available in unofficial, often poor, English translations. As a result, ECPAT relied on secondary sources, as well as consultations with member groups and local legal consultants, to clarify any confusion.

## Key Findings

Overall, Moldova's legal framework is strong when it comes to enabling victims of SEC to access justice. Its legislation is largely in line with international and regional laws and standards, such as the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Lanzarote Convention), although certain gaps still exist. According to justice officials in the country, it is not the law itself that is lacking, but the knowledge of professionals in the justice system of the law and, as a result, its effective implementation.

Before child victims of sexual exploitation even enter the criminal justice system, they are faced with barriers to accessing justice for the crimes perpetrated against them. While efforts have been made by the State to address some of these barriers, including improvements in the process of identification of trafficking victims, challenges remain. Once in the system, child victims can face numerous obstacles to accessing justice, including in the areas of child-friendly procedures, services and assistance, and the child's best interests. In recent years, Moldova has taken steps to improve legislation and practice in this regard; however, barriers remain preventing children from seeing a case through until the end, receiving the support and protection required from the State, and seeking – and receiving – effective remedies.

No country in the world has a perfect criminal justice system when it comes to ensuring access to justice for child victims of sexual exploitation. The reasons for this are numerous including, for many countries, a lack of resources – both human and financial – to dedicate to this issue, as there are many other vulnerable groups that also require protection and assistance. The findings of this Study show that Moldova has attempted to address and improve legislation, policy and practice associated with its justice system's treatment of child victims of sexual exploitation. Gaps still exist, but it is important to note that these gaps are not unique to Moldova and, in fact, can be common in many other countries as well. By highlighting positive measures, as well as needed improvements, this Study will serve to aid the State in continuing its work towards ensuring all SEC victims' rights are recognised and upheld in the criminal justice system.



The principal barriers to accessing justice for SEC victims identified in the Study include, *inter alia*:

### Challenges in identifying child victims

Moldova has a National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) which identifies trafficking victims and potential trafficking victims and coordinates their care through multi-disciplinary teams; however, none of the nine officials interviewed mentioned the NRS as a mechanism to identify victims in the justice system. When asked about the challenges in identifying victims of sexual exploitation, justice officials' responses included the refusal of parents to cooperate with legal bodies and the lack of complaints by victims.

### Reluctance of victims to report

It was clear from the responses of the justice officials interviewed that reporting of child sexual exploitation by victims is extremely rare which likely means that police are missing out on identifying SEC-related abuses and cases. There are likely multiple and varied reasons for this; however, the factors identified specifically by justice officials included familial influences and a lack of well-trained professionals able to build relationships of trust with children.

### Disincentives to filing complaints

One of the strengths of Moldova's legal system is that a victim's complaint is not necessary to initiate prosecution for SEC-related offenses. However, without a child's complaint or cooperation, a case is often weak and the prosecutor has the discretion to drop it. Justice officials identified several reasons why child victims choose not to file complaints, including familial influence, a lack of trust by children of justice professionals and a lack of standard protection procedures for children involved in the criminal justice process.

### Right to be informed

There appeared to be discrepancies in the justice official responses regarding who is informed of the child's rights during a criminal case (i.e. whether it is the child her/himself who is informed in age-appropriate language or if it is his/her parent/guardian/legal representative). There was also no mention in the interviews of child-friendly information materials or notifications given to children in an age-appropriate language. The development and dissemination of child-friendly materials is essential in order to ensure children understand their rights.

Moldovan law does give children the right to stay informed during the criminal justice proceedings and to express their opinions in matters that affect them, which is more than many countries allow. It is not clear, however, if the actual child is involved in this process or if the conversations are solely between State actors and the child's representative.

### Right to support, care and protection during the process

#### *Multidisciplinary approaches*

Moldova's National Referral System reportedly provides comprehensive assistance to victims and potential victims of trafficking. Several officials said that there were multidisciplinary teams evaluating the needs of victims; however, the majority of officials interviewed either had no experience with the NRS or thought that it was inefficient.

#### *Available services: shelters and residential care*

While several justice officials responded that victims have access to protective shelters or residential care facilities, others said that these shelters and/or care facilities are not fully accessible. Moldova's



Trafficking Law guarantees a range of recovery services for victims; however, when asked whether SEC victims have access to physical and mental health care, the majority of officials recognised that while some services are available, they are limited.

### *Disappearance of SEC victims during proceedings*

A majority of justice officials recognised that the running away of child victims during criminal investigations can be a problem. It is unclear from the justice official responses the motivations/factors leading to these children running away; however, it is vital that justice officials are able to identify these motivations and address them, as they can impede the child's access to justice by preventing their full recovery and reintegration as well as perhaps preventing convictions and awards of compensation.

### *Training of professionals*

Moldova has made significant efforts to improve investigation of SEC cases, including the implementation of specialised law enforcement trainings and improved investigation measures to minimise trauma to victims, including child-friendly interview rooms and the ability for the child victim to conduct his/her interview outside of the presence of the accused. However, there were still reports that victims were being interviewed multiple times as well as reports of confrontations with offenders during the investigation stage and court proceedings.

### *Support persons*

According to justice official responses, it is not uncommon for NGO lawyers/representatives to fulfil the State's obligation to provide legal assistance. While it is the duty of the State to provide this assistance, the support of NGOs can be incredibly valuable, especially when they may have the skills and resources that official child protection services do not. However, it is still vital that the State provide these services, even with limited resources, as NGOs cannot assist in all cases. Several officials said that children only receive support services during cases when NGOs are involved. When analysing support to victims during SEC cases, it is important to highlight that under Moldovan law, many services and protections only apply to those children under 14 years of age.

### *Financial assistance*

The costs associated with participating in criminal cases can sometimes discourage SEC victims and families from participating, particularly if, as is common in Moldova, the victim is from a rural area and has been trafficked into city centres. When asked if victims fail to participate in criminal cases until their conclusion because of financial costs, five justice officials recognised that there are problems in this regard. All five pointed to the same issue regarding finances: the victim's cost of transportation. Some justice officials reported that police and prosecutors will give their own money to victims to permit them to attend the criminal cases. This lack of financial support by the State may serve as a large deterrent for child victims to participate fully in the justice process.

### **Right to be heard**

The participation of a child as a victim or witness in a SEC case and his or her experience therein can be a significant aspect of whether s/he is able to access justice. It is therefore vital that even those children under the age of 14 who lack "legal capacity" to exercise their rights are able to express their opinions in matters that affect them and have their views taken into consideration by the justice system.



## Right to protection from hardship

### *Best interests of the child*

Examples provided by justice officials show a willingness to provide special protections for victims of SEC; however, officials can have a wide variety of ideas about what the best interests of the child means – not only in Moldova, but in many justice systems around the world. There appears to be no systematic assessment procedure that is a normal part of case proceedings and no guardian *ad litem* assigned to protect each child's best interests. Laws may mention the best interest of the child but do not necessarily provide a formal procedure to determine what this is; as a result, officials can construe a child's best interests to mean a variety of things.

### *Child-friendly procedures*

According to a 2014 amendment to Moldova's *Criminal Procedure Code* (Article 110), hearings of witnesses under the age of 14 in criminal cases concerning sexual offenses, trafficking or domestic violence must follow specific child-friendly procedures, including: the questioning of the child by a trained interviewer in a special room, equipped with audio/video recording facilities; the investigative judge, prosecutor, defence counsel, psychologist and legal representative of the child being placed in a separate viewing room (the accused is not present at all); the requirement that the hearing be carried out to avoid causing adverse effect on the child's mental state; and the avoidance of repeated hearings to the extent possible. While these procedures represent an important step toward a more child-friendly criminal justice system in Moldova, these procedures only apply to children under 14 years of age.

## Right to reparation

The majority of justice officials said that children are able – through a legal representative, solicitor, or public prosecutor – to seek moral and material damages for their sexual exploitation. However, justice officials also said that children do not benefit from compensation, with one official going so far as to say that “compensation for victims is a mechanism which doesn't exist in [Moldova].”

Barriers identified by justice officials to child victims seeking damages or compensation include a lack of solicitors, difficulty enforcing collection of monetary awards, lack of a State Fund, victims' lack of knowledge/information on the right to seek damages, and a loss of trust in the justice system.

## Key Recommendations

### *National legal framework*

- Amend the *Criminal Procedure Code* to extend its Article 110 child-friendly procedures to all children and not just to those under the age of 14.
- Expand the “safe harbour” provision in Article 32 of the *Law on Preventing and Combating Trafficking in Human Beings* to more closely conform to the UN Guidelines on child victims and witnesses of crime and the OHCHR Guidelines on Trafficking.
- Amend the *Criminal Code* to toll statute of limitation periods until the child reaches the age of majority.

### *Barriers to entering the justice system*

- Implement more training on Moldova's National Referral System for trafficking victims for relevant justice officials to ensure widespread implementation.
- Ensure that the NRS has the financial and human resources necessary to be effective.



- Ensure that the justice system and its officials are accessible to SEC victims; this could include education/awareness raising as well as outreach to improve the relationship between children and law enforcement.

### *Barriers while in the justice system*

- Ensure, whenever possible, that the child, and not just the child's representative or parents/guardian, is informed directly of his/her rights and the nature/progress of the criminal proceedings.
- Ensure support personnel is provided by the State to SEC victims during cases, especially when NGOs are not involved. Assign a State-appointed guardian *ad litem* or dedicated person to support and protect the interests of the child throughout the criminal justice process.
- Develop and implement a formal procedure so that all justice officials can recognise and determine what is in the child's best interests in a systematic manner.
- Create an official policy to streamline/prioritise cases of violence against children in the court system.
- Provide financial resources for transportation costs for victims involved in SEC cases.
- Train legal representatives, prosecutors and other justice officials so they can inform all victims at the outset of their cases of their right to compensation and a clear procedure on how to go about requesting it.
- Create a State Fund for compensation of child victims.

***“It is necessary to create a justice system which would serve the interest of the child-victim. At the moment, it happens that the victim serves the justice system, only to sentence the guilty one. Immediately after reaching this result, the victim is forgotten... [with] the lack of the recovery services, the victims get into the visor of the justice system, but as offenders.” [Judge]***



# Introduction

Twenty years have passed since the First World Congress against the Commercial Sexual Exploitation of Children (CSEC) focused the world's attention on the fact that children were being exploited worldwide through prostitution, child sexual abuse materials and trafficking for sexual purposes. Despite significant efforts made since that time, the sexual exploitation of children (SEC) continues to threaten children in all parts of the globe. This was confirmed in 2015 with the adoption of the United Nations (UN) Sustainable Development Goals, which included four targets related to the elimination of the sexual exploitation of children.<sup>41</sup>

## 1. The sexual exploitation of children

Due to the inherent nature of the sexual exploitation of children (SEC) as a hidden crime, data collection efforts vary from State to State. As a result, it is difficult to ascertain the exact number of children who are exploited in prostitution, featured in sexual abuse materials, trafficked across and within borders for sexual purposes and exploited by travelling child sex offenders worldwide.<sup>42</sup> What is known, however, is that manifestations of SEC are spreading and children in every region of the world are increasingly at risk.

Human trafficking is a multi-billion [US] dollar industry worldwide.<sup>43</sup> According to the United Nations Office on Drugs and Crime (UNODC) in 2014, the majority of human trafficking is conducted for purposes of sexual exploitation; most known victims are female; and one-third of all known victims of trafficking are children.<sup>44</sup>

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41 UN Sustainable Development Goals, Target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; Target 5.3: Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation; Target 8.7: Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms; Target 16.2: End abuse, exploitation, trafficking and all forms of violence against and torture of children; <https://sustainabledevelopment.un.org/?menu=1300>.

42 ECPAT International defines four primary and interrelated forms of commercial sexual exploitation of children: exploitation in prostitution, sexual abuse materials, trafficking for sexual purposes and sexual exploitation in travel and tourism; see: ECPAT International (2008), "Questions and Answers About the Commercial Sexual Exploitation of Children," [http://resources.ecpat.net/EI/Publications/About\\_CSEC/FAQ\\_ENG\\_2008.pdf](http://resources.ecpat.net/EI/Publications/About_CSEC/FAQ_ENG_2008.pdf).

43 See, for example: ILO (2014), "Profits and Poverty: The economics of forced labour," Geneva: International Labour Office, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf), reporting that forced labour in the private economy generates 150 billion USD in illegal profits per year, two thirds or 99 billion USD coming from sexual exploitation; see also: Polaris Project, "Human Trafficking", <https://polarisproject.org/human-trafficking>; ILO (2008), "ILO Action Against Trafficking in Human Beings", Geneva: International Labour Office, p. 5, "Based on the 2005 global estimate of human trafficking, the ILO has calculated that traffickers and unscrupulous employers earn at least 32 billion US\$ annually from the illicit movement and exploitation of migrant workers."

44 UNODC (2014), "Global Report on Trafficking in Persons 2014," pp. 5,10,11, [https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP\\_2014\\_full\\_report.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf).



The circulation of online child sexual abuse images is a growing phenomenon, with millions of child sexual abuse images being viewed online by adults, and new technology enabling viewers to watch live sexual abuse of children from anywhere in the world.<sup>45</sup> According to the International Association of Internet Hotlines (INHOPE) in 2014, 81% of the victims portrayed in child abuse images that were reported to INHOPE members were female; 21% of victims were pubescent, 72% were pre-pubescent and 7% were infants.<sup>46</sup>

Although the 2016 Global Study on the Sexual Exploitation of Children in Travel and Tourism (SECTT) represents the largest bank of information on SECTT ever compiled,<sup>47</sup> it highlighted the difficulties in generating precise and accurate data on the global scale and scope of SECTT due to, *inter alia*, its hidden and specific nature, lack of agreed upon definitions and under-reporting.<sup>48</sup> What the study did find was that SECTT has expanded to reach all regions of the world, with no country being “immune.” As a result, “the risks of child sexual exploitation are increasing.”<sup>49</sup>

“Big number” estimations on the number of children exploited in prostitution have circulated for years, if not decades. As a result, there is an over-reliance on old figures that cannot be verified and may have been inaccurate from the beginning. This constant recycling of imprecise and invalid data can present serious challenges to effective advocacy, policy-making and programme planning.

### Definition of [C]SEC

“A child is a victim of sexual exploitation when she/he takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such) from a third party, the perpetrator, or by the child her/himself.”

“A distinction can...be made between ‘sexual exploitation’ and ‘commercial sexual exploitation’, with the latter being a form of sexual exploitation where the focus is specifically on monetary benefit....”<sup>50</sup>

45 Morris, Emma (2015), “#WePROTECT, Global Online Child Sexual Abuse Summit,” Policy Brief, 5 February 2015, <https://www.fosi.org/policy-research/weprotect-global-online-child-sexual-abuse-summit>; reporting that the U.S. National Center for Missing and Exploited Children received 17.3 million child sexual abuse images and videos of children in 2011 alone, a marked increase from 2007, and that the United Kingdom’s Child Exploitation and Online Protection Centre receives 1600 reports of illegal material per month.

46 INHOPE, Statistics 2014, <http://www.inhope.org/tns/resources/statistics-and-infographics/statistics-and-infographics-2014.aspx>; it should be noted that INHOPE does not provide a definition/distinction among “pubescent,” “pre-pubescent” and “infant” children.

47 See: <http://globalstudysectt.org/>.

48 Hawke, Angela and Raphael, Alison (2016), “Offenders on the Move: Global Study on sexual exploitation of children in travel and tourism,” Bangkok: ECPAT International and Defence for Children-ECPAT Netherlands.

49 *Ibid.*, p. 13.

50 Interagency Working Group on Sexual Exploitation of Children (2016), “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse,” (Luxembourg Guidelines), adopted on 28 January 2016, pp. 24, 27, <http://luxembourgguidelines.org/>.



## 2. International and Regional Legal Frameworks<sup>51</sup>

### 2.1 A Child's Right to Live Free from Sexual Exploitation

Under Article 34 of the *UN Convention on the Rights of the Child (CRC)*, the sexual exploitation of children, in all its forms, is a violation of a child's human rights.<sup>52</sup> The *Optional Protocol on the sale of children, child prostitution and child pornography (OPSC)* specifies that States must take steps to protect children from exploitation through prostitution and pornography, and to impose appropriate criminal penalties on the offenders which take into account the "grave nature" of these offences.<sup>53</sup> States are also obligated to protect children from all forms of trafficking, including trafficking for sexual purposes, pursuant to the International Labour Organization (ILO) *Convention No. 182 on the Worst Forms of Child Labour* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)*.<sup>54</sup>

### 2.2 The Right of Sexually Exploited Children to Access Justice

In order to secure remedies, sexually exploited children must be able to access the justice systems entrusted to uphold and enforce these rights. A child's ability to access justice is a "fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights," according to a 2013 report of the UN High Commissioner for Human Rights on "Access to justice for children."<sup>55</sup>

Access to justice for children is defined as "the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child."<sup>56</sup> Children exploited in prostitution and sexual abuse materials, therefore, have a right to access justice for violations of their rights under Article 34 of the CRC against sexual exploitation.

51 The International Legal Framework section is taken, in part, from another ECPAT Access to Justice Study, see: Lynch, Darlene C. (2016), "Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand," Bangkok: ECPAT International, (forthcoming).

52 Article 34, CRC: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials."

53 Article 3, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) (2000). The Optional Protocol also prohibits other offences, including the sale of children for purposes of transferring their organs, using them in forced labour, or effecting an illegal adoption. Child, early and forced marriage can constitute another type of sale or exploitation; see: ECPAT International and Plan International (2015), "Thematic Report: Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage." However, children who are exploited in these ways can access justice much differently than children who are the focus of this Study, and a complete analysis is beyond the scope of this paper.

54 Article 7, International Labour Organization Convention No. 182 on the Worst Forms of Child Labour (1999); Article 5, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) (2000); see also: CRC, Article 35: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." Moldova is a party to all of these conventions and protocols.

55 Human Rights Council, "Access to justice for children," Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/25/35, 16 December 2013, para. 3.

56 *Ibid.*, para. 4.



Moreover, the right to access justice applies to “civil, administrative and criminal spheres of national jurisdiction” and covers “*all relevant judicial proceedings . . . without limitation.*”<sup>57</sup> (Emphasis added.) It explicitly applies to child “victims and witnesses”<sup>58</sup> defined as “children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.”<sup>59</sup>

While the concept of access to justice is sometimes misunderstood to apply only to juvenile justice – or children in conflict with the law – guaranteeing them fair treatment during criminal proceedings, the High Commissioner’s report on “Access to justice for children” established that it applies to child victims as well. This understanding is confirmed by multiple international treaties and standards, which give victims of human rights violations the right to access justice and obtain remedies for the violations committed against them.<sup>60</sup>

**For purposes of this report, “access to justice” refers to the ability of sexually exploited children to obtain a just and timely remedy through State criminal justice systems, including their ability to secure the compensation and services they need to recover and rebuild their lives.**

### Access to Justice for Children

“Access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child. It applies to civil, administrative and criminal spheres of national jurisdiction . . . and covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognized as having infringed the penal law, victims and witnesses or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection.”<sup>61</sup>

Report of the UN High Commissioner for Human Rights, 2013

## 2.3 The Right of Sexually Exploited Children to Legal Remedy

A child who is subjected to sexual exploitation is entitled to seek and obtain a remedy for that violation under international law. The right of children to legal remedy for human rights violations is well-established in international law. As the Committee on the Rights of the Child has noted, it is “implicit

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*, para. 4, footnote 5; see also: para. 6, confirming that “juvenile justice” is distinct from “access to justice” because the former provides legal rights and protections only to children in conflict with the law who engage in the criminal process.

60 See, e.g.: UN General Assembly (2012), *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, UN Doc. A/67/L.1\*, 30 November 2012, paras. 14 and 17, emphasising the “the right of equal access to justice for all, including members of vulnerable groups;” UN Guidelines on child victims and witnesses of crime, paras. 7, 8 and 15, stating that child victims and witnesses should have access to the justice process without discrimination and urging States to ensure “justice for child victims and witnesses of crime” even while safeguarding the rights of the accused; Basic Principles on the Right to Remedy and Reparation, para. 12, a “victim of a gross violation of international human rights law . . . shall have equal access to an effective judicial remedy as provided for under international law;” Declaration on Justice for Victims of Crime, para. 4, victims are “entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”

61 Report of the UN High Commissioner, “Access to justice for children,” para. 4.



in the Convention [on the Rights of the Child] and consistently referred to in the other six major international human rights treaties.”<sup>62</sup>

Legal remedies include, *inter alia*, compensation, restitution and rehabilitation.<sup>63</sup> A principal way that victims of SEC obtain these remedies is by reporting the crime against them to the police and participating in a criminal case against their exploiter.<sup>64</sup> Criminal courts may order convicted SEC offenders to pay restitution to the child.<sup>65</sup>

The child may also be eligible for compensation from State-managed funds for crime victims. Children may also receive recovery services through the justice system, including “medical and psychological care as well as legal and social services,” which can help them recover from abuse while cases are pending, participate more effectively as witnesses, and ultimately return to healthy lives.<sup>66</sup>

## 2.4 The Obligation to Provide Sexually Exploited Children with Access to Justice

International and regional law and standards impose a duty on States to take steps to make their systems “child-friendly” and provide justice that takes into consideration the needs and rights of the child.

Child victims face unique challenges when they try to access justice and secure remedies.<sup>67</sup> As observed by the UN *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (UN Guidelines on child victims and witnesses of crime), there are “serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, in particular in cases involving sexual exploitation.”<sup>68</sup>

Because child victims are particularly vulnerable, they “need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process.”<sup>69</sup> As explained by the Committee on the Rights of the Child, “[c]hildren’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights [and] States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives.”<sup>70</sup>

62 Committee on the Rights of the Child, General Comment No. 5, UN Doc. CRC/GC/2003/5, 27 November 2003, para. 24. For international treaties and standards providing a right to remedy for human rights violations, see, e.g.: Article 8, *Universal Declaration of Human Rights*, UN Doc. A/810 at 71 (1948); Article 2, *International Covenant on Civil and Political Rights*, Resolution 2200A(XXI), 16 December 1966; paras. 4-7, Declaration on Justice for Victims of Crime; Basic Principles on the Right to Remedy and Reparation.

63 Para. 18, Basic Principles on the Right to Remedy and Reparation.

64 Other ways that a sexually exploited child could obtain remedies include a civil suit against the offender, an administrative action to access state funds and services, or an informal mediation outside of official state systems. This Study focused only on the ability of SEC survivors to seek remedies through state criminal justice systems. For more detailed information on remedies for victims of SEC, see: ECPAT International (2016), “Compensation Study on Child Victims of Sexual Exploitation,” Bangkok: ECPAT (forthcoming).

65 Para. 8, Declaration on Justice for Victims of Crime.

66 Para. 20, Basic Principles on the Right to Remedy and Reparation; see also: para. 37, UN Guidelines on child victims and witnesses of crime: children have a right to reparation and “[w]here possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed;” para. 14, Declaration on Justice for Victims of Crime: “Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.”

67 General Comment No. 5, para. 24.

68 UN Guidelines on child victims and witnesses of crime, Preamble.

69 *Ibid.*

70 General Comment No. 5, para. 24.



Thus, the UN High Commissioner made clear in the “Access to justice for children” report that the “concept of access to justice for children requires the legal empowerment of all children.”<sup>71</sup> In order for children to obtain the remedies they deserve, they need to be “enabled” to participate in the judicial proceedings that affect them through “legal and other services, child rights education, counselling or advice, and support from knowledgeable adults.”<sup>72</sup>

Enabling child victim-witnesses to participate and to navigate safely and effectively through criminal proceedings to secure remedies is sometimes referred to as providing “child-friendly justice.” It is an approach to justice that balances the rights of child victims and witnesses with those of the accused offenders and takes into account the child’s individual needs and views.<sup>73</sup>

## Child-Friendly Justice

“‘[C]hild-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level...and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”<sup>74</sup>

Article II, *Council of Europe Guidelines on Child-Friendly Justice* (2010)

There can be a tension between the right of child victims to access justice through the criminal system and the right of the accused offenders to receive a fair trial. Certain child-friendly procedures can be contentious, such as procedures that allow child victims to testify out of the presence of the defendant, by camera or behind screens. State actors have a duty under the OPSC and other legal authorities to ensure that child-friendly justice procedures do not strip the defendant of fair trial rights,<sup>75</sup> but they also have a duty to ensure that child victims are able to access remedies for the harms they have suffered without being re-victimised in the process. The challenge, as noted in the UN Guidelines on child victims and witnesses of crime, is to find a balance that is respectful of the rights of both.<sup>76</sup>

The State’s duty to provide child-friendly justice and enable child victims to access justice through criminal proceedings arises from multiple international and regional legal instruments and standards, the most significant of which are outlined below, followed by a description of their key provisions:<sup>77</sup>

71 Report of the UN High Commissioner, “Access to justice for children,” para. 5.

72 *Ibid.*

73 UN Guidelines on child victims and witnesses of crime, para. 9(d).

74 Art. II (c), Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (COE Guidelines on Child-Friendly Justice), 17 November 2010. Note that, like access to justice, child-friendly justice can apply to all types of judicial proceedings and to child defendants, victims and witnesses, see: Article I (2), *Ibid.* For purposes of this report, it refers only to victims-witnesses in criminal justice proceedings.

75 Article 8(6), OPSC; See also: Para. 27, UN Guidelines on the Right to Remedy and Reparation, Para. 6(b), UN Declaration of Basic Principles of Justice; Para. 7(j), UN Guidelines on child victims and witnesses of crime; Article I(3), COE Guidelines on Child-friendly Justice.

76 While this report acknowledges the need for balancing the competing legal rights of child victims and accused offenders, a full legal analysis is beyond the scope of this Study.

77 Other relevant international instruments and standards include: Articles 24 and 25, United Nations Convention Against Transnational Organized Crime; Report of the Office of the High Commissioner for Human Rights (2013), “Access to justice for children;” *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2013); Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children (2011), *Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons*; United Nations Office on Drugs and Crime (2009),



## Child-Friendly Justice Procedures under International and Regional Instruments

Treaty Obligations	Date of Ratification by Moldova
UN Convention on the Rights of the Child, 1989	26 January 1993 (accession)
UN Optional Protocol on the sale of children, child prostitution and child pornography, 2000	12 April 2007
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000	16 September 2005
ILO Worst Forms of Child Labour Convention (No. 182), 1999	14 June 2002
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007 <sup>78</sup>	12 March 2012
Council of Europe Convention on Action against Trafficking in Human Beings, 2005	19 May 2006
Norms and Standards	
UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002 <sup>79</sup>	
UN ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005	
Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, 2010	
UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 2014 <sup>80</sup>	

### 2.4.1 Convention on the Rights of the Child (CRC), 1989

The *Convention on the Rights of the Child* is the core legal instrument establishing children's rights under international law.<sup>81</sup> Under Article 1 of the CRC, a child is any human being under the age of 18.<sup>82</sup>

*Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law.*

78 Other relevant international instruments and standards include: Articles 24 and 25, United Nations Convention Against Transnational Organized Crime; Report of the Office of the High Commissioner for Human Rights (2013), "Access to justice for children;" United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013); Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children (2011), Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons; United Nations Office on Drugs and Crime (2009), *Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law*.

79 See, *inter alia*: Guideline 8: Special measures for the protection and support of child victims of trafficking.

80 See: Section VIII: Improving criminal proceedings in matters involving child victims of violence.

81 United Nations Convention on the Rights of the Child (CRC) (1989). As of the writing of this report, the CRC has been ratified by every State in the world except the United States of America.

82 Article 1, CRC: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier," such as by marriage.



States must ensure that the child's "best interests" are a "primary consideration" in all legal actions that concern them.<sup>83</sup> During judicial and administrative proceedings, the State must provide children with an opportunity to express their views and have them taken into account,<sup>84</sup> and protect against all forms of discrimination.<sup>85</sup> States must also promote the child's "physical and psychological recovery and social reintegration" in an "environment which fosters the [child's] health, self-respect and dignity."<sup>86</sup>

## 2.4.2 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), 2000

The OPSC elaborates upon provisions set out in the CRC by establishing an obligation on State parties to take specific measures to prevent and prohibit sexual exploitation of children. It is open to any State who is a party to the CRC or any State who has signed it. Under Article 8 of the OPSC, States must adopt child-sensitive justice procedures tailored to the special needs of sexually exploited children and ensure that their best interests are paramount in SEC cases.<sup>87</sup>

Articles 8 and 9 contain a list of specific obligations, including the duty to keep children informed; consider their views; protect their privacy and safety; provide witness support services; ensure appropriate care for their "full social reintegration and their full physical and psychological recovery;" give access to compensation; and avoid unnecessary delays.<sup>88</sup>

The OPSC also directs States to "ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim."<sup>89</sup>

83 Article 3(1), CRC: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

84 Article 12, CRC : "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child; 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

85 Article 2(1), CRC: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

86 Article 39, CRC: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

87 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) (2000), Article 8: (1) "States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by: (a) recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses; (3) States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration."

88 Articles 8 and 9, OPSC.

89 Article 8(2), OPSC; Note that Article 8(6) recognises that special protections for child victims must be consistent with the rights of the accused to a fair and impartial trial.



### 2.4.3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), 2000

The Palermo Protocol supplements the *UN Convention on Transnational Organized Crime*, prescribing special protections for trafficking victims, including child victims of trafficking for sexual purposes, during cases against their traffickers.<sup>90</sup> It obligates States to protect victims' privacy and safety; provide information and the opportunity to be heard; ensure access to recovery and reintegration services, including housing, legal counselling, medical care, material assistance, education and vocational training; and provide access to compensation. It specifies that States must consider the age, gender and special needs of child victims when providing services.<sup>91</sup> The Palermo Protocol is open to any State who is a party to the *UN Convention on Transnational Organized Crime* or any State who has signed it.

### 2.4.4 ILO Convention on the Worst Forms of Child Labour (No. 182), 1999

The International Labour Organization (ILO) *Convention on the Worst Forms of Child Labour* calls attention to child sexual exploitation as one of the worst forms of child labour. Article 7 requires States to act proactively to rescue children from prostitution and pornography, giving special attention to girls and other children at high risk. The State must also provide necessary and appropriate assistance for the recovery and social integration of sexually exploited children, including access to education and vocational training.<sup>92</sup>

### 2.4.5 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007

The Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Lanzarote Convention) obligates State parties to take measures to assist victims through physical and psycho-social recovery.<sup>93</sup> Article 30 requires States to ensure the best interests of the child are respected during investigations and criminal proceedings, and that these proceedings do not re-traumatise the victim and are carried out without "unjustified delay."<sup>94</sup> Article 31 provides general measures of protection to child victims, including their special needs as witnesses, such as: information about their rights, the progress of their case and when the alleged offender is released temporarily or permanently; the right to be heard and have their views and concerns presented; provision of support services; and protection of their privacy, identity and safety.<sup>95</sup> The Lanzarote Convention also provides specific requirements for State parties when conducting interviews with children. These measures include ensuring that interviews take place in an environment designed for the purpose of interviewing

90 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, (Palermo Protocol) (2000), Article 6, "Assistance to and protection of victims of trafficking in persons;" also defines a child as "any person under eighteen years of age," Article 3(d).

91 Article 6(4), Palermo Protocol.

92 Article 7, ILO *Convention on the Worst Forms of Child Labour* (No. 182) (1999).

93 Article 14, Council of Europe, *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Lanzarote Convention), Council of Europe Treaty Series – No. 201, Lanzarote, 25.X.2007: (1) "Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns."

94 Article 30(1),(2),(3), Lanzarote Convention; Note that Article 30(4) recognises that special protections for child victims must be consistent with the rights of the accused to a fair and impartial trial.

95 Article 31(1), "General Measures of Protection," Lanzarote Convention.



children, that the number of interviews is limited, that interviews may be video recorded and that these recordings may be accepted as evidence during court proceedings.<sup>96</sup>

#### 2.4.6 Council of Europe Convention on Action against Trafficking in Human Beings, 2005

The Council of Europe *Convention on Action against Trafficking in Human Beings* requires State parties to assist victims in their physical, psychological and social recovery, including the provision of secure accommodation, psychological and material assistance, medical care, translation services, counselling, information about their legal rights, assistance to ensure their interests are represented and considered in the criminal proceedings, and access to education.<sup>97</sup> Article 13 provides for a recovery and reflection period of at least 30 days when “there are reasonable grounds to believe that the person concerned is a victim.”<sup>98</sup> The Convention also ensures the right to legal assistance and the right of victims to compensation.<sup>99</sup> Article 28 requires child victims to be afforded special protection measures taking into account their best interests.<sup>100</sup> Article 30 provides for the protection of a victim’s privacy, identity and safety and, in the case of child victims, requires “taking special care of children’s needs and ensuring their right to special protection measures.”<sup>101</sup>

#### 2.4.7 United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council Resolution 2005/20 (UN Guidelines on child victims and witnesses of crime)

An international standard that serves to guide States on how to accommodate children in their justice systems is found in a set of Guidelines issued by the United Nations Economic and Social Council (ECOSOC) under Resolution 2005/20.<sup>102</sup>

The UN Guidelines on child victims and witnesses of crime state that “in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:”<sup>103</sup>

##### 1. The Right to be Treated with Dignity and Compassion

“Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.”<sup>104</sup>

96 Article 35, “Interviews with the child,” Lanzarote Convention; see also: Article 36, requiring steps be taken to ensure that the victim may be heard in a closed courtroom, or be able to testify outside of the courtroom, through the use of communication technologies.

97 Article 12, Council of Europe, Convention on Action against Trafficking in Human Beings (COE Trafficking Convention), Council of Europe Treaty Series – No. 197, Warsaw, 16.V.2005.

98 Article 13, “Recovery and Reflection period,” COE Trafficking Convention.

99 Article 15, “Compensation and legal redress,” COE Trafficking Convention.

100 Article 28(3), COE Trafficking Convention.

101 Article 30, COE Trafficking Convention.

102 *United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ECOSOC Resolution 2005/20, (UN Guidelines on child victims and witnesses of crime), accessed at: <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

103 UN Guidelines on child victims and witnesses of crime, para. 8.

104 *Ibid.*, para. 10.



## 2. The Right to be Protected from Discrimination

Every child has the right “to be treated fairly and equally,” regardless of “race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.” Neither the child’s age nor the child’s involvement in sexual crimes should result in discrimination that blocks access to justice.<sup>105</sup>

## 3. The Right to Have Best Interests Given Primary Consideration

States must ensure that the best interests of every child victim are given “primary consideration” throughout the proceedings. When managing a criminal case, police, prosecutors, judges and court staff must always consider how best to protect the child from “any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect.”<sup>106</sup>

## 4. The Right to Participation

“Every child has . . . the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.”<sup>107</sup>

These four principles should be applied throughout the justice process, from the detection of the crime, through the making of the complaint, to the investigation, prosecution and trial of the case, to the case’s final resolution and the child’s reintegration into the community. The principles cut across all other rights provided to child victims, including the right to victim-witness assistance; care and recovery services; protection of privacy and safety; avoidance of unnecessary delays; and award of reparations.

### Nine Essential Elements of Access to Justice for Child Victims of Crime<sup>108</sup>

1. The right to be treated with dignity and compassion
2. The right to be protected from discrimination
3. The right to be informed
4. The right to be heard and express views and concerns
5. The right to effective assistance, such as victim-witness specialists, lawyers, translators and care and recovery providers
6. The right to privacy
7. The right to be protected from hardship during the justice process, including avoidance of unnecessary delays
8. The right to safety
9. The right to reparation

105 *Ibid.*, paras. 8(b), 17, 18; para. 17: “In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children;” para. 18: “Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.”

106 *Ibid.*, para. 8(c).

107 *Ibid.*, para. 8(d).

108 *Ibid.*, Sections V – XIII.



# Methodology

While countries around the world, including Moldova, have made significant efforts in recent years to improve access to justice for child victims of crime, there has been little research into how these efforts impact child victims of sexual exploitation. As the only global network dedicated to protecting children from all forms of commercial sexual exploitation, ECPAT<sup>109</sup> International conducted this Study to gain a better understanding of the experience of sexually exploited children in the criminal justice system in Moldova and identify the special challenges they face when seeking access to justice and remedies. This study was conducted from May-August 2015 to assess the ability of sexually exploited children to access the criminal justice process in Moldova. Moldova was chosen as one of five countries to be included in ECPAT International's research project on access to justice for child victims of sexual exploitation. Moldova was chosen (1) in an attempt to learn about access to justice and children's experiences in a different region and context than the other countries in the research project<sup>110</sup> and (2) due to the significant risk of vulnerability of children to sexual exploitation in the country (see section below on country context).

Nine criminal justice officials were interviewed from various sectors, including judges, prosecutors, representatives of government agencies/centres and investigators. These interviews were conducted in order to gain insight into the criminal justice procedures in cases involving SEC victims, the successes of such procedures as well as their gaps and challenges. The interviews were conducted at the various offices of the criminal justice professionals in Chisinau, Moldova's capital.

These interviews were supplemented by a desk review of national laws, policies and practices that impact the child's experience of the justice system, from initial contact with police to award of post-trial remedies.

## *Scope and challenges*

This Access to Justice Study sought to understand the experience of SEC survivors in the criminal justice system in Moldova by documenting accounts of selected criminal justice professionals who engage with them in the system. While the Study highlights the State's obligation to provide child-friendly justice and includes examples of ways in which it has complied, it is neither a comprehensive analysis of the State's incorporation of international standards or implementation of child-sensitive procedures nor a mapping of the SEC survivors' experiences at every stage of the criminal justice system. Instead, the Study focuses on the access-to-justice issues that were most important to the adult professionals interviewed, as well as problem areas identified in ECPAT's other Access to Justice Studies.

## *Sample size and representativeness*

The justice officials interviewed were a non-random sample of professionals in Moldova. As a result, the findings of the Access to Justice Study cannot, and should not, be seen as representative of the larger population.

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109 End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

110 The other countries studied were Nepal, the Philippines, Tanzania and Thailand.



ECPAT engaged lawyers specialising in cases involving child victims in Moldova to select criminal justice professionals based on their experience working with SEC cases. Because of this experience, it is likely that these professionals were more familiar with applicable child-friendly laws, procedures and policies than other criminal justice professionals and are not representative of the level of knowledge or implementation in Moldova as a whole. In addition, the fact that the professionals had experience working with SEC cases may have created a bias among these professionals, causing them to be more sympathetic to survivor's interests or, conversely, more antagonistic. It is not clear if or how any bias affected this Study.

### *Translation challenges*

Interviews were translated into English after they took place. Transcripts sometimes contained errors in English, which were mostly left unchanged in quotes used in this paper (when terminology was changed, it has been noted within the quotations). When an informant's testimony was paraphrased, rather than translated directly, no quotations are used.

Some legal materials were also unavailable in English or only available in unofficial, often poor, English translations. As a result, ECPAT relied on secondary sources, as well as consultations with member groups and local legal consultants, to clarify any confusion.



# Findings

Overall, Moldova’s legal framework is strong when it comes to enabling victims of SEC to access justice. Its legislation is largely in line with international law and regional mechanisms, such as the Lanzarote Convention, although certain gaps still exist. According to justice officials in the country, it is not the law itself that is lacking, but the knowledge of professionals in the justice system of the law and, as a result, its effective implementation.

Before child victims of sexual exploitation even enter the criminal justice system, they are faced with barriers to accessing justice for the crimes perpetrated against them. While efforts have been made by the State to address some of these barriers, including improvements in the process of identification of trafficking victims, challenges remain. Once in the system, child victims can face numerous obstacles to accessing justice, including in the areas of child-friendly procedures, services and assistance, and the child’s best interests. In recent years, Moldova has taken steps to improve legislation and practice in this regard; however, barriers remain preventing children from seeing a case through until the end, receiving the support and protection required from the State, and seeking – and receiving – effective remedies.

No country in the world has a perfect criminal justice system when it comes to ensuring access to justice for child victims of sexual exploitation. The reasons for this are numerous including, for many countries, a lack of resources – both human and financial – to dedicate to this issue, as there are many other vulnerable groups that also require protection and assistance. The findings of this study show that Moldova has attempted to address and improve legislation, policy and practice associated with its justice system’s treatment of child victims of sexual exploitation. Gaps still exist, but it is important to note that these gaps are not unique to Moldova and, in fact, can be common in many other countries as well. By highlighting positive measures, as well as needed improvements, this Study will serve to aid the State in continuing its work towards ensuring all SEC victims’ rights are recognised and upheld in the criminal justice system.

The first section of this paper will present Moldova’s national legal framework addressing SEC victims’ access to justice, identifying legal provisions related to SEC-victims’ rights in the justice system. Section two will assess the barriers for SEC victims to entering the justice system and includes both positive efforts by the State to address these barriers, as well as remaining gaps in policy and practice. Section three will analyse the barriers to securing justice for SEC victims once in the criminal justice system; these barriers are linked to the right to be informed; the right to support, care and protection; the right to be heard; the right to privacy and safety; the right to protection from hardship; and the right to reparation.<sup>111</sup> The last section will conclude and provide recommendations for action to the State in order to ensure access to justice for child victims of sexual exploitation in Moldova’s criminal justice system.

111 These rights are taken from the UN Guidelines on child victims and witnesses of crime.

112 The World Bank, Moldova, accessed 23 June 2016, <http://www.worldbank.org/en/country/moldova>.

113 UNICEF statistics, accessed 23 June 2016, [http://www.unicef.org/infobycountry/moldova\\_statistics.html](http://www.unicef.org/infobycountry/moldova_statistics.html).

114 *Ibid.*

115 UNICEF Moldova, “Children of Moldova,” accessed 24 June 2016, <http://www.unicef.org/moldova/children.html>.

116 UNDP, Human Development Report 2015, accessed 23 June 2016, <http://report.hdr.undp.org/>.

117 UNICEF statistics, accessed 23 June 2016, [http://www.unicef.org/infobycountry/moldova\\_statistics.html](http://www.unicef.org/infobycountry/moldova_statistics.html).

118 *Ibid*



## Country Context

Moldova Country Statistics	
Population (2015)	3.551 million <sup>112</sup>
Under 18 years of age (2013)	701,000 <sup>113</sup>
GDP (2014)	7.962 billion (USD) <sup>114</sup>
Population living below poverty line (2013)	12.7% <sup>115</sup>
Human Development Index ranking (2015)	107/188 <sup>116</sup>
Child labour (2002-2012)	16.3% <sup>117</sup>
Child marriage (2002-2012)	18.9% <sup>118</sup>

Moldova is one of the poorest countries in Europe and, in 2011, had the highest share of GDP supported by remittances.<sup>119</sup> With large numbers of Moldovan citizens emigrating to other countries in the region in search of employment opportunities, there is an increased risk of exploitation for those children left behind.<sup>120</sup> UNICEF Moldova has reported that one in five children has one or both biological parents working abroad.<sup>121</sup>

It has been reported that many children exploited in prostitution in the country are trafficked domestically, from the countryside to the capital, Chisinau, for sexual exploitation.<sup>122</sup> According to La Strada Moldova in 2010, the majority of child trafficking victims were first recruited between the ages of 14-17, most victims were from poor families in rural areas and it was reported that the percentage of boy trafficking victims was growing.<sup>123</sup> As access to the Internet increases, so does the vulnerability of children to online grooming and exploitation. According to a 2011 study conducted by La Strada Moldova, approximately 13% of 12 year olds and around 29% of 16 year olds interviewed reported receiving “indecent proposals” from foreigners they met online.<sup>124</sup>

Based on this data, it is apparent that there are children in Moldova who are victims of, and vulnerable to, sexual exploitation. The country does, however, have legislation in place to address the sexual exploitation of children, including laws to promote access to justice and child-friendly procedures in the criminal justice system.

119 Migration Policy Centre (2013), “Migration Profile: Moldova,” [http://www.migrationpolicycentre.eu/docs/migration\\_profiles/Moldova.pdf](http://www.migrationpolicycentre.eu/docs/migration_profiles/Moldova.pdf); in this context, remittances can be defined as money transferred from a Moldova national living abroad to Moldova.

120 See, for example: UNICEF (2008), “The Impacts of Migration on Children in Moldova,” [http://www.unicef.org/The\\_Impacts\\_of\\_Migration\\_on\\_Children\\_in\\_Moldova\(1\).pdf](http://www.unicef.org/The_Impacts_of_Migration_on_Children_in_Moldova(1).pdf); ECPAT International (2012), “Global Monitoring status of action against commercial sexual exploitation of children: Moldova,” Bangkok: ECPAT, p. 10.

121 UNICEF Moldova, “Children of Moldova,” accessed 24 June 2016, <http://www.unicef.org/moldova/children.html>.

122 ECPAT International (2012), “Global Monitoring status of action against commercial sexual exploitation of children: Moldova,” p. 12.

123 La Strada Moldova (2010), “Overview of the child trafficking phenomenon in the Republic of Moldova,” p. 68.

124 La Strada Moldova (2011), “Children in the Republic of Moldova: Alone Online? Safe Online?,” p. 56. These statistics were based on a sample of 1,347 children aged between 12-16, users of the Internet from 59 localities of the Republic of Moldova (except Transnistria), in the period from April 18-May 21, 2011. “There is a 2.66% error margin for 95% credibility.” Ibid., p. 29.



## National Legal Framework

Moldova's legal framework regarding the sexual exploitation of children is generally strong and is largely in line with international and regional laws and standards.

The Constitution of the Republic of Moldova is the highest law of the country; however, it does recognise the supremacy of international law, stating that “the coming into force of an international treaty containing provisions which are contrary to the Constitution shall be preceded by a revision of the latter.”<sup>125</sup>

The sexual exploitation of children in prostitution, child sexual abuse materials and the trafficking of children for sexual purposes are all criminalized under Moldovan law including, *inter alia*, the *Criminal Code*, the *Law on Preventing and Combating Trafficking in Human Beings*, and the *Contraventional Code*. The *Law on Child Rights* aims to protect children against all forms of exploitation, discrimination, physical and psychological violence.

The tables below provide a brief overview of national legislation related to age, sexual exploitation and child-friendly criminal justice procedures.

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- 125 Article 8(2), Constitution of the Republic of Moldova, <http://www.presedinte.md/eng/constitution>; see also: Article 4(2): “Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.”
- 126 Article 1(2), Law on Child Rights, No. 338-XIII of 15.12.1994; see also: Article 2(4), Law on Preventing and Combating Trafficking in Human Beings, No. 241-XVI of 20.10.2005; Article 1, About Child Protection from the Negative Impact of Information, Law No. 30 of 07.03.2013. Also, a child is defined as a person not reaching 18 years old and not having full legal capacity, Article 3, Law on Special Protection of Children at Risk and of Children Separated from their Parents, No. 140 of 14.06.2013. For the purposes of the Trafficking Law, a person is presumed to be a child where there are reasons to believe that he or she is under 18 years of age, Article 27.
- 127 Article 174(1), Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002: sexual intercourse with a person “certainly known to be under the age 16” is a crime, regardless of consent or coercion; Article 174(2): “The person who committed the act set forth in par. (1) shall not be subject to criminal liability if he/she is similar to the victim in terms of age and physical and mental development.”
- 128 Under the Criminal Code, full criminal responsibility attaches at age 16, Article 21(1). Between the ages of 14 and 16, children are responsible only for certain serious crimes, such as murder, rape, kidnapping, robbery, and escape from detention, Article 21(2) (listing the offenses for which a child age 14 to 16 can be held responsible). Under the Contravention Code No. 218-XVI, 24.10.2008, which penalises “an illicit action or inaction with a lower level of social danger than a crime that is committed with culpability” (Article 10), individuals are not fully liable until age 18, Article 16(1). Children between ages 16 and 18 are liable only for certain offenses, such as traffic violations, Article 16(2) [children age 16 to 18 are liable for contraventions under Articles 228-245 (driving offenses) and Articles 263-311 (black market and tax evasion offenses)].
- 129 Article 89(2), Contravention Code.
- 130 Article 32, Law on Preventing and Combating Trafficking in Human Beings; Article 206(4), Criminal Code, “A victim of trafficking in children shall be exempted from criminal liability for any crimes committed by him/her in relation to this procedural status.”
- 131 See: The Contravention Code, Article 16(1).



## National Legal Framework for Access to Justice in Moldova

Legal Provisions Related to Age	
Age of a child	under the age of 18 <sup>126</sup>
Age of sexual consent	16 <sup>127</sup>
Age of criminal responsibility	16 <sup>128</sup>  The <i>Contravention Code</i> prohibits prostitution, but a “person engaged in prostitution against his/her will shall be exempt from liability.” <sup>129</sup>  Trafficking victims are “exempt from criminal, administrative, and civil liability for actions committed by him/her in relation to his/her status as a victim.” <sup>130</sup>  *While SEC victims can often be arrested on public nuisance offences, the age of criminal liability in Moldova for these offences appears to be 18. <sup>131</sup>

## National Legal Framework for Access to Justice in Moldova

Criminal Laws Against Sexual Exploitation of Children
Law on Child Rights (1994) <sup>132</sup>
Criminal Code (2002) <sup>133</sup> <ul style="list-style-type: none"> <li>Includes Statute of Limitations for SEC-related crimes which vary from 5-25 years<sup>134</sup></li> </ul>
Law on Preventing and Combating Trafficking in Human Beings (2005) <sup>135</sup>
The Contravention Code (2008) <sup>136</sup>
Law About Child Protection from the Negative Impact of Information (2013) <sup>137</sup>

132 Article 6, Law on Child Rights, requiring the State to protect children from any form of exploitation, being incited or forced to participate in illegal sex acts, used in prostitution or other illegal sexual practices, or used in pornography or pornographic materials, by any person, including parents, guardians or relatives.

133 Prohibits CSEC-related crimes, such as child rape, child sex trafficking, child pornography and online grooming. Articles 145-163 (violent crimes); Articles 164-169 (kidnapping, trafficking in human beings, slavery crimes and forced labour); Articles 171-175 (sexual crimes, including Article 175(1): prohibiting grooming, including online, of a child for sexual purposes, in force as of 25.05.2012); Articles 201-209 (crimes against children, including trafficking in children, child pornography and engaging a child in criminal activity or immoral acts).

134 Article 60, Criminal Code: the criminal liability limitation period for rape and sexual violence is five years; for child trafficking and sexual violence against a juvenile it is 15 years; for violent crimes and child trafficking against a child under 14 years of age it is 25 years; Article 97, Criminal Code: providing limitation periods for enforcing sentences, which range from 6-20 years for CSEC-related offences.

135 Prohibits child exploitation and trafficking, Chapter 4, “Preventing and combating trafficking in children. Assistance and Protection of Child Victims of Trafficking in Human Beings,” Law on Preventing and Combating Trafficking in Human Beings. The Trafficking Law defines “trafficking in children” in accordance with the Palermo Protocol as the “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation.” (Article 2(2), Law on Preventing and Combating Trafficking in Human Beings; see also: Article 3(c), Palermo Protocol). As this definition of trafficking does not always require movement, (see: UNOHCHR (2014), “Human Rights and Human Trafficking: Fact Sheet No. 36”, p. 3, accessed 14 July 2016, [http://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf)), victims of all manifestations of SEC could potentially be covered by the Trafficking Law’s provisions.

136 Articles 89 and 90, Contravention Code: prohibits the practice of prostitution and “producing, selling, distributing or storing pornographic products for sale or distribution.”

137 Articles 3 and 4, Law About Child Protection from the Negative Impact of Information: prohibits making available and distribution of “information of pornographic nature which encourages violence and sexual exploitation of children” and other information that has a “negative impact” on children. Article 1 defines pornography as “vulgar, rough display of any kind of sexual connections between persons difference or same-gender, submission of other forms of indecent manifestation of sexual life, and also the obscene image of genitals.”



**Child-Friendly Criminal Justice Procedures**

Law on Special Protection of Children at Risk and Children Separated from Parents (2013)<sup>138</sup>

Law on Preventing and Combating Trafficking in Human Beings (2005)<sup>139</sup>

Criminal Procedure Code (2003)<sup>140</sup>

Law on Witness Protection (2008)<sup>141</sup>

Trafficking Guidelines (2012)<sup>142</sup>

Out of the nine criminal justice professionals interviewed, 100% said that they knew about the laws in Moldova related to SEC. **When asked if they thought these laws protect children as victims, six out of nine said “no” or “not fully”.** One Judge interviewed cited insufficient punishment of traffickers as a weakness and highlighted the need for post-trial assistance for the victim with specialised services, which he said were currently missing in Moldova.

138 Law on Special Protection of Children at Risk and Children Separated from Parents, Article 4: requires that all child protection measures ensure and promote the child’s best interests; Articles 8-11: require child protection authorities to identify children at risk, including those engaged in prostitution. If a child is in an unsafe situation during the criminal proceedings, local authorities must have a child specialist do an assessment and, if there is a direct threat to the child, act immediately to find a safe placement; Article 22: child protection authorities are liable for the failure to act and a child may seek compensation for any violations.

139 Law on Preventing and Combating Trafficking in Human Beings, Article 21: protection of the private life and identity of a victim; Article 23: protection of physical safety and rights; right to compensation for damages; Article 24: protection and assistance to foreign citizens and stateless persons who are victims of trafficking; Article 26: (b) special protection and assistance measures for child victims, (c) respect for the opinion of the child victim over 10 years of age regarding all actions affecting him/her, (d) informing child victim of rights, protection and assistance measures, (e) protection of identity; Article 29: requires State assistance and protection to child victims, irrespective of cooperation with authorities (appointment of a legal guardian; reflection period of 30 days).

140 Criminal Procedure Code, No. 122-XV dated 14.03.2003, Article 18(21): requires juvenile victim testimony to be heard in a closed hearing. Under the Code, juvenile is defined as: “a person who has not reached the age of 18” (Art. 6(47)); Article 113(6): juveniles cannot be forced to confront a person accused of a crime against their physical and/or moral integrity; see also: Article 369(1): victims may be heard in the absence of the defendant; Article 110: special methods for examining a witness: (1) testifying via electronic means, without appearing in court if there is a risk of danger to witness, (8) video recorded testimony may only be used as a source of evidence if confirmed by other evidence; 2014 Amendment Article 1101: hearings of minor witnesses **under the age of 14** [emphasis added] in criminal cases concerning sexual offences/trafficking must follow specific child-friendly procedures (e.g. questioning by trained interviewer in a special room without accused present; avoidance of adverse effect on child’s mental state; avoidance of repeated hearings “to the extent possible”).

141 Law on Witness Protection and other persons who participate in the Criminal Procedure, No. 105-XVI, 16.05.2008, Article 1: Victims are eligible for special protection when their life, corporal integrity, freedom or property are under threat owing to possession of information which they agreed to provide to judicial authorities and which is proof of a serious crime, including CSEC-related crimes. (Trafficking victims are entitled to state protection as soon as they are identified, Article 58(5), Criminal Procedure Code). Article 13(3): “Urgent” protective measures may include: assigning a bodyguard; supervising the victim via audio or video devices; placing the victim in a temporary safe house; or even restricting the victim’s movement for his/her own protection; Article 14, special interrogation methods; Article 22: Certain “relief” measures may also be provided to the victim, such as integration into another social environment, professional retraining, medical care, legal aid, psychological and public assistance, assistance in the receipt of a new profession or even provision of income until employment is obtained.

142 Ministry of Labour, Social Protection and Family (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*, Article 2.6: In interviews to identify victims, the child should be accompanied by a parent, guardian or other legal representative, educator or psychologist. (In cases of severe crimes, such as CSEC, the child may also bring a confidant, see: Article 58(4), Criminal Procedure Code). Interview should take place in a child-friendly place, when necessary.



Another Judge stated:

*“In general, the legislation in this area [is] advanced, being close to the international standards...Moldova did adhere to many international conventions, which ensure protection to child-victims of ESCC [CSEC]. The problem stays with the non-knowing of the legislation even by specialists who are in contact with children.”*

A Trafficking Police Professional observed:

*“[T]he child’s interest is [not always] prevailing[:] the principle of compliance with the criminal procedures, the legal representative, the hearing procedure...isn’t perfect...From the social point of view, the long term programmes for integration and rehabilitation do not exist. After the trial is over everyone forgets about the child-victim.”*

Two out of the three justice officials who said that the laws were sufficient to protect children elaborated that the problem is not with the legislation, but with the implementation and interpretation of the laws. The next sections of this report will analyse how Moldova’s national framework protects child victims of SEC and identify gaps in relation to international and regional standards.

## Vulnerability Factors Leading to SEC

In order to get a better idea of certain factors that may lead to SEC in the country, justice officials were asked about five possible factors that might impact cases of SEC: poverty, corruption, lack of information, discrimination and children’s or offenders’ status as foreigners.

### Poverty

All of the justice officials interviewed<sup>143</sup> identified poverty as having an impact on SEC; the majority identified it as the “main” or “determining” factor.

*“Poverty is the determining factor for the existence and growth of human trafficking. Most of the population is vulnerable from the point of view of economical survival; the lack of jobs leaves no alternatives of employment with the possibility to obtain a decent and legal income.” [Judge]*

*“I consider poverty determining victims to stay in the situation of exploitation, even after the identification of the person as a victim. The motive being the lack of existence means and need to survive, in the conditions when the victim, besides selling own body, doesn’t know anything.” [Trafficking Police Investigator]*

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143 One Cyber Crime Investigator did not answer any questions about poverty, corruption, lack of information, discrimination or foreigner status.



## Corruption

Generally, corruption was seen as having less of an impact on SEC cases than poverty. One Cyber Crime Investigator identified corruption as a factor related to why traffickers are not held accountable by the justice system and a Cyber Crime Professional thought that corruption only had an effect on the punishments received by the offenders. A Judge recognised that corruption “affects the system,” but did not think it was a factor determining the existence or growth of SEC. A Trafficking Police Professional identified corruption generally as causing a lack of trust by society in the legal system. Other sources have confirmed that corruption can be a problem in Moldova’s judicial system.<sup>144</sup>

## Lack of information on SEC laws

Only one justice official responded that lack of information on SEC laws had an impact on SEC cases, specifically effecting compensation received by victims. The remaining officials said that lack of information was not an issue/problem/relevant. This seems to contradict previous information provided, including by a Judge, that lack of specialised knowledge in this area is a problem.

## Discrimination based on gender, sexual orientation, nationality, ethnicity or social group

Only one justice official said that discrimination had an impact on SEC cases. The remaining officials said that discrimination is not a problem/does not exist/is not relevant to this issue.

However, discrimination against Roma people living in Moldova is commonly reported, and Roma children are particularly vulnerable to exploitation.<sup>145</sup> In 2011, the Roma National Centre reported that “Roma suffer discrimination in the judicial system, including as victims pursuing justice for violations perpetrated against them (their complaints are not adequately investigated and prosecuted).”<sup>146</sup>

## Foreigner status of the child or exploiter

All of the justice officials who answered this question (seven) said the foreigner status of the child was not a problem/irrelevant to SEC cases.

Based on justice official responses, it appears that poverty is seen as the most common factor impacting the sexual exploitation of children. While a child’s/family’s low economic status is an important factor that may lead to an increase in a child’s vulnerability to sexual exploitation, there are a multitude of other factors that have been found in all regions of the world to affect a child’s vulnerability to sexual exploitation. These include: single-parent households, domestic violence and abuse, lack of education, living/legal situation (children living and/or working on the street, children on the move, undocumented child migrants, refugees, stateless children), discrimination against ethnic minorities, lack of birth certificate/citizenship, demand for sex with children, traditional gender norms and cultures of silence. While further research should be conducted in Moldova to identify its country-specific vulnerability factors, it is unlikely that poverty is the sole factor that leads to SEC in the country.

Regardless of what makes them vulnerable, once children are sexually exploited, they face numerous barriers to accessing justice through the criminal justice system in Moldova; some barriers exist even before the child victims enter the system.

144 See: U.S. State Department (2012), “Moldova Human Rights Report”, <http://www.state.gov/documents/organization/204527.pdf>.

145 ECPAT International (2012), “Global Monitoring Status of Action against Commercial Sexual Exploitation of Children: Moldova”, p. 10.

146 The Roma National Centre (2011), “Report on the situation of Roma and Roma Children’s Rights”, p.1, accessed 8 May 2016, <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/MD/CNR-RomaNationalCentre-eng.pdf>.



## Barriers to Entering the Justice System

Child victims of sexual exploitation can face challenges in accessing justice even before they enter the criminal judicial system. Examples of improvements in this area can be found in Moldovan law and policy when it comes to particular issues such as trafficking victim identification mechanisms. However, based on interviews with justice officials, as well as a review of Moldova's laws and policies, there are context-specific barriers to entering the justice system for child victims of sexual exploitation. These barriers include, *inter alia*: continued difficulty in identifying SEC victims, a lack of reporting by victims, the arrest and detention of victims and short statutes of limitation for victims to report SEC-related offences.

### I. Challenges in identifying SEC victims

The identification of SEC victims has historically proven to be an extremely difficult task. This is due to numerous factors, including the hidden nature of the crime, lack of victim reporting, lack of knowledge of SEC manifestations and crimes by authorities and/or lack of motivation by authorities and communities to recognise these violations of children's rights and identify vulnerable groups. For example, in ECPAT's 2016 Access to Justice Report, it was reported that identification of trafficking victims in Thailand was difficult, especially in relation to the distinction between victims of child trafficking for sexual purposes and "illegal" migrants, leading to detention and deportation of child victims.<sup>147</sup>

The Trafficking Law requires Moldova to identify trafficking victims and provide services.<sup>148</sup> In responding to child victims of trafficking, the State must also strictly observe the rights of the child provided in Article 19 of the Trafficking Law<sup>149</sup> as well as the Regulation on Procedure for Repatriation of Children and Adults which concerns three categories of persons: unaccompanied minors, "illegal" migrants and victims of trafficking.<sup>150</sup> According to the Council of Europe's Group of Experts on Action Against Trafficking in Human Beings (GRETA) 2012 evaluation, "placing possible victims of [trafficking] in the same category as illegal migrants and unaccompanied children may result in the authorities of a foreign country immediately proceeding with the return of a person to the Republic of Moldova without making an effort to identify if he/she is a potential victim of trafficking."<sup>151</sup> GRETA concluded that Moldova needed to do more to provide the necessary resources to the agencies involved in the identification and provision of assistance to trafficking victims, as well as to ensure that local authorities participate in the operation of the National Referral System. GRETA also called for more regular training of "members

147 Lynch, Darlene C. (2016), "Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand," Bangkok: ECPAT International, (forthcoming).

148 See: Articles 15, 20 and 29, Law on Preventing and Combating Trafficking in Human Beings.

149 Article 19: "Repatriation of Victims of Trafficking in Human Beings" including, *inter alia*, a description of the State's responsibilities to: contribute without "undue delay" to repatriation and reception of victims of trafficking, verify the nationality of the victims, and issue travel documents.

150 Decision of the Government of the Republic of Moldova No. 948 from 07 August 2008, Regulation on Procedure for Repatriation of Children and Adults – Victims of Human Trafficking, Illegal Migrants' Trafficking, as well as Unaccompanied Children.

151 Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2012), "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Republic of Moldova," Strasbourg: COE, p. 31. [Pursuant to the Regulation, "44 Moldovan children were repatriated in 2008 (including 32 from the Russian Federation), 42 in 2009 (of whom 25 from the Russian Federation) and 67 in 2010 (of whom 32 from the Russian Federation and 30 from Ukraine). However, it is not clear how many of these children were identified as victims of trafficking"].



of the multidisciplinary teams, labour inspectors, border guard staff, social workers, staff working in special institutions for children and other relevant professionals.”<sup>152</sup>

### Effect of age determination on treatment in justice system

When asked about the difficulty of identifying the age of victims and how this affects the way they are treated in the justice system, three justice officials said they had no experience with this and three said they didn't see age determination as a problem.

One Trafficking Police Investigator reported that there were cases when prostitution networks were identified and the ages of the girls involved were not immediately apparent, based on how they looked. In these situations, “the police body verifies the age and identity of the identified persons, in conformity with the personal file of the individual. So, there were no cases when it was impossible to find the age of the victims.” According to a Trafficking Police Professional, “the population is documented; we have schooling programmes. There are no undocumented children in Moldova. When they reach the school age there's no problem of non-documentation.”

This would seem to be in contradiction to a meeting in 2016 of the National Council for Child Rights Protection (CNPDC), where the Prime Minister ordered an analysis to be conducted to identify undocumented children in the country.<sup>153</sup> It has additionally been reported that thousands of Moldovan children do not have ID cards and that this problem is more serious in communities with Roma people. The National Roma Centre (NRC) has acknowledged that documentation among Roma population is a serious problem. According to Ion Oboroceanu, Director of the Căușeni-based Law Center, in 2009, unregistered children in the country “can be easily trafficked for sex or work, or for organ harvesting, and nobody would know that, nobody would be looking for them because they are not registered anywhere.”<sup>154</sup>

There were justice officials who did recognise the problematic aspects of age ambiguity when identifying victims. A Prosecutor spoke of court cases when the minor looked older and, as a result, the court acquitted the trafficker, as it was not proven that the trafficker had knowledge of the age of the minor. According to another Prosecutor:

***“There were problems when reviewing the matter in court, with the identification of the age, appreciation of the age of the child-victim. The court did motivate the sentence to re-qualify the actions from Art. 206 [trafficking in children] to 165 [trafficking in human beings] by the fact that the victim didn't present to the culprits any ID and the declarations of the victim weren't sufficient to determine the age. The court of first instance issued acquittal for that reason alone. From this motive the decision was challenged, the appeal was admitted and the traffickers were sentenced [under] Art. 206 Criminal Code.”***

152 Council of Europe (2012), GRETA Report, p. 7; see also: U.S. State Department (2014), “Trafficking in Persons Report: Moldova,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226779.htm>: recommendation to “enhance efforts to identify victims and potential victims of trafficking among unaccompanied and separated children, children placed in institutions, and other vulnerable children.”

153 Government of Republic of Moldova (2016), “Moldovan government proposes new solutions, measures for children's protection,” accessed 20 April 2016, <http://www.gov.md/en/content/moldovan-government-proposes-new-solutions-measures-childrens-protection>.

154 Cozonac, Cornelia (2009), “Children with No Name,” Journalistic Investigations Center, Chisinau, Moldova: Center for Investigative Journalism, accessed 20 April 2016, <http://www.investigatii.md/eng/index.php?art=187>.



It is crucial for the justice system to understand and recognise the distinction between “trafficking in children” and “trafficking in human beings,” as international law recognises that a child can never consent to being trafficked.<sup>155</sup>

### Determining the age of victims

Under international standards, uncertainty as to the age of a victim should not prevent the initiation of criminal investigations.<sup>156</sup> Moldova’s *Law on Preventing and Combating Trafficking in Human Beings* complies with these standards by establishing a presumption of age in favour of young trafficking victims:

***“When the age of the victim of trafficking in human beings is not known but there are reasons to believe that the victim has not yet reached 18 years old, it shall be presumed that the victim is a child, and, until final verification of age, the victim shall be treated as a child, by granting him/her all special protection measures provided for in the present Law and other normative acts.”<sup>157</sup>***

It should be noted that in order for this presumption of age to benefit children, authorities must first have reason to believe that a victim might be a child. Law enforcement may require training on how to discern the true age of a child. This is particularly relevant for SEC cases as many victims, if not the majority, are older children and hence, it is not always easy to determine their age simply by looking at them. The Code of Criminal Procedure contains a specific provision which refers to the mandatory expertise in the case when the age of the victim is unknown (if this circumstance is important for the criminal cause) or the documents certifying the age of the persons do not exist or are doubtful. Six out of the nine justice officials interviewed identified forensic testing as a common way to identify the age of the victim. Two Prosecutors referenced the *Criminal Procedure Code* in this regard. Although neither specified the relevant provision, they may have been referencing Article 97(5) which states that “circumstances shall be confirmed in a criminal proceeding by certain sources of evidence”, including: “the injured party...reaching a certain age if important for the case – by an affidavit confirming age, and in the case of incapacity related to age – by a medical and forensic or psychiatric expert report.”<sup>158</sup>

Two Prosecutors specifically mentioned the Guidelines of the General Public Prosecutor on Trafficking [*Guidelines of the General Public Prosecution on the investigation of matters of trafficking of persons and children*], recommending that when there are difficulties in determining the age of the victim, forensic tests on age identification are ordered.

### Existing State-run and civil society identification mechanisms

In addition to the police, prosecutor’s office and court that make up the multidisciplinary teams that respond to reported cases of child abuse, the tutelage authority works at the national, district and local levels to identify and assist child victims of abuse.<sup>159</sup> There are various State-run and civil society mechanisms in the country for identifying victims of sexual exploitation, particularly trafficking victims.

155 See: Article 3(c), Palermo Protocol.

156 Article 8(2), OPSC.

157 Article 27, Law on Preventing and Combating Trafficking in Human Beings.

158 See: Article 143 (1.4), Criminal Procedure Code and Article 97(5), Criminal Procedure Code.

159 See: Child Abuse and Neglect in Eastern Europe (2009), “Child Protection systems in Eastern Europe: Moldova flowchart,” accessed 20 July 2016, [http://www.canee.net/bulgaria/child\\_protection\\_systems\\_in\\_eastern\\_europe](http://www.canee.net/bulgaria/child_protection_systems_in_eastern_europe).



### National Referral System

Moldova has a National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) which identifies trafficking victims and potential trafficking victims and coordinates their care through multi-disciplinary teams.<sup>160</sup> This national system was designed to be “a comprehensive system of co-operation between governmental and non-governmental agencies involved in promoting human rights and combating human trafficking.”<sup>161</sup>

Multidisciplinary Teams (MDTs) are the main operational units of the NRS, bringing together a wide range of specialists (e.g. social workers, policemen, prosecutors, doctors, lawyers and psychologists). They work at the regional level to identify victims and potential victims and assist them in their recovery and reintegration process by referring them to service providers.<sup>162</sup> As of 2012, MDTs employed a total of 344 specialists.<sup>163</sup>

The Ministry of Labour, Social Protection and Family’s *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings* (2012) established a procedure for identifying victims through the National Referral System and coordinating multi-disciplinary teams to provide assistance.<sup>164</sup>

### Child Helplines/Hotlines

The Ministry of Labour, Social Protection and Family and the NGO La Strada operate a 24-hour Child Helpline that offers counselling and referral services to children and parents in need.<sup>165</sup> The Free Child Helpline 116111, operating since June 2014, was established by the Ministry of Labour, Social Protection and Family and is run by La Strada, a child rights NGO. The Helpline takes calls from children, parents, tutors and “any other person willing to communicate a case which requires child’s aid.” It provides access to information, counselling, and access to social workers who can assess a child’s needs and risk of harm. Upon its opening, it was available from 8 a.m. to 9 p.m.,<sup>166</sup> but is now available 24 hours a day, seven days a week.<sup>167</sup>

A Transnistria (toll-free) Hotline also exists (0 800 88888), launched in 2006 and operated by NGO Interaction, which accepts SOS calls from trafficking victims.<sup>168</sup>

160 Moldova International Organization for Migration, "National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking," <http://www.iom.md/index.php/programs/counter-trafficking/national-referral-system>.

161 *Ibid.*

162 *Ibid.*

163 Council of Europe (2012), GRETA Report, p. 13.

164 Ministry of Labour, Social Protection and Family (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*, p. 9; When NRS specialists establish that a person is in immediate danger, they must give him/her urgent assistance, such as rescue, safe shelter and emergency medical care, to overcome the crisis situation and normalise his/her psychological and physical condition. Afterward, the multidisciplinary team may take steps to carry out the final identification of the victim, provide services and manage any criminal case against the victim’s abuser.

165 La Strada, “Child Helpline Number 116111 Became Operable,” 9 July 2014, <http://cupluarmonios.lastrada.md/en/child-helpline-number-116111-became-operable>; see also: <http://lastrada.md/en/the-first-1000-calls-at-the-child-helpline,marking-the-1000th-call-to-the-helpline-in-its-first-five-months-of-operation,with-452-children-provided-counselling-and-referrals-and-549-adults,mostly-parents,given-advice>.

166 La Strada, “Child Helpline Number 116111 Became Operable.”

167 La Strada Moldova, email communication with author, Bangkok, Thailand, 14 July 2016.

168 Moldova International Organization for Migration, "National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking."



The legal aid helpline supported by the Center for Prevention of Trafficking in Women (CPTW) provides legal counselling in relation to human trafficking and migration. The helpline is also used as a tool in gathering intelligence and cooperating with law enforcement to solicit information (exploitation of victims, identification and prosecution of the traffickers, release of victims, etc.).<sup>169</sup>

### Legal Duty to Identify and Assist Children at Risk

Moldova local guardianship authorities have a legal duty to identify and help children at risk, including children engaged in prostitution, under the 2013 Law about Special Protection for Children at Risk and Children Separated from Parents.<sup>170</sup> When local guardianship authorities are notified about a child who appears to be engaged in prostitution, they must contact a child protection specialist within 24 hours to do an initial assessment. If the assessment indicates an imminent threat to the child's health or safety, the prosecutor's office is contacted.<sup>171</sup> In order to implement the Law about Special Protection of Children at Risk and Children Separated from Parents, the Instructions on the mechanism of intersectoral cooperation for the identification, evaluation, referral, assisting and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking was approved by the Government of Moldova. Due to the relative newness of the Law, it is as yet unclear whether implementation of this provision has been successful.

### NGOs

Moldova also has several active NGOs dedicated to combating SEC, including La Strada and the National Centre for Child Abuse Prevention, and they are also key sources of identification.<sup>172</sup>

### Law Enforcement

Law enforcement, including border police officers, may also identify victims in the course of their police work, such as during trafficking operations. Moldova has committed to providing ongoing training and education on identification of human trafficking victims, including child victims.<sup>173</sup> In recent years, numerous trainings have been conducted for law enforcement and migration officials, as well as social service professionals, school workers, doctors and NGO representatives.<sup>174</sup> Moldova has also provided

169 Gutu, Daniela (2007), "Regional Legal Best Practices in Assistance to Victims of Trafficking in Human Beings," Chisinau: Center for Prevention of Trafficking in Women, p. 31, <http://www.legislationline.org/topics/country/14/topic/14>.

170 Article 8(c), Law about Special Child Protection, Being in the Situation of Risk, and Children Separated from Parents; children at risk include children engaged in prostitution. Note that the English translation of the law is poor, making it difficult to describe fully the relevant identification and referral procedure. Local guardianship authority are mayors of villages (communes) and cities, *Ibid.*, Article 3.

171 Articles 9 and 10, Special Child Protection Law. A specialist in child rights protection is a civil servant employed in the Mayor's Office who supports the guardianship authority to fulfil its duties, *Ibid.*, Article 3.

172 Council of Europe (2012), GRETA Report, p. 13; The main NGOs currently working in the field of preventing and combating trafficking in Moldova are the International Centre "La Strada," "Terre des Hommes" Moldova, the National Centre for Child Abuse Prevention, "Save the Children" Moldova and "Médecins du Monde,"

173 Article 14, Law on Preventing and Combating Trafficking in Human Beings.

174 U.S. Department of State (2014), "Trafficking in Persons Report: Moldova." See, e.g.: La Strada, "Trilateral collaboration: border police, the Center for Combating Human Trafficking (CCTP) and the International Center 'La Strada,'" 9 July 2014, <http://sigurantacopii.lastrada.md/en/trilateral-collaboration-border-police-the-center-for-combating-human-trafficking-cctp-and-the-international-center-la-strada/>. See also: Committee of Experts on the Application of Conventions and Recommendations (2012), "Direct request to the State of Moldova concerning Worst Forms of Child Labour Convention, 1999 (No. 182)", [www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2700561](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2700561); In 2011, the Center to Combat Trafficking in Persons conducted 12 training seminars for prosecutors, police and social service staff on human trafficking crimes and identifying victims. CCTP officers, prosecutors, Supreme Court representatives and others involved in combating trafficking also participated in training courses on improving cooperation in identification and documentation of trafficking cases and provision for the recovery and reintegration of victims.



trainings related to identifying child victims of online sexual exploitation. In 2013, for example, police officers were trained by Interpol to use the International Child Sexual Exploitation Database (ICSE).<sup>175</sup>

When asked how victims are identified in the justice system, a majority of the justice officials cited “pro-active” methods, including special investigations. None of the nine officials interviewed mentioned the NRS or hotlines/helplines; one official made a general reference to “organisations dealing with protection of children.” This may suggest that, while the NRS and helplines could be seen as “good practices” in theory, it is possible they are not being implemented or used as much as previously thought. More training might be needed to ensure widespread implementation of these mechanisms by officials, including efforts focused on specialised outreach instead of relying on children reaching out via helplines/hotlines.

## II. Reluctance of victims to report exploitation

It is clear from the responses of the justice officials interviewed that reporting of child sexual exploitation by victims is extremely rare.

*“I don’t know from my experience of cases when the child-victim did complain and submit a complaint against the traffickers.” [Trafficking Police Investigator]*

*“Children do not report these cases.” [Cyber Crime Investigator]*

*“From my experience children don’t get to complain to police on the fact of committing of a sexual offence, such as trafficking of children with the aim of commercial sex exploitation.” [Judge]*

*“As far as I know children don’t go to police or only very seldom.” [Judge]*

*“From my practice I know that victims of sexual offences, of ESCC [CSEC], do not get to complain to police. The reasons being different: fear, shame, stigma, etc. As a recommendation, I’d suggest that the police ... [and] also other specialists in contact with children be proactive in identifying children in the risk group.” [Judge]*

There are likely multiple and varied reasons for the lack of reporting by victims; however, the factors identified specifically by justice officials included familial influences and a lack of well-trained professionals able to build relationships of trust with children. According to ECPAT’s 2016 Access to Justice Report, additional factors included: victims’ lack of knowledge of their own legal rights, enhanced threat of retaliation and stigma, fear of confinement in residential facilities and children not seeing themselves as victims.<sup>176</sup>

175 Global Alliance against Child Sexual Abuse Online, Moldova, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitements/ga\\_commitment\\_-\\_moldova\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitements/ga_commitment_-_moldova_en.pdf); also noting that Moldova participated in a Council of Europe training in 2011 on combating child pornography and sexual abuse of children.

176 Lynch, Darlene C. (2016), “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand,” Bangkok: ECPAT International, (forthcoming).



There appears to be an extreme lack of reporting of child victim of sexual exploitation which likely means that police are missing out on identifying SEC-related abuses and cases. Mechanisms like the NRS are extremely important, but in order to work, they must be utilised by children, their families and officials. The State should work to ensure that the justice system is more accessible to children; this can be done through outreach and education programmes with the aim of improving the relationship between children and law enforcement.

### III. Potential criminal liability for SEC offences

It is not clear from the information gathered whether the arrest and detention of children is a factor influencing the willingness to report by victims (i.e. a barrier to access to justice) in Moldova. It is clear from the justice officials interviewed that older children are arrested and placed in detention for their involvement/participation in SEC-related activities/exploitation.

#### *Arrest of children: gaps between law and practice*

Moldovan law prohibits arresting child victims of trafficking for crimes committed while they were being trafficked.<sup>177</sup> It is not clear whether children found engaging in prostitution are, nevertheless, arrested on prostitution or other public nuisance charges, as is common in other countries. According to the new legislative changes introduced in March 2017, Moldovan law appears to hold persons age 16 and over responsible for being involved into prostitution. For all persons engaged in prostitution (including children aged 16-18), the punishment constitutes fine or several hours of unpaid community work.<sup>178</sup>

If a SEC victim is engaged in more serious offenses, such as encouraging others to engage in prostitution, he or she is subject to criminal liability if he or she is 16 years or older.<sup>179</sup> Being a juvenile at the time of the commission of the crime is, however, considered a mitigating factor in terms of punishment.<sup>180</sup> Detention or arrest of the child shall be the last resort and only in cases provided for in legislation; parents or a legal representative shall be immediately informed.<sup>181</sup>

Seven of the nine justice officials interviewed said that teenagers are “sometimes” arrested for taking part in commercial sexual activities (the remaining two responded that they were not arrested). The Judges interviewed both asserted that teenagers cannot be arrested for participating in commercial sexual activities; however, they can be arrested for recruiting child-victims into these commercial sexual activities, but only when it is proven by evidence that they committed these actions “not in relation with [their] victim status.” Both the Cyber Crime Investigator and Trafficking Police Investigator said teenagers can be arrested for committing a “very severe” or an “exceptionally severe” offence.<sup>182</sup>

Based on the justice official responses, it appears that, in spite of existing legal provisions, teenagers are sometimes arrested for their involvement in SEC.

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177 Article 32, Law on Preventing and Combating Trafficking in Human Beings: a trafficking victim is “exempt from criminal, administrative, and civil liability for actions committed by him/her in relation to his/her status as a victim;” Article 206(4), Criminal Code: “A victim of trafficking in children shall be exempted from criminal liability for any crimes committed by him/her in relation to this procedural status.”

178 Art. 89 (1), Contraventional Code.

179 Article 21, Criminal Code.

180 *Ibid.*, Article 76.

181 Article 28(2), Law on Child Rights.

182 According to Moldova’s Criminal Code, an “extremely serious crime” is one “committed with intent for which criminal law provides for a maximum punishment by imprisonment for a term of more than 12 years;” an “exceptionally serious crime” is one “committed with intent for which criminal law provides for life imprisonment.” Article 16.



### *Detention facilities: gaps between law and practice*

Under Moldovan law children are to be held separately from adults in juvenile detention facilities, and the detention or arrest of a child should only be carried out as a last resort.<sup>183</sup> Detention institutions are

required, *inter alia*, to ensure detainees have adequate security, protection and assistance, have access to independent medical care and have the opportunity to register complaints.<sup>184</sup>

According to UNICEF, Moldova reduced the number of children in pre-trial detention by 80% between 2002 and 2010. All judges and prosecutors responsible for children now have specialist training, as well as many probation officers and correctional staff in facilities for adolescents. There are also Community Justice Centres, which serve as alternatives to detention.<sup>185</sup> However, poor conditions have been reported in orphanages and other residential institutions.<sup>186</sup>

Eight out of the nine justice officials<sup>187</sup> interviewed said that arrested teenagers are put in detention (“preventive detention institution/isolator,” “penitentiary institution for provisional detention”). La Strada Moldova confirmed that children 16 and older who commit “very serious crimes” can be arrested and placed in pre-trial detention; if convicted, they will be detained in a special penitentiary for minors.<sup>188</sup> One Judge said that the conditions in detention are bad and that there are many reports of the Committee for the Prevention of Torture that address this issue. While a Cyber Crime Professional said that, in general, youth are detained separately from adults in similar conditions, a Trafficking Police Investigator asserted that youth are held together with adults.

While efforts have reportedly been made to reduce the pre-trial detention of children, the practice appears to be ongoing, with some children being placed in bad conditions with adult offenders.

### **Is the arrest and detainment of teenagers “fair”? the opinion of justice officials**

One justice official out of nine said that the arrest and detention of children in cases related to sexual exploitation is unfair. The remaining justice officials<sup>189</sup> said that arrest was correct under certain circumstances.

***“I don’t consider that fair. They didn’t realise what they were doing. Most of them act [because they are] being placed into certain circumstances by adult criminals.” [Cyber Crime Professional]***

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183 Article 72(5), Criminal Code: “Persons aged under 18 shall serve the punishment of imprisonment in penitentiaries for juveniles with due consideration of the personality of the convict, his/her criminal history, and the prejudicial degree of the crime committed;” see also: Article 28(2) and (3), Law on Child Rights.

184 Article 187, Criminal Procedure Code.

185 UNICEF, Central and Eastern Europe, “Child protection,” accessed 27 June 2016, [http://www.unicef.org/ceecis/protection\\_17301.html](http://www.unicef.org/ceecis/protection_17301.html).

186 U.S. Department of State (2011), “2010 Human Rights Report: Moldova,” <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154439.htm>.

187 One Cyber Crime Investigator did not answer the question.

188 La Strada Moldova, email communication with author, Bangkok, Thailand, 7 July 2016.

189 One Cyber Crime Investigator did not answer the question.



*“In my experience I did review a criminal case when the culprit was [involved] in another matter on child trafficking as a victim. The file [was] reviewed by me, the minor was charged with the fact that he did overtake the offending activity of recruiting children through socialising networks with the aim to involve them into commercial sex exploitation activities. In this case he didn’t act in relation with the victim status and for such situations I consider it is fair to try him.” [Judge]*

*“For participation [in CSEC it] isn’t fair, but if they commit other offences then the law is equal for all. I [would like to] mention that arrest is applied in the case of juveniles (minors) only in exceptional situations.” [Judge]*

Although there appears to be a distinction under Moldovan law between child victims of sexual exploitation and those that commit crimes that are considered “unrelated to their victim status,” such as the recruitment of other children into sexual exploitation, it may be relevant to ask: (1) if these crimes are truly unrelated to their victim status; and (2) whether arrest is the best option under these circumstances. Some children were exploited themselves when they were younger and then coerced or brainwashed by their offenders and may feel as though they have no choice but to recruit other children. Another factor to consider – one that was also of significance/importance in ECPAT’s 2016 Access to Justice Report focused on Nepal, the Philippines and Thailand – is the common perception of older children as “willing” participants in their sexual exploitation. It is not uncommon for officials to be less sympathetic to teenagers, who they feel have greater “agency” or are more responsible for their actions, and are not victims. This was found to be a powerful barrier for children to access justice in the Report, as it not only caused them to be denied help, but exposed them to the risk of arrest and detention.<sup>190</sup> These arrests and detentions can be a barrier to access justice, as they may affect a victim’s willingness to report exploitation due to fear that he or she may be arrested and/or detained. While it is not evident from the interviews in Moldova if this perception is one held by justice officials, it is a real possibility.

#### **IV. Statute of Limitations (SoLs)**

Article 60 of Moldova’s Criminal Code sets out the limitation periods for criminal liability.<sup>191</sup> Based on this Article, the limitation period for rape and sexual violence is 5 years; for child trafficking and sexual violence against a juvenile it is 15 years; and for violent crimes against a child under 14 it is 25 years. The limitation periods for enforcing sentences range from 6-20 years for SEC-related offenses.<sup>192</sup> SoLs are based on the seriousness of the crime in Moldova, with some SEC crimes treated as less serious than others, resulting in shorter SoLs. This link between penalties and SoLs could lead to children from aged 14-17 (likely the majority of SEC victims), having to act much more quickly than younger children, in order to ensure a charge can be brought against an offender. It should also be noted that delayed

190 Lynch, Darlene C. (2016), “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand,” Bangkok: ECPAT International, (forthcoming).

191 Article 60(1), Criminal Code: “A person shall be exempted from criminal liability if the following terms have expired from the date of the commission of the crime: (a) 2 years from the commission of a minor crime; (b) 5 years from the commission of a less serious crime; (c) 15 years from the commission of a serious crime; (d) 20 years from the commission of an extremely serious crime; (e) 25 years from the commission of an exceptionally serious crime.”

192 See: Article 97, Criminal Code: “The conviction sentence shall not be subject to enforcement if it has not been enforced within the following terms calculated from the day when the sentence became final: (a) 2 years for conviction for a minor crime; (b) 6 years for conviction for a less serious crime; (c) 10 years for conviction for a serious crime; (d) 15 years for conviction for an extremely serious crime; (e) 20 years for conviction for an exceptionally serious crime.”



disclosures of abuse are common in SEC cases which, based on the above legal provision, can have a devastating effect on a child's ability to access justice. One possible measure to improve children's access to justice in this regard is for the SoLs to be tolled until the child reaches the age of majority, as in many other countries (e.g. Philippines).<sup>193</sup>

While the barriers to entering the justice system are powerful and varied (justice officials' inability to identify victims, lack of victim complaints, arrest and detainment of victims and short and/or inconsistent SoLs), even more barriers exist for children to secure justice once they are in the criminal justice system in Moldova, as the next section will illustrate.

## Barriers to Securing Justice Once in the System

Once in the system, child victims can face numerous obstacles to accessing justice. In this context, access to justice is not limited to a conviction of the defendant, but includes a plethora of child-friendly procedures, services and assistance to the victim, always keeping in mind his/her best interests. The following section will provide a number of positive/encouraging aspects of the Moldovan system in this regard, as well as describe those areas that are in need of improvement. Areas of focus include: the right of victims to be informed; support, care and protection during the criminal justice process; the right to be heard; the right to privacy and safety; the right to protection from hardship and the right to reparation.

### Moldova's Criminal Justice System

Moldova follows a civil law system. The General Police Protectorate and the Prosecutor's Office are the offices tasked with investigating and prosecuting crimes, including SEC. Criminal investigative officers of the Ministry of Home Affairs, i.e., the police, search for evidence and attempt to establish facts.<sup>194</sup> The Prosecutor initiates and leads criminal investigations, represents the prosecution in court, and submits applications for protective measures, among other duties.<sup>195</sup> Investigative judges make rulings during the investigation, such as granting orders for protective measures.<sup>196</sup> Criminal investigations may also be conducted by bodies created by law by the Ministry of Home Affairs, the Customs Service, or the National Anti-corruption Centre.<sup>197</sup>

A victim's complaint is not necessary to initiate prosecution, as prosecutors may act *ex officio*. Under Moldovan law, all participants in a case, including victims, must be given written notice of their rights and obligations at the outset of the investigation.<sup>198</sup> A "criminal investigation body" will launch an investigation if there is "reasonable suspicion" that a crime has been committed.<sup>199</sup> If the investigation body later concludes that there is "sufficient evidence that a crime has been committed by a specific person," they will recommend that formal charges be brought.<sup>200</sup> If prosecutors find the evidence "conclusive and sufficient," they will issue an order to bring formal charges.<sup>201</sup>

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193 See: Philippines, Republic Act No. 10364, an Act expanding Republic Act No. 9208, "Expanded Anti-Trafficking in Persons Act of 2012," 6 February 2013, Section 14, <http://www.gov.ph/2013/02/06/republic-act-no-10364/>.

194 Article 55, Criminal Procedure Code.

195 *Ibid.*, Article 51.

196 *Ibid.*, Article 29; An investigative judge is "a judge vested with duties specific to criminal investigations and to judicial control over procedural actions conducted in the course of criminal investigations." *Ibid.*, Article 6(24).

197 *Ibid.*, Articles 55-57.

198 *Ibid.*, Article 277.

199 *Ibid.*, Article 274.

200 *Ibid.*, Article 280.

201 *Ibid.*, Article 281.



In a trial, the State is represented by a Prosecutor and the accused by defence counsel.<sup>202</sup> All the victims of crimes have the right to be assisted during all the procedural actions by a chosen attorney. Specific provisions are foreseen for victims of a severe crime such as the right to access defense counsel during the entire criminal proceeding, to be assisted by a court-appointed attorney if unable to afford an attorney and to be accompanied by a confidant and a attorney in all procedural actions (including the judicial closed sessions).<sup>203</sup> The pre-trial detention of a suspect may be ordered if there are reasonable grounds to assume that s/he will evade a criminal investigation, prevent the finding of the truth, and/or commit other crimes. In such cases, adults may be detained for up to 72 hours<sup>204</sup> and juveniles for up to 24 hours.<sup>205</sup> Criminal cases are heard by a court with a panel of three judges or by one judge, depending on the circumstances.<sup>206</sup>

## V. Disincentives to filing SEC complaints

One of the strengths of Moldova's legal system is that a victim's complaint is not necessary to initiate prosecution for SEC-related offenses, as prosecutors may act *ex officio*.<sup>207</sup> The Prosecutors interviewed confirmed this, stating that if the child is identified, a complaint is not necessary; the initiative of the criminal investigation body is sufficient. In fact, once an investigation is initiated, the victim cannot withdraw the complaint. However, it should be noted that without a child's complaint or cooperation, a case is often weak and the prosecutor has the discretion to drop it. Justice officials identified several disincentives for child victims to file complaints, including familial influence, a lack of trust by children of justice professionals and a lack of standard protection procedures for children involved in the criminal justice process.

Several of the justice officials interviewed mentioned the influence of family as one reason children do not file a criminal complaint of SEC-related crimes. One Cyber Crime Professional cited this influence from the child's perspective, fearing that parents or relatives will discover what happened and the child's unwillingness to talk about it in their presence. A Cyber Crime Investigator referenced family influence from the parents' point of view and the common desire on their part to keep the abuse secret:

***“In some cases, parents mistakenly consider that it is better for the abuse to remain secret from the legal bodies and refuse to cooperate with them.”***

A Cyber Crime Investigator stated that the refusal of parents/tutors to cooperate with legal bodies and a lack of family support can be a major reason for children failing to enter the justice system or following through until the case's conclusion. This is one reason why the assignment of a State-appointed guardian *ad litem* or dedicated person to support and protect the interests of the child from the very beginning is critical.

A Cyber Crime Professional stated that children decide against filing SEC complaints because there is a lack of trained specialists able to build a trusting relationship with the child and there are no standard procedures in place which ensure that the child will be protected while in the criminal justice system (e.g. guaranteeing that what the child says will not be communicated to relatives; ensuring that justice officials will not seek or admit multiple hearings).

202 See: *Ibid.*, Title III: “The Parties and other Participants in a Criminal Proceeding,” Chapter I and Chapter II.

203 *Ibid.* Article 58.

204 *Ibid.*, Article 166(5).

205 *Ibid.*, Article 166(6).

206 See: *Ibid.*, Article 30.

207 *Ibid.*, Articles 274 and 276.



One Trafficking Police Investigator did report that there are cases when a complaint is submitted or the police body identifies a case of trafficking, and the child agrees to collaborate with the criminal investigation body to investigate the offence and identify the traffickers. However, according to the Investigator, one reason the child may decide not to participate or decide against investigation is due to “the explanation provided to the child that **he has** to make statements.”

This assertion by the Investigator was not clarified further, but one interpretation could be that child trafficking victims are sometimes pressured, coerced or made to feel that they must provide a statement, when in fact the reverse is true. The right to a reflection and recovery period means that victims can receive help from the State unconditionally, even if they do not agree to participate in the case against the offender.<sup>208</sup> Regardless, the best interests of the child should always be the primary consideration throughout the entirety of the criminal justice process.

### Recovery and reflection period

Once a trafficking victim is identified as such, an initial “recovery and reflection” period allows him or her a specified amount of time to try to escape the influence of his or her exploiter and begin the healing process before filing a criminal complaint. Article 13 of the Council of Europe’s *Convention Action Trafficking in Human Beings* requires States parties to provide for a 30-day minimum recovery and reflection period for victims.

Moldova’s *Law on Preventing and Combating Trafficking in Human Beings* provides a reflection period of 30 days during which victims can decide whether to testify against a trafficker.<sup>209</sup> Trafficking victims’ access to necessary assistance and protection is not conditional upon their willingness to cooperate in the criminal process against traffickers.<sup>210</sup>

All of the justice officials interviewed said that victims had access to reflection periods; one Judge cited the Human Trafficking Law and a Trafficking Police Professional cited 30 days for the reflection period “with no problems.” However, it has been reported that reflection periods are often not implemented due to the strict time limits under which charges must be pressed.<sup>211</sup>

A child trafficking victim’s right to a recovery and reflection period appears to be well known by justice officials, if not always implemented. One reason why this time period may not always be effective is that the child’s testimony is often the only real evidence against the offender and prosecutors may not want to file charges without knowing they will have that evidence.

There may also be cases where the child does not want a reflection period. In these situations a protective environment for the children is still vital and the interviewer of the victims must be skilled in this area, making the child feel safe and supported. As in all cases dealing with children in the justice system, their best interests should be the priority. When it comes to reflection periods, a decision can be made on a case-by-case basis, depending on what is best for the individual child.

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208 See: Ministry of Labour, Social Protection and Family (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*, Section I. “General Provisions”, (5).

209 Article 29(5), Law on Preventing and Combating Trafficking in Human Beings.

210 Ministry of Labour, Social Protection and Family (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*, Section I. “General Provisions” (5).

211 U.S. State Department (2015), “Trafficking in Persons Report: Moldova,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243494.htm>; see also: Article 274, Criminal Procedure Code on “Initiating a Criminal Investigation.”



## VI. The right to be informed

### Access to information about child victims' rights

International law requires that child victims be notified of their rights,<sup>212</sup> and Moldova's *Criminal Procedure Code* provides that all victims of crime, including SEC victims, have a right to receive written notice of their rights and obligations at the outset of the case.<sup>213</sup> The Trafficking Law also requires child victims to be informed of their rights.<sup>214</sup>

When asked if children are informed about their rights, a Cyber Crime Investigator responded:

*“Usually not, in order not to stress him more, their rights are protected by representatives and solicitors obligatory to take part, by the public prosecutor and the judge.”*

A Cyber Crime Professional said that children are only informed of their rights:

*“in cases when their interests are represented also by a solicitor.”*

Three officials responded that children are informed about their rights in writing when they are recognised as an injured party.

*“The court explains to all participants to the trial the rights they have. The written information on the rights and obligations is provided to the victim by the criminal investigation officer at the criminal investigation stage.” [Judge]*

- Information about victims' right to seek compensation/damages  
Six of the nine justice officials said that child victims do receive information about their right to seek compensation/damages or other forms of financial assistance. They cited criminal investigation officers, solicitors or public prosecutors as those who explain this right to the child.

Despite the majority of officials confirming that child victims are informed of their right to compensation, a Cyber Crime Investigator said that the compensation procedure is unclear and a Cyber Crime Professional said that victims “practically don't receive” this information except in cases when a child's Ombudsman<sup>215</sup> gets involved in the matter.

212 Article 8, OPSC; see also: Article 31, Lanzarote Convention; COE Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,” IV. “Child-friendly justice before, during and after judicial proceedings;” UN Guidelines on child victims and witnesses of crime, para. 19(g).

213 Article 277, Criminal Procedure Code.

214 Article 26(d), Law on Preventing and Combating Trafficking in Human Beings: special principles to be taken into account when preventing and combating trafficking in children and protecting and assisting child victims include, “informing the child victim of trafficking in human beings about his/her situation and rights, protection and assistance measures, available services, repatriation procedure, and family reunification process.”

215 In April 2014, Moldova passed a law establishing the office of Ombudsman (called People's Advocate). The law provides that there are two persons serving as People's Advocates, one of whom must be specialised in children's rights; however, this post remained vacant as of February 2016. The Ombudsman for the protection of child rights must ensure the protection of children's rights and freedoms by public authorities at the national level, in accordance with the CRC. The Ombudsman for children can provide protection and assistance to the child at their request, without seeking the parents' or legal representatives' consent and decide complaints alleging children's rights violations. In addition, the Ombudsman for children may initiate court proceedings in order to protect the rights and freedoms of the child. Law No. 52 from 03 April 2014 on the People's Advocate (Ombudsman), available at: [http://www.apc.ch/content/files/npm/eca/Moldova\\_Ombudsman%20Law\\_May2014\\_ENG.pdf](http://www.apc.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf), as cited in: CRIN (2014), “Access to



Six justice officials cited a legal representative or solicitor as supporting children in applying for damages. One Cyber Crime Professional said that this aid is provided only if an NGO solicitor is involved; a Prosecutor cited La Strada solicitors specifically as those who assist children in this process. A Judge asserted that “financial assistance isn’t provided; free legal aid [is] only at request.”

## Implementation

There appears to be discrepancies in the justice official responses regarding who is informed of the child’s rights during a criminal case (i.e. whether it is the child her/himself who is informed in age-appropriate language or if it is his/her parent/guardian/legal representative). There was also no mention in the interviews of child-friendly information materials or notifications given to children in an age-appropriate language. The development and dissemination of child-friendly materials is essential in order to ensure children understand their rights.<sup>216</sup>

### Keeping children and their families informed during proceedings

Moldova has a duty, under international law, to keep child victims informed of available services including health, psychological, social and other relevant services, and the progress and disposition of the criminal proceedings and review mechanisms.<sup>217</sup> Its *Criminal Procedure Code* gives victims the right to review court documents, participate in hearings, and be informed about decisions related to their interests.<sup>218</sup> Under the Trafficking Law, child victims also have the right to be informed about their situation and rights, protection and assistance measures, available services, repatriation procedure and family reunification process.<sup>219</sup> However, child victims must exercise their right through their legal representatives.<sup>220</sup> As a result, it is the child’s parent or guardian who is kept informed and given the opportunity to participate in the proceedings.<sup>221</sup>

A Trafficking Police Professional did verify that a “legal representative is appointed from the child’s interest perspective;” however, it is not clear if this legal representative is someone who, in practice, keeps the child informed.

A Trafficking Police Investigator said:

***“[T]here’s a possibility to involve a solicitor from the La Strada NGO, who informs the victim for the whole duration of the matter on her rights and obligations, as well as the stages of the criminal matter.”***

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Justice for Children: Moldova” (subsequently edited by CRIN), p. 4, [https://www.crin.org/sites/default/files/moldova\\_access\\_to\\_justice.pdf](https://www.crin.org/sites/default/files/moldova_access_to_justice.pdf).

216 See, for example: UN Guidelines on justice in matters involving child victims and witnesses of crime, Child-Friendly Version: [https://www.unodc.org/pdf/criminal\\_justice/Guidelines\\_E.pdf](https://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf).

217 Article 8, OPSC; see also: Article 31, Lanzarote Convention; COE Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,” IV. “Child-friendly justice before, during and after judicial proceedings;” UN Guidelines on child victims and witnesses of crime, paras. 19(a) and 20(a).

218 Articles 58 and 60, Criminal Procedure Code.

219 Article 26, Law on Preventing and Combating Trafficking in Human Beings.

220 Articles 58(10) and 60(4), Criminal Procedure Code. A legal representative can be a parent, tutor or custodian who represents the interests of the child in the proceeding, Article 77(1), Criminal Procedure Code.

221 Article 78, Criminal Procedure Code: legal representatives must be notified when the victim has to appear in court, may participate in procedures, provide explanations, etc. Article 91, Criminal Procedure Code: with respect to child victims in particular, a legal representative may file requests, make objections, review court papers, etc.



It is not clear whether this information is provided to the victim in those cases where La Strada is not involved.

Moldovan law does give children the right to stay informed during the criminal justice proceedings and to express their opinions in matters that affect them, which is more than many countries allow. It is not clear, however, if the actual child is involved in this process or if the conversations are solely between State actors and the child's representative.

## VI. The right to support, care and protection during the process

Under international law and standards, Moldova is required to assist child victims of exploitation, including their recovery and reintegration.<sup>222</sup> According to the Lanzarote Convention, States parties must assist victims in their short and long term physical and psycho-social recovery.<sup>223</sup> Moldova's *Law on Preventing and Combating Trafficking in Human Beings* require it to undertake "special protection and assistance measures to a child victim of trafficking in human beings."<sup>224</sup> The Trafficking Law defines "trafficking in children" in accordance with the Palermo Protocol as the "recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation."<sup>225</sup> As this definition of trafficking does not always require movement,<sup>226</sup> but includes the maintenance of a child for purposes of exploitation, victims of all manifestations of SEC could potentially be covered by the Trafficking Law's provisions.

When analysing the scale and scope of Moldova's support, protection and care to victims throughout the justice process, the following principle areas will be assessed: the multidisciplinary process to meet victims' needs; shelter/residential care facilities; medical, psychological and other recovery services; training of professionals; support persons; and financial assistance.

### Multidisciplinary approaches

In the context of child protection, Multidisciplinary Teams (MDTs) are a group of professionals – including, *inter alia*, law enforcement, child protective services, justice officials, doctors, and counsellors – working together to coordinate services and effective responses to reports of child exploitation and abuse, many times at the early stages of an investigation. According to international standards, States are encouraged to adopt multidisciplinary approaches and structures to provide the necessary support to child victims.<sup>227</sup> These MDTs are central to ensuring the most effective coordinated response possible, including the minimising of additional trauma to child victims.

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222 Article 39, CRC: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child;" see also: Article 9(3), OPSC: "States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery;" UN Guidelines on child victims and witnesses of crime, Section IX: "The right to effective assistance."

223 Article 14, Lanzarote Convention.

224 Article 26, Law on Preventing and Combating Trafficking in Human Beings.

225 Article 2(2), Law on Preventing and Combating Trafficking in Human Beings; see also: Article 3(c), Palermo Protocol.

226 See: UNOHCHR (2014), "Human Rights and Human Trafficking: Fact Sheet No. 36," p. 3, accessed 14 July 2016, [http://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf).

227 Lanzarote Convention, Article 11; COE Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Section IV(A)(5); UN Guidelines on child victims and witnesses of crime, para. 43.



## National Referral System

Moldova's National Referral System reportedly provides comprehensive assistance to victims and potential victims of trafficking, including "protection and assistance through the processes of identification, repatriation, rehabilitation and reintegration of the victims."<sup>228</sup> It was reported in 2011 that the System was operating successfully in "31 territorial units, including 28 districts, two municipalities and one town" and that medical, legal, financial, psychological, and other benefits were provided to victims.<sup>229</sup> Financial assistance for victim reintegration was also available.<sup>230</sup> Multidisciplinary regional teams have been established to ensure coordination on these issues.<sup>231</sup> Although the NRS specifically references trafficking victims, according to La Strada Moldova, even those victims of SEC who are exploited locally can be provided assistance under the NRS.

Of the nine justice officials interviewed, four responded that they had no knowledge of or experience with multidisciplinary teams to evaluate the needs of victims.

One official thought that the teams were not efficient:

***"I don't think that multidisciplinary teams and the national referral system represent an efficient mechanism, which should provide the assistance of child-victims of trafficking." [Trafficking Police Investigator]***

Four officials said that there were multidisciplinary teams evaluating the needs of victims. One Prosecutor cited to the involvement of NGOs, particularly La Strada, as being receptive to requests to help identify victim needs, especially its solicitor. The Prosecutor reported that there is also collaboration to appeal for the placement of victims at the Centre for Protection and Assistance of Victims of Trafficking in Human Beings.

Moldova's *Law on Preventing and Combating Trafficking in Human Beings* permits children to stay in centres for protection and assistance of victims of trafficking, *inter alia*, for the duration of their case.<sup>232</sup> According to one Prosecutor, some cases can reportedly last up to five years.

While making general conclusions about the effectiveness of the NRS based on the knowledge/feedback of nine justice officials is not possible, the fact that the majority of those officials interviewed either had no experience with the NRS or thought that it was inefficient may warrant a further, deeper analysis of the System, its implementation and its effect on the protection and recovery of child victims.

228 Moldova International Organization for Migration, "National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking."

229 UNFPA, Moldova (2011), "Action against Human Trafficking and Domestic Violence in Moldova: Good Practices and Human Touch Stories in the Project 'Protection and Empowerment of Victims of Human Trafficking and Domestic Violence in Moldova,'" Chisinau: UNFPA Moldova, p. 14, <https://docs.unocha.org/sites/dms/HSU/Outreach/Moldova/063/Public%20Report%20Moldova.pdf>.

230 U.S. State Department (2014), "Trafficking in Persons Report: Moldova."

231 Fight Against Trafficking in Human Beings, "Fight against Trafficking in Human Beings and Organised Crime – Phase 1," Moldova (THB/IFS/1); see also: U.S. State Department (2014), "Trafficking in Persons Report: Moldova."

232 See: Articles 17 and 29, Law on Preventing and Combating Trafficking in Human Beings.



## Available services: shelters and residential care

Article 6 of the Palermo Protocol states that States parties should “consider implementing measures to provide for the physical, psychological and social recovery of victims”, including appropriate housing. Under the Council of Europe’s *Convention on Action against Trafficking in Human Beings*, States parties are required to adopt legislation or other measures to assist victims in their recovery, including “appropriate and secure accommodation.”<sup>233</sup>

Moldova’s Trafficking Law requires the State to provide child victims with accommodation in victim protection and assistance centres for up to six months or the duration of the proceedings (separately from adults)<sup>234</sup> and long-term care in a family-type or community-type environment.<sup>235</sup>

The Assistance and Protection Centre of Chisinau provides food, shelter, medical, psychological, social and legal services to trafficking victims.<sup>236</sup> In June 2016, a specialized unit for victims of child trafficking was created. This allows to place the children - victims of child trafficking separately from the adults - victims of human trafficking. Tailored medium to longer-term assistance may also be provided.<sup>237</sup> There are five government funded regional centres providing training, reintegration and long-term assistance to victims<sup>238</sup> and government funded shelters for victims in seven locations.<sup>239</sup> There are two local centres providing services (“physical, psychological and social recovery measures, including accommodation, medical and legal assistance as well as access to schools and vocational training”) to victims of human trafficking in Balti and Cahul established in 2010.<sup>240</sup> It has been reported that the available resources for victim services, however, remain insufficient and many victims decline assistance.<sup>241</sup> While some may return home, according to La Strada Moldova, most return to the streets and continue to be exploited.<sup>242</sup>

When asked if victims have access to protective shelters or residential care facilities, four out of nine justice officials said yes. The remaining officials said that these shelters and/or care facilities are not fully accessible. One Judge and a Trafficking Police Investigator said that they are “not sufficient” and a Trafficking Police Professional said that these facilities are only accessible in the short term.

A Judge stated:

***“As far as I know the existing centres aren’t specialised on assistance for only child-victims of sexual offences and ESCC [CSEC]. As [a] recommendation, it would be good for these victims to have such specialised centres, which would cover all the needs of the victim.”***

This lack of specialised services is not unique to Moldova and has also been reported in, *inter alia*, ECPAT’s 2016 Access to Justice Report in Nepal, the Philippines and Thailand.<sup>243</sup>

233 Article 12, COE Convention on Action against Trafficking in Human Beings.

234 Articles 29(6) and (7), Law on Preventing and Combating Trafficking in Human Beings.

235 *Ibid.*, Article 29(11).

236 Moldova International Organization for Migration, “National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking.”

237 *Ibid.*

238 La Strada International, “Moldova,” accessed 10 May 2016, <http://lastradainternational.org/ls-offices/moldova>.

239 U.S. Department of Labor (2014), “Findings on the Worst Forms of Child Labor,” accessed 10 May 2016, <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2014TDA/moldova.pdf>.

240 Committee of Experts on the Application of Conventions and Recommendations (CEACR), Direct request (2012) to the State of Moldova concerning Worst Forms of Child Labour Convention, 1999 (No. 182), [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3084805:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084805:NO).

241 U.S. State Department (2014), “Trafficking in Persons Report: Moldova.”

242 La Strada Moldova, email communication with author, Bangkok, Thailand, 7 July 2016.

243 Lynch, Darlene C. (2016), “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal,



These kinds of specialised services are extremely important for SEC victims as, according to ECPAT International:

*“[T]he recovery and reintegration needs of children victim of sexual exploitation differ in various ways from the needs of children who are ‘simply’ victim of familial neglect, physical abuse or incest. The needs of child victims of sexual exploitation tend to be more complex and their behaviours more challenging to manage. Specialized and separate services and programmes are needed to best serve this population.”<sup>244</sup>*

### Medical, psychological and other recovery services

In addition to appropriate housing for victims, the Palermo Protocol states that parties should provide medical, psychological and material assistance to victims of trafficking, as well as employment, educational and training opportunities.<sup>245</sup> The OPSC requires States to take measures to ensure assistance to victims, including “their full social reintegration and their full physical and psychological recovery”<sup>246</sup> and the UN Guidelines on child victims and witnesses of crime state that victims should have access to support services, including: “counselling, health, social and educational services, physical and psychological recovery services.”<sup>247</sup> The Council of Europe *Convention on Action against Trafficking in Human Being* also provides for psychological and material assistance for victims, as well as access to emergency medical treatment and education for children.<sup>248</sup>

### *Moldova’s Trafficking Law guarantees the following recovery services:*

- a. Social recovery to reintegrate victims back into a normal way of life, including “legal and material assistance, psychological, medical and professional rehabilitation, employment, and a dwelling space.”<sup>249</sup>
- b. Attendance of State educational institutions.<sup>250</sup>
- c. Free employment services and vocational training for children over the age of 16.<sup>251</sup>
- d. A minimum package of social and medical services is available based on presumption of a person’s status as a victim of trafficking.

When asked whether SEC victims have access to physical and mental health care, four of the nine officials said yes. The others recognised that while some services are available, they are limited.

One Trafficking Police Professional said that this type of care is only available in the short term. A Trafficking Police Investigator pointed out that “there are no specialised centres for minor (juvenile) victims.” One Judge was not aware of any mental health services, stating that “mental healthcare services don’t really exist as far as I know.”

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the Philippines and Thailand,” Bangkok: ECPAT International, (forthcoming). see: section on “Inadequate Care and Recovery Services.”

244 ECPAT International Submission to the UN Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer Buquicchio on Care and Recovery of Child Victims, 18 May 2015, p.15, <http://www.ohchr.org/Documents/Issues/Children/SR/CareAndRecovery/ECPAT.pdf>.

245 Article 6, Palermo Protocol.

246 Article 9(3), OPSC.

247 Para. 22, UN Guidelines on child victims and witnesses of crime.

248 Article 12, COE Convention on Action against Trafficking in Human Beings.

249 Article 16, Law on Preventing and Combating Trafficking in Human Beings.

250 *Ibid.*, Article 29(9).

251 *Ibid.*, Article 18.



### *Family tracing and reunification efforts*

The Council of Europe *Convention on Action against Trafficking in Human Beings* requires States parties to “make every effort to locate [the victim’s] family when this is in the best interests of the child” as soon as a child is identified as a victim.<sup>252</sup>

Moldova’s Trafficking Law requires officials to conduct an emergency search for family or begin proceedings to institute guardianship,<sup>253</sup> provide repatriation services,<sup>254</sup> ensure non-delay of family reunification and repatriation when in the best interests of the child<sup>255</sup> and consider the child’s opinion in repatriation or relocation decisions if the child is over the age of 10.<sup>256</sup>

When asked if victims have access to family reunification, three justice officials said yes; three said they didn’t know; one said no; and one said not fully. No elaboration on these answers was given. Moldova’s legislation addressing family reunification, at least when it comes to trafficking victims, appears to be quite thorough. Based on the diversity of the responses from justice officials, it might be beneficial for the State to investigate the effectiveness of the law’s implementation in this regard.

### *Immigration services, such as counselling and applications for short-term stays*

Under the Trafficking Law, child victims must be given temporary visas until return to their country of origin is possible,<sup>257</sup> appointed a legal guardian by the State<sup>258</sup> and provided with provisional identity documents.<sup>259</sup> According to the US State Department’s 2015 Trafficking in Persons (TIP) Report, the government assisted in the repatriation of Moldovan victims identified abroad. Child victims of trafficking were generally “placed with relatives, in foster care, or in rehabilitation clinics that provided specialized medical and psychological care.”<sup>260</sup>

When asked if victims had access to immigration assistance, six justice officials said yes. Regarding immigration assistance, one Trafficking Police Professional said: “We absolutely don’t have [this] problem, only with Transnistria.”

It should be noted that when asked about access to recovery and reintegration services, one Cyber Crime Professional responded that children have access to all of the services mentioned in the questionnaire (physical and mental healthcare, family reunification, protective shelters or residential services, immigration assistance and a reflection period). However, s/he qualified his/her answer:

***“Unfortunately all the services listed above are accessible only when the criminal investigation is at the investigative stage. Immediately when it goes to trial stage, nobody cares [for] the children. With small exceptions of police officers who are maintaining contact with children...to be able to bring them to court hearings. Otherwise, nobody cares [about] children.”***

252 Article 10(4), COE Convention on Action against Trafficking in Human Beings.

253 Article 29(10), Law on Preventing and Combating Trafficking in Human Beings.

254 *Ibid.*, Article 28(1).

255 *Ibid.*, Article 28(2).

256 *Ibid.*, Article 28(4).

257 *Ibid.*, Article 28(6).

258 *Ibid.*, Article 29(4).

259 *Ibid.*, Article 10(11).

260 U.S. State Department (2015), “Trafficking in Persons Report: Moldova.”



### *Disappearance of SEC victims during proceedings*

Running away from State residential facilities is reportedly common in Moldova<sup>261</sup> and shelters lack security.<sup>262</sup> No programmes aimed at preventing victims from returning to exploitative conditions have been identified.

When asked if there were problems with children running away during criminal investigations, two justice officials replied that this is not a problem.

***“Children don’t run away, [they are] abandoned by the system...[and] relatives, getting into the nets of the criminals; children being again left astray, are looking for their faith, a better life, etc. Obviously, they avoid the system, which in fact doesn’t provide them with anything but repeated hearings.” [Cyber Crime Professional]***

While there may be victims who do not intentionally “run away,” as alluded to above, it may be more of a push and pull by adults (the child is pushed away by his/her family and pulled in by abusers) which can have a similar effect.

Other officials acknowledged that the disappearance of child victims can be a problem:

***“I had many cases when the child-victim couldn’t be found by the public prosecutor to come to court to make statements. Usually...the public prosecutor...is the person responsible [for] ensuring her presence. But many times the measures they can undertake in conformity with the law do not provide results because it is found that the victim is abroad.”<sup>263</sup> [Judge]***

***“Yes, I had such cases. I’d like to mention that many times the victims disappear; the public prosecutor can’t ensure their presence in court. The situation is difficult in such cases, because in the case when the victim wasn’t heard at the criminal investigation stage by the judge, it is mandatory to interview him/her in court, there’s a risk for the culprit to be acquitted due to the lack of evidence.” [Judge]***

***“I had such cases when victims, after being placed in a shelter, did run away. There are cases when they run away during the review of the criminal matter. Measures are undertaken to search for the victims, sometimes there’s a public prosecutor’s order to bring them by force. More complicated are situations when minors [leave] the country.” [Trafficking Police Investigator]***

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261 Republic of Moldova, Resolution 16/12, “Children’s rights: a holistic approach to child protection and promotion of work and/or living on the street,” <http://www.ohchr.org/Documents/Issues/Children/Study/RepMoldova.doc>.

262 U.S. State Department (2015), “Trafficking in Persons Report: Moldova.”

263 Some countries have victim-witness advocates or another person who maintains contact during the case. Moldova’s MDT should each have a caseworker who does this (so the entire burden is not placed on the Prosecutor).



*“These are the most important challenges which I’m facing when I’m managing a child-trafficking matter. Because these matters take time, sometimes over three, four or even more [years], the victims, after reaching full age, are leaving the country...most often it is not possible to find the victim.” [Prosecutor]*

*“Yes. It happens. Measures are undertaken to identify the whereabouts of these children, in the aim to identify the reasons and motives for the disappearing of these children and in order to prevent the re-victimization and exclusion of the facts of their influence on behalf of the traffickers.” [Trafficking Police Professional]*

It is unclear from the justice official responses what the motivations/factors are, leading to these children running away; the reasons could be numerous and varied: poor shelter conditions, fear of retaliation from offenders, the length of time taken for the proceedings, lack of faith in the justice system, or a desire to return home. It is vital that justice officials are able to identify these motivations and address them, as they can impede the child’s access to justice by preventing their full recovery and reintegration as well as perhaps preventing convictions and awards of compensation.

### *Training of professionals*

- **Specialised police training on interviews; police units/desks for SEC cases**

International law and regional mechanisms require Moldova to adopt measures to ensure that specialised units or persons are in charge of SEC investigations and that all personnel are properly trained.<sup>264</sup>

The Centre for Combating Trafficking in Persons (CCTP) leads trafficking investigations, including those involving child victims. It is staffed by 35 police officers in Chisinau and eight officers in regional divisions.<sup>265</sup> The Centre reportedly has a training curriculum for staff on relevant legislation, as well as identification, hearing and protection of victims.<sup>266</sup>

The Centre for Combating Cyber Crimes (CCCC) was created in 2012 as a subdivision of the General Police Inspectorate. The CCCC’s Child Protection Section is an investigative unit specialising in online recruitment and sexual exploitation of children. It seeks to curb child sexual abuse materials and other forms of online sexual exploitation of children.<sup>267</sup> The General Prosecutor’s Office also has a Cybercrime Section.<sup>268</sup>

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264 Article 34, Lanzarote Convention; see also: Article 8(4), OPSC.

265 U.S. State Department (2014), “Trafficking in Persons Report: Moldova.”

266 Fight Against Trafficking in Human Beings, “Fight against Trafficking in Human Beings and Organised Crime – Phase 1: Moldova” (THB/IFS/1).

267 Global Alliance against Child Sexual Abuse Online, Moldova, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitments/ga\\_commitment\\_-\\_moldova\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitments/ga_commitment_-_moldova_en.pdf); see also: Council of Europe (2014), “Report submitted by the Moldovan authorities on measures taken to comply with Committee of the Parties Recommendation CP (2012)6 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings,” Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, p. 12, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063bc2e>.

268 Global Alliance against Child Sexual Abuse Online, Moldova, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitments/ga\\_commitment\\_-\\_moldova\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/commitments/ga_commitment_-_moldova_en.pdf).



Moldova's *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings* (Trafficking Guidelines) set out the process of identifying victims of trafficking by specialists and include rules for identification interviews of trafficking victims.<sup>269</sup>

The International Centre La Strada conducts trainings and seminars for professionals working with/in contact with victims of trafficking, including in Moldova. The Centre has developed numerous Guidelines to assist in these trainings.<sup>270</sup> The ECPAT Europe Law Enforcement Group has also developed multiple training manuals to assist in better detection and prosecution of trafficking offences and better protection of children within the justice system.<sup>271</sup>

- **Specialised prosecutor/judicial training; specialised units/desks/courts**

The Lanzarote Convention requires Moldova to provide training on children's rights and sexual exploitation and abuse to judges, as well as prosecutors and lawyers.<sup>272</sup>

Since 2016, the Prosecutor's Office for Combating Organized Crime and Special Causes handles trafficking cases.<sup>273</sup> The Centre was created in 2006 and is composed of officials assigned by the Prosecutor General's Office, Customs Service, National Migration Bureau, Border Guard Service, Ministry of the Interior, Information and Security Service and National Anti-corruption Centre. As of 2014, seven prosecutors were assigned to focus solely on investigating and prosecuting trafficking cases.<sup>274</sup> It was reported in 2012 that the Prosecutor's Office also established a specialised unit to investigate cybercrimes, including online child sexual abuse materials.<sup>275</sup>

Moldova does not currently have specialised juvenile courts. Instead, cases involving child victims are heard by a single judge (or rarely, by a panel of three judges) in regular trial courts.<sup>276</sup> These judges must apply certain child-specialised procedures contained in the *Criminal Procedure Code*, such as special procedures governing the taking of child testimony.<sup>277</sup>

269 See: Section 2.6, "Rules for Identification Interviews of Victims of THB," Ministry of Labour, Social Protection and Family of Republic of Moldova (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*.

270 These include: *A methodological guide for the prevention of trafficking in persons; Practical guide on social assistance to victims of trafficking; Recommendations on the identification of victims of trafficking; Guidelines for law enforcement authorities and NGOs on anti-trafficking in South East Europe; Practical Guide on telephone counselling* (for the prevention of trafficking in persons); *Trainer's Guide Peer to Peer (annually updated editions); Curriculum for the continuous training of social workers on prevention and assistance to victims of trafficking; Guide for the cadets of the Police Academy "Stefan cel Mare"* (best practices to prevent and combat trafficking in persons); *Trainer in the thematic sessions trainer within training programs of the National Institute of Justice. La Strada Moldova, "Strengthening the capacity of professional groups (trainings, seminars)," accessed 10 May 2016, <http://migratiesigura.lastrada.md/en/strengthening-the-capacity-of-professional-groups-trainings-seminars/>.*

271 See, for example: ECPAT Europe Law Enforcement Group Programme against Trafficking in Children for Sexual Purposes in Europe in cooperation with ECPAT International (2006), "Combating the Trafficking in Children for Sexual Purposes: A training guide for the training of multi-stakeholder groups consisting of law enforcement personnel, social workers and caregivers," Amsterdam, Bangkok: ECPAT Europe Law Enforcement Group; ECPAT Europe Law Enforcement Group (2008), "Training for Trainer: A guide to training trainers – specifically in relation to trafficking in children and the sexual exploitation of children," Amsterdam, Bangkok: ECPAT Europe Law Enforcement Group.

272 Article 36, Lanzarote Convention.

273 See: Article 11(5), Law on Preventing and Combating Trafficking in Human Beings.

274 Council of Europe (GRETA) (2015), "Reply from the Republic of Moldova to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties" second evaluation round (Reply submitted on 11 February 2015), p. 10, accessed 12 May 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063bc32>.

275 U.S. State Department (2012), "Moldova Human Rights Report," accessed 28 June 2016, <http://www.state.gov/documents/organization/204527.pdf>.

276 Article 30, Criminal Procedure Code.

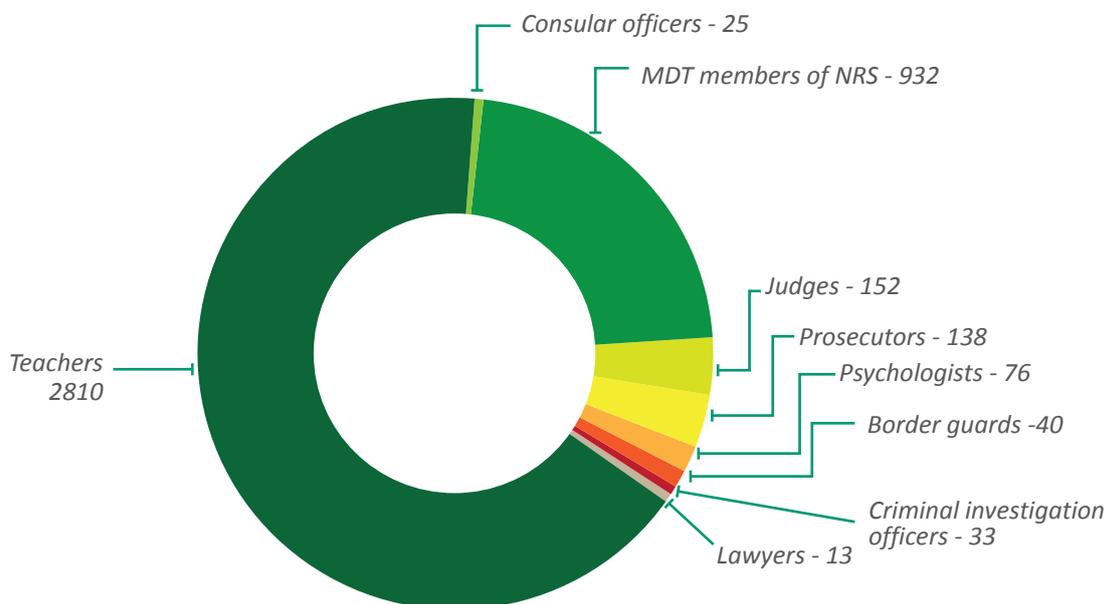
277 See, for example: Article 1101, Criminal Procedure Code: requiring that hearings of child victims up to age 14 take place in special rooms, with audio/video recording equipment, conducted by a specially-trained interviewer, with the



In 2014, a training session was held to help prosecutors, judges and psychologists understand the best interests of child victims.<sup>278</sup> The training focused on investigation and prosecution of trafficking and sexual exploitation and on the utilisation of special procedures for the interview of child witnesses.<sup>279</sup>

According to data from 2014, 4229 specialists were provided training on the trafficking of human beings including judges, prosecutors, psychologists, criminal investigating officers, lawyers and members of the MDTs of the NRS. These training included, but were not limited to, workshops on “hearing of children-victims/witnesses/sexual exploitation of victims” and seminars on “special protection of children victims/witnesses of crimes” and “hearing of children victims/witnesses of abuse and sexual exploitation.”<sup>280</sup>

### Specialists trained on human trafficking



[Chart taken from Council of Europe, GRETA (2015), “Reply from the Republic of Moldova to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.” The chart represents the majority of professionals trained, but is not inclusive of all specialists trained on human trafficking].

investigation judge, prosecutor, defence attorney, the child’s legal representative and others confined to a separate viewing room.

278 La Strada Moldova, “Continuous training for psychologists and people from the judicial system,” 24 October 2014, accessed 28 June 2016, <http://sigurantacopii.lastrada.md/en/continuous-training-for-psychologists-and-people-from-the-judicial-system/>.

279 *Ibid.*

280 Council of Europe (2015), GRETA Report, pp. 19-20.



*In 2012, a Training Seminar was conducted through a USAID Rule of Law Institutional Strengthening Programme and prepared by La Strada, on “Interviewing children witnesses of sexual abuse/exploitation.” The goal of the course was to “equip participants [eight prosecutors and nine judges] with knowledge and skills that will allow them to organise a favourable environment for children’s testimony in court assuring that children’s rights and best interests will be respected.” Objectives of the course included teaching participants about the impact of trauma on children’s behaviour during investigative procedures and in court, and training participants in advanced interviewing techniques, adjusted to the children’s age and specific traumas.*

*While participants were able to identify the components of SEC, there was reportedly confusion related to the Criminal Procedure Code amendment, article 110. When practicing the skills learned, it was observed that while “at the theoretical level, participants seem[ed] to understand and agree with [the] presented skills...[a]t the practical level they still continue[d] to use old/familiar communication skills, which are not always suitable for interviewing victim/children.”<sup>281</sup>*

### Support persons

Under international and regional legal mechanisms Moldova is required to “provid[e] appropriate support services to child victims throughout the legal process,”<sup>282</sup> including free (where warranted) legal aid.<sup>283</sup>

*Legal representatives for children:* Parents, tutors or custodians shall serve as legal representatives for the child, and if they are not available, the court will appoint the tutelage authority as the legal representative. Legal representatives have a right to be kept informed and to participate in the proceedings with the child. They also have a variety of legal-related duties, such as reviewing all case materials and submitting legal complaints and requests.<sup>284</sup>

*Lawyers:* Victims of severe crimes, such as SEC victims, also have a right to be assisted by a court-appointed attorney, if they are unable to afford an attorney.<sup>285</sup> Victims of less severe crimes have a right to be assisted by a lawyer, at their own cost, during the parts of the case requiring their participation.<sup>286</sup> Since 2013, qualified legal aid must be provided to child victims of crime, under the *Law on State Guaranteed Legal Aid*.<sup>287</sup>

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281 USAID and La Strada (2012), “Training Seminar on interviewing children witnesses of sexual abuse/exploitation,” Chisinau: USAID/Moldova, [http://pdf.usaid.gov/pdf\\_docs/PA00HXKW.pdf](http://pdf.usaid.gov/pdf_docs/PA00HXKW.pdf).

282 Article 8(1)(d), OPSC.

283 Article 31, Lanzarote Convention: (1)(d) “providing them with appropriate support services so that their rights and interests are duly presented and taken into account”; (3) “Each Party shall ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings.”

284 Articles 75-77, Criminal Procedure Code.

285 *Ibid.*, Article 58(4).

286 *Ibid.*, Article 58(3).

287 Article 19(11), Law on State Guaranteed Legal Aid, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325350&lang=1> (in Romanian).



**Confidants:** Victims of severe crimes also have a right to be accompanied by a confidant, in addition to their attorney, during all proceedings, including closed hearings.<sup>288</sup>

**Translators:** The national legislation is differentiating the procedural role of the translator (the specialist who is translating in written form) and of interpreter (the specialist who is translating in oral form). The State must appoint either translator or interpreter, or both.<sup>289</sup>

When asked if children receive legal aid, interpretation services, help of a solicitor or *ad litem* supervisor, five of nine justice officials responded with an unconditional yes.

However, as evidenced by other justice official responses, it is not uncommon for NGO lawyers/representatives to fulfil the State's obligation to provide legal assistance (this is not unique to Moldova and was found in ECPAT's Access to Justice Study in Nepal, the Philippines and Thailand as well). While it is the duty of the State to provide this assistance, the support of NGOs can be incredibly valuable, especially when they may have the skills and resources that the official child protection services do not. However, it is still vital that the State provide these services, even with limited resources, as NGOs cannot assist in all cases. Several officials said that children only receive the support services mentioned above when NGOs are involved. A Cyber Crime Professional said that children receive these services "only in cases when an NGO had knowledge of the case and got involved at the very initial stages, referring the case to the police. Otherwise – NO." When asked about support services, a Judge identified La Strada as a "special organisation" which provides legal assistance to SEC victims.

When asked if SEC victims receive pertinent data and support during trial, eight out of nine justice officials said yes.

According to a leading national NGO on CSEC:

***"Despite ample provisions on victims' rights in the national legislation, there still are such issues as the lack of the ex officio attorney and psychologist, the victims' distrust of criminal justice, the widespread opinion that children themselves are responsible for getting trafficked, deficient practices of case management and communication between all involved parties (judicial and law enforcement authorities), [and] the lack of appropriate equipment for interviewing children in child-friendly rooms."***<sup>290</sup>

For victims of SEC, having a lawyer, guardian *ad litem* or other support person helps to ensure that their best interests are considered, that they are informed of their rights and the proceedings and that their views are solicited and taken into consideration. The importance of having one person to guide and support the child through the entire process – and not on an *ad hoc* basis – cannot be overstated. By law, Moldova is required to appoint child victims a lawyer under certain circumstances. However, based on some of the justice official responses, it appears organisations like La Strada – who are not contracted or paid by the State – are heavily relied upon to represent these children. According to La Strada Moldova, the State does not cover any costs related to legal assistance and victims of crimes do not have access to free legal assistance.<sup>291</sup>

288 Article 58(4), Criminal Procedure Code.

289 *Ibid.*, Article 85.

290 La Strada Moldova, "The Best Interest of the Child – A Priority for the Legal System," 27 February 2014, accessed 28 June 2016, <http://sigurantacopii.lastrada.md/en/the-best-interest-of-the-child-a-priority-for-the-legal-system/>.

291 La Strada Moldova, email communication with author, Bangkok, Thailand, 7 July 2016.



When analysing assistance to victims during SEC cases, it is important to highlight that all children should be entitled to these rights and services, even if thought to be more mature or of an age that is better able to handle these types of situations. However, under Moldovan law, many services and protections mentioned above only apply to those children under 14 years of age. While not all children may want or need these specialised protections, all children should have the right to them.

In the area of support, protection and care of SEC victims during a case, legislation in Moldova appears to be strong, at least in regard to the Trafficking Law. However, based on justice official responses, the implementation of the law is less clear. Particular attention should be paid to the implementation and practice of Moldova's MDTs, especially regarding the involvement of justice officials.

### Financial assistance

One reason the right to reparation is so vital for access to justice is that the costs associated with criminal cases can sometimes discourage SEC victims and families from participating, particularly if, as is common in Moldova, the victim is from a rural area and has been trafficked into a city centre.<sup>292</sup>

The Council of Europe *Convention on Action against Trafficking in Human Beings* requires each Party to provide free legal aid for victims in its domestic law.<sup>293</sup> Article 227 of Moldova's *Criminal Procedure Code* requires the State to pay witness fees and other expenses incurred in the "normal course of criminal proceedings," such as the cost of interpreters, storage of evidence, and any legal assistance guaranteed by the State, including legal assistance to SEC victims in serious criminal cases. A witness may also be reimbursed for the cost of transportation, accommodation, and lost wages related to his/her appearance before an investigative body or court, but it is unclear if witnesses receive these reimbursements in practice. Based on justice official observations regarding financial costs to victims, this does not appear to be the case.

When asked if victims fail to participate in criminal cases until their conclusion because of financial costs, such as court expenses, transportation and costs of childcare, two justice officials said no, with one Trafficking Police Professional asserting that the State covers all costs.

Five justice officials recognised that there are problems in this regard. All five pointed to the same issue regarding finances: the victim's cost of transportation to the trial location.

***"There are problems; we give them personal money for transportation."  
[Prosecutor]***

***"There are cases when because of lack of financial means the victims can't commute from another region of the country except the one where the trial takes place."  
[Judge]***

***"The problems do exist, most of the victims being vulnerable from the social-economic point of view. Often it happens that police officers pay money for the transportation of victims from their own means."  
[Trafficking Police Investigator]***

***"There are problems; we give them our own money for transportation."  
[Prosecutor]***

292 See: UNFPA (2011), "Action against Human Trafficking and Domestic Violence in Moldova," p. 4.

293 Article 15(2), COE Convention on Action against Trafficking in Human Beings.



*“I had cases when they were refusing to come because of the travel expenses. In such cases costs were covered from the pockets of the police officers.” [Cyber Crime Professional]*

This lack of financial support by the State may serve as a large deterrent for child victims to participate fully in the justice process.

## VIII. The right to be heard

International law requires Moldova to consider a child victim’s views and give them due weight during all stages of the criminal justice process.<sup>294</sup>

The *Criminal Procedure Code* authorises juveniles to testify<sup>295</sup> and they are exempt from taking the oath.<sup>296</sup> Witnesses who refuse to testify or evade testifying may be held criminally liable under Article 313 of the Criminal Code.<sup>297</sup> According to La Strada Moldova, this is generally not an issue related to victims of SEC, as they cannot be punished for refusing to give a statement under the Trafficking Law. Under Moldova’s *Law on the Rights of the Child*, all children who are “capable of formulating their own views” have the right to freely express them on all issues affecting their life. Once a child has reached the age of 10, the State must take his/her opinion into account, unless it contradicts the child’s best interest. A child must also have the opportunity to be heard during legal or administrative procedures affecting his/her life, either directly or through a legal representative.<sup>298</sup>

The Trafficking Law also requires the State to “respect[] the opinion of a child victim of trafficking in human beings over 10 years old regarding all actions affecting him/her, taking into account the age, degree of maturity and his/her best interest.”<sup>299</sup>

However, pursuant to Moldova’s *Criminal Procedure Code*, child victims under age 14 lack “legal capacity” to exercise their rights and must rely on a legal representative, such as their parents or guardians, to exercise their rights for them. Child victims under age 18 have limited legal capacity and may exercise some rights independently, but may not withdraw a complaint or reconcile with the accused on their own.<sup>300</sup>

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294 Article 12, CRC: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child; 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law;” Article 8, OPSC: “Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;” see also: Article 31, Lanzarote Convention: “enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered.”

295 Articles 90 and 91, Criminal Procedure Code. The Code defines a juvenile as “a person who has not reached the age of 18,” Article 6(47).

296 *Ibid.*, Article 481.

297 Article 313, Criminal Code: “The refusal or evasion of a witness or of an injured party to make statements in the course of a criminal investigation or trial shall be punished by a fine of up to 300 conventional units;” see also: Articles 60 and 90, Criminal Procedure Code.

298 Article 8(2) and (3), Law on Child Rights.

299 Article 26(c), Law on Preventing and Combating Trafficking in Human Beings.

300 Articles 75-77, Criminal Procedure Code.



A Prosecutor confirmed that the opinion of the child is taken into consideration during SEC cases. A Judge pointed out that:

***“[T]he court asks the child if he wants to make statements in the presence of the culprits, in the presence of the mother and in all cases the court takes into consideration the will of the child.”***

The fact that judges are asking children how they prefer to testify is an important aspect of the access to justice process, as it reflects a desire to treat each child individually, rather than apply special procedures in a “one-size-fits-all” manner.

When asked if they had changed their working procedure in a SEC case based on the opinion of a child, five of the nine justice officials said yes. Examples included:

***“There were cases when, following the opinion of the child, we did interview him in the absence of the culprits.” [Judge]***

***“In all cases when the law provides it, so that the procedure isn’t violated. In the same time, we should realize that the court ensures the protection of the procedural rights of the culprits, so that to provide them the right and possibility to address questions to the child and take part to the review of all evidence.” [Judge]***

***“When the removal of the legal representative [was requested]” [Trafficking Police Investigator]***

***“The tactics are changed or formed coming from the information presented by the child...[t]he only positive experience I had, when the child was heard in the absence of the parents, their interests being represented by a state appointed legal representative, the procedure being changed coming from the child’s interests.” [Cyber Crime Professional]***

The participation of a child as a victim or witness in a SEC case and his or her experience therein can be a significant aspect of whether s/he is able to access justice. It is therefore vital that even those children under the age of 14 who lack “legal capacity” to exercise their rights are able to express their opinions in matters that affect them and have their views taken into consideration by the justice system.

## **IX. The right to privacy and safety**

International law requires Moldova to take steps to protect the privacy and safety of child victims during criminal proceedings. It must adopt measures:

***“protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims [and] providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.”<sup>301</sup>***

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301 Article 8, OPSC; see also: Article 31, Lanzarote Convention.



Moldova's *Criminal Procedure Code* obligates police, prosecutors and judges to take action to protect victims and their families, if their safety is endangered as the result of participating in criminal proceedings:

***“Should there be sufficient grounds to consider that the injured party...or their close relatives may be or have been threatened with death, violence, the damage or destruction of their goods or with other illegal acts, the criminal investigative body and the court shall be obliged to undertake the measures provided in the legislation to protect the lives, health, honour, dignity and the goods of these persons and to identify the persons guilty of making the threats and subject them to liability.”<sup>302</sup>***

Trafficking victims under age 18 are “provided all measures of the specialised protection, stipulated by regulations in the sphere of children’s rights and child protection.”<sup>303</sup>

Moreover, Moldova’s Special Child Protection Law requires child protection authorities to identify children at risk, including those engaged in prostitution or separated from their parents. If these children are in an unsafe situation during the criminal proceedings, local authorities must have a child specialist do an assessment and, if there is a direct threat to the child, act immediately to find a safe placement.<sup>304</sup> Child protection authorities are liable for the failure to act and a child may seek compensation for any violations.<sup>305</sup>

Moldova has various mechanisms in place to protect child victims’ right to privacy and safety, including: ensuring the confidentiality of the victims’ personal information, the provision of closed hearings, pre-trial detention and release, and a Witness Protection Law.

### **Confidentiality of personal information**

Under Article 212 of the *Criminal Procedure Code*, criminal investigation materials may only be disclosed if the prosecutor finds that disclosure would not harm the interests of the accused, victim, or other participants. The prosecutor must warn victims, experts, attorneys, interpreters and others attending the proceedings about the confidentiality requirement.<sup>306</sup> In trafficking cases, prosecutors must ensure that the victim’s personal information is not disclosed.<sup>307</sup> The personal information of persons protected under Moldova’s *Law on Witness Protection and other persons who participate in the Criminal Procedure* (Witness Protection Law) is also confidential and may not be disclosed.<sup>308</sup>

When asked how the identity of victims and families are protected in Moldova’s criminal justice system, the majority of justice officials said that all data is kept confidential and that there is non-disclosure of personal data of victims and their families.

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302 Article 215, *Criminal Procedure Code*; see also, Article 58, *Criminal Procedure Code*: victim’s right to protection during criminal proceedings.

303 Article 2.7, Ministry of Labour, Social Protection and Family of Republic of Moldova (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*.

304 Articles 8-11, *Law About Special Child Protection of Children at Risk and Children Separated from Parents*.

305 *Ibid.*, Article 22.

306 Article 212, *Criminal Procedure Code*.

307 Articles 21 and 26, *Law on Preventing and Combating Trafficking in Human Beings*.

308 Article 4, *Law on Witness Protection and other persons who participate in the Criminal Procedure*.



When asked if, based on their experiences, the safety and identities of victims and families are adequately protected during SEC cases, seven officials said yes, one did not answer and one said no. The Cyber Crime Investigator who answered no explained that he did not feel the protection mechanisms were sufficient as:

*“many times the community finds out about what has happened, this is because of the low professional level of the police officer from the community or sometimes mass-media doesn’t comply with the professional ethics and discloses data about the victim, even if names and surnames aren’t called, but data such as locality, family from which he/she comes, the school of the victim, easily lead to the identification of the victim by the community.”*

### Closed hearings

According to Moldova’s *Criminal Procedure Code*, testimonies of child victims may only be given in closed hearings.<sup>309</sup> When asked about mechanisms to protect the identities of SEC victims, two justice officials specifically mentioned the use of closed hearings.

### Pre-trial detention of accused

The detention of a suspect may be ordered if there are reasonable grounds to assume that s/he will evade a criminal investigation, prevent the finding of the truth, or commit other crimes. In such cases, adults may be detained for up to 72 hours<sup>310</sup> and juveniles for up to 24 hours.<sup>311</sup> Suspects may also be detained under certain circumstances, including for commission of a crime during a hearing.<sup>312</sup> House arrest may also be possible and may come with additional security measures, such as communication restrictions or electronic tracking devices.<sup>313</sup>

### Pre-trial release subject to restrictive conditions

Instead of detention, courts may impose preventive measures that restrict the defendant’s movement, including orders requiring him not to leave a locality, provisional release on bail, house arrest and preventive arrest.<sup>314</sup>

### Witness Protection Law

When asked how the police and public prosecutor provide for the safety of victims and families during cases, four of the nine justice officials mentioned the Law on Witness Protection, based on which, according to one Judge, “any participant in case of imminent danger may request to be included into the assistance programme.”

SEC victims are eligible for special protection under Moldova’s Witness Protection Law when their “life, corporal integrity, freedom or property are under threat owing to possession of information which they agreed to provide to judicial authorities and which is proof of a serious crime,” including SEC-related crimes. Victims may apply for special protection under the Law, or prosecutors may apply on their own initiative.<sup>315</sup>

309 Article 18, Criminal Procedure Code.

310 *Ibid.*, Article 166(5).

311 *Ibid.*, Article 166(6).

312 *Ibid.*, Article 171.

313 *Ibid.*, Article 188.

314 *Ibid.*, Articles 175 and 176.

315 Articles 5-11, Law on Witness Protection.



Trafficking victims are entitled to State protection as soon as they are identified,<sup>316</sup> and multidisciplinary regional teams have a role in coordinating issues of protection for victims of trafficking.<sup>317</sup>

“Urgent” protective measures may include: assigning a bodyguard, supervising the victim via audio or video devices, placing the victim in a temporary safe house, or even restricting the victim’s movement for his/her own protection.<sup>318</sup> Other measures include: protecting the victim’s identification data, changing her/his phone number, residence or school, installing a security system in her/his home, or using special interrogation methods,<sup>319</sup> such as interviewing her/him outside the presence of the accused.<sup>320</sup>

Certain “relief” measures may also be provided to the victim, such as integration into other social environments, professional retraining, medical care, legal aid, psychological and public assistance, and assistance in the receipt of a new profession or provision of worthy income until obtaining employment.<sup>321</sup>

## Implementation

Despite the availability of protection measures, it has been reported that victims are not adequately protected, and both victims and witnesses have been threatened. On occasion, intimidation of witnesses has been reported to have occurred in court despite the presence of police and prosecutors.<sup>322</sup> While there appears to be various legal mechanisms in place to protect children’s safety, even with the best legislation on the books, the effectiveness of such laws will be hampered without proper implementation and adequate resources. If child victims cannot rely on the justice system to keep them safe, this will greatly affect their ability to access justice.

## X. The right to protection from hardship

According to the UN Guidelines on child victims and witnesses of crime, child victims have the right to be protected from hardship during the justice process. This right includes ensuring the child’s best interests, including avoiding delays, avoiding confrontations with the accused and utilising child-sensitive procedures.<sup>323</sup>

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316 Article 58(5), Criminal Procedure Code.

317 Fight Against Trafficking in Human Beings, “Fight against Trafficking in Human Beings and Organised Crime – Phase 1: Moldova” (THB/IFS/1); see also: U.S. State Department (2014), “Trafficking in Persons Report: Moldova.”

318 Article 13(3), Law on Witness Protection.

319 *Ibid.*, Article 14.

320 Article 110, Criminal Procedure Code.

321 Article 22, Law on Witness Protection.

322 U.S. State Department (2015), “Trafficking in Persons Report: Moldova.”

323 See: UN Guidelines on child victims and witnesses of crime, Guideline XI.



## Ensuring the best interests of the child<sup>324</sup>

International law requires Moldova to ensure that the child's "best interests" are given primary consideration in all actions involving them.<sup>325</sup> Moldova is directly bound by the Council of Europe's Lanzarote Convention which requires States parties to take "the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interest and respecting the rights of the child."<sup>326</sup>

Moldova's 2013 *Law About Special Protection of Children at Risk* requires that all child protection measures, including those in cases involving children engaged in prostitution, be performed with the child's best interests as a primary consideration.<sup>327</sup> The Trafficking Law also states that "the activity of public administration authorities, bodies, and organizations with duties in the field of preventing and combating trafficking in human beings shall focus on the best interests of the child."<sup>328</sup>

When asked how the child's best interest is taken into consideration during a trial against alleged SEC offenders, one official replied that this was "hard to answer;" one said it "depend[ed] on the complexity of the matter;" and another responded that s/he had "no experience in this regard."

Both of the Prosecutors interviewed cited a reduction in re-victimisation as a best interest practice, through the presence of a psychologist and/or legal representative, and the taking into account of the opinion of the child when s/he does not want his/her parents to be present during interviews. One Prosecutor also said that when repeated hearings are sought, the court tends to reject such applications. One Judge also said that "the court does everything possible for the victim to be heard in just one hearing in court, excluding the culprits from the court room" and that "the questions of the participants are addressed in such a way so they won't affect the dignity of the victim."

It is of course to the child's benefit to avoid unnecessary hearings and there are those, like La Strada, that promote the limiting of hearings as a general rule. However, a hard-and-fast rule against repeated hearings may not suit every child. It is important to consider the child's best interest on an individual basis in this regard.

Another Judge said that judges take into account the child's interest; for example, children under 14 years of age – and in some cases even older children – are interviewed in special conditions. A Trafficking Police Investigator responded that measures are undertaken to exclude visual contact between the victim and offender.

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324 According to the UN Committee on the Rights of the Child, "the 'best interests of the child' is a right, a principle and a rule of procedure based on an assessment of all elements of a child's or children's interests in a specific situation... Assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The 'best-interests assessment' consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff – if possible a multidisciplinary team –, and requires the participation of the child. The 'best-interests determination' describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment." UN Committee on the Rights of the Child, "General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)," UN Doc. CRC/C/GC/14, 29 May 2013, paras. 46 and 47.

325 Article 8(3), OPSC.

326 Article 30(1), Lanzarote Convention.

327 Article 4, Law About Special Child Protection of Children at Risk and Children Separated from Parents.

328 Article 25, Law on Preventing and Combating Trafficking in Human Beings; see also: Article 26: "the following special principles shall be taken into account in the activity of preventing and combating trafficking in children and protecting and assisting child victims of such trafficking: (c) respecting the opinion of a child victim of trafficking in human beings over 10 years old regarding all actions affecting him/her, taking into account the age, degree of maturity, and his/her best interests."



The examples provided above all show a willingness on the part of justice officials to provide special protections for victims of SEC; however, officials can have a wide variety of interpretations about what the best interests of the child means – not only in Moldova, but in many justice systems around the world. There appears to be no systematic assessment procedure that is a normal part of case proceedings and no guardian *ad litem* assigned to protect each child’s best interests. Laws may mention the best interest of the child but do not necessarily provide a formal procedure to determine what this is, like the one recommended by the Committee on the Rights of the Child.<sup>329</sup> As a result, officials can construe a child’s best interests to mean a variety of things.

It appears from the justice official responses that they are on the right track as far as identifying specific mechanisms and procedures to respect the child’s best interests in SEC cases; however, a formal procedure should be developed and implemented so that all justice officials can recognise and determine what is in the child’s best interests in a systematic manner.

### Avoiding confrontations with the accused

The Lanzarote Convention requires States parties to take legislative or other measures to ensure that a “victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.”<sup>330</sup>

Moldova law states that “no juvenile shall be forced to participate in a confrontation with a person accused of a crime against his/her physical and/or moral integrity.”<sup>331</sup> Victims must also be allowed to identify the accused in a line-up in a way that prevents the accused from seeing them.<sup>332</sup>

### Avoiding delays

According to the Lanzarote Convention, any interview with a child victim must take place without undue delay<sup>333</sup> and the OPSC states that States parties shall adopt appropriate measures to avoid unnecessary delays in the disposition of cases.<sup>334</sup> The *Criminal Procedure Code* specifies that all criminal investigations and hearings are required to occur within a reasonable timeframe.<sup>335</sup> The reasonableness of the timeframe is to be determined based on case complexity, conduct of parties and of investigative bodies and the court, as well as whether the victim is a child.<sup>336</sup> The prosecutor is responsible for ensuring a reasonable time frame is observed.<sup>337</sup> However, it was reported in 2014 that “court hearings were frequently delayed and prosecutors did not maintain regular contact with victims” of trafficking.<sup>338</sup>

When asked how long a SEC case generally lasts, answers of justice officials varied from several months to five years. According to the officials, the duration of the case depends on various factors, including the presence of victims/witnesses and the complexity of the matter, especially in cross-border cases. According to one Trafficking Police Professional:

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329 See: “General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.”

330 Article 36, Lanzarote Convention.

331 Article 113, Criminal Procedure Code.

332 *Ibid.*, Article 116.

333 Article 35, Lanzarote Convention.

334 Article 8(1)(g), OPSC; see also: Article 30(3), Lanzarote Convention.

335 Article 20(1), Criminal Procedure Code.

336 *Ibid.*, Article 20(2).

337 *Ibid.*, Article 20(4). For additional guidelines on duration, see also: Articles 274, 276, 281, 282, 284, 289, 291, 296, *Ibid.*

338 U.S. State Department (2014), “Trafficking in Persons Report: Moldova.”



*“[A]ll existing legal leverages at the national and international levels [are used] to comply with the reasonable time frame, especially in the case of children.”*

However, if there are SEC cases that continue for a time period of years, it would seem these efforts are failing. SEC cases that continue on for long periods of time can not only have negative implications for victims involved in the proceedings (e.g. not being continually informed about the status of the proceedings, lack of resources to continue involvement, frustration at the process in general), but they can also discourage victims from engaging with the criminal justice system at all, which can impede their ability to secure remedies for the harm caused to them.

### Child-friendly procedures

- **Interviews conducted by trained professionals**

Pursuant to the Lanzarote Convention, any interview with a child victim must be carried out by trained professionals.<sup>339</sup> In Moldova, the National Referral System has regional multidisciplinary teams with trained specialists who must be authorised before they conduct interviews with potential trafficking victims. The specialist must be of the same gender as the victim.<sup>340</sup>

- **Interviews conducted in presence of parents, guardian or legal representative, educator or psychologist, and confidant**

The Lanzarote Convention also requires Moldova to take steps to ensure that a child may be accompanied by his/her legal representative or, where appropriate, an adult of his/her choice when being interviewed.<sup>341</sup> According to Moldova’s Trafficking Guidelines, when the victim is a child, the child should be accompanied by a parent, guardian or other legal representative, educator or psychologist. If the child does not want his/her parent(s) present, he/she must invite another legal representative.<sup>342</sup> In cases of severe crimes, such as SEC, the child may also bring a confidant.<sup>343</sup>

- **Child-friendly interview rooms**

The Lanzarote Convention and Moldova’s Trafficking Guidelines state that interviews should take place in a child-friendly place, when necessary.<sup>344</sup> According to the Guidelines, the interview may be conducted at a specialised centre, the specialist’s office, or the victim’s home. The place must be “comfortable, safe and isolated.” The Guidelines go so far as to describe specific requirements of the furniture in the room, asserting that the chairs for the interviewer and victim must be the same height and the furniture should be arranged so as not to create barriers between them.<sup>345</sup>

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339 Article 35, Lanzarote Convention.

340 See: Article 2.6, “Rules for Identification Interviews of Victims of THB,” Ministry of Labour, Social Protection and Family (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*.

341 Article 35, Lanzarote Convention.

342 Article 2.6, “Rules for Identification Interviews of Victims of THB,” Ministry of Labour, Social Protection and Family (2012), *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*.

343 Article 58, Criminal Procedure Code.

344 Article 35, Lanzarote Convention.

345 See: Article 2.6, *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*.



- **Limits on repeat interviews**

The Lanzarote Convention mandates that States take steps to ensure that the number of interviews is limited and that the same professional conducts all the interviews of the child. Measures must also be put in place to videotape the interview and admit it into evidence in the criminal proceedings.<sup>346</sup>

According to Moldova's *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*, "after completion of the final identification of [a victim] by an authorized person of one of [the] organizations participating in NRS, it is prohibited to conduct similar and/or repeated interviews for the same purposes by specialists of other organizations – participants in NRS."<sup>347</sup>

- **Alternatives to courtroom testimony**

Victims of any age may testify at trial via electronic means, from a separate room outside the courtroom, when the court finds that there are "sound reasons to consider that the life, corporal integrity, or freedom of [the] witness or his/her close relatives are in danger due to his/her testimony in a criminal case on a serious, especially serious or exceptionally serious crime,"<sup>348</sup> such as a SEC crime. Witnesses, prosecutors, attorneys or other interested persons can request this protection from the judge or the judge can order it on his/her own initiative.<sup>349</sup>

It should also be noted that videotaped testimony of a witness may only be used as a source of evidence to the extent it is confirmed by other evidence.<sup>350</sup> It may also be admitted when it is impossible for the witness to appear in court or to ensure his/her security.<sup>351</sup>

According to a 2014 Amendment to the *Criminal Procedure Code*, there are now specific child-friendly procedures in place for conducting a hearing of minor witnesses during the investigation period that can supplant the child's appearance at trial.

### 2014 Criminal Procedure Code Amendment on Child-Friendly Procedures

Pursuant to a 2014 amendment to the *Criminal Procedure Code* (Article 1101), hearings of witnesses under the age of 14 in criminal cases concerning sexual offenses, trafficking or domestic violence must follow specific child-friendly procedures:

- a. The child is questioned by a trained interviewer in a special room, equipped with audio/video recording facilities.
- b. The investigative judge, prosecutor, defence counsel, psychologist and legal representative of the child stay in a separate viewing room. The accused is not present at all.
- c. The participants address questions to the judge who forwards them to the interviewer, who then poses them to the child.
- d. The hearing must be carried out to "avoid causing any adverse effect on [the child's] mental state."
- e. The accused receives a copy of the child's testimony and can submit additional questions at a second hearing, if necessary, but "repeated hearing of the minor shall be avoided to the extent possible."<sup>352</sup>

346 Article 35, Lanzarote Convention.

347 Article 2.6, para. 59, *Guidelines on the Identification of Victims and Potential Victims of Trafficking in Human Beings*.

348 Article 110, Criminal Procedure Code.

349 *Ibid.*

350 Article 110(8), Criminal Procedure Code.

351 Article 371, Criminal Procedure Code; see also: Article 35(2), Lanzarote Convention: requiring Moldova to take steps to ensure that interviews of child victims are videotaped and the videotapes are admissible in evidence, to the extent provided by Moldova's domestic law.

352 Article 110, Criminal Procedure Code; see: La Strada Moldova, "Child-friendly hearing of victims/witnesses has become a law," 20 August 2014, accessed 29 June 2016, <http://sigurantacopii.lastrada.md/en/child-friendly-hearing-of-victimswitnesses-has-become-a-law/>.



It is important to note that these special procedures only apply to those children under 14 years of age. There may be certain children from 14-17 years of age who do not want or need the special procedures but the decision should be made on a case-by-case basis and not by a one-size-fits all approach.

When asked if during investigation and trial, children are allowed to make witness statements that are recorded/taped, in hearing rooms or other special modalities, all nine justice officials said yes.

According to one Judge:

*“Child-victims below 14 years of age are heard in special conditions, with the application of the audio-video taping. Also, the older victims, at the request of the public prosecutor or the victim may request, if necessary, to be heard at the criminal investigation stage by the judge. This happens in cases when there’s a risk for the victim to leave abroad and not be present at the court hearing. Also, the victims may be heard with the application of special means, when they are abroad. Then a videoconference is organised.”*

- **Restrictions on who may be present during trial testimony**

Where a juvenile is a victim or witness, his/her testimony is heard in a closed court.<sup>353</sup> Only a specially-trained interviewer may be present in the same room during the testimony of a SEC victim under the age of 14, although the child’s legal representative can be nearby in a viewing room.<sup>354</sup> Older SEC victims may testify via electronic means, including via closed teleconference with their image and voice distorted, if allowed by court order.<sup>355</sup> They may be accompanied by their legal counsel and a confidant.<sup>356</sup>

- **Restrictions on questioning by defence counsel**

Questions obviously aimed at insulting or humiliating a person are prohibited during the examination of a witness.<sup>357</sup>

- **Use of testimonial aids or comfort items**

All witnesses may make sketches or drawings to illustrate their statements.<sup>358</sup>

- **Rape shield laws and other special evidentiary rules**

Article 111(3) of the *Criminal Procedure Code* sets forth Moldova’s rape shield law, preventing the defence from offering evidence about the alleged character or personal history of a victim of a sexual crime, except when the court is convinced, after an *in camera* hearing, that the evidence is relevant and its exclusion could prejudice the defendant. In these cases, the court must set specific limits on the questioning.<sup>359</sup>

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353 Article 18(21), Criminal Procedure Code; see also: Article 36, Lanzarote Convention: requiring Moldova to take steps to ensure that the child victim may be heard in a closed courtroom, or be able to testify outside of the courtroom.

354 Article 1101, Criminal Procedure Code. La Strada Moldova confirmed that every victim of trafficking can be accompanied by a confidant during testimony. La Strada Moldova, email communication with author, Bangkok, Thailand, 7 July 2016.

355 Article 110, Criminal Procedure Code; see also: Article 369: the victim, “upon his/her request or on a motion by the prosecutor may be heard in the absence of the defendant who shall be given the possibility to review the statements and to address questions to the person heard.”

356 Article 58(4), Criminal Procedure Code.

357 *Ibid.*, Article 105(8).

358 *Ibid.*, Article 90(12)(9).

359 *Ibid.*, Article 111(3).



- **Use of expert witnesses to increase understating of SEC and victims**  
Experts may provide evidence based on applied special knowledge of science, technology, art or other areas, excluding law.<sup>360</sup>

### Differences in Child-Friendly Hearing Procedures based on Age of Victim

SEC Victims up to age 14, Art. 110/1, Criminal Procedure Code	SEC Victims age 14-17, Art. 110, Criminal Procedure Code
Hearing of a minor witness shall be performed by the investigating judge in special rooms, equipped with audio/video recording, via an interviewer.	Victim generally must testify live; can testify via teleconference only if able to show risk of danger
Accused is absent; viewing room shall contain the investigative judge, the prosecutor, defence counsel, the minor's legal representative, etc.	Closed court with accused present
Court-appointed attorney and confidant to be present with child at hearing	Lawyer, only if hired by victim, and confidant
Questioning must "avoid causing any adverse effect on [the child's] mental state."	No special requirement

When asked specifically about child-friendly procedures, four of the nine justice officials identified a special hearing room for children under 14 years of age where, according to one Judge, the suspected/charged party does not have access. Other officials identified communications with psychologists/counselling and a pleasant/amiabile interview environment as child-friendly procedures in use by the justice system.

When asked to state the challenges they face working with SEC victims during investigations and trial, three justice officials said that there were none. Others listed a variety of challenges, including:

*"I did mention that it is complicated to review such a matter, when the victim is not in the country any more, while during criminal investigation he/she wasn't heard by the judge. Or I had cases when initially the minor victim was recognised as [a] victim of [SEC] and while reviewing the matter in court, he/she was charged for committing another offence. But I can't say that this prevent[ed] the good development of the review of the matter in court." [Judge]*

*"Sometimes decision-makers from the system don't realise the gravity and danger in time of these offences." [Cyber Crime Investigator]*

*"Remembering what has happened provokes the continuous victimisation of the child, from this motive the number and duration of hearings must be limited to [a] minimum." [Cyber Crime Investigator]*

360 See: Articles 88, 93, 142-143, Criminal Procedure Code.



*“There are cases when victims do not cooperate with the police, the trafficker being the person for whom the victim has special feelings, her being attached to him. In such [a] situation it is very difficult [for] the victim to make statements.” [Trafficking Police Investigator]*

Moldova’s amendment to its *Criminal Procedure Code* provides a multitude of new child-friendly procedures in order to better protect child victims in the criminal justice system. However, these special measures should be applicable to all children, not just those under the age of 14.

## Implementation

According to the 2014 TIP Report of the US State Department, child victims of trafficking were “questioned by law enforcement in the presence of a psychologist using a specialised ‘children’s room.’”<sup>361</sup> A 2015 report from Moldova to the Council of Europe stated that there were seven such interview rooms in place and funded from the State budget.<sup>362</sup> However, representatives of the Prosecutor General’s Office, the judiciary and NGOs reported to GRETA in 2012 that victims of trafficking were often interviewed several times. There were additional reports that child victims sometimes had to confront offenders both at the investigation stage and during court proceedings.<sup>363</sup> A 2014 report by La Strada revealed that repeated hearings were still a problem and that child victims or witnesses were made to retell abusive events multiple times and the abuser was sometimes present in the same room.<sup>364</sup>

According to survivors interviewed as part of ECPAT’s Access to Justice Study in Nepal, the Philippines and Thailand in 2016, they were most traumatised by having their abusers in the same room. Some were willing to tell their stories if they could do it without the defendant present and under sensitive conditions.<sup>365</sup> It is therefore vital that there is not only a requirement for a minimum number of interviews, but that the interview process itself is child-friendly so children can be heard without being re-traumatised.

## XI. The right to reparation

### SEC cases and convictions

According to a 2013 Report of the US Department of Labor, 19 investigations on child trafficking were opened by the government in 2013, and of those cases, 20 children were victims of trafficking for labour or sexual exploitation. The government finalised seven investigations, and four perpetrators were sentenced to prison for child trafficking. The government assisted all 20 victims, and 12 child victims were assisted by the Centre for Assistance and Protection of Victims of Human Trafficking under the Ministry of Labour, Family, and Social Protection.<sup>366</sup>

361 U.S. State Department (2014), “Trafficking in Persons Report: Moldova.”

362 Council of Europe (2015), GRETA Report, p. 86.

363 Council of Europe (2012), GRETA Report, p. 35.

364 La Strada Moldova, “The Best Interest of the Child – A Priority for the Legal System,” 27 February 2014, accessed 28 June 2016, <http://sigurantacopii.lastrada.md/en/the-best-interest-of-the-child-a-priority-for-the-legal-system/>.

365 Lynch, Darlene C. (2016), “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand,” Bangkok: ECPAT International, (forthcoming).

366 U.S. Department of Labor (2013), “Findings on the Worst Forms of Child Labor,” p. 520, <https://www.dol.gov/ilab/reports/child-labor/findings/2013tda/2013tda.pdf>.



## Trafficking cases in Moldova's criminal justice system 2012-2014

	2012 <sup>367</sup>	2013 <sup>368</sup>	2014 <sup>369</sup>
Investigations	171	155	175
Prosecutions	654 <sup>370</sup>	514 <sup>371</sup>	49
Convictions	354 <sup>372</sup>	254 <sup>373</sup>	434 <sup>374</sup>
Sentences	Average sentence for child trafficking: 13 years	6 months-20 years; for trafficking of children: 11-17 years	5-13 years

In 2011, there were three cases of child pornography registered; in one of these cases, the offender was convicted and sentenced to 20 years' imprisonment. In 2012, there were six cases of child pornography registered.<sup>375</sup> According to a contribution from Moldova to the OHCHR, in 2013, 15 criminal cases were initiated on charges of child pornography; in 2014, 11 criminal cases were initiated, out of which three people were convicted. In the first semester of 2015, 12 cases were initiated on grounds of child pornography.<sup>376</sup>

The majority of justice officials interviewed had been involved in a SEC matter that went to trial; however, only one commented on the result of the case (the offender was not sentenced).

It has been reported that judicial corruption significantly impacts the conviction and sentences for traffickers in the country.<sup>377</sup> In 2012, it was reported that "corruption remains one of the most significant structural problems faced by the Republic of Moldova, and there are allegations that corruption among law enforcement officials is contributing to [trafficking in human beings]."<sup>378</sup>

367 U.S. State Department (2013), "Trafficking in Persons: Moldova."

368 U.S. State Department (2014), "Trafficking in Persons: Moldova."

369 U.S. State Department (2015), "Trafficking in Persons: Moldova."

370 There is a discrepancy in the U.S. TIP reports regarding the number of prosecutions: the number reported in the 2013 report (for the year 2012) was 41 offenders; the number in the 2014 report, citing to the year 2012, was 65.

371 Eight were for child trafficking.

372 Six were for child trafficking.

373 Four were for child trafficking

374 Six sentences were suspended. Of the 37 offenders sentenced to prison, 26 were convicted for sex trafficking, two for labour trafficking, six for sexual exploitation of minors, and three for forcing children to beg.

375 Ministry of Internal Affairs of the Republic of Moldova, General Inspectorate of Police, National Inspectorate of Investigations, Centre for combating cyber crime (2015), "Cyber-threats seen from Moldova," Sibiu, accessed 9 May 2016, <https://www.first.org/resources/papers/istanbul2015/artur-degteariov.pdf>.

376 "Information on the protection of children's rights in the Republic of Moldova on the theme 'Information and communications technology and child sexual exploitation' pursuant to Human Rights Resolution 28/19 on the rights of the child."

377 U.S. State Department (2015), "Trafficking in Persons Report: Moldova."

378 Council of Europe (2012), GRETA Report, p. 17.



## Damages and compensation

Under international and regional law and standards, child victims of sexual exploitation have the right to access adequate procedures to seek compensation for damages suffered.<sup>379</sup>

Under Moldova's *Criminal Procedure Code*, child victims of crimes are automatically deemed to be an "injured party" and thereby are entitled to solicit recovery of moral, physical and material damages.<sup>380</sup> An injured party is also entitled to compensation for expenses incurred in the criminal case.<sup>381</sup> However, if a SEC victim is determined to be somehow "involved" in the underlying crime, this will disqualify him/her from the ability to seek compensation, as he/she is no longer considered to be an injured party.

Victims of trafficking are entitled to compensation for damages.<sup>382</sup> However, before victims can claim compensation, recognition of criminal guilt is often required, recognition of criminal guilt of the offender is required.<sup>383</sup> In 2013, only three victims of trafficking reportedly received compensation, and the amounts were minimal (approximately \$300 to \$2300).<sup>384</sup>

According to the *Criminal Procedure Code*, a civil action can be filed in a criminal proceeding by individuals that suffered material or moral damages; these individuals can claim, *inter alia*, "redress for moral damage." The civil action can be filed based on a written request of the civil party or his/her representative anytime from the start of a criminal proceeding until the judicial inquiry is complete.<sup>385</sup> The majority of justice officials said that children are able – through a legal representative, solicitor, or public prosecutor – to seek moral and material damages for their sexual exploitation. According to the majority of justice officials, a grounded accusation against the offender must exist before a child can seek compensation.

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379 Article 9(4), OPSC and Article 6(6), Palermo Protocol; see also: Article 15(3), COE Convention on Action against Trafficking in Human Beings; UN Guidelines on child victims and witnesses of crime, Section XIII, "The right to reparation:" "Child victims should, wherever possible, receive reparation in order to achieve full redress...procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive;" "combined criminal and reparations proceedings should be encouraged;" "reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings;" COE Guidelines on Child-Friendly Justice, Section IV(E)(81): damages should be claimed by the child's lawyer, guardian or legal representative during or after criminal proceedings and, where appropriate, costs could be covered by the State and recovered from the perpetrator.

380 Articles 23 and 59, Criminal Procedure Code.

381 *Ibid.*, Article 60.

382 Article 23, Law on Preventing and Combating Trafficking in Human Beings.

383 See: Article 225(4), Criminal Procedure Code: "The court shall leave a civil action unsettled in a criminal proceeding if a sentence on termination of the criminal investigation or on acquittal is issued due to the lack of the elements of a crime. This fact shall not prevent the person who filed the civil action from filing it under civil procedures."

384 U.S. State Department (2014), "Trafficking in Persons Report."

385 See: Articles 219-221, Criminal Procedure Code. According to Article 219(3): "Moral damage shall be construed related to an action prohibited by criminal law if it is expressed in expenses for: 1) the treatment of the injured party and his/her care; 2) the funeral of the injured party; 3) insurance, allowances and pensions; 4) the execution of a contract for protecting goods;" Article 219(4): "When assessing the amount of material compensation for moral damage, the court shall consider the physical suffering of the victim; damage that makes it impossible to pursue a sporting, artistic or other activity; esthetic damage; the loss of faith in life; the loss of trust in married life; the loss of honor by defamation; the mental suffering caused by the death of close relatives, etc."



According to one Judge:

***“[I]t is necessary for the child to be recognised as [an] injured party, so that he could be recognised as civil party and it is necessary to identify the person who has caused the damage by offence. Regarding the collection of damages, then a final and irrevocable convicting sentence is necessary.”***

A Prosecutor confirmed this statement by asserting that a civil action can only be admitted in the case of a convicting sentence.

According to both Judges interviewed, material damages must be confirmed through receipts or records of some kind. Moral damages are compensated and are calculated on a case-by-case basis, depending on the gravity of the matter and court practice. One Judge said in these instances, a psychological report or evaluation of trauma and impact on the victim are welcomed by the court.

Four justice officials specifically mentioned that a civil action can be filed in order to recover material damages, which apply to the costs of things like treatment, transportation, income and housing costs, as well as moral damages, which apply to trauma and suffering and are, according to one Judge, “appreciated depending on the gravity of the matter.” Both Judges interviewed reported that when a civil action is filed within a criminal matter, the court reviews the action and orders the collection of material and moral damages for the victim.

However, other justice officials said that children do not benefit from compensation, with one Cyber Crime Investigator citing “the lack of the damage evaluation procedure in the respective cases.” The respondent went so far as to say that:

***“Compensation for victims is a mechanism which doesn’t exist in [Moldova]. It is not developed neither applied by judges.”***

## **State Fund for victims of exploitation**

Of the nine justice officials interviewed, seven replied that there is no State Fund for victims. Two said they did not know. One Trafficking Police Professional mentioned the existence of a draft law related to a State Fund. According to La Strada Moldova, this draft law applies to all victims of crimes, but stipulates that victims can only access the State Fund to cover costs for medical assistance and/or if they suffered serious injuries – nothing is mentioned regarding psychological damages resulting from the offence.<sup>386</sup> The existence of a draft law for a State Fund to compensate victims of crimes is a positive development, as awards of damages as part of criminal proceedings can be a lengthy process and a State Fund can provide faster access to reparation. However, it is essential that more than just medical costs are covered and/or that “serious injuries” specifically include psychological and emotional trauma of the victim, among others.

When asked to suggest examples of “child-friendly” procedures which could be useful to SEC victims attempting to access justice through the criminal system in Moldova, one Judge specifically recommended a State Fund for compensation.

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386 La Strada Moldova, email communication with author, Bangkok, Thailand, 7 July 2016.



## Barriers faced by victims when seeking damages

When justice officials were asked for examples of barriers faced by child victims when trying to seek damages or submit a request for compensation, common responses included:

- a. Lack of solicitors (three officials mentioned this)
- b. Difficulty enforcing collection of monetary awards (four officials mentioned this)
- c. Lack of State Fund (three officials mentioned this)
- d. Victims' lack of knowledge/information on right to seek damages (three officials mentioned this)
- e. Unwillingness of victim and loss of trust in justice system (one official mentioned this)

*“A barrier would be the lack of knowledge and non-information of the victim on the right to seek damages. Another barrier would be the lack of [a] solicitor who could draw the civil action in conformity with the legal provisions. While in the case of a convicting sentence with the order to pay damages to the victim, the impossibility to enforce this sentence because of lack of financial means on behalf of the convict.” [Judge]*

*“The first and the main barrier is that these decisions are very difficult to enforce, because the court orders acquittal on behalf of the sentenced person. The sentenced person usually doesn't have property from which could be ensured the enforcement of the sentence ordering the compensation of damages. The second barrier is the lack of the State Fund for the compensation of the victims of offences. The third, a small number of victims is assisted by the State, so that they would be capable to file a civil action, to correspond to the legal requirements.” [Judge]*

*“There's no information on such mechanisms. Police officers and public prosecutors don't provide them with necessary information. Except cases when protected by a solicitor.” [Cyber Crime Professional]*

Awards of compensation to SEC victims appear to be rare and although several of the justice officials knew about the types of damages available to victims, a Cyber Crime Investigator also admitted that “the compensation procedure is unclear.” The process can also be long and result in awards of minimal amounts. There does not appear to be any justice actor in charge of identifying and attaching defendants' assets at the outset so that they can be accessed later and of course there is no guarantee that the defendant will be found guilty. As evidenced in other countries,<sup>387</sup> all of this can lead to victims and families taking up-front cash settlements from offenders. Many times compensation is just not seen as a viable option by victims or their families.

In its 2012 report, GRETA recommended the creation of a State compensation scheme for trafficking victims, and urged the State to provide better information to victims on the right to compensation and how to access it.<sup>388</sup>

387 See, for example: Lynch, Darlene C. (2016), “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand,” Bangkok: ECPAT International, (forthcoming).

388 Council of Europe (2012), GRETA Report, p. 7.



# Conclusion and Recommendations

## Conclusion

There is evidence to show that Moldova is taking steps towards ensuring access to justice for child victims of sexual exploitation in Moldova's criminal justice system. Amendments have been made to national legislation to provide more child-friendly procedures during investigations and court cases (e.g. Article 110 of the 2014 amendment to the *Criminal Procedure Code*). The government has been working with the Council of Europe to implement the Lanzarote Convention, as well as the Council of Europe Guidelines on Child-Friendly Justice. The Ministry of Interior has requested support from the Council of Europe to develop child-friendly frameworks to aid child victims of sexual violence, as well as train professionals involved in the process.<sup>389</sup> These efforts have also been reported by various organisations and, while acknowledging that challenges and gaps remain,<sup>390</sup> they recognise the progress made and report that Moldova is "getting closer to child-friendly justice."<sup>391</sup>

Despite these efforts, there are still barriers for child victims of sexual exploitation to access justice. Amendments to legislation, while positive in certain regards, tend to focus on the protection of younger children, leaving older children (arguable the majority of SEC victims) without the same child-friendly procedures and protections. There appears to be an extreme lack of child victim complaints which most likely means that police are missing out on identifying SEC-related abuses and cases. Although prosecutions can proceed without these complaints, it is still vital that the justice system be accessible to exploited children. Mechanisms like the NRS are extremely important, but in order to work, they must be utilised by children, their families and officials.

While trainings of justice officials and other professionals involved in SEC cases have been conducted, gaps appear to remain in regard to child-friendly procedures and processes such as keeping the child informed of the proceedings, informing the child of his/her rights throughout, including the right to compensation, providing free legal assistance, implementing a reflection period, and ensuring specialised recovery and reintegration assistance and services.

In order to fill many of these gaps, substantial human and financial resources are needed and it is acknowledged that Moldova, like many countries, is limited as to the allocation of its resources in this regard. However, by continuing its collaboration with entities like the Council of Europe and dedicating the time needed to proper training of professionals, including evaluation and follow-up, it is possible for Moldova to ensure that child victims of sexual exploitation can access a child-friendly justice system.

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389 See: Child Protection Center of Zagreb, "Child Protection Center included in the inception phase of Council of Europe project," <http://www.poliklinika-djeca.hr/english/featured/news/child-protection-center-included-in-the-inception-phase-of-council-of-europe-project/>.

390 OSCE, "Continued need for legal training to effectively tackle trafficking in human beings and domestic violence in Moldova, concludes ESCE evaluation," 23 October 2015, <http://www.osce.org/moldova/194066>.

391 See: IOM, "Moldova is Getting Closer to Child-Friendly Justice," accessed 29 June 2016, <http://www.iom.md/index.php/media-center/press-releases/255-moldova-is-getting-closer-to-child-friendly-justice>; UNICEF Moldova, "A Child-Friendly Justice System," [http://www.unicef.org/moldova/child\\_protection\\_27932.html](http://www.unicef.org/moldova/child_protection_27932.html).



## Recommendations

- While further research should be conducted in Moldova to identify its country-specific vulnerability factors, it is unlikely that poverty is the sole factor that leads to SEC in the country. An investigation and assessment of vulnerability factors in the country could be helpful in identifying risk factors as well as assisting justice officials to better understand the situation of SEC victims.

## National Legal Framework

- Although the Moldovan *Criminal Code* criminalises sexual intercourse with a child under the age of 16 without proof of coercion or lack of consent, the statute requires that the victim be “certainly known” to be under-age.<sup>392</sup> This provision may lead to impunity if prosecutors fail to prove that the perpetrator knew the child’s age with certainty. Many children engaged in prostitution conceal their age and sometimes carry false identity papers, increasing the difficulty of proving this element of the crime. It is recommended that the *Criminal Code* be amended to eliminate this requirement.
- Although a child is defined as a person under the age of 18 under Moldovan law, articles 175 and 175-1 of the *Criminal Code* criminalising grooming, including online, concern only children up to the age of 16 years, which is the age of consent.<sup>393</sup> It is recommended that the *Criminal Code* be amended to include all children in this provision, up to the age of 18.
- Although a child is defined as a person under the age of 18 in Moldovan law, pursuant to a 2014 amendment to the *Criminal Procedure Code* (Art. 110), hearings in criminal cases concerning sexual offenses, trafficking or domestic violence must follow specific child-friendly procedures only when the minor witness is under the age of 14. While there may be children 14-17 years of age who may not require these child-friendly procedures, they should have the option, if desired, to have access to these procedures. It is recommended that the *Criminal Procedure Code* amendment be extended to include all children as defined by Moldovan law (up to the age of 18).
- Article 32 of the *Law on Preventing and Combating Trafficking in Human Beings* states that a trafficking victim is “exempt from criminal, administrative, and civil liability for actions committed by him/her in relation to his/her status as a victim.” This trafficking “safe harbour” provision may not protect children from all crimes resulting from their exploitation due to the ambiguous wording: “in relation to his/her status as a victim.” This provision could be expanded to more closely conform to para. 9(a) of the UN Guidelines on child victims and witnesses of crime (children are considered to be victims “regardless of their role in the offence”) and Guideline 5(5) of the OHCHR Guidelines on Trafficking (“law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation”).
- Under Moldovan law, criminal penalties for offenders are less severe and statutes of limitations are shorter in cases involving older child victims. For example, under article 60 of the *Criminal Code* the limitation period for rape and sexual violence is five years, for child trafficking and sexual violence against a juvenile it is 15 years, for violent crimes and child trafficking against a child

392 Article 174, Criminal Code.

393 Committee on the Rights of the Child, “Concluding Observations on the Initial Report of the Republic of Moldova submitted under article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Committee on the Rights of Child at its sixty-fourth session (16 September - 4 October 2013)”, UN Doc. CRC/C/OPSC/MDA/CO/1, 29 October 2013, para. 23, <http://www.refworld.org/docid/5280f80a4.html>; see also: Article 175-1, Criminal Code: “the proposal, including through information technology and communication equipment, [of] a meeting with a child to commit against him of any sexual offenses, if a proposal was followed by material acts leading to such a meeting, shall be punishable with imprisonment for a period from 1 year to 5 years”, retrieved from UNODC Database of Legislation, accessed 13 May 2016, [https://www.unodc.org/cld/en/legislation/mda/criminal\\_code/chapter\\_iv/article\\_175-1/article\\_175-1.html](https://www.unodc.org/cld/en/legislation/mda/criminal_code/chapter_iv/article_175-1/article_175-1.html).



under 14 it is 25 years. It is not clear why a 14 year-old child should have a SoL that is a decade less than a 13 year-old child. It is recommended that the *Criminal Code* be amended to reflect the common experiences of all child victims. One way to do this could be to toll SoLs until the child reaches the age of majority, as in many countries (e.g. Philippines).

### Barriers to Entering the Justice System

- There was no mention of Moldova's National Referral System for trafficking victims by the justice officials interviewed. While these responses are not representative of justice officials as a whole in the country, more training may be needed for relevant officials to ensure widespread implementation of mechanisms like the NRS and child hotlines/helplines, including efforts focused on specialised outreach instead of relying on children to reach out via helplines/hotlines.
- While making general conclusions about the effectiveness of the NRS based on the knowledge/feedback of nine justice officials is not possible, the fact that the majority of those officials interviewed either had no experience with the NRS or thought that it was inefficient may warrant a further, deeper analysis of the NRS, its implementation and its effect on the protection and recovery of child victims. Furthermore, it is crucial that the NRS have the financial and human resources necessary to be effective.
- According to justice officials, SEC victim complaints are rare. While a victim complaint is not necessary in Moldova to bring a case against an alleged offender, it is important that all child victims have faith in/trust their justice systems and feel that they can ask for help. It is recommended that the State take steps to ensure that the justice system and its officials are accessible to SEC victims. This could include education/awareness raising as well as outreach to, for example, improve the relationship between children and police. This could also include awareness raising among justice officials on the experiences of SEC victims and the effects of sexual exploitation on children, regardless of whether they are younger children or adolescents.
- Another motive identified by justice officials for non-reporting by child victims of SEC relates to family dynamics; children are afraid of their parents knowing about the abuse or parents are afraid of others finding out about the abuse. These dynamics can stem from ingrained stigmas and stereotypes related to sexual abuse. Community outreach and education programmes can assist in addressing this issue.

### Barriers While in the Justice System

- The level of involvement of children when being kept informed about their rights and the criminal proceedings is unclear. It appears that there is more communication between the State and the child's representative or parents/guardian. While this may be required in certain circumstances, it is recommended that, whenever possible, the child is informed directly of his/her rights and the nature/progress of the proceedings [Article 8, OPSC; Article 31, Lanzarote Convention]. It is equally important that children are provided information on their rights in a language and in a way they can understand; developing and disseminating child-friendly materials are encouraged in this regard.
- Based on the diversity of the responses from justice officials in relation to victims' access to family reunification efforts, it may be beneficial for the State to investigate the effectiveness of the *Law on Preventing and Combating Trafficking in Human Beings*' implementation in regard to family reunification.
- Based on suggestions by justice officials to improve child-friendly procedures for SEC victims in the criminal justice system in Moldova, it appears that an increase in recovery/assistance services



for victims is a primary recommendation. While it is recognised that there are a multitude of victims of different crimes who would all benefit from specialised assistance – and at the same time recognising the lack of resources for this type of assistance – whenever possible assistance centres and their staff should be specialised in the area of providing assistance to child victims of sexual abuse and exploitation.

- It is vital that justice officials are able to identify motivations for child victims' disappearance during criminal proceedings and address them. This is vital, as these motivations can impede children's access to justice by preventing their full recovery and reintegration as well as perhaps preventing convictions and awards of compensation due to the absence of children as victims/witnesses. One way of identifying these motivations would be to consult with children who have been involved in the criminal justice process about possible reasons for children disappearing (keeping in mind relevant ethical considerations when talking to/dealing with survivors of sexual exploitation).
- Based on suggestions by justice officials to improve child-friendly procedures for SEC victims in the criminal justice system, specific trainings on SEC cases should be conducted for solicitors, social workers and psychologists. These trainings should be, whenever possible, systematic in nature and the impact of such trainings should be evaluated. While training on the different manifestations of SEC is necessary, it is equally important for judges, prosecutors and other professionals to undergo training on the "situation of victims," taking into account things like their histories/backgrounds, societal factors like gender inequality and discrimination, and the psychology of what it means to be a victim of sexual exploitation.
- While a reflection period for child victims is provided under Moldovan law, it has been reported that the period is not always implemented due to strict time limits on pressing charges. While not all children may want or need this reflection period, it is important that all child victims have this option as provided by the Council of Europe's *Convention on Action against Trafficking in Human Beings* (Article 13).
- Lack of family support can be a major reason for children failing to enter the justice system or following through until the case's conclusion. The assignment of a State-appointed guardian *ad litem* or dedicated person to support and protect the interests of the child from the very beginning is critical. It is recommended that this appointment is guaranteed by the State for all child victims.
- According to justice officials, it is common for free legal aid and assignment of confidants to child victims to occur only when NGOs are involved in the case. It is vital that the State ensure support persons are available to SEC victims to SEC victims during cases, especially when NGOs are not involved [Article 8, OPSC; Article 31, Lanzarote Convention].
- While there appears to be various legal mechanisms in place to protect children's safety (as required by Article 8 of the OPSC and Article 31 of the Lanzarote Convention), even with the best legislation on the books, the effectiveness of such laws will be hampered without the proper implementation and resources. If child victims cannot rely on the justice system to keep them safe, this will greatly affect their ability to access justice. In this regard, it is recommended that funding/allocation of resources is prioritised for child victim/witness protection in SEC cases.
- In their responses, most justice officials were able to identify various mechanisms and procedures that function to respect the child's best interests in SEC cases; however, a formal procedure should be developed and implemented so that all justice officials can recognise and determine what is in the child's best interests in a systematic manner as recommended by the Committee on the Rights of the Child in its General Comment No. 14.



- There does not seem to be any official measures in place to minimise delays in SEC cases [Article 8, OPSC; Article 30, Lanzarote Convention] as some can last for years. It is recommended to develop an official policy to streamline/prioritise cases of violence against children in the court system.
- Almost all justice officials interviewed identified a lack of resources for transportation costs to the trial location for SEC victims as a serious problem. This lack of financial support by the State for transportation costs may serve as a large deterrent for child victims to participate fully in the justice process. Efforts should be made to provide these costs for victims involved in SEC cases, as per Article 227 of Moldova's *Criminal Procedure Code*.
- From the evidence available, it appears that compensation for SEC victims is rare in Moldova; that the procedure to request compensation is unclear; that there is an inability to enforce collection of damages from offenders; that there is no State Fund for victims; and that there is a general lack of information provided to victims about their right to access compensation. It is therefore recommended that legal representatives, prosecutors and other justice officials are trained so they can be trained, so that they can, at the outset of the case, inform all victims of their right to compensation [Article 9(4), OPSC; Article 6(6), Palermo Protocol; Article 15(3), COE Convention on Action against Trafficking in Human Beings] and how to go about requesting it. It is also recommended that a justice actor is charged with identifying and attaching defendants' assets at the outset of a case so that they can be accessed later, if needed. A State Fund that is accessible by victims to cover costs for medical assistance, as well as psychological damages resulting from sexual exploitation, is highly recommended.



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# ANNEX #1

## Moldova Access to Justice Case Studies<sup>394</sup>

### Case Study #1: A's Story

**A**, a Russian national, frequently ran away from home and was registered by local authorities as a “runaway.” According to **A**, her stepfather drank a lot and liked to fight as well. When she was 10 years old, **A**'s stepfather sexually molested her. Among her friends (social network) there were girls involved in prostitution. One day, when she was 13 years old, while walking in the evening with a friend through the city, **A** found herself on the highway (this highway is known as a place where interested people can find women for sexual services). Initially the girls did not understand what was happening, but after several cars stopped near them and requested sexual services, they realised that they could make money by providing these sexual services. A few days later, a friend who was involved in prostitution told **A** about the profitability of providing sexual services along the highway.

After two days of offering sexual services on the highway, the girls were approached by a woman around 22 years of age, who told them that they could not stay on the street without paying a protection fee of 50% of their earnings. **A** did not admit that she paid the woman; she said that she was on the street twice and that she did not like it.

**A**, along with several other minors, were identified on the street by a police officer from the Centre for Combating Trafficking in Persons. They were brought to La Strada by the police officer where **A** was heard by a judge while interviewed by a psychologist; however, **A** rejected any assistance on behalf of the multidisciplinary team. According to La Strada, **A** did not trust social assistance as she was afraid her mother would lose custody of her.

**A**'s exploiter was identified, arrested and charged with trafficking in children; the case is currently pending. According to La Strada, **A** was indifferent to the hearing procedures and her only concern was to hide her sexual exploitation from her mother and family members.

While there are no services specialised in recovery and reintegration for child victims of sexual exploitation, **A** was offered additional meetings with a psychologist but she refused. **A** was offered psychological and legal assistance during the legal investigation and hearing under special provisions in a child-friendly interview room.

**A** went through the identification, investigation and judiciary stages of the justice system. She received legal counselling and aid during all three stages, including an attorney from La Strada who represented her interests in court and continues to counsel her on legal matters. During the judiciary stage, she was interviewed in a child-friendly room by a psychologist and made statements via a video connection during trial. When asked what she thought about this method, she said that “anyway, everyone hears and sees me. It's more comfortable with a single person – criminal investigation officer.”

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394 The case studies were provided by La Strada, Moldova.



Currently, **A** studies and lives in an orphanage, but during weekends she stays with her family (one room for five family members). According to La Strada Moldova, the mother reacts adequately and provides support to **A** during investigative procedures.

At the moment, **A** displays a better understanding of exploitative relationships. A social assistant proposed to **A** that she participate in a summer camp with other girls who went through difficult life circumstances organised by the Centre of Assistance and Protection for Victims of Trafficking in Human Beings, and **A** promised to think about this opportunity. **A** continues to run away from home and she maintains her relationship with the group of teenagers with high risk for different types of abuse. The family is monitored by social assistance services.

## Case Study #2: D's Story

**D** is a Moldovan national and her parents are labour migrants in Russia and Italy. Intending to diminish the expenses that her parents were paying for her in Chisinau (food, clothing, rent, education fee), **D** (16 years of age) decided to find a job and be financially independent. She found an online ad and when she called the number provided, the woman who answered the phone proposed that **D** come to an apartment if she wanted to find out more details about the job. The "employer" was a woman around 30 years old who launched a network of video-chats involving mainly young girls in search for financial independence. Girls were made available in chat rooms for foreigners who were paying for girls to follow their instructions, which were of a sexual nature.

Due to the employer's positive attitude and financial promises, **D** agreed to communicate with foreigners via the video-chats. Since it was difficult to find a job for an unskilled, young person, the offer to participate in the video-chats (advertised as "counselling for lonely men") appeared safe and secure. Over time, it became "normal" for **D** to take off her clothes during these chats. The money that was earned by **D** was shared 50% with the "employer". **D** continued with these chats for one month, until some acquaintance recognised her and later blackmailed her. Around that same time **D** was identified by an undercover police officer. She was taken to La Strada's office where she was heard without a video recording or participation of a judge. She was heard in a child-friendly environment and was assisted by a psychologist.

The employer was charged with trafficking of children for exploitation and the case is in process.

**D** went through the identification, investigation and judiciary stages of the justice system. When she was identified, she said the police came to her home at seven in the morning, and that they accused and searched her. She also said the police took her phone and Internet connection. Overall, her interaction with officials during this stage was described as "hostile". The investigation stage was different. She said she was talked to and taken care of at the Centre for Combating Trafficking in Persons and at La Strada, and that she felt safe with the psychologist from La Strada. **D** was provided with legal aid and a child-friendly interview room.

While there are no recovery and reintegration services in the country specifically for child victims of sexual exploitation, **D** was counselled and supported during the investigative proceedings to find a job in order to support her endeavours for financial independence. Due to psychological support received during the investigation, according to La Strada, Moldova, **D** managed to cope with her feelings of shame and fear of being blamed. **D** still faces the risk of being approached by the person who blackmailed her so a few problem solving scenarios for risky situations were discussed with a psychologist.



### Case Study #3: D's Story

**D**, a Moldavian national, was sexually exploited for five years by her neighbour (an older man and father of two grown children), starting at the age of seven years old. In exchange for sexual favours, the neighbour provided her with money, clothing and shoes; if she resisted, he threatened to cause problems for her and her mother. According to the National Center for Prevention of Child Abuse (CNPAC), **D** came from a socially vulnerable family. Being aware of **D**'s vulnerability, the neighbour groomed her using financial/material rewards.

**D** explained to CNPAC why she kept silent about the abuse:

*"I was thinking that if I'll speak out then he will have problems in his family (with his wife, children). When I was coming to their house, I was asked to take a bath, do the homework - I didn't understand, was receiving money and other necessary things. Then at school I found out what sexual abuse is and I understood that he could be arrested for what he's doing, and I was afraid to tell because he is a big man in our village".*

Another neighbour eventually reported suspicion of the abuse to a Hotline.

**D** suspected that her mother was also sexually abused by the same man and she guessed that her mother was aware of the risk for her daughter to be abused. When **D** was sent for forensic screening, her mother said: *"He broke your life too."*

The neighbour was charged with perverse actions against a child and the case is in process.

Due to economical problems, **D** was sent by her mother to a social placement centre. During the initial psychological assessment in the placement centre, **D** was identified as a victim of sexual abuse. Once identified, the police were informed. When receiving legal counselling during the identification stage, **D** did not ask questions because she didn't understand the process. During the investigative stage, she started asking questions and getting answers, but she said if she didn't ask the questions, then she wasn't explained the procedures from a legal standpoint. She felt that she could speak freely in the interview room; however, she said it would be good for children to be told from the start why it is important to talk about everything that happened to them.

**D** was referred to CNPAC for psychological support services during the pre-trial and investigative stages of the legal case. **D** felt confused, ashamed, and displayed defensive behaviour, but is in the process of adjusting to a new understanding of her previous experiences. She continues to be in a position of vulnerability; in the absence of consistent recovery and reintegration programmes, there is still a high risk that she will be repeatedly involved in sexual exploitation. **D** is currently being monitored by local social service professionals.

### Case Study #4: G's Story

At the age of 14, **G**, a Russian national, lived with his grandmother, his sick grandfather, his mother (who suffered from a personality disorder), and his aunt and her family. His family was in difficult economic circumstances; his grandmother used to tell him to "go to work", and there were days when he had no food. Through his peer-network **G** was introduced to foreigners interested in sexual relationships with minors. The foreigners would take him to eat pizza and McDonalds and gave him the chance to play online games. **G** received money for accompanying foreign adults and was sexually abused on repeated occasions at the apartments of these offenders.

**G** was exploited for one year before his grandmother called a Hotline complaining that her grandson's behaviour was out of control and she suspected that he was being abused. La Strada, Moldova, connected her to a police officer from the Centre for Combating Trafficking in Human Beings. During the



investigation, **G** was identified as a victim of child trafficking with the intent to be sexually exploited and offenders were prosecuted. During the criminal proceedings **G** was assisted by a lawyer and psychologist from La Strada. The case is currently in process.

**G** went through the identification, investigation, judiciary and compensation stages of the justice system. He said the stages were very unpleasant. During the investigation stage, he said he made statements for four hours. He said five years after the trial he received compensation which was good because he needed the money, but it was not the amount that had been discussed/that he had only received part of the compensation promised him.

**G** is monitored by social services and is provided with food, clothing and vocational training. A psychologist was hired in order to provide **G** with psychotherapy but his mother, bothered by questions that **G** started to ask her, opposed this, seeing it as “brainwashing” and therapy stopped.

According to La Strada, Moldova, it is difficult to differentiate how much of **G**'s shyness, withdrawal, and predisposition for depression are due to his abuse or to his family background. **G** used to be a good student; initially due to the poverty that made him feel disadvantaged at school and later due to the trauma, he encountered difficulties in finishing high school. At the moment **G** is not interested in graduating middle school; he would like to learn a profession. Yet, according to La Strada, Moldova, his behaviour is very coloured by victimisation. He is being continuously monitored by social services.



# ANNEX #2

## Access to Justice for Child Victims of Sexual Exploitation International Requirements and Standards

### Addressing Barriers to Entering the Justice System

#### *Identifying and Rescuing Sexually Exploited Children*<sup>395</sup>

##### **Art. 19, CRC**

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

##### **Arts. 8(1) and 9(2), OPSC**

State Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the [OPSC] at all stage of the criminal justice process.

State Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the OPSC. In fulfilling their obligations under this Article, State Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

##### **Art. 7(2) ILO Convention No. 182**

Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: (a) prevent the engagement of children in the worst forms of

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<sup>395</sup> See also: UN General Assembly (2015), “United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice: resolution adopted by the General Assembly on 18 December 2014,” UN Doc. A/RES/69/194, accessed 1 July 2016, <http://www.refworld.org/docid/54cf56124.html>, Section IV, “Establishing effective detection and reporting mechanisms” (requiring States to ensure that criminal justice professionals recognise the risk factors of various forms of violence against children and report them to the proper authorities and work with ICT providers to facilitate detection of online sexual exploitation of children); see also: Section V, “Offering effective protection to child victims of violence” (requiring States to ensure that law enforcement respond promptly to incidents of violence against children and “respond with sensitivity to child victims of violence whose physical or psychological integrity remains at serious risk and requires their urgent removal from the dangerous context”).



child labour; (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls.

#### **Guideline 5, OHCHR Guidelines on Trafficking**

States and, where applicable, intergovernmental and non-governmental organizations should consider: (1) Sensitizing law enforcement authorities and officials to their primary responsibility to ensure the safety and immediate well-being of trafficked persons; (2) Ensuring that law enforcement personnel are provided with adequate training in the investigation and prosecution of cases of trafficking. This training should be sensitive to the needs of trafficked persons, particularly those of women and children, and should acknowledge the practical value of providing incentives for trafficked persons and others to come forward to report traffickers. The involvement of relevant non-governmental organizations in such training should be considered as a means of increasing its relevance and effectiveness; (6) Implementing measures to ensure that ‘rescue’ operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place.

#### **Arts. 19(d) and 20(i), U.N. Model Strategies**

In order to respond to the need to detect and report acts of violence against children, Member States are urged, as appropriate: to ensure that safe child- and gender-sensitive approaches, procedures and complaint, reporting and counselling mechanisms are established by law, are in conformity with the obligations of Member States under the relevant international human rights instruments, take into account relevant international standards and norms on crime prevention and criminal justice and are easily accessible to all children and their representative or a third party without fear of reprisal or discrimination.

In order to more effectively protect child victims of violence through the criminal justice process and avoid their secondary victimization, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments, to take appropriate measures: to ensure that child victims of violence and their families have access to appropriate mechanisms or procedures in order to obtain redress and reparation, including from the State, and that relevant information about those mechanisms is publicized and easily accessible.



## *Treating Sexually Exploited Children as Victims, Not Criminals*<sup>396</sup>

### **Art. 8(2), OPSC**

States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

### **Arts. 2(b) and 3(c), Palermo Protocol**

The purposes of this Protocol are: (b) To protect and assist the victims of such trafficking, with full respect for their human rights.

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.

### **Para. 9(a), UN Guidelines on child victims and witnesses of crime**

‘Child victims and witnesses’ denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.

### **Guideline 5, OHCHR Guidelines on Trafficking**

States, and where applicable, intergovernmental and non-governmental organizations should consider: (5) Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation.

## **Addressing Barriers to Securing Justice Once in the System**

### *Ensuring Adult Support during the SEC Case*

### **Art. 8(1), OPSC**

State Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the [OPSC] at all stage of the criminal justice process, in particular by: (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses; (d) Providing appropriate support services to child victims throughout the legal process.

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<sup>396</sup> See also: Protocol of 2014 to the ILO Forced Labour Convention, 1930 (adopted by ILO 11 June 2014, not yet in force), Article 4(2): “Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.” See also: OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Article 8(3) (urging States to consider measures for “[e]nsuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.”); U.N. Model Strategies, Part Three, Section XI, “Reducing the number of children in contact with the justice system” (calling for the elimination of status offenses and raising of criminal age of responsibility to at least 12 years old).



### **Art. 6(4), Palermo Protocol**

Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

### **Paras. 24 and 25, UN Guidelines on child victims and witnesses of crime**

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include: (a) Child victim and witness specialists to address the child's special needs; (b) Support persons, including specialists and appropriate family members to accompany the child during testimony; (c) Where appropriate, to appoint guardians to protect the child's legal interests.

### *Protecting Safety during the SEC Case<sup>397</sup>*

### **Art. 8(1), OPSC**

State Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the [OPSC] at all stages of the criminal justice process, in particular by: (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims; (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

### **Art. 6(5), Palermo Protocol**

Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

### **Para. 34, UN Guidelines on child victims and witnesses of crime**

Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include: (a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process; (b) Using court-ordered restraining orders supported by a registry system; (c) Ordering pre-trial detention of the accused and setting special 'no contact' bail conditions; (d) Placing the accused under house arrest; (e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

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<sup>397</sup> See also: Guideline 6(6), OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking: "States should consider ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard;" Articles 20, 22, 24, of the U.N. Model Strategies, "Offering effective protection to child victims of violence."



### *Providing Appropriate Therapy and Care during the SEC Case*

#### **Art. 39, CRC and Art. 9(3), OPSC**

State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

#### **Art. 25, CRC**

State Parties recognize the right of a child who has been placed by the competent authorities for the purpose of care, protection or treatment of his or her physical or mental health, to be a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### **Art. 6(3), Palermo Protocol<sup>398</sup>**

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.

### *Prioritising the Child's Best Interests during the SEC Case*

#### **Art. 3(1), CRC and Art. 8(3), OPSC**

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

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398 See also: Art. 7(2)(b), ILO Convention No. 182: "Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration."



**Art. 8(1), OPSC**

State Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the [OPSC] at all stage of the criminal justice process, in particular by: (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases; (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law.

**Art. 6(2), Palermo Protocol**

Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

**Paras. 19-21, UN Guidelines on child victims and witnesses of crime**

19. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, inter alia: (a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable; (b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which 'questioning' will be conducted during the investigation and trial; (c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings; (d) The specific places and times of hearings and other relevant events; (e) The availability of protective measures; (f) The existing mechanisms for review of decisions affecting child victims and witnesses; (g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of: (a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case; (b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by: (a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19

<sup>399</sup> See also: Art. 24, U.N. Model Strategies: "Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments, to ensure that child victims of violence, their parents or legal guardians and legal representatives, from the first contact with the justice system and throughout the judicial proceedings, are promptly and adequately informed of, inter alia, the rights of the child, the relevant procedures, available legal aid and the progress and disposition of the specific case."



above; (b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process; (c) Giving due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

### *Reducing Delays during the SEC Case*

#### **Art. 8(1), OPSC**

State Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the [OPSC] at all stage of the criminal justice process, in particular by: (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

#### **Para. 30(c), UN Guidelines on child victims and witnesses of crime**

Professionals should approach child victims and witnesses with sensitivity, so that they: (c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited.

### *Reducing the Hardships of Recounting the Abuse<sup>400</sup>*

#### **Art. 8(1), OPSC**

State Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the [OPSC] at all stage of the criminal justice process, in particular by: (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses.

#### **Paras. 29-31, UN Guidelines on child victims and witnesses of crime**

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

- (a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
- (b) Provide certainty about the process . . . The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

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400 See also: Art. 24(i), U.N. Model Strategies: "Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments, to ensure that, when child victims of violence may be the subject of intimidation, threats or harm, appropriate conditions are put in place to ensure their safety and that protective measures are taken."



(d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.

31. Professionals should also implement measures: (a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording; (b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided; (c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

### *Guideline 5, OHCHR Guidelines on Trafficking*

States and, where applicable, intergovernmental and non-governmental organizations should consider: (3) Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid overreliance on victim testimony.

### *Ensuring Adequate Compensation and Reintegration Services<sup>401</sup>*

#### **Art. 39, CRC and Art. 9(3), OPSC**

State Parties shall take all appropriate measure to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

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401 See also: United Nations Model Strategies on Elimination of Violence Against Children, Part Two, Section IV, "Establishing effective detection and reporting mechanisms" (requiring States to ensure that criminal justice professionals recognise the risk factors of various forms of violence against children and report them to the proper authorities, to establish child-sensitive reporting and complaint procedures; and to work with ICT providers to facilitate reporting of online abuse and exploitation); See also: Section V, "Offering effective protection to child victims of violence"(requiring States to ensure that law enforcement respond promptly to incidents of violence against children and "respond with sensitivity to child victims of violence whose physical or psychological integrity remains at serious risk and requires their urgent removal from the dangerous context").



#### **Art. 9(4), OPSC**

States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

#### **Art. 6(6), Palermo Protocol**

Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

#### **Paras. 35-39, UN Guidelines on child victims and witnesses of crime**

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.
36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.
37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.
38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.
39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.





