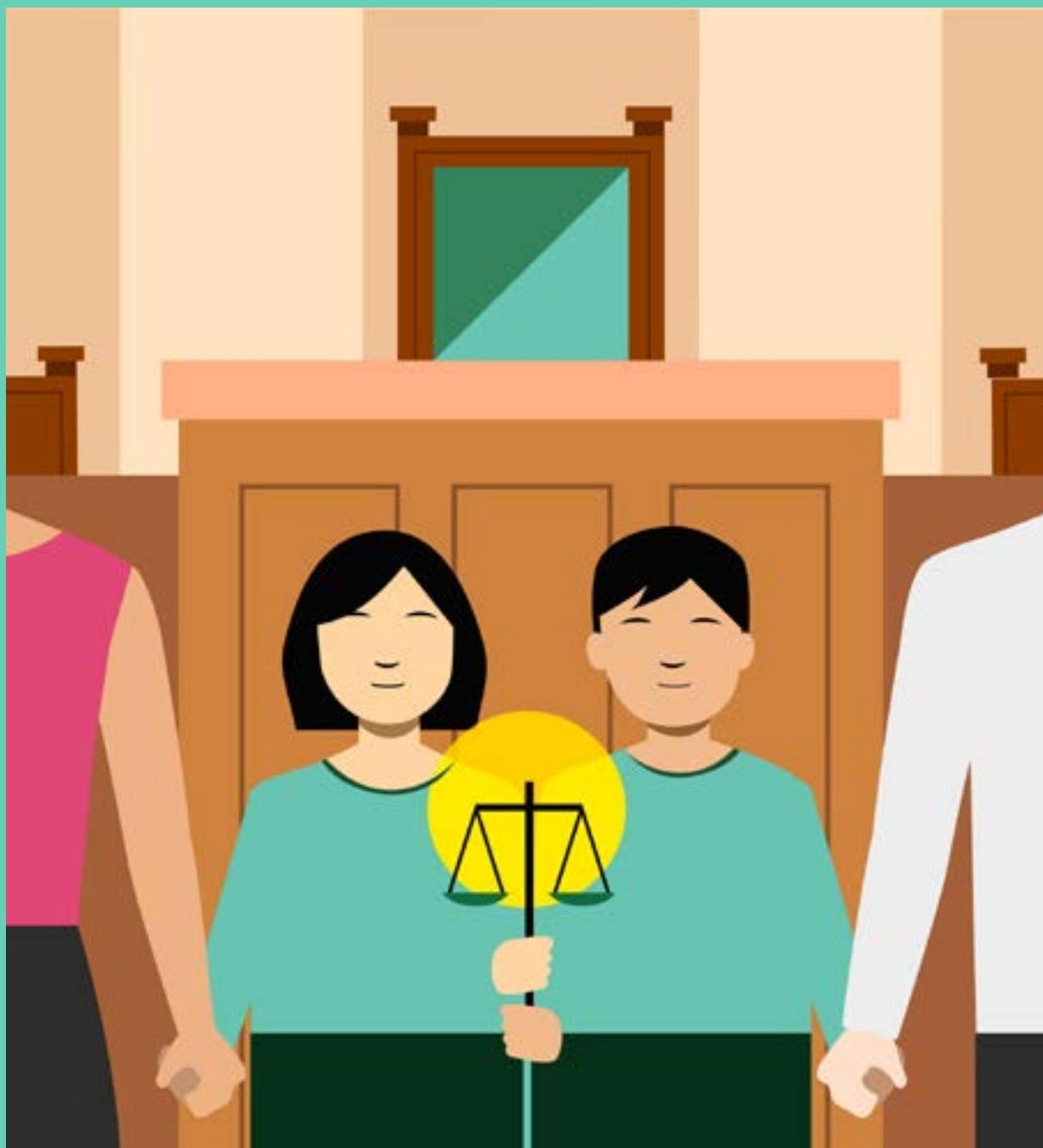


# Through the Eyes of the Child:

## 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





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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## Through the Eyes of the Child:

### Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation



### 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 presented 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.

Motivated by this goal, ECPAT International set out to confront the demand head on. ECPAT arduously collected and collated data over the course of two years to identify themes; analyzed local and regional legislations to address policy weaknesses; worked with translators to ensure accuracy in word and spirit; and assembled the pieces to produce a unique, innovative approach to understanding the problem at hand. As such, ECPAT's study provides clarity on the impediments faced by child-victims from the victims themselves, including: under-reporting their own exploitation; social stigmas; re-victimization by law enforcement as 'willing sex-workers'; and the failure of Study Countries to implement the 'best interests' principle into judicial proceedings.

Ultimately, this report provides an unprecedented view of children's stories by not only getting them directly from exploitation survivors, but also by listening to the NGOs providing rehabilitative services and the law enforcement officials responsible for administering justice.



And in the fight against sexual exploitation, the importance of this report cannot be overstated. For instance, owing to the devastation from the mid-2015, 7.8 magnitude earthquake in Nepal, offenders immediately began capitalizing on the disarray to exploit children. Meanwhile, given the increased tourism in places like Thailand, combined with the vast underground market in the Philippines, children across Asia are at greater risk of exploitation. Although the Study Countries are making substantial progress on the issue of child sexual exploitation in their own way, there is more work to be accomplished. This report is therefore an open invitation not only to learn from the victims and those caring for them, but use victim stories as a means of addressing specific gaps in legislation. ECPAT is excited to introduce this report to the community fighting for a child's right to be free and live a healthy life. It is our hope that the child's voices contained herein will not only inspire the readers to action, but encourage the desire to hear from victims further.



Junita Upadhyay,  
Deputy Executive Director, Programmes  
ECPAT International Secretariat



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# GLOSSARY OF TERMS

## 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>

## Adolescent

For purposes of this report, adolescent refers to persons under age 18 who are in the process of developing from a child into an adult.<sup>3</sup> “Older child” or “teenager” may also be used as a way to distinguish these children from pre-pubescent children.

## Best interests of the child

Pursuant to Article 3(1) of the 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>4</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>5</sup>

## Child

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

- 
- 1 Human Rights Council (2013), “Access to justice for children, Report of the United Nations High Commissioner for Human Rights” (hereinafter Access to Justice), UN Doc. A/HRC/25/35, 16 December 2013, para 4.
  - 2 See: UN General Assembly (1985), “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” UN Doc. A/RES/40/34, 29 November 1985, para. 4 (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”); UN General Assembly (2006), “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” UN Doc. A/RES/60/147, 21 March 2006, para. 12 (“victims 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 Interagency Working Group on sexual exploitation of children (2016), “Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse” (hereinafter Luxembourg Guidelines), adopted on 28 January 2016, accessed 30 June 2016, <http://luxembourgeguidelines.org/>
  - 4 UN General Assembly (1989), “Convention on the Rights of the Child” (herein after CRC), Res. 44/25 of 20 November 1989.
  - 5 Committee on the Rights of the Child (2013), “General Comment No. 14 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.



## Child-friendly justice

Pursuant to Article II(c) of the Council of Europe *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>6</sup>

## 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.” 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.”

According to the 2016 *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (Luxembourg Guidelines), “[t]he terms ‘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>7</sup>

## Child 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.” According to Article 3(1)(b), each State Party shall ensure that, at a minimum, the following acts are fully covered under its criminal or penal law...offering, obtaining, procuring, or providing a child for child prostitution.”

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>8</sup>

6 Council of Europe (2010), “Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice,” adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, art. II (c).

7 Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, p. 40. 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.”

8 *Ibid.*, 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)<sup>9</sup>, “[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.”

## 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.” The Basic Principles on the Right to Remedy and Reparation define compensation as “any economically assessable damage, as appropriate and proportional to the gravity of violation and the circumstances of each case,” including compensation for 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>10</sup>

## Criminal Justice Process

As defined by paragraph 9(c) of the UN Guidelines on Child Victims and Witnesses, 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.”

## 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>11</sup>

## ECPAT

ECPAT International is a global network of civil society organizations dedicated to ending the sexual exploitation of children. As of July 2016, ECPAT International consisted of 95 member groups in 86 countries around the world.<sup>12</sup>

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9 UN Economic and Social Council (2005), “Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime,” UN Doc. E/RES/2005/20, 22 July 2005, para. 9(d).

10 UN General Assembly, Basic Principles on the Right to a Remedy and Reparations, para. 20.

11 See: Oxford Dictionary (2016), “Definition of criminal justice system,” 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”).

12 ECPAT International, “About us,” *ECPAT International website*, accessed 10 January 2017, <http://www.ecpat.org/about-ecpat/>



## 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>13</sup>

## Guardian ad Litem

Guardians *ad litem* (GALs) are professionals, often lawyers 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>14</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 press.<sup>15</sup>

## Live-link Testimony

Live-link testimony is an alternative to in-court testimony and refers to the process by which witnesses give testimony from a location outside the courtroom and their image and voice are transmitted electronically into the courtroom.<sup>16</sup>

## Online child sexual exploitation

According to the Luxembourg Guidelines it includes all acts of a sexually exploitative nature carried out against a child that have, at some stage, a connection to the online environment. It includes any use of ICT that results in sexual exploitation or causes a child to be sexually exploited or that results in or causes images or other material documenting such sexual exploitation to be produced, bought, sold, possessed, distributed, or transmitted. While the term “online child sexual exploitation” can be used as an umbrella-term to indicate such forms of sexual exploitation that have an online component or a relation to the Internet, it should be recalled that the Internet is a means, albeit very potent, to exploit children sexually; it is not, in and by itself, a distinct type of sexual exploitation.

## Professionals

Pursuant to Article 9(b) of the UN Guidelines on Child Victims and Witnesses, “[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.”

13 See: Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, 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).

14 Legal Information Institute (n.d.), “Wex Legal Dictionary,” accessed 4 July 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.

15 Stewart, William J. (2006), “Collins Dictionary of Law.”

16 See e.g. Philippine Supreme Court (2000), “Rule on the Examination of a Child Witness,” § 25 (courts may order that “the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television”).



## Recovery and Reintegration

Article 39 of the CRC states that “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.” Article 9(3) of the OPSC states that “State 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.” This assistance can include physical health services, psychosocial support and assistance with reintegration where children have been removed from their families or communities.

## Remedies

Article 19 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Declaration on Justice for Victims of Crime) 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. According to the UN Guidelines on Child Victims and Witnesses, “[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>17</sup>

## Respondents

Respondents refers to individuals interviewed for this Study, including victims and survivors of child sexual exploitation, criminal justice professionals, and social service providers.

## Restitution

According to Article 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 victimization, the provision of services and the restoration of rights.” Article 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.”

## 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>18</sup>

## 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.” Article 3(1)(a)(i) directs State parties to criminalize the sale of children for the purposes of sexual exploitation, forced labour and the transfer of organs.

17 UN Economic and Social Council, Guidelines on Child Victims and Witnesses, paras. 35 and 37.

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



## Service providers

The term “service providers” refers to individuals who provide direct assistance and services to survivors. These may include government and non-government professionals, including social workers, outreach workers, case managers, mental health professionals, such as psychologists or counsellors, and shelter staff, including house parents.<sup>19</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. ECPAT International recognizes four primary and interrelated forms of SEC: prostitution, pornography, trafficking for sexual purposes and sexual exploitation in travel and tourism.<sup>20</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 focuses not only on Western offenders, but includes local and regional travellers and tourists as well.<sup>21</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>22</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 him/herself.

## Trafficking

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 “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

19 Brunovskis, Anette and Surtees, Rebecca (2012), “A Fuller Picture: Addressing Trafficking-Related Assistance Needs and Socio-Economic Vulnerabilities,” accessed 25 July 2016, [http://www.fafu.no/~fafu/media/com\\_netsukii/20256.pdf](http://www.fafu.no/~fafu/media/com_netsukii/20256.pdf)

20 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: Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, 41-42.

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

22 Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, 80.



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.

### Victim

Pursuant to Article 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.” 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>23</sup> For purposes of this paper, “victim” refers to anyone who suffered from sexual exploitation as a child.

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23 UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para. 9(a).



# ACRONYMS

<b>ASEAN:</b>	Association of South East Asian Nations
<b>ATJ:</b>	Access to Justice
<b>COE:</b>	Council of Europe
<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>ICT:</b>	Information and Communications Technology
<b>ILO:</b>	International Labour Organization
<b>MDT:</b>	Multidisciplinary Teams
<b>MoU:</b>	Memorandum of Understanding
<b>NGO:</b>	Non-governmental Organisations
<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>SAARC:</b>	South Asian Association for Regional Cooperation
<b>SEC:</b>	Sexual Exploitation of Children
<b>SECO:</b>	Sexual Exploitation of Children Online
<b>SECTT:</b>	Sexual Exploitation of Children in Travel and Tourism
<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, pornography and sex trafficking. Despite significant efforts made since that time, sexual exploitation of children (SEC) continues to threaten children in all parts of the globe.

Today, studies show that human trafficking is a multi-billion-dollar global industry, with children making up one-third of all known victims, and most victims trafficked for sexual purposes. Due to cheaper travel and the spread of the internet, child sexual offenders are also increasingly on the move, able to exploit vulnerable children in new and remote areas of the planet. The growth of the internet has also led to a new and pernicious form of SEC: the sexual exploitation of children online. Millions of child sexual abuse images now appear online, and new technology enables viewers to watch live sexual abuse of children from anywhere in the world.

While it is difficult to ascertain precisely how many children are being exploited in these ways, what is certain is that SEC is spreading into real and virtual areas where it never existed before, and children everywhere are increasingly at risk.

## Access to justice for sexually exploited children

Children have a right under Article 34 of the *Convention on the Rights of the Child* to live a life free of sexual abuse and exploitation and to access justice when this right is violated.

Access to justice for children is defined as the “the ability to obtain a just and timely remedy for violations of rights” under international law. For sexually exploited children, the criminal justice system is an important way to secure legal remedies, including the compensation and services they need to recover and return to healthy lives. Indeed, participating in a criminal case against their offender is sometimes their only avenue for redress, as it can be costly and impractical for them to seek damages through separate civil lawsuits, and aid from state compensation funds, when available, is usually minimal.

To secure remedies for the violation of their rights, sexually exploited children must be able to engage effectively with the criminal justice system. States have a duty under international law and standards to help child victims participate in criminal cases against their offenders without being exposed to additional harm in the process, such as threats to their safety, privacy, health, or well-being. This “child-friendly” approach to justice recognizes the rights of child victims and witnesses, and balances them against those of accused offenders.

In recent years, States around the world have put in place a wide range of child-friendly measures to make their criminal justice systems more accessible and hospitable to children. While these advances have surely helped many child victims of crime to access justice, child victims of sexual exploitation continue to struggle. Few sexually exploited children enter the criminal justice system, and fewer still, participate in criminal proceedings until their conclusion. Indeed, it is rare for sexually exploited children to receive any legal remedy at all.



As the only global network dedicated to protecting children from all forms of sexual exploitation, ECPAT International conducted this Study to understand the experience of sexually exploited children in the criminal justice system and to identify the special challenges they face when seeking access to justice and remedies.

## Methodology

During 2014 and 2015, ECPAT conducted the Access to Justice Study in Nepal, the Philippines and Thailand. A key priority of the Study was to listen to SEC survivors and learn from their experiences in the criminal justice system. ECPAT conducted more than 40 access-to-justice interviews with young people, aged 13 through 26, all of whom had suffered sexual exploitation and were contemplating, or participating in, criminal actions against their exploiters.

*The Access to Justice Study is the first of its kind to feature the voices of young SEC survivors in such great number. ECPAT is grateful for the courage of these young people and is proud to share their views in this report.*

ECPAT also interviewed dozens of criminal justice and social service professionals who work with SEC survivors in criminal cases, including police, prosecutors, judges and civil society actors. This report is informed by a total of almost 100 individuals on the frontlines of the effort to provide sexually exploited children with access to justice and remedies. Desk research was conducted into relevant international and national laws to provide background and context.

The data from the field and desk research was collated and reviewed for common themes. In this way, it was possible to identify unique barriers that sexually exploited children continue to face when they seek access to justice and remedies.

## Research Limitations

While this research was extensive, certain limitations and challenges exist.

- The Study provides a unique look at the criminal justice process through the eyes of sexually exploited children. It is not a comprehensive analysis of the Study Countries' efforts to incorporate international access-to-justice standards into their justice systems or to implement child-sensitive procedures. Rather, it is intended to provide unique insight into the *child's experience* of these justice systems and highlight aspects of the justice process that merit additional attention.<sup>24</sup>
- Because interviews for this Study had potential to trigger painful memories for survivors and be re-traumatizing, participants were carefully selected by child protection "gatekeepers". Only survivors who were deemed to be physically and emotionally able and willing to participate in the Study were included. Even for these survivors, the criminal justice-related questions were particularly difficult to discuss. As a result, the Study presents a valuable but incomplete picture of the experience of survivors in the justice system, excluding experiences that were too painful for survivors to recount.

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24 Recommended resources for a more comprehensive review of the Study Countries' response to SEC include: ECPAT International's "Global Monitoring Status of Action against Commercial Sexual Exploitation of Children" Reports for Nepal, the Philippines and Thailand and the related regional overviews, as well as ECPAT's recently published "Situation Analysis of the Commercial Sexual Exploitation of Children in Thailand," October 2015. Available at: <http://www.ecpat.org/resources/>



- English translation posed a challenge throughout the Study, both in the field interviews and in the desk research. Wherever possible, efforts were made to confirm the translation through other sources.

## KEY Findings

Nepal, the Philippines and Thailand have put in place a wide range of legislation to combat the sexual exploitation of children and to help victims participate in criminal cases against offenders to obtain much-needed legal remedies. However, the Study identified a number of unique and powerful barriers that continue to impact sexually exploited children:

1. Reluctance to Report: **Children’s silence about sexual exploitation may be the number one barrier to their ability to access justice and one of the most difficult to overcome.** According to the Study, children exploited in prostitution or pornography are particularly unlikely to report abuse: many do not perceive themselves as victims, distrust the justice system, risk retaliation and stigma, and fear long-term placement in government facilities. While States have taken important steps to build child-friendly hotlines and other reporting mechanisms, these methods are not widely used by SEC victims to seek help, and specialized outreach by State actors appears to be a promising but rare practice. Moreover, when SEC survivors do report the sexual crimes against them, their report is often delayed, and short statutes of limitations for these crimes can deny them access to justice.
2. Police Inaction: **Inaction by local police in the face of SEC was a common theme in ECPAT’s interviews with young survivors, their advocates, and even criminal justice actors themselves.** The Study Countries rely heavily on non-governmental organizations to search for, identify, and rescue children from brothels, clubs and other sex venues. When police do conduct raid and rescue operations, they face numerous challenges in distinguishing child victims from adult offenders, and sexually exploited children often fall through the cracks, returning to the streets or finding themselves under arrest.
3. Criminalization of Victims: **When sexually exploited children, particularly adolescents, come to the attention of the police, they risk being treated as criminals rather than victims entitled to justice.** While the Study suggests that arrests are less frequent than in the past, sexually exploited children continue to risk arrest after raids on sex venues or red light districts.
4. The Need for Time, Information and Assistance at the Start of SEC Cases: Before deciding whether to file a criminal complaint and participate in a case against their exploiters, sexually exploited children often need time to heal and understand their exploitation. They also need information to prepare for the challenges that lie ahead. **Yet, sexually exploited children often have little time or information to make an informed decision about whether or not to participate in a criminal case against their offender, and many are under tremendous pressure from the adults around them to reach a decision that is not necessarily in their best interests.**



5. Lack of Support from Family or Other Advocates: **While family support was cited as vital to the ability of children to access justice, and many sexually exploited children who interact with the justice system (including more than 25% of the survivors in the Study) lack this support.** They are separated from their families, ashamed to confide in them about their exploitation, or abused and neglected by family members, themselves. Families often prefer to settle SEC cases quietly rather than support their children through long and difficult criminal proceedings. While children without families by their side may still be able to access justice with the help of a dedicated advocate, the Study shows that, unless a child is connected with a well-resourced NGO, this is unlikely to be the case.
6. Threats to Safety: **Sexually exploited children and their families are at risk of exploiters' threats, harassment, and violence during the pre-trial and trial periods, and witness protection is a priority to ensure their access to justice.** Accused offenders evade pre-trial restrictions and gaps in witness protection measures leave children and families exposed to danger, including in public areas in and around the courthouse. Children are often placed in secured residential facilities during SEC cases, which, while keeping them safe, can be perceived as a form of pre-trial detention used to ensure their appearance at trial.
7. Unmet Needs for Specialized Care and Counselling: When SEC victims enter the justice system, many still suffer from the effects of their sexual abuse and exploitation and require a wide range of specialized physical, psychological and social services, both during and after the SEC case. The children's needs are great and the States' services are limited, and many children run away from shelter care before cases reach trial. **The unmet needs of sexually exploited children for specialized care and counselling can make it difficult for them to interact with the justice system in pursuit of legal remedies and lead them to return to the sex trade, where the cycle of abuse begins again.**
8. Child's Best Interests Not a Primary Consideration: In all criminal cases involving child victim-witnesses, police, prosecutors and judges have a special duty: to give primary consideration to the child's best interests when making decisions that affect them. SEC cases are generally heard in criminal courts where the best interests principle is less familiar than in family-specialized courts. **In the criminal courts, the best interests of SEC victim-witnesses are not assessed or considered in a systematic way, and children's interests are not given the weight they deserve in the balance with competing interests of the accused and the State.**
9. Gaps in Communication: Although justice officials also have a duty to inform and seek the views of sexually exploited children during cases against their offenders, **many survivors interviewed for the Study had little understanding about what was transpiring in the criminal case, unaware when they would go to court, if they would see the accused, why there were delays, or when they would be allowed to return home.** Since SEC cases still tend to move quite slowly through the justice system, some survivors were left without news about their cases for months or even years. The lack of communication keeps children from effectively engaging in the justice process and contributes to their sense that authorities do not care about securing justice in their cases.
10. Hardships Related to Recounting Abuse: For SEC survivors, one of the most daunting aspects of the justice process is the requirement that they tell the story of their abuse, often many times, during proceedings. This hardship is even greater when they have to tell their story in the presence of their exploiter or confront the biases of officials who have trouble seeing



the exploited child beneath the image of the sex worker. **While the Study Countries offer a range of special interview and trial procedures, a one-size-fits-all approach can lead officials to apply procedures that are not well-suited to the special needs and preferences of the individual child.** For example, many courts hold SEC cases in judges' chambers, a measure that spares children unwanted publicity, but often requires them to speak in even closer proximity to their exploiter than usual.

**Adding to this hardship is the fact that SEC cases are still largely child-dependent rather than child-supportive, relying almost entirely on the testimony of the child to convict exploiters.** While this approach is not unusual for SEC cases and sometimes the only way to proceed, the Study revealed significant gaps in the way SEC investigations are conducted. A new approach, which offers benefits to the child and State, emphasizes the collection of crime scene evidence, the introduction of evidence to educate courts about SEC and combat harmful misconceptions, and the full use of evidentiary rules to help children tell their story effectively.

11. Failure to Secure Convictions and Legal Remedies: Few sexually exploited children will see their offenders brought to justice, and fewer still will receive legal remedies. Recovering assets from offenders is a difficult and often unsuccessful process, and state compensation programmes, while a welcome alternative, offer only small awards. **The Study shows that the compensation process is poorly understood by children and families involved in SEC cases and hindered by a perception that children who have “earned” money for engaging in sex do not deserve monetary awards.**

## Special Barriers Affecting Children Exploited Online

Children who are sexually exploited online face special access-to-justice barriers. Children used in online pornography or live performances are believed to be even more reluctant to report the crimes against them than other SEC victims, because they fear that recordings of their abuse will be discovered. Most of these children are never found or connected with the justice system.

For those victims who do engage with the justice system, existing child-friendly procedures may not be well-suited to their needs. For example, there are currently few explicit restrictions on the disclosure and discovery by the parties of sexual abuse imagery in evidence, with the Philippines being an exception. In addition, a growing reliance on digital technologies to enable children to give testimony remotely may not always be the best option for children who have been victimised through these means.

## Cross-Cutting Themes

Certain cross-cutting themes emerged from the Study, including:

1. **The Myth of the “Willing” Victim:** A dominant theme arising out of the Study is the failure of adults in the justice system to see the injured child beneath the image of a sex worker or troubled teen, which negatively impacts the child's experience at every stage of the process – from the initial contact with police, to the investigation and trial, to the final judgment and award of remedies.



2. **Discrimination against the Adolescent Victim:** The prostitution of children is largely a crime against adolescents, but child-friendly justice often provides greatest protection to young children. The Study revealed that sexually exploited children who are, or appear to be, old enough to consent to sex are more likely to be treated as criminals than victims. Their ability to access justice may be thwarted by shorter statutes of limitations and private settlement laws that apply to older children. Because delayed disclosures and slow-moving cases are common in SEC prosecutions, older children also risk being deemed ineligible or undeserving of child-friendly protections by the time they reach trial.
3. **Discrimination against Certain Groups of Sexually Exploited Children:** Certain groups of sexually exploited children also appear to be at a disadvantage when accessing justice, including migrant or trafficked children, children living or working on the streets, and prostituted boys and transgender youth. The Study shows that these children often lacked the family support needed for successful participation in SEC cases and risked being treated as immigration violators or juvenile offenders rather than child victims.
4. **Elusive Nature of the Child's Best Interests:** Because the duty to consider the best interests of child victim-witnesses in criminal cases is not institutionalized in the Study Countries, SEC cases tend to be managed in the same way as criminal cases involving adult victim-witnesses. As a result, inadequate attention is paid to the special needs of children in that role, exposing them to unnecessary hardships at all stages of the case and making it more difficult for them to access justice through the criminal process.
5. **Few Opportunities for Meaningful Participation:** The right of child victims to have a say in criminal cases against their offenders is also not widely recognized in the Study Countries. The Study shows that SEC survivors are rarely informed or given a chance to express their views on important matters during cases against their offenders, from the decision to file a criminal complaint to the selection of child-friendly procedures to the making of a victim impact statement at the sentencing of the offender.

## KEY Recommendations

In light of these findings, ECPAT offers the following suggestions/recommendations to the Study Countries and others like them to improve access to justice for sexually exploited children:

1. Develop specialized outreach programmes for sexually exploited children and those at risk of sexual exploitation, including joint partnerships between specialized police and NGOs.
2. Expand the investigatory capacity of police to find and rescue sexually exploited children and build stronger SEC cases around them.
3. Introduce or broaden safe harbour protections to reduce the risk of arrest for crimes arising out of exploitation.
4. Create a legal presumption that a victim of sexual exploitation is a child whenever the victim's age is unclear and train first-contact professionals to better discern age.
5. Provide victims with the opportunity for a recovery and reflection period after rescue to help them heal and understand their exploitation before deciding whether to participate in a criminal case against the exploiter.
6. Provide information to victims at the outset of the SEC case to help them make an informed decision about filing a criminal complaint against the exploiter, including information about their rights, their expected role in the criminal process, and the risk and benefits of participation.



7. Eliminate statutes of limitations for SEC-related crimes or ensure that they are of reasonable length and do not begin to run until the victim reaches age 18.
8. Ensure that any informal or mediated settlement of SEC cases takes place only when it is in the best interests of the child, and does not involve harmful practices, such as forced marriage.
9. Assign a guardian *ad litem* or other qualified advocate to every child victim-witness to help them navigate safely and effectively through the criminal law proceedings in SEC cases.
10. Create a legal presumption in favour of pre-trial detention of accused SEC offenders, and where that presumption exists, take steps to ensure it is properly enforced. Improve witness protection for children, with a focus on public transportation and public areas in and around courthouses, including bathrooms, waiting areas, and corridors.
11. Ensure that shelter care is the last resort for child victims of crime. Address gaps in government-run, residential facilities that house SEC victims and develop non-residential care and protection programmes for SEC victim-witnesses.
12. Institute a formal “best interests” determination process for SEC cases in accordance with the Convention on the Rights of the Child and related guidance.
13. Establish a structured system of communication with SEC victim-witnesses, requiring officials to provide written notice of rights at the outset of the case, give regular updates, seek the child’s views on key decisions, explain delays, and ensure proper trial preparation.
14. Expedite SEC cases through priority tracking, continuous hearings or other methods and approve delays only after considering the child’s views and best interests.
15. Create a single protocol of child-friendly procedures applicable to SEC cases in whatever court they are heard, ensuring that the procedures are available to all children under the age of 18 (or older, when necessary) and are flexibly applied to address the individual needs and interests of each child. Due consideration should be given to the child’s own views about the types of interview and trial procedures he or she is most comfortable with.
16. Adopt a law enforcement strategy of “child-supportive” rather than child-dependent SEC cases, corroborating the child’s testimony with crime scene evidence, introducing evidence to improve understanding of SEC victimisation and combat harmful misconceptions, and making full use of evidentiary rules, such as child sexual abuse shield laws and child hearsay exceptions, to assist and protect child witnesses.
17. Improve the ability of SEC victims to receive restitution from convicted offenders by identifying and attaching defendants’ assets early in the proceedings and amending money laundering laws to permit victims to be paid from forfeited property.
18. Develop state victim compensation funds and ensure that SEC victims are not deemed ineligible due to involvement in SEC-related crime.
19. Develop a comprehensive continuum of care and support that includes closely-monitored, post-trial reintegration services, including for foreign-born victims.
20. Provide SEC-specialized training to criminal justice professionals, highlighting the unique challenges faced by adolescent, migrant, homeless, and male youth.



# INTRODUCTION

It has been twenty years 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, pornography and sex trafficking.<sup>25</sup> Since this time, great efforts have been made at the international and national level to combat these crimes. Yet, the sexual exploitation of children continues to expand across the world and out-pace every attempt to respond.

## I. THE SEXUAL EXPLOITATION OF CHILDREN

Human trafficking is now estimated to be a multi-billion-dollar global industry,<sup>26</sup> with children making up one-third of all known victims, and most victims trafficked across or within borders for sexual purposes.<sup>27</sup> Thanks to a profusion of cheap travel options and the spread of the internet, child sexual offenders are also increasingly on the move, able to seek out and exploit vulnerable children in new and more remote areas of the globe.<sup>28</sup>

The growth of the internet has also led to a new and pernicious form of SEC: the sexual exploitation of children online. Today, even the best-resourced law enforcement agencies struggle to meet this challenge,<sup>29</sup> faced with millions of child sexual abuse images online,<sup>30</sup> and new technology that enables viewers to watch live sexual abuse of children from anywhere in the world.<sup>31</sup>

Because of the hidden nature of SEC and the difficulties of collecting up-to-date, accurate and complete data, it is not possible to ascertain the precise number of children being exploited in these ways.<sup>32</sup> What is certain, however, is that SEC is spreading into real and virtual areas where it never existed before, and children everywhere are increasingly at risk.

25 ECPAT International defines four primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography, trafficking for sexual purposes and sexual exploitation in travel and tourism.

26 International Labour Organisation (2014), "Profits and Poverty: The Economics of Forced Labour," 15, accessed 10 May 2016, [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), (forced sexual exploitation generates an estimated \$99 billion USD in profits per year).

27 UN Office on Drugs and Crime (2014), "Global Report on Trafficking in Persons," 2014, 5, 10 and 11, accessed 10 May 2016, [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)

28 Hawke, Angela and Raphael, Alison, Global Study on SECTT, 13.

29 INTERPOL, "Crimes Against Children," *Interpol website*, accessed 4 July 2016, <http://www.interpol.int/Crime-areas/Crimes-against-children/Crimes-against-children>

30 While it is difficult to quantify the number of child sexual abuse images online because websites quickly appear, disappear and re-appear under new names, and images are often distributed through hard-to-detect peer-to-peer networks and the dark net, the U.S. Centre on Missing and Exploited Children reported that it has reviewed more than 164 million child abuse images; See: National Center for Missing and Exploited Children (n.d.), "Key Facts," *National Center for Missing and Exploited Children website*, accessed 26 July 2016, <http://www.missingkids.com/KeyFacts>

31 See: ECPAT Belgium (2014), "Child sex tourism via webcam, a disturbing new trend," August 2014, accessed 30 September 2016, <http://ecpat.be/wp-content/uploads/2014/09/Le-tourisme-sexuel-impliquant-des-enfants-via-webcam1.pdf>; Holmes, Oliver (2016), "How child sexual abuse became a family business in the Philippines," 30 May 2016, accessed 12 June 2016, <https://www.theguardian.com/world/2016/may/31/live-streaming-child-sex-abuse-family-business-philippines> (describing a 2013 law enforcement undercover action, in which a virtual 10-year-old girl named Sweetie was contacted by nearly 20,000 Web users over a 3-month period, with one thousand people offering money for sex acts performed in front of the camera).

32 See: ECPAT International (2015), "Situational Analysis of Commercial Sexual Exploitation in Thailand," Bangkok: ECPAT International (discussing weaknesses in current data on SEC).



## DEFINITION OF SEXUAL EXPLOITATION OF CHILDREN (SEC)

A child is a victim of sexual exploitation when he/she takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such) received by a third party, the perpetrator, or by the child him/herself. 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>33</sup>

## II. THE INTERNATIONAL LEGAL FRAMEWORK

### A Child’s Right to Live Free from Sexual Exploitation

Under Article 34 of the *United Nations Convention on the Rights of the Child* (CRC), the sexual exploitation of children – wherever and however it occurs – is a violation of a child’s human rights. The *Optional Protocol to the Convention 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 taken into account the “grave nature” of these offences.<sup>34</sup>

States are also obligated to protect children from all forms of trafficking, including the trafficking of a child within or across national borders for sexual purposes, pursuant to Article 35 of the CRC, as well as 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>35</sup>

The *International Labour Organization Convention No. 182 on the Worst Forms of Child Labour* also requires State Parties to “eliminate as a priority the worst forms of child labour,” the prostitution, pornography and trafficking of children.<sup>36</sup>

33 Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, 39-41.

34 See: UN General Assembly (2000), “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC),” A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002, art.3 (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. Forced child marriage, which is prevalent in certain parts of Nepal, can constitute another type of sale or exploitation. These types of exploitation are not addressed by this Study).

35 UN General Assembly (2000), “United Nations Convention against Transnational Organised Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime,” (hereinafter Palermo Protocol), Res. 55/25 of 15 November 2000, art. 5.

36 ILO (1999), “Convention No. 182 on the Worst Forms of Child Labour,” art. 6.



## THE CHILD'S RIGHT TO LIVE FREE FROM SEXUAL EXPLOITATION:

### Article 34 of the Convention on the Rights of the Child

“States Parties [shall] 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.”

## 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. Put simply by the Committee on the Rights of the Child, “[f]or rights to have meaning, effective remedies must be available to redress violations.”<sup>37</sup>

The right of children to legal remedy for human rights violations is well-established in international law. As the Committee notes, it is “implicit in the Convention [on the Rights of the Child] and consistently referred to in the other six major international human rights treaties.”<sup>38</sup> Legal remedies can include, among other things, restitution, compensation, and rehabilitation.<sup>39</sup>

One way that victims of SEC can obtain these remedies is by reporting the crimes against them to the police and participating in a criminal case against their exploiter. If the offender is convicted, the criminal court may order him or her to pay restitution to the child to compensate for the harms the offender caused.<sup>40</sup> Another way that children may access compensation is by applying for funds from state-managed crime victim programmes or suing their offenders in civil court.

For many sexually exploited children, the criminal process is the only avenue for adequate compensation. Many States do not offer compensation programmes,<sup>41</sup> and even when they do, funds are limited and not sufficient to ensure the full compensation and rehabilitation of every victim. Civil actions for damages are often incorporated into the criminal proceedings. Victims may file a separate lawsuit in civil court, but this can be a costly and impractical option, especially for child victims who lack legal capacity and require the cooperation of their parents or guardians.<sup>42</sup>

37 Committee on the Rights of the Child, “General measures of implementation of the Convention on the Rights of the Child”, General Comment No. 5, UN Doc. CRC/GC/2003/5, para 24.

38 Ibid. For international treaties and standards providing a right to remedy for human rights violations, see e.g. UN General Assembly (1948), “Universal Declaration of Human Rights”, art. 8; UN General Assembly (1966), “International Covenant on Civil and Political Rights”, art. 2; UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, arts. 4-7; UN General Assembly, Basic Principles the Right to a Remedy and Reparation, arts. 18-23.

39 UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, art. 18. See also: ECPAT International, “Compensation Study for Child Victims of Sexual Exploitation,” Bangkok: ECPAT International (publication forthcoming).

40 UN General Assembly, Declaration of Basic Principles for Justice.

41 Nepal has no such programme.

42 Other ways that a sexually exploited child could obtain remedies include a quasi-judicial proceeding before a specialized “ombudsman,” an informal mediation outside of official state systems, and in some countries, a private prosecution of offenders, in which the victim rather than the state pursues the criminal case. This Study focuses only on the ability of SEC survivors to obtain remedies in connection with their participation in the criminal justice system, as discussed more fully in Section 11 of this report. For information about other avenues of access to justice, see: Child Rights International Network (2016), “Rights, Remedies and Representation: Global Report on Access to Justice for Children”,



International standards also establish a right to the remedy of rehabilitation.<sup>43</sup> This remedy may include compensation in an amount sufficient to pay for the child’s rehabilitation, or it may include rehabilitation services, themselves.<sup>44</sup> Rehabilitation services have been defined to include the medical, psychological, social and legal services that victims need to return to healthy lives.<sup>45</sup>

## 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. In 2013, the United Nations Office of the High Commissioner for Human Rights produced a report on *Access to Justice for Children*<sup>46</sup> and in 2014 convened a full-day meeting of the Human Rights Council on this subject.<sup>47</sup>

The *Access to Justice for Children* Report emphasizes that the ability of a child to access justice is a “fundamental right in itself and an essential prerequisite for protection of all other human rights.”<sup>48</sup> It defines access to justice 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>49</sup> Thus, children used in prostitution and pornography have a right to access justice for violations of their right against sexual exploitation under Article 34 of the CRC.

As explained by the Report, the right to access justice applies to “civil, administrative and criminal spheres of national jurisdiction” and covers “all relevant judicial proceedings...without limitation”.<sup>50</sup> It applies to child victims and witnesses,<sup>51</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>52</sup>

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January 2016, accessed 27 September 2016, [www.crin.org/sites/default/files/crin\\_a2j\\_global\\_report\\_final\\_1.pdf](http://www.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf)

43 UN General Assembly, Basic Principles on the Right to Remedy and Reparation, art. 20; See also: UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 14; UN General Assembly (1984), “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” Res. 39/46 of 10 December 1984, art.14.

44 It is not entirely clear how States are to provide victims with the remedy of rehabilitation – whether they should ensure that victims receive compensation in an amount covering the costs of their rehabilitation, or provide rehabilitation services directly, or both. For more, see: Villalba, Clara (2009), “Rehabilitation as a Form of Reparation under International Law,” December 2009, accessed 27 September; <http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf>, 58-59.

45 UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, art. 20.

46 Human Rights Council, Access to justice, para. 3.

47 Office of the High Commissioner for Human Rights (2014), “Summary of the full-day meeting on the rights of the child,” UN Doc. A/HRC/27/25, 18 June 2014, para 5.

48 Human Rights Council, Access to justice, para 3.

49 *Ibid*, para 4.

50 *Ibid*.

51 *Ibid*.

52 *Ibid.*, footnote 5. See also: *Ibid.*, 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, while the latter applies to child victims and witnesses as well.)



While the concept of access to justice is sometimes misunderstood to apply only to children in conflict with the law, guaranteeing them fair treatment during criminal proceedings against them, the High Commissioner’s report makes clear 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>53</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 compensation and services needed to recover and rebuild their lives.*

### ACCESS TO JUSTICE FOR CHILDREN: Report of the UN High Commissioner for Human Rights, 2013

“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 it 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>54</sup>

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

Child victims of sexual exploitation face unique challenges when they try to access justice and secure remedies.<sup>55</sup> As observed by the UN Economic and Social Council in the *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (UN Guidelines on Child Victims and Witnesses), 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>56</sup>

Because child victims of crime 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>57</sup> As explained by the Committee on the Rights of the Child in its General Comment on *General Measures of*

53 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\*, 19 September 2012, paras. 14 and 17 (emphasising the “the right of equal access to justice for all, including members of vulnerable groups”); UN Economic and Social Council, *Guidelines on Child Victims and Witnesses*, 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.); UN General Assembly, *Basic Principles on the Right to a Remedy and Reparation*, art. 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.”); UN General Assembly, *Basic Principles of Justice for Victims of Crime and Abuse of Power*, art. 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.”)

54 Human Rights Council, *Access to justice*, para 4.

55 Committee on the Rights of the Child, *General Comment No. 5*, para. 24.

56 UN Economic and Social Council, *Guidelines on Child Victims and Witnesses*, Preamble.

57 *Ibid.*



*Implementation of the Convention 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>58</sup>

For these reasons, the “concept of access to justice requires the legal empowerment of all children.”<sup>59</sup> As explained by the UN High Commissioner, if children are to be able to obtain the remedies they deserve, they need to be “enabled” to participate in judicial proceedings through “legal and other services, education, counselling, advice and support from knowledgeable adults.”<sup>60</sup>

Enabling child victim-witnesses to navigate safely and effectively through criminal proceedings 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>61</sup>

### 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...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)

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. 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>62</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, is to find a balance that is respectful of the rights of both.<sup>63</sup>

58 Committee on the Rights of the Child, General Comment No. 5, para. 24.

59 Human Rights Council, Access to justice, para 5.

60 *Ibid.*

61 UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para 9(d).

62 OPSC, art. 8(6). See also: UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, art. 27; UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, art. 6(b); UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para. 7(j); COE, Guidelines on child-friendly Justice, Art. I (3).

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



The State’s duty to provide child-friendly justice to children and enable them to access justice through criminal proceedings arises from multiple international and regional legal instruments and standards, the most significant of which are outlined below:<sup>64</sup>

**Table 1: Child-Friendly Justice Procedures in International and Regional Instruments**

<b>Child-Friendly Justice Procedures In International and Regional Instruments</b>			
Treaty Obligations	Date of Ratification		
	Nepal	Philippines	Thailand
UN Convention on the Rights of the Child, 1989	1990	1990	1992 <sup>65</sup>
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000	2006	2002	2006
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol), 2000	Not a party to the Protocol	2002	2013
ILO Worst Forms of Child Labour Convention (No. 182), 1999	2002	2000	2001
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002	2002	Not applicable	Not applicable
ASEAN Declaration Against Trafficking in Persons Particularly Women and Children, 2015	Not applicable	2015	2015
International Norms and Standards			
UN OHCHR Recommended Principles & Guidelines on Human Rights and Human Trafficking 2002			
UN ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005			
UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 201 <sup>66</sup>			

64 Other relevant international instruments and standards include UN General Assembly, Palermo Protocol, arts. 24 and 25; Human Rights Council, Access to justice; UNODC (2013), “United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems;” UN Special Procedures (2012), “Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children,” A/HRC/20/18; UN General Assembly (2014), “Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons, Annex II: Basic principles on the right to an effective remedy for victims of trafficking in persons Special Rapporteur on Trafficking in Persons (Draft),” UN Doc. A/HRC/26/18, 2 May 2014 (hereinafter Trafficking Guidelines); COE, Guidelines on Child-Friendly Justice; UNODC (2009), “Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law.”

65 Thailand made the following reservation: “The application of articles 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand.”

66 See: UNODC (2015), “Planning the implementation of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice: A Checklist,” Strategy VIII: Improving criminal proceedings in matters involving child victims of violence.



## 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>67</sup> Under Article 1 of the CRC, a child is any human being under the age of 18.<sup>68</sup> States must ensure that the child's "best interests" are a "primary consideration" in all legal actions that concern them, including criminal actions in which they are a victim-witness.<sup>69</sup> During these proceedings, the State must provide children with an opportunity to express their views and have them taken into account,<sup>70</sup> and protect against all forms of discrimination.<sup>71</sup> States must also promote the child's "physical and psychological recovery and social integration" in an "environment which fosters the [child's] health, self-respect and dignity."<sup>72</sup>

## 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 through the sale, prostitution and pornography of children.<sup>73</sup> 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 a primary consideration in SEC cases.<sup>74</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.

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>75</sup>

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67 The CRC is currently ratified by every State in the world except the United States.

68 CRC, art. 1 ("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.)

69 *Ibid.*, art. 3(1).

70 *Ibid.*, art. 12.

71 *Ibid.*, art. 2(1).

72 *Ibid.*, art. 39.

73 The OPSC also address the additional offences of forced labour, illegal adoptions and the trafficking of a child's organs. See: OPSC, art. 3.

74 OPSC, arts. 8(1)(a) and 8(3).

75 *Ibid.*, art. 8(2).



## Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (“The Palermo Protocol”):<sup>76</sup>

The Palermo Protocol supplements the *UN Convention on Transnational Organized Crime*, prescribing special protections for trafficking victims, including child victims of sex trafficking, during cases against their traffickers.<sup>77</sup> It obligates States to protect victims’ privacy and safety; provide information and opportunity to be heard; ensure access to recovery and reintegration services, including housing, legal counselling, medical care, material assistance, education, and vocational training; offer immigration assistance, such as temporary stays of deportation and safe repatriation; and provide access to compensation.<sup>78</sup> It specifies that States must consider the age, gender and special needs of child victims when providing services.<sup>79</sup>

## ILO Worst Forms of Child Labour Convention (No. 182), 1999:

The *ILO Worst Forms of Child Labour Convention* 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. State must also provide necessary and appropriate assistance for the recovery and social reintegration of sexually exploited children, including access to education and vocational training.

## 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):

An international standard that serves to guide States on how to accommodate children in their justice systems is found in a set of international guidelines issued by the United Nations Economic and Social Council under Resolution 2005/20.<sup>80</sup>

The UN Guidelines on Child Victims and Witnesses 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>81</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>82</sup>*

76 Note that Nepal has not ratified the Palermo Protocol and is not bound by its provisions.

77 UN General Assembly, Palermo Protocol, art. 6.

78 *Ibid.*

79 *Ibid.*

80 UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para. 8.

81 *Ibid.*

82 *Ibid.*, para. 8(a).



## 2. The Right to be Protected from Discrimination

*Every child has the right “to be treated fairly and equally,” regardless of “race, ethnicity, 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>83</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 additional hardship, neglect, or abuse and allow the child to continue to develop physically, psychologically, spiritually, morally and socially.<sup>84</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>85</sup>*

The Guidelines make clear that these four principles are to be applied “throughout the justice process,” from initial contact with the justice system to the final resolution of the case and the child’s reintegration into the community.<sup>86</sup>

### 9 Essential Elements of Access to Justice for Child Victims of Crime<sup>87</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 unnecessary delays
8. The right to safety
9. The right to reparation

83 *Ibid*, para. 8(b).

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

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

86 *Ibid.* para. 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”); see also: paras. 10, 15, 19, 21, 24, 33 (noting that the rights of child victim-witnesses begin at first contact with the justice system and continue until the end of the case or longer, where needed, including the right to be treated with care and dignity, to access justice systems without discrimination, to be informed, to express views, to have effective support and assistance, to be protected from hardship, and to be kept safe).

87 *Ibid*, § V – XIII.



# METHODOLOGY

As the only global network dedicated to protecting children from all forms of sexual exploitation, ECPAT 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.

## I. THE STUDY

Over a seven-month period in 2014 and 2015, ECPAT conducted an in-depth qualitative study that focused on the experience of sexually exploited children in the criminal justice systems in Nepal, the Philippines and Thailand, and their ability to secure legal remedies. Because the Study was the first of its kind, ECPAT selected three countries where SEC is believed to be a significant problem and where ECPAT has strong and active member groups.<sup>88</sup>

The following tools were used to collect qualitative data:

### Desk Research

The Access to Justice Study began with desk research into the international norms and standards that inform the States' duty to provide child-friendly procedures and enable child victims to access justice. Researchers then developed an Access to Justice Research Tool to guide additional research into relevant national laws, policies and procedures in the Study Countries.

Because many sexually exploited children never engage with the justice system at all, the Research Tool was designed to seek information on the barriers that prevent victims from entering the system, as well as those that prevent them from securing remedies, such as compensation, restitution and rehabilitation, after entering. It considered each stage of a SEC case in chronological order, reflecting the usual progress of a child victim through the justice process.

The desk research was used to provide important background and context to the accounts of the survivors, justice professionals, and service providers interviewed for this Study.

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<sup>88</sup> It is difficult to obtain reliable estimates as to the magnitude of the crime in the Study Countries. Some estimates indicate that the number of children used in prostitution and pornography is in the thousands. In Nepal, reports suggest there are 11,000 to 13,000 girls and women working in the sex industry in Kathmandu alone. Estimates have placed the number of children used in prostitution in the Philippines and Thailand at around 60,000. See e.g. ECPAT International (2011), "Global Monitoring Status of Action against Commercial Sexual Exploitation of Children: Nepal," 9, Bangkok: ECPAT International; ECPAT International (2011), "Global Monitoring Status of Action against Commercial Sexual Exploitation of Children: Philippines," 8, Bangkok: ECPAT International; ECPAT International (2015), "Situational Analysis of the Commercial Sexual Exploitation of Children in Thailand," 36-37 (noting that while Thai authorities have recognized that child prostitution is a significant problem in the country, estimates as to scale vary widely).



## Interviews with Survivors and Service Providers

Table 2: Access to Justice Interviews

ACCESS TO JUSTICE INTERVIEWS February – May 2015								
Study Countries	Survivors of Sexual Exploitation	Service Providers	Criminal Justice Professionals	Police	Public Prosecutors	Judges	Child-Rights Attorneys and Advocates (Non-governmental)	Total Number of Interviews
Nepal	18	9	8	(2)	(1)	(2)	(3)	35
Philippines	14	9	9	(3)	(2)	(2)	(2)	32
Thailand	9	8	13	(4)	(2)	(1)	(6)	30
Total	41 <sup>89</sup>	26 <sup>90</sup>	30	(9)	(5)	(5)	(11)	97

During the first half of 2015, ECPAT Consultant, Dr. Katherine Hargitt, interviewed 139 SEC survivors and service providers in the Study Countries.<sup>91</sup> The interviews covered issues related to three ECPAT studies: The Access to Justice Study, the Recovery and Reintegration Study, and the Compensation Study. Of the total number of respondents, 41 survivors and 26 service providers shared information related to access to justice that was used in this Study.

Participants were selected after a process that began with preliminary field missions to the Study Countries and consultations with ECPAT member groups, SEC survivors and government and non-government stakeholders. ECPAT was then able to identify organisations that work with SEC survivors in the Study Countries and invite them to participate in the Study. The participating organisations then selected the survivors and service providers for this Study, based on detailed criteria from ECPAT.

Extra precautions were taken with respect to selection of survivors. A staff member at each organisation who worked closely with survivors was assigned to act as a “child protection gatekeeper.” This person assessed the interest and readiness of survivors to participate, briefed them on the contents of the consent forms and accompanying information sheets, and followed up with them after the interviews. Survivors were excluded from participation if they lacked minimal maturity to engage in the Study, experienced severe mental health problems, lacked access to psychosocial support, or were believed to be vulnerable to suffering additional harm as a result of participation.

89 67 SEC survivors were interviewed in total (25 in Nepal, 27 in the Philippines and 15 in Thailand), of which 41 shared information relevant to the Access to Justice Study.

90 72 SEC service providers were interviewed in total, of which 26 provided information relevant to the Access to Justice Study.

91 Dr. Katherine Hargitt is a SEC-specialized child psychologist and ECPAT’s Consultant and Lead Researcher for the Recovery and Reintegration Study, “Voices of Children & Youth Survivors and their Service Providers: Shining a Light on the Continuum of Care and Recovery Needs of Commercially Sexually Exploited Children in Nepal, the Philippines and Thailand” Bangkok: ECPAT International (publication forthcoming).



The interviews were conducted using open-ended questions related to the three studies. Interviews with survivors were unstructured and followed a trauma-informed protocol,<sup>92</sup> while interviews with service providers had a semi-structured format.

Questions related to access to justice were provided by the lead researcher for this Study and drawn from the Access to Justice Research Tool developed for the desk research. The questions focused on the child's experience in the criminal justice process, inquiring as to what was most helpful to children, what was most difficult, and what the respondents would change to improve the child's experience. All interviews were conducted in English through use of an interpreter and lasted from 30 minutes to more than an hour. Consent forms and related information were provided in the participants' native language, and informed consent was obtained from the participants, or their legal guardians where necessary, prior to interviews. Participation was voluntary and negotiable at each stage of the involvement.

The interviews were audio-recorded. Dr. Hargitt also took hand-written notes. The identity of participants was protected through a coding system.

Responses to the access to justice-related questions were transcribed from the audio-recordings and coded. After redacting the transcripts where necessary to protect the informants' confidentiality, Dr. Hargitt provided them for use in this Study.

### SEC Survivors

Of the 41 survivors who provided information relevant to this Study, 26 were female, eight were male and seven identified as transgender. They ranged in age from 13 to 26, with an average age of 18 years.<sup>93</sup> They had various degrees of interaction with the criminal justice system. Some had participated in the prosecution and trial of offenders, while others were still contemplating whether to report their exploitation and engage with the system. Some had lived for extended periods of time in shelters, while others were identified through their visits to drop-in centres. Interviews took place in NGO shelters and drop-in centres, as well as in government shelters in the Philippines.

### Service Providers

A total of 26 service providers were also interviewed about their experiences working with survivors during the criminal justice process. Participants included non-government social workers in all Study Countries, and government social workers in Thailand and the Philippines. They also included directors and staff of NGO-run shelters in all of the Countries and the employees at government shelters in the Philippines.

## Interviews with Criminal Justice Professionals

Between February and April 2015, ECPAT also engaged child-rights lawyers in each Study Country to serve as in-country legal consultants, conducting interviews with key criminal justice informants.

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92 The trauma-informed interview protocol entailed a warm-up series of questions to introduce the researcher and translator and discuss the Study's purpose and procedures, including a review of the consent form and the confidentiality protections. Only after a series of "ice-breaker" questions were questions asked related to ECPAT's three studies. Questions that had the potential to be most difficult for survivors to discuss, which included questions related to the Access to Justice Study, were raised halfway through the interviews to give participants time to become comfortable with the interview process beforehand and to transition smoothly back into their daily life afterward.

93 In total, Dr. Hargitt interviewed 67 survivors, ranging in age from 10 to 36, with 26 percent being age 17. 66 percent were female, 19 percent were male and 15 percent identified as transgender.



The consultants interviewed a total of 30 informants, including police, prosecutors, and judges, as well as child-rights lawyers and advocates from non-governmental organizations. The informants were selected based on their expertise and experience working with sexually exploited children during SEC criminal cases. Several were leading experts in their countries on this topic.

The Access to Justice Research Tool formed the basis for the interviews, though the legal consultants adapted the research tools to suit the country context:

- In Nepal, the legal consultant conducted one-on-one interviews, lasting about one hour, with eight criminal justice actors at their workplaces. Responses were noted on the research tool and summarized in a final report.
- In the Philippines, the legal consultant gathered information from nine expert informants, through a two-hour focus group discussion, individual interviews, and written responses from two informants who were unable to meet in person. The responses were collated and summarized in a final report.
- In Thailand, the legal consultant conducted individual one-hour interviews with 13 informants and produced written transcripts based on tape-recordings of each session. Results were also summarized in a final report.

The legal consultants also shared their own insights on the ways that sexually exploited children engage with justice systems in their countries through written feedback and Skype consultations.

## Countries and Regions

Approximately the same number of access-to-justice interviews (30-35) were conducted in each Study Country. Interviews were conducted in selected cities and tourist destinations where SEC exists and SEC-specialised police, prosecutors and judges are based. These areas included Kathmandu and Lalitpur in Nepal; Manila and Cebu in the Philippines, and Bangkok, Chiang Mai, and Pattaya in Thailand. Interviews were also conducted in the more remote areas where SEC shelters are located. These shelters housed SEC survivors from a wide range of cities and villages.

## Data Analysis

All of the research was compiled and reviewed for common themes. Data from interviews with survivors, service providers, and criminal justice professionals was collated with desk research into relevant categories and organized according to the usual timeline of SEC proceedings, from the discovery of the child victim to the resolution of the case against the child's offender and award of post-trial remedies. In this way, it was possible to identify potential access-to-justice barriers at each stage of the proceedings, as well as a number of important cross-cutting issues. The analysis was strengthened by comparing data from the desk research with that of the field research, and between adult and child respondents; state actors and non-state actors; and informants from one country and those of another.



## II. LIMITATIONS AND CHALLENGES

### Scope

The Access to Justice Study sought to understand the experience of SEC survivors in the criminal justice system by interviewing selected survivors, criminal justice professionals and service providers, and conducting desk research to provide useful background and context. The Study is not a comprehensive analysis of the Study Countries' efforts to incorporate international standards into their justice systems or implement child-sensitive procedures. Rather, it is intended to provide insight into the *child's experience* of these justice systems and highlight aspects of the justice process that merit additional attention.<sup>94</sup>

The Study is also not a complete mapping of the SEC survivor's experience at every stage of the criminal justice process. The Study relied on loosely-structured interviews and open-ended questions to encourage participants to speak freely. The Study reflects the access-to-justice issues that were most important to the survivors and the adult professionals interviewed.

### Sample Size and Representativeness

Although the Study was able to draw on accounts from a large number of key informants in the Study Countries, the informants are a non-random sample of survivors and professionals in these countries, and the Study's findings should not be seen as representative of the larger population.

#### *SEC Survivors*

Only survivors who were found by child protection gatekeepers to be willing and able to participate were included in this Study. The sample was not balanced by gender, age, place of origin, or type of exploitation, and survivors presented at various stages in the criminal justice process. ECPAT's consultant accessed youth through shelters and drop-in centres, and did not conduct independent outreach or street work.<sup>95</sup>

The sample also excluded survivors whom gatekeepers believed were physically or psychologically unable to participate in interviews or were likely to experience a set-back in their recovery. Even among these survivors, "[i]t became evident in the beginning of the data collection that questions pertaining to the criminal justice process elicited memories or thoughts that were often accompanied with strong negative emotions."<sup>96</sup> In these cases, it was sometimes necessary to forego asking these questions.

As a result, the Study presents a valuable but incomplete picture of the experience of SEC survivors in the justice system, excluding survivors who had particularly traumatic experiences, as well as events that were too distressful for participating survivors to recount.

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94 Recommended resources for a more comprehensive review of the Study Countries' response to SEC include ECPAT International's "Global Monitoring" Reports for Nepal, the Philippines and Thailand and the related regional overviews, as well as ECPAT's recently published Situational Analysis of the Commercial Sexual Exploitation of Children in Thailand available at <http://www.ecpat.org/resources/>.

95 This is true of the larger sample as well, which included survivors who shared information relevant to ECPAT's other studies on recovery and reintegration, and compensation, but not on this Study. ECPAT International, *Recovery and Reintegration Study: That sample included 67 survivors, with the greatest number of survivors (27 percent) being age 17 and 66 percent being female. More than half (54 percent) were living in an NGO or government shelter at the time of the interview, while the others lived on the streets, with family or friends, or on their own.*

96 Hargitt, Katherine, *Recovery and Reintegration Study*.



### ***Criminal Justice Professionals and Service Providers***

Criminal justice professionals and service providers were selected for the Study based on their experience working with SEC survivors. Because of this experience, it is likely that they were more familiar with applicable child-friendly laws, procedures, and policies than similar professionals and therefore, are not representative of the level of knowledge or implementation in the Study Countries as a whole. In addition, while ECPAT sought to interview a balance of government and non-government informants, and informants from each category – police, prosecutors, judges, social workers and caregivers, and legal advocates – it was not possible to ensure that each category participated equally in this Study. Finally, the fact that the informants had experience working with SEC survivors 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**

Translation posed a challenge throughout the Study. The quality of translation during interviews was variable. Some legal materials were not available in English or only available in unofficial, sometimes faulty English translations. The author of this report relied on secondary sources, as well as consultations with Dr. Hargitt, local legal consultants, and ECPAT member groups to clarify understanding, where necessary.

The reader should take note that responses to access-to-justice questions were transcribed directly from audio-recordings, and any errors in English were left unchanged in this report. In cases where it is clear that the translator paraphrased, rather than directly translated, an informant’s testimony (for instance, when third-person pronouns are used to refer to the informant), the report so indicates.

### **Ethical Considerations**

A number of precautions were taken to protect survivor-informants from the risk of re-traumatisation, including the use of child protection gatekeepers, survivor-specialized consent forms in the participant’s native language, and a coding system to protect confidentiality.

The interviews also followed a trauma-informed protocol, and wherever possible, took place at a location of the participant’s choosing. All participants were offered the opportunity to have support person(s) in the interview with them and given access to follow-up support and counselling.

Among the challenges in conducting these interviews were the short time for building rapport with the survivors; the need to ensure that the interview was not seen as a criminal interrogation; the difficulty of finding a location that safeguarded the survivor’s privacy and security and prevented distractions in shelters with limited options; and the potential negative impact of language and cultural barriers.



# FINDINGS

Nepal, the Philippines and Thailand have legal frameworks in place to protect children from sexual exploitation and provide access to justice. They have made significant efforts to help child victims of crime interact with the justice system, hold their offenders accountable, and obtain legal remedies, including needed compensation and services. Nevertheless, sexually exploited children continue to struggle to access justice in these countries.

The Study shows that sexually exploited children face unique barriers that keep them from coming forward and seeking redress, including the fact that many do not perceive themselves as victims. The Study also identified a number of obstacles that make it particularly difficult for professionals to find and rescue children from prostitution and pornography.

For SEC victims who do engage with the justice system, participating in cases against their offenders is often a long and difficult process. In fact, for the survivors interviewed in the Study, their experience with the criminal justice process was so painful that many had trouble discussing it, and some were unable to speak about it at all.<sup>97</sup>

***“Questions pertaining to the criminal justice process elicited memories or thoughts that were often accompanied with strong negative emotions. Some children would cross their arms, and lean or curl into themselves. Others had fear in their eyes and a general discomfort. Some had a hard time thinking or talking about it. These difficult memories would flood their mind, and it was best to gently move on...any questions that elicited the thought of the abuser(s) were traumatic.”***

*Dr. Katherine Hargitt, ECPAT Consultant and Lead Researcher responsible for conducting interviews with SEC survivors for the Access to Justice Study<sup>98</sup>*

This chapter explores the gap between the Study Countries’ efforts to provide access to justice and the experience of sexually exploited children, and calls attention to potential areas for improvement. It is organized in four sections:

- The first section provides an overview of the Study Countries’ efforts to provide access to justice for child victims of crime;
- The second section identifies barriers that impact the ability of sexually exploited children when entering and participating in the justice system;
- The third section identifies additional barriers that appear to impact child victims of online sexual exploitation and merit further study; and
- The last section identifies cross-cutting themes that provide additional insight into the challenges that sexually exploited children face when accessing justice.

97 Hargitt, Katherine, e-mail communication to author, 4 August 2015.

98 *Ibid.*



## I. OVERVIEW: STATE EFFORTS TO PROVIDE ACCESS TO JUSTICE FOR CHILDREN

Nepal, the Philippines and Thailand are very different countries that struggle with a similar problem: the sexual exploitation of children through prostitution, pornography and trafficking for sexual purposes. The Study Countries have made significant efforts to protect children from these crimes and provide them with access to justice, even in the face of limited resources, the competing demands of other vulnerable groups, and the negative impact of political instability or natural disasters. Below is a general overview of their efforts.

### A. Country Context

In the Study Countries, the human, financial and institutional resources that are available to confront SEC vary widely.

#### Nepal

In recent years, Nepal has emerged from a ten-year civil war, abolished its monarchy, established a new government, and in 2015, enacted a new constitution.<sup>99</sup> During this time, it has also made substantial efforts to develop its criminal justice system and make it more responsive to women and child victims. It has established specialized police centres for women and children,<sup>100</sup> and has begun to put in place a system of juvenile courts with plans to allow these courts to hear SEC cases.<sup>101</sup> Despite some notable economic progress,<sup>102</sup> however, Nepal remains one of the poorest and least-developed nations in the world,<sup>103</sup> and its progress suffered a major setback when it was struck by a devastating earthquake in April 2015.<sup>104</sup>

99 See: ECPAT International, Global Monitoring Status: Nepal, 8; BBC Monitoring (2016), “Country Profile: Nepal,” 24 February 2016, accessed 5 July 2016, <http://www.bbc.com/news/world-south-asia-12511455> (reporting on enactment of 2015 Constitution).

100 Crime Investigation Department, Nepal Police (n.d.), “Women and Children Service Directorate,” *CID Nepal Police website*, accessed 27 September 2016, <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate> (reporting that Women and Children Service Centers (WCSC) are actively operating in 75 districts across the nation apart from and 7 Metropolitan Circles in the Kathmandu Valley).

101 Interview with Nepal, Judge #1. See also: Samiti, Rastriya (2015), “Juvenile Bench in District Court Myagdi,” *The Himalayan Times*, 3 July 2015, accessed 23 July 2016, <http://thehimalayantimes.com/nepal/juvenile-bench-in-district-court-myagdi/>.

102 Asian Development Bank (n.d.), “Nepal and ADB,” accessed 19 June 2016, <http://www.adb.org/countries/nepal/main>.

103 World Bank (2015), Nepal Country Profile, accessed 18 June 2016, <http://data.worldbank.org/>.

104 UNICEF (2015), “Nepal Earthquake Humanitarian Situation Report,” 25 May 2015, accessed 30 September 2016, <http://unicef.org.np/uploads/files/490686761967626139-nepal-earthquake-humanitarian-situation-report-three-months-review.pdf>.



## The Philippines

The Philippines is the most populous of the Study Countries, with more than 100 million people.<sup>105</sup> It is designated as a lower-middle income country by the World Bank<sup>106</sup> and ranked medium on the scale of human development by the UN Development Programme.<sup>107</sup> Its criminal justice system features specialized law enforcement units that work on SEC-related crimes.<sup>108</sup> It has a family court system that is unusual in that its courts may hear cases of child sexual exploitation brought under the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.”<sup>109</sup>

## Thailand

Thailand is the most prosperous of the Study Countries, despite a history of political instability. It has experienced 13 military coups since 1932, with the most recent in 2014.<sup>110</sup> Still, Thailand has been able to rise into the ranks of upper middle income countries with a high level of human development.<sup>111</sup> It has a well-developed criminal justice system with specialized police and investigation units that address SEC-related crimes, and an extensive court system, which includes specialized family courts, though these courts do not hear SEC matters.<sup>112</sup>

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105 World Bank (2015), Philippines Country Profile, accessed 18 June 2016, <http://data.worldbank.org/>.

106 *Ibid.*

107 UNDP (2015), “Human Development Report: 2015”, 47-50, accessed 18 June 2016, [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf).

108 Philippines Government, “Judiciary,” *Philippines Government’s Website*, accessed 19 June 2016, <http://www.gov.ph/about/gov/judiciary/>.

109 Philippines (1992), “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” R.A. 7610, § 30 (“Special Court Proceedings. – Cases involving violations of this Act shall be heard in the chambers of the judge of the Regional Trial Court duly designated as Juvenile and Domestic Court. Any provision of existing law to the contrary notwithstanding.”); Philippines (1997), “Family Courts Act,” R.A. 8369, § 5 (“The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases...Violations of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”).

110 ECPAT, Thailand Situational Analysis, 15.

111 World Bank (2015), Thailand Country Profile, accessed 18 June 2016, <http://data.worldbank.org/>; UNDP Human Development Report, 47-50.

112 Thailand (2010), “Juvenile and Family Court and Its Procedure Act,” B.E. 2553, Chapter 8 on “Court’s Jurisdiction Relating to Criminal Case,” §§ 95-98 (available in Thai only at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=89334&p\\_country=THA&p\\_count=441](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89334&p_country=THA&p_count=441)), described in English on Thailand Court of Justice website, <http://www.coj.go.th/en/judicialsystem.html>.



Table 3: Key Demographic Indicators (rounded to whole numbers)

Demographic Indicators	Nepal	Philippines	Thailand
Population <sup>113</sup>	29 million	101 million	68 million
Income level (designation by World Bank) <sup>114</sup>	Low income	Lower middle income	Upper middle income
Gross domestic product <sup>115</sup>	\$ 20 billion USD	\$ 285 billion USD	\$ 405 billion USD
Gross national income per capita (Atlas method) <sup>116</sup>	\$ 730 USD	\$ 3,500 USD	\$ 5780 USD
Percent of population below international poverty line (\$1.25 USD per day) <sup>117</sup>	25% (2010)	25% (2012)	11% (2014)
Human Development Index <sup>118</sup> (ranked out of 188)	Low/Rank 145	Medium/Rank 115	High/Rank 93

## B. National Legal Framework

Nepal, the Philippines and Thailand have ratified all or most of the core international and regional treaties addressing SEC and access to justice, including the CRC, the OPSC, and in the case of the Philippines and Thailand, the Palermo Protocol related to human trafficking.<sup>119</sup> The Study Countries also have national legal frameworks in place relevant to SEC crimes and access to justice for child victims. Although the strength of these frameworks varies by country and type of exploitation, most of the Study’s respondents felt that the laws in their country were sufficient and that implementation was the main problem.

### Nepal

Nepal’s 2015 Constitution recognizes the right to live free from exploitation<sup>120</sup> and gives child victims the right to “child-friendly justice.”<sup>121</sup> Nepal has comprehensive anti-trafficking legislation in place, but has no laws that explicitly prohibit child prostitution or child pornography.<sup>122</sup> Nepal has no special procedures that apply specifically to child victim-witnesses in criminal cases.<sup>123</sup> However, Nepal has recently begun to create a system of specialised juvenile courts to hear

113 World Bank (2015), Country Profiles: Nepal, the Philippines and Thailand, accessed 18 June 2016, <http://www.worldbank.org/en/country> (Figures are for 2015).

114 *Ibid.*

115 *Ibid.* (Figures are for 2014).

116 *Ibid.* (Figures are for 2014).

117 *Ibid.*

118 UNDP, Human Development Report 2015, 47-50.

119 See: Table 1, Child-Friendly Justice Procedures in International and Regional Instruments.

120 Nepal (2015), “Constitution of Nepal”, Art. 29 (“Every person shall have the right against exploitation” and “[n]o person shall be subjected to human trafficking or...forced labour.”); *Ibid.*, Art. 39 (children shall not be subject to illegal trafficking, sexual abuse or exploitation or torture) Unofficial translation accessed at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100061&p\\_country=NPL&p\\_count=1](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100061&p_country=NPL&p_count=1).

121 *Ibid.*, Art. 39(8) (“Every child shall have the right to child friendly justice”).

122 Nepal (2007), “Human Trafficking and Transportation (Control) Act,” 2064 (hereinafter Trafficking Act).

123 Nepal (1992), “Children’s Act,” 2048, § 55



child protection and juvenile justice matters,<sup>124</sup> and respondents reported that these “child-friendly” courts will sometimes hear SEC cases.<sup>125</sup> Nepal recognizes the right of crime victims to compensation, but there is no state-managed crime victim fund.<sup>126</sup>

### The Philippines

The Philippines has a particularly robust legal framework. Children have a constitutional right against exploitation.<sup>127</sup> Specialized laws criminalize the prostitution, pornography and sex trafficking of children; protect children from prosecution for crimes related to their exploitation; and offer victim services and protection.<sup>128</sup> The Philippines Supreme Court’s *Rule on the Examination of a Child Witness* provides a comprehensive set of child-friendly examination procedures that apply to child victim-witnesses in all proceedings,<sup>129</sup> and a new case management protocol outlines child-sensitive procedures for handling SEC from start to finish.<sup>130</sup> Crime victims also have a constitutional and statutory right to compensation, and a state crime victim fund exists.<sup>131</sup>

### Thailand

Thailand also has a strong legal framework. The Constitution gives children the right to be protected from violence,<sup>132</sup> as well as the right to access justice, including the right to “protection, assistance, remuneration from the State; compensation, and other necessary expenses.”<sup>133</sup> Its criminal code and specialized anti-prostitution and anti-trafficking laws prohibit SEC crimes, shield victims from prosecution for certain crimes related to being trafficked, and provide victims services and assistance.<sup>134</sup> Thailand’s criminal procedure code also mandates a number of child-sensitive interview and trial procedures.<sup>135</sup> Crime victims have a right to legal remedies,<sup>136</sup> and a state crime victim fund is in place.

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124 See: Samiti, Rastriya, “Juvenile Bench in District Court Myagdi.”

125 Interview with Nepal, Judge #1, Service Provider, N-CTUV.

126 Nepal, Constitution, Art. 39(10) (child’s right to compensation from person who committed act of exploitation); Nepal, “General Code,” Part 4, Chpt. 14 on Rape, No. 10C; Nepal, Anti-Trafficking Act, § 17; Nepal, Children Act, § 53(6).

127 Philippines, Constitution, Art. XV, § 3(2) (the State must defend children’s right to “special protection from all forms of neglect, abuse, cruelty, exploitation”).

128 Philippines (1992), “Special Protection of Children Against Abuse, Exploitation and Discrimination” (Anti-Child Abuse Act) Act, R.A. No. 7610; Philippines (2012), “Expanded Anti-Trafficking in Persons Act”, R.A. No. 10364; Philippines (2009), “Anti-Child Pornography Act,” R.A. No. 9775; Philippines (2012), “Cybercrime Prevention Act,” R.A. No. 10175.

129 Philippines (2000), “Supreme Court Rule on the Examination of a Child Witness.”

130 Philippines (2013), Committee for the Special Protection of Children, “Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation,” accessed 30 September 2016, <http://cpwg.net/wp-content/uploads/sites/2/2014/05/Philippines-CSPC-protocol.pdf>.

131 Philippines (2000), “Revised Rules of Criminal Procedure,” Rule 120, § 2; Philippines (1992), “Act Creating a Board of Claims,” R.A. 7309.

132 Thailand (2007), “Constitution,” Art. 52 (children “have the right to be protected by the State against violence”). See also: Thailand (2003), “Child Protection Act,” § 26 (making it illegal to “[c]ommit or omit acts which result in torturing a child’s body or mind;” “act in any way that results in the exploitation of a child;” “[f]orce, threaten, use, induce, instigate, encourage or allow a child to perform or act in a pornographic manner”).

133 Thailand Constitution, Part 4, “Rights to Access the Judicial Process,” § 40(5).

134 Thailand (1956), “Criminal Code,” B.E. 2499, §§ 276-287 (offences related to sexuality); §§ 288-300 (offences against life and body); §§ 309-321 (offences against liberty); Thailand (1996), “Prevention and Suppression of Prostitution Act,” B.E. 2539 (note that Sections 5 and 6 could be used to bring a criminal case *against* a child exploited through prostitution); Thailand (2008), “Anti-Trafficking in Persons Act,” B.E. 2551. Thailand also recently amended its Criminal Code to prohibit child pornography. Thailand (2015), “Amendment to Criminal Code Act,” B.E. 2558 (not yet available in English).

135 Thailand (1934), “Code of Criminal Procedure,” B.E. 2477, §§ 133, 133*bis*, 133*ter* (specialized interview procedures), §§ 172, 172*ter*, 177 (specialized examination procedures at trial).

136 Thailand Constitution § 40; Thailand Code of Criminal Procedure, § 44; Thailand Anti-Trafficking Act, § 35; Thailand (2001), “Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act,” B.E.2544.



The tables at the end of this section provide a brief overview of the national legislation in each Study Country related to age, criminal laws against child sexual exploitation, and relevant criminal procedural laws and policies.

## C. Implementation of Child-Friendly Justice Measures

The Study Countries have also taken a number of concrete steps toward implementation of child-friendly justice, which are discussed throughout this report. Some examples include:

- Increasing efforts to identify child victims of crime through child helplines, child-friendly police intake units, one-stop crisis centres in hospitals, and increased training for first responders, particularly in the area of human trafficking;
- Creating specialized police units and centres with female police and social service staff, and in the Philippines and Thailand, expanding the use of multi-disciplinary teams;
- Providing at least some basic medical, psychological and social services to children who participate in criminal proceedings;
- Guarding the safety of child victim-witnesses, in some cases, through the use of separate interview and waiting rooms, and the placement of children in protective residential facilities;
- Protecting the privacy of child victim-witnesses through *in camera* hearings and restrictions on disclosure of information;
- Enacting specialized interview and trial procedures, such as the use of child-friendly settings, the involvement of child specialists in questioning; and the option for children to give testimony, under certain conditions, outside the presence of the accused; and
- Initiating measures to reduce delays, including priority tracking and continuous hearings.



Table 4: Relevant Legal Framework – Nepal

Relevant Laws Related to Age	Criminal Laws Against Sexual Exploitation of Children	Child-friendly Justice Procedures
<p><u>Definition of a child:</u> Under the age of 16, or under the age of 18 in trafficking cases<sup>137</sup></p> <p><u>Age of sexual consent:</u> 16 years<sup>138</sup></p> <p><u>Age of criminal responsibility:</u> 10 years; children aged 10 years to 13 years inclusive, can only be given a warning for offences that carry a maximum penalty of a fine.<sup>139</sup></p> <p>(Children are not protected from prosecution for crimes related to their exploitation.)<sup>140</sup></p>	<p>Constitution of Nepal (2015)<sup>141</sup></p> <p>General Code (1963)<sup>142</sup></p> <p>Children's Act (1992)<sup>143</sup></p> <p>Human Trafficking and Transportation (Control) Act (2007)<sup>144</sup></p> <p><u>Statute of Limitations on SEC Crimes:</u></p> <p>35 days for rape and other SEC-related crimes.<sup>145</sup> There is no statute of limitations for trafficking.</p>	<p>Constitution of Nepal (2015)<sup>146</sup></p> <p>Human Trafficking and Transportation (Control) Act (2007) and Rules (2008)<sup>147</sup></p>

137 Nepal (1992), "Children's Act," § 2(a) (a child is anyone under age 16). Nepal (2007), "Human Trafficking and Transportation (Control) Act," 2064, § 2(d) (child is anyone under age 18).

138 Nepal (2006), "Amending Some Nepal Acts to Maintain Gender Equality," 2063, § 2(12).

139 Nepal Children's Act, § 11.

140 Nepal (1970), "Some Public (Crime and Punishment) Act," 2027, § 2(c) (children involved in prostitution are at risk of prosecution for crimes against public order).

141 Nepal (2007), Constitution, Art. 29 (right of all persons against exploitation, including human trafficking); Art. 39(6) (right of children against sexual abuse and exploitation).

142 Nepal (1963), "General Code," 2020 (1963), Part 4., Chpt. 8 (illegal detention), Chpt. 8A (kidnapping), Chpt. 9 (hurt/battery), Chpt. 11 (trafficking), Chpt. 13 (intention of sex against a female), Chpt. 14 (rape of female; sodomy of a minor).

143 Nepal, Children's Act, § 16 (prohibiting involving children under age sixteen in "immoral professions" or taking, distributing or exhibiting photographs for that purpose).

144 Nepal, Trafficking Act, § 4 (prohibiting sex trafficking of children by force, threats, or deceit).

145 Nepal, General Code, Part 4, Chpt. 9, No. 27 (35 days to bring a case for "hurt" and three-month period for "grievous" hurt); Chpt.13, No. 6 (35 days for intention of sex); Chpt. 14, No. 11 (35 days for rape and sodomy).

146 Nepal, Constitution, Art. 39(8) ("Every child shall have the right to child friendly justice."); Art. 21 (crime victims have the right "to be informed about the investigation and proceedings of the case regarding his/her victimization" and "to social rehabilitation and justice with compensation as provided for by law.")

147 Nepal, Anti-Trafficking Act, §§ 10-13, 20, 25-27, and Trafficking Rules 2065 (2008), Rules 9, 10, 13, 15, 16 (providing for in camera hearings, security and confidentiality, right to retain one's own lawyer and translator, family reunion services, where appropriate, and certain recovery and reintegration services).



Table 5: Relevant Legal Framework – The Philippines

Relevant Laws Related to Age	Criminal Laws Against Sexual Exploitation of Children	Child-friendly Justice Procedures
<p><u>Age of a child:</u> Anyone under age 18, or older if “unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition”<sup>148</sup></p> <p><u>Age of sexual consent:</u> 12 years<sup>149</sup></p> <p><u>Age of criminal responsibility:</u> 15 years<sup>150</sup> (Children are protected from prosecution for some crimes related to their exploitation)<sup>151</sup></p>	<p>Constitution (1978)<sup>152</sup></p> <p>Revised Penal Code (1930)<sup>153</sup></p> <p>Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (1992)<sup>154</sup></p> <p>Anti-Trafficking in Persons Act (2003); Expanded Anti-Trafficking Act (2012)<sup>155</sup></p> <p>Anti-Child Pornography Act (2009)<sup>156</sup> and Cybercrime Prevention Act (2012)<sup>157</sup></p> <p><u>Statute of Limitations:</u> 10 to 20 years,<sup>158</sup> with the period only beginning to run when the child victim turns 18 in trafficking cases.<sup>159</sup></p>	<p>Witness Protection, Security and Benefit Act (1991)<sup>160</sup></p> <p>Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (1992)<sup>161</sup></p> <p>Anti-Trafficking in Persons Act (2003) and Expanded Anti-Trafficking Act (2012)<sup>162</sup></p> <p>Anti-Child Pornography Act (2009)</p> <p>Supreme Court Rule on Examination of a Child Witness (2000)<sup>163</sup></p> <p>Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation (2013)<sup>164</sup></p>

148 Philippines (1992), “Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” R.A. No. 7610, § 3(a); Philippines (2012), Expanded Anti-Trafficking in Persons Act, R.A. No. 10364, §3(b); Philippines (2009), Anti-Child Pornography Act, R.A. No. 9775, §3(a).

149 Philippines (1930), “Revised Criminal Code,” R.A. No. 3815, § 335.

150 Philippines (2006), “Juvenile Justice and Welfare Act”, R.A. 9344, § 6. The draft Penal Code published in August 2014 included provisions that would reduce the minimum age of criminal responsibility to 13.

151 Philippines, Juvenile Justice Act, § 58 (barring prosecution for vagrancy and prostitution); Philippines, Anti-Child Abuse Act, § 5 (children who engage in commercial sex acts “are deemed to be children exploited in prostitution and other sexual abuse.”); Philippines, Expanded Anti-Trafficking Act, § 17 (no prosecution of victims for “unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked”).

152 Philippines, Constitution, Art. XV, § 3(2) (children have a right to “special protection from all forms of neglect, abuse, cruelty, exploitation”).

153 See e.g., Philippines, Revised Criminal Code, Title 8, Arts. 262-266 (physical injury); Arts. 267-274 (kidnapping and illegal detention); Arts. 335-341 (rape, lascivious acts, enslavement for prostitution).

154 Philippines, Anti-Child Abuse Act, §§ 5-9 (prohibiting child prostitution, child trafficking and use of children in obscene publications and shows).

155 Philippines, Anti-Trafficking Act, as amended by Expanded Anti-Trafficking Act, § 4 (prohibiting child trafficking).

156 Philippines Anti-Child Pornography Act, § 4 (prohibiting child pornography).

157 Philippines (2012), Cybercrime Prevention Act, R.A. No. 10175, § 4(c)(2) (prohibiting computer-facilitated child pornography).

158 Philippines Revised Criminal Code, § 90.

159 Philippines Expanded Anti-Trafficking Act, § 14, amending § 12 of the Trafficking Act of 2003.

160 Philippines (1991), “Witness Protection, Security and Benefit Act,” R.A. 6981 (providing witness protection in serious cases and making child victims of trafficking and pornography automatically eligible).

161 Philippines, Anti-Child Abuse Act, §§ 28-30 (calling for protective custody, confidentiality, in camera hearings and priority hearings, but no legal aid or recovery and reintegration services).

162 Philippines Expanded Anti-Trafficking Act, § 15 (providing protective custody, security and confidentiality, free legal services, immigration assistance, recovery and reintegration services)

163 Philippines (2000), Supreme Court Rule on the Examination of a Child Witness (child-friendly protections for examinations of children in judicial proceedings).

164 Philippines (2011), Committee for the Special Protection of Children, Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation, (protocol for managing SEC cases with variety of child-friendly procedures), accessed at <http://cpwg.net/wp-content/uploads/sites/2/2014/05/Philippines-CSPC-protocol.pdf>.



Table 6: Relevant Legal Framework – Thailand

Relevant Laws Related to Age	Criminal Laws Against Sexual Exploitation of Children	Child-friendly Justice Procedures
<p><u>Age of a child:</u> Generally, anyone under age 18<sup>165</sup></p> <p><u>Age of sexual consent:</u> 15 years<sup>166</sup></p> <p><u>Age of criminal responsibility:</u> 7 years old; children between age 7 and 14 cannot be criminally punished but may be subject to other sanctions<sup>167</sup></p> <p>(Trafficking victims are protected from prosecution for prostitution and immigration offenses).<sup>168</sup></p>	<p>Constitution (2007)<sup>169</sup></p> <p>Criminal Code (1956)<sup>170</sup></p> <p>Prevention and Suppression of Prostitution Act (1996)<sup>171</sup></p> <p>Child Protection Act (2003)<sup>172</sup></p> <p>Anti-Trafficking in Persons Act (2008)<sup>173</sup></p> <p>Act on Computer Crime (2007)<sup>174</sup></p> <p><u>Statute of Limitations:</u> 10-20 years,<sup>175</sup> but only 3 months for compoundable offenses,<sup>176</sup> including rape, sexual assault<sup>177</sup> and false imprisonment<sup>178</sup> of victims age 15 or older when committed in private without injury.</p>	<p>Constitution (2007)<sup>179</sup></p> <p>Criminal Procedure Code (1934)<sup>180</sup></p> <p>Prevention and Suppression of Prostitution Act (1996)<sup>181</sup></p> <p>Child Protection Act (2003)<sup>182</sup></p> <p>Witness Protection Act, B.E. 2546 (2003)<sup>183</sup></p> <p>Anti-Trafficking in Persons (2008)<sup>184</sup></p>

165 Thailand (2003), “Child Protection Act,” B.E. 2546, § 4. Note that, under § 277 of the Thai Criminal Code, a child as young as 13 may attain majority by marriage with court permission.

166 Thailand (1956), “Criminal Code,” B.E. 2499, § 277.

167 Thailand, Criminal Code, §§ 73-74.

168 Thailand (2008), “Anti-Trafficking in Persons Act,” B.E. 2551, § 41 (prosecution only possible with permission of Minister of Justice); Thailand (2003), “Memorandum of Understanding on Common Operational Guidelines for Government Agencies Engaged in Addressing Trafficking in Children and Women” (children are “considered to be victims of trafficking, irrespective of whether they consent to or collude with the misdeeds.”), accessed 30 September 2016, <http://un-act.org/publication/thailands-memorandum-of-understanding-on-common-operational-guidelines-for-government-agencies-engaged-in-addressing-trafficking-in-children-and-women-2003/>

169 Thailand (2007), Constitution, Art. 52 (children “have the right to be protected by the State against violence”).

170 Thailand, Criminal Code §§ 276-287 (offences related to sexuality); §§ 288-300 (offenses against life and body); §§ 309-321 (offenses against liberty). See also: Thailand (2015), “Amendment to Criminal Code Act”, B.E. 2558 (criminalizing possession, distribution, and production of child pornography). An unofficial English translation is available <http://www.southasia-law.com/newsdetail.php?id=12>.

171 Thailand (1996), “Prevention and Suppression of Prostitution Act,” §§ 8-11 (prohibiting prostitution of children). Note, however, that §§ 5 and 6 may be used to prosecute a child engaged in prostitution).

172 Thailand, Child Protection Act § 26 (prohibiting child abuse, exploitation and pornography)

173 Thailand (2008), Anti-Trafficking in Persons Act, B.E. 2551, § 6(2) (prohibiting human trafficking).

174 Thailand (2007), “Act on Computer Crime,” B.E. 2550, § 14 (prohibiting use of a computer to spread pornography).

175 Thailand, Criminal Code, § 95

176 Thailand, Criminal Code, § 96

177 Thailand, Criminal Code, § 281

178 Thailand, Criminal Code, § 321

179 Thailand, Constitution, Art. 40 (victim-witnesses have the right to “proper treatment in the administration of justice,” with “necessary and appropriate protection and aids from the State” and “the right to be accorded protection . . . [and] proper treatment in cases related to sexual violence”).

180 Thailand, Code of Criminal Procedure, e.g. § 13 (free translation services), §§ 133, 133bis, 133ter (protective interview procedures), §§ 172, 172ter, 177 (protective examination procedures at trial).

181 Thailand, Anti-Prostitution Act, §§ 33-35 (protective custody, occupational training, rehabilitation).

182 Thailand, Child Protection Act, § 22 (consideration of best interests of child), § 50 (confidentiality of child’s identifying information).

183 Thailand (2003), “Witness Protection Act,” B.E. 2546, §§ 6-10 (protection for endangered witnesses, with special protection for victims of sex crimes or trafficking).

184 Thailand, Anti-Trafficking Act, §§ 33-39, 56 (providing shelter, security and confidentiality, legal aid immigration assistance, recovery and reintegration services, access to compensation).



## II. ACCESS TO JUSTICE BARRIERS FOR SEXUALLY EXPLOITED CHILDREN

### A. Barriers to Entering the Justice System

While child victims of all types of crime are often reluctant to engage with State criminal justice systems, child victims of sexual exploitation appear to face unique barriers, including barriers to reporting, to being found and rescued, and to being treated as victims rather than criminals once they are found. These barriers make it especially difficult for sexually exploited children to enter the justice system and obtain remedies for the crimes against them.

#### 1. Not Feeling Like a Victim: Sexually Exploited Children Rarely Report Abuse

*“They ask me ‘why you rescue me?’ They need money to send home. So this is the first big problem, because they don’t want our help. They do not cooperate. They don’t feel they are victims.”*

*Thailand, Prosecutor #2*

Most crime victims access the justice system by reporting the crimes committed against them. They may walk into a police station or call a helpline. Most children, however, never report abuse or only report after a long period of silence, sometimes lasting into adulthood.<sup>185</sup> Children who are exploited in the sex trade are particularly unlikely to report due to powerful factors that do not affect most other victims, including their belief that they are complicit in the sex crimes against them and their fear that they will be treated as criminals if they come forward. The silence of sexually exploited children may be the most significant barrier to their ability to access justice and one of the most difficult to overcome.<sup>186</sup>

##### 1.1 Barriers to Reporting

There are many reasons why child victims of crime are reluctant to report abuse. They may not understand how to make a report; they may be ashamed or confused about what happened to them; they may feel guilt or pity for their exploiter, particularly when he or she is a family member or friend,<sup>187</sup> or in some communities, they may be silenced by social norms that make it inconceivable for a child to speak out against an adult. While recognizing the multitude of factors that discourage child victims from reporting, this Study revealed four barriers that have unique impact on sexually exploited children:

1. The failure to perceive themselves as victims;
2. A deep distrust of the criminal justice system and fear of arrest;
3. The heightened risk of retaliation and stigma associated with the commercial sex trade; and
4. The fear of long-term confinement in shelter care.

<sup>185</sup> In a statistical analysis of studies worldwide, UNICEF confirmed that most child victims of violence never disclose their abuse or delay disclosure for long periods of time, particularly in cases of sexual violence. In fact, the majority of adolescent girls, between ages 15 and 19, who experience physical and/or sexual violence never seek help, including more than 70 percent in Nepal and more than 80 percent in the Philippines. UNICEF (2014), “Hidden in Plain Sight: A Statistical Analysis of Violence Against Children,” 88-92, accessed 6 July 2016, [https://www.unicef.org/publications/index\\_74865.html](https://www.unicef.org/publications/index_74865.html)

<sup>186</sup> While a victim complaint is not generally required for authorities to initiate a criminal case against an alleged child sex offender, victim reporting is essential to uncover SEC crimes that occur largely behind closed doors, and as explained later in this report, some SEC-related crimes do require a victim complaint for prosecution.

<sup>187</sup> Several survivors from Thailand and the Philippines spoke about their feelings of guilt for reporting friends or family.



### a) Failure to Perceive Themselves as Victims

In all three Study Countries, respondents cited the fact that sexually exploited children often fail to perceive themselves as victims as one of the most significant barriers to reporting. In Nepal, all of the criminal justice respondents reported that SEC victims are often unaware that they had been sexually exploited.<sup>188</sup> Professionals in the Philippines and Thailand agreed that the child's lack of awareness was the "main" or "first" reason for the lack of reporting.

As confirmed by respondents in the Study, sexually exploited children often come from troubled, impoverished, or abusive families, and many engage in commercial sex to survive on the streets or support families back home. Poverty was reported to be a major reason that children entered the sex trade in all of the Study Countries.<sup>189</sup> The Study also indicated that some children were motivated, not by poverty, but the desire for consumer goods or a more independent lifestyle.<sup>190</sup>

A unique aspect of SEC is that its victims may depend upon the earnings of their own exploitation, and this is a powerful disincentive to report. As explained by an experienced police officer in Thailand:

***"It is difficult because the victim had benefit from the business. They made money out of it, and they don't want to talk, and if they tell us they will lose this money. They will lose the chance to get more. Here is the difficult part: because it involves their economy, because they got to live and they need money. This is the most difficult part."***

*Thailand, Police Officer, #4*

Sexually exploited children often see what they are doing as work rather than child abuse or exploitation. The fact that many adults also have difficulty seeing the troubled child beneath the image of the independent sex worker only confirms the child's perception.<sup>191</sup>

As the Study's respondents noted, it can take time for sexually exploited children to come to the realization that they are victims of adults who took advantage of their immaturity and vulnerability. Depending on the circumstances of their exploitation, it may take days, months, or even years before children fully comprehend what happened to them and are ready to seek redress.<sup>192</sup> As explained by an anti-trafficking lawyer from Thailand:

***"Most victims don't want to say anything. We must give them time to think and change her mind. Some girls don't know or understand they were exploited but after the social workers explain to them what is exploitation then they understand ... Some cases need long time before she talk."***

*Thailand, Lawyer #1*

188 Magar, Ritu. (2015), "Nepal Access to Justice Report on Criminal Justice Interviews" (Nepal Access to Justice Report). On file with author.

189 Most of the Nepali respondents thought poverty played a key role in driving children into SEC. A judge in the Philippines estimated that poverty was a major factor in 75 percent of SEC cases. See Nepal Access to Justice Report.

190 For more information on consumerism as a push factor for SEC in Thailand, See: Thailand Situational Analysis, 29-35.

191 Foreign children who are trafficked for sexual purposes also sometimes believe they are 'illegals,' rather than crime victims. According to a Thai criminal justice respondent, their fear of arrest and deportation discourages reporting.

192 Among the respondents who discussed the need for children to have time to understand that they have been victimised were a police officer, public prosecutor, judge and different NGO specialists from all three countries. See: ECPAT International, Recovery and Reintegration Report.



Not only are many SEC victims unaware of their own exploitation, but according to respondents, many are unaware of their legal rights, including their right to live free from this “worst form of child labour”.<sup>193</sup> According to respondents, victims and families often do not understand that SEC is a crime or that they are entitled to seek help from authorities, report offenders for prosecution, or obtain legal remedies. The problem appears to be particularly acute in Nepal.

***“Children in this sector they are very ignorant, they don’t know what their rights are and they don’t even know that organizations exist who can help them or file a case.”***

*Nepal, SEC Survivor, N-SH*

***“One of the reasons they cannot raise voice is because they are not educated, they do not know about their rights, and these legal possibilities.”***

*Nepal, SEC Survivor, N-ST*

***“Most importantly they need to be made aware of their rights because most of them don’t even know as a victim what are their rights. So this awareness to victims or survivors and their family is very necessary. They need to be made aware of their rights.”***

*Nepal, Service Provider, N-PC*

***“Children are not aware about [their rights]. They share with their parents or relatives, and if they are aware that their rights have been violated, only then do they decide to complain to the police.”***

*Nepal, Judge #1*

## **b) Distrust of the Criminal Justice System and Fear of Arrest**

Another factor that distinguishes sexually exploited children from others is their distrust of the criminal justice system and fear of arrest, which discourages reporting.<sup>194</sup> Almost one-third of all the Survivors interviewed for the Study reported negative feelings toward police, judges, and other government officials.

Many respondents, including several in Nepal, reported that police often blamed adolescents for their involvement in prostitution, or failed to take them seriously.<sup>195</sup>

***“Children are afraid to go to police because police don’t behave well...Police think that is the fault of the [children] that they got into such trouble.”***

*Nepal, SEC Survivor, N-SK*

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193 ILO, Convention, No. 182.

194 See also: Philippines Focus Group Report, p. 3 (the fact that sexually exploited children “do not trust and are wary of the system” was listed as one of the top reasons for children’s decision not to connect with the justice system).

195 A caregiver from Thailand also stated that: “Some police, they blame the children for being involved in the SEC. ‘These children make trouble for themselves.’ These police, they need to understand that this is not the thing that they should say to the children.” Thailand, Service Provider, T-CI.



***“Police will ask ‘what problem do you have?’...[then] they are going to laugh at her.”***

*Nepal SEC Survivor, N-SS*

Sexually exploited children who live or work on the streets have often had bad encounters with the police that make them disinclined to turn to the police for help. A survivor from Thailand recounted the following experience:

***“The police should not hurt children...For example, we just only walk along the street and they just arrest us, just like that. And when they arrest us, then they beat us with the baton and sometimes they put hot water on us and they also lock us up for one night and in the morning they release us. Maybe the police does not like them because they are street children.”***

*Thailand, SEC Survivor, T-SEF*

The notion that male victims can be victims, rather than aggressors of sex crimes is at odds with social norms in the Study Countries and many countries around the world, and male survivors and those identifying as transgender expressed doubt that police would believe their complaints and pursue cases on their behalf. A seasoned private prosecutor in the Philippines also noted that authorities sometimes found it “far-fetched” that older boys could be sexually exploited.<sup>196</sup> In the words of one male survivor from Nepal:

***“In Nepal, they don’t really understand the issue about gays. If they go to the police, the police are totally ignorant and they refuse to believe that a man can abuse a man.”***

*Nepal, SEC Survivor, N-SW<sup>197</sup>*

Criminal justice and social service respondents reported that even if children have never had negative contact with the police, exploiters often “brainwash” them into thinking that the police will mistreat or arrest them if they come forward.<sup>198</sup>

***“It is not easy to deal with victims. They have been brainwashed into believing that law enforcement is out to arrest them instead of help them. They don’t trust the system and the process.”***

*Philippines, Prosecutor #2.*

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196 Sevilla, Cristina, telephone conversation with author, 8 June 2015.

197 Another survivor from Nepal also stated that “there is no use going to police because they are not going to listen to a transgender in any case.”

198 Philippines Focus Group Report, 2.



Finally, youth and adult respondents spoke about the prominent role that corruption and discrimination play in SEC and the dampening effect it has on reporting. Survivors in all three countries believed that police and other officials accept bribes to protect wealthy and powerful traffickers and exploiters, making it futile for children to report abuse.<sup>199</sup> Judges, prosecutors, police, and NGO workers in all three countries also acknowledged that corruption often taints SEC cases, breeds distrust, and leads to a failure to report. Some examples of their accounts include:

***“Here if you are rich, you can easily put someone in jail no matter how little the offense. But if you are poor and expect something from the government, nothing happens.”***

*Philippines, SEC Survivor, P-SA*

***“In Nepal, those who have money get justice, that is why not many people get justice. I think in ten people, only three get justice. The police are very corrupt too. Most police are working together with the perpetrators...Only those who have the support of powerful people get justice.”***

*Nepal, SEC Survivor, N-SK*

***“[Sexually exploited children] do not trust the police because during the time they were selling sex in the establishment, some police were going there to get bribes or even using the services. So they think that if they tell anything, nothing will be improved. So they keep silent.”***

*Thailand, Prosecutor #2*

### **c) Heighten Risk of Retaliation and Stigma**

Sexually exploited children are also discouraged from reporting SEC by the heightened risk of retaliation and stigma associated with commercial sex.

#### **Retaliation**

While the risk of retaliation by offenders is real in all criminal cases, certain characteristics of SEC can increase that risk. Unlike other crimes against children, for example, SEC is an illicit and highly lucrative commercial enterprise in which children are valuable commodities. According to the UN Office on Drugs and Crime, the trafficking of human beings, including children, delivers billions of U.S. dollars in annual profits.<sup>200</sup> Adults who trade in children have a great deal at stake if a child escapes or alerts authorities to the illegal business. For buyers of sex with children, the social stigma and stiff penalties associated with their crimes provide strong motivation to keep child victims quiet.

It is perhaps not surprising, then, that multiple respondents in the Study, including police, prosecutors, judges and service providers, reported that SEC victims were not adequately protected from offenders during SEC cases. Instead, victims and their families were frequently contacted by exploiters or their associates and subjected to bribes, threats, or harassment.

199 In Nepal, multiple survivors, without prompting, brought up the issue of corruption, stating that only the wealthy were likely to get justice. Several respondents in the Philippines, including survivors, a prosecutor, private lawyer and judge, reported that corruption can derail cases and lead to distrust among the community. In Thailand, one survivor reported some police threatened children to recant, while a prosecutor stated that police were known to visit sex venues and take bribes to stop SEC cases from proceeding. Several Thai NGO workers also noted local police corruption.

200 UN Office on Drugs and Crime (2012), “Human Trafficking: Organized crime and the multibillion dollar sale of people,” accessed 6 July 2016, [http://www.unodc.org/unodc/en/frontpage/2012/July/human-trafficking\\_-\\_organized-crime-and-the-multibillion-dollar-sale-of-people.html](http://www.unodc.org/unodc/en/frontpage/2012/July/human-trafficking_-_organized-crime-and-the-multibillion-dollar-sale-of-people.html).



Indeed, fear of the exploiter was one of the most often cited concerns of SEC survivors interviewed for the Study. For example, one survivor living in a Filipino shelter told the interviewer that she felt that her life was in danger. She reported that “a lot of people” had been going to her family’s home to threaten and bribe them to stop the case and someone may have even come to the shelter to find her.<sup>201</sup> A survivor from Thailand expressed her fear that if her exploiter were to find out that she was the one who accused him, “then I might be harmed, get hurt, later on” or even killed.<sup>202</sup>

### Stigma

Sexually exploited children in all the Study Countries, but particularly Nepal, were also silenced by the powerful stigma attached to sex work. In many countries, victims of rape and other sex crimes face stigma.<sup>203</sup> Yet, the ostracisation can be worse when the victim is perceived to have willingly engaged in sex for profit.

In Nepal, sex workers are reported to be marginalized, not only for engaging in work perceived as immoral, but for carrying sexually transmitted diseases.<sup>204</sup> More than half of the Nepali Survivors interviewed for the Study spoke about their fear of being cast out by their families, discriminated against by society, and dismissed by the police. This fear was a strong disincentive to disclosing their exploitation.

***“Most of the time family does not support [prostituted children]. They say ‘you are dirty. You have done this and that so we cannot keep you in the family.’ So most of them are kicked out of the home. Not just family but even neighbours, they even tell their own children ‘oh don’t touch her’ or they don’t use common source of water. If a girl who has been exploited touches water, nobody else touch that which is wrong. At this point the most difficult [thing] that the survivor faces she knows that it wasn’t her fault that she has been wronged but no one understands that it wasn’t her fault.”***

*Nepal, SEC survivor, N-SG*

### d) Fear of Being Confined in Government Shelters

The Study also suggests that sexually exploited children fear being committed to long-term institutional care if they come forward, which can discourage reporting. In Thailand and the Philippines, many children rescued from sex trade are placed in secured residential facilities for their care and security. Some survivors in the Study reported living in shelters for years while their

201 Interview with SEC Survivor, P-SZ.

202 Interview with SEC Survivor, T-SA.

203 See e.g. Win, Thin L. (2013), “For Thai rape victims, seeking justice is another assault,” *Thomson Reuters Foundation News*, accessed 6 July 2016, <http://www.trust.org/item/?map=for-thai-rape-victims-seeking-justice-is-another-assault> (recounting a case in which a rape victim who went public lost her job, her boyfriend and ultimately, her surname).

204 Silverman, Jay G., et al. (2007), “HIV Prevalence and Predictors of Infection in Sex-Trafficked Nepalese Girls and Women,” *Journal of American Medicine*, 298(5), 536-542, accessed 6 July 2016, <http://jama.jamanetwork.com/article.aspx?articleid=208242>. See also: Sarup, Kamala (2008) “Lost Daughters – An ongoing tragedy in Nepal,” *Women News Network*, accessed 6 July 2016, <http://womennewsnetwork.net/2008/12/05/lostdaughternepal808> (reporting the stigma against sex workers for having been infected with HIV); Save The Children (2003), “Mapping of Psych Support for Girls and Boys Affected by Child Sexual Abuse in Four Countries in South and Central Asia,” 41 accessed 6 July 2016, <http://resourcecentre.savethechildren.se/sites/default/files/documents/2973.pdf>, (children were stigmatised as being prostitutes once it was revealed they lived in shelters).



cases wound slowly through the courts.<sup>205</sup> They were separated from family, friends, and even their own children and given few opportunities to leave the premises.<sup>206</sup> According to one child protection professional from Thailand, children on the street were known to advise each other to lie to authorities rather than seek help, because “if they identify you are a victim you will be kept in shelter for long time and you will never go home for 3 years.”<sup>207</sup> While there have recently been efforts in the Study Countries to decrease the length of SEC cases and time spent in shelters, the fear of long-term confinement appears to remain an impediment to reporting.

## 1.2 Strengths and Weaknesses in the States’ Response

States have a duty under Article 19 of the *Convention on the Rights of the Child* to put effective procedures in place to help children report abuse and to connect with needed services and, where appropriate, the justice system.<sup>208</sup> Nepal, the Philippines, and Thailand have taken a number of steps to encourage reporting among child victims of crime.

They have engaged in community awareness and education programmes on SEC-related issues.<sup>209</sup> They have created one-stop crisis centres in local hospitals, where women and child victims of sexual crimes can report crimes and receive physical and psychological care, legal advice and referrals for other services.<sup>210</sup> Nepal has also established Women and Children Police Service Centres throughout the country, where women and child victims can report crimes to female officers<sup>211</sup> (these centres only receive women and girls, not boys). In the Philippines, child-friendly help-desks are reported to be located in each village or “*barangay*”<sup>212</sup> and some local police stations have carved out child-friendly areas for intake interviews.<sup>213</sup>

205 Of the 67 survivors interviewed for the Access to Justice, Recovery and Reintegration, and Compensation Studies, 26 had been living in their current shelter for one year or more, with seven having lived in the facility for four years or more. It was not clear if or how long they had lived in other shelters.

206 Hargitt, Katherine, e-mail communication to author, 16 May 2016.

207 Interview with Thailand, Service Provider, SW#2.

208 CRC, Art. 19 (“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”).

209 For information on SEC education and awareness campaigns in the Study Countries, See ECPAT International, Global Monitoring Reports for Nepal, the Philippines, and Thailand.

210 See: Nepal (2013), “Report on Anti-Human Trafficking Initiatives Led by the Government of Nepal,” 15, accessed 6 July 2016, <https://asiafoundation.org/resources> (as of 2011, the Government had established hospital-based one-stop centres for victims of gender violence in seven districts); Philippines, Child Protection Unit Network website, accessed 6 July 2016, <http://www.cpu-net.org.ph>, (child protection units are required in every government hospital to provide care for sexually abused and exploited children; the National Bureau of Investigation and the Philippines National Police also opened centres for medico-legal evaluation); UN Women website (2013), “Thailand launches One-Stop Crisis Centre to respond to violence against women,” accessed 6 July 2016, <http://www.unwomen.org/en/news/stories/2013/4/thailand-launches-one-stop-crisis-centre-to-respond-to-violence-against-women#sthash.OD4n61x1.dpuf> (One Stop Crisis Centre includes a hotline managed by trained staff, a network of 22,000 crisis centres and 1,300 mobile units to access communities nationwide. It receives complaints, transfers cases, and coordinates responses between government agencies).

211 Asian Development Bank (2014), “More Police Service Centres in Nepal Help Reduce Violence Against Women,” accessed 6 July 2016, <http://www.adb.org/news/features/more-police-service-centres-nepal-help-reduce-violence-against-women> (30 percent increase in reporting of gender-based crimes in pilot districts with specialized police service centres).

212 Philippines SEC Case Management Protocol.

213 Diloy, Ysrael C.(2015), “Creating Child Friendly Spaces for the PNP Women and Children Protection Centers,” *Stairway Foundation*, accessed 6 July 2016, <http://www.stairwayfoundation.org/wp-content/uploads/2015/09/PNP-Child-Friendly-Spaces-2.pdf>.



In a promising practice, Thailand opened its first child advocacy centre, called Children's Advocacy Centre Thailand (ACT) in Northern Thailand in 2015. The centre creates a safe and child-friendly space where SEC victims can report crimes, and where police, social service and other professionals can come together under one roof to manage SEC cases in an efficient and child-sensitive way.<sup>214</sup>

### a) Child-Friendly Helplines

There has been a recent push from the international community for States to create confidential and child-friendly reporting mechanisms, such as telephone and internet helplines.<sup>215</sup> According to a report of the UN Special Representative of the Secretary-General on Violence against Children, 76 percent of States had some sort of reporting mechanism in place as of 2013.<sup>216</sup> The Study Countries have government-run or government-funded child helplines, which accept reports of child mistreatment, offer information and counselling, and provide referrals to needed services.<sup>217</sup>

Data collected by Child Helpline International from 141 countries over a ten-year period shows that millions of children and young people worldwide contact helplines each year.<sup>218</sup> Children typically want to talk about family or peer problems, mental health issues, or in 17 percent of cases, their experiences of abuse and violence.<sup>219</sup> They use helplines to report different types of abuse, including physical abuse (32 percent), bullying (28 percent), sexual abuse (19 percent), emotional abuse (11 percent), and neglect (10 percent).<sup>220</sup>

However, children do not often use helplines to report sexual exploitation. According to Child Helpline, only one percent of all calls made by children to child helplines between 2003 and 2013 related to commercial exploitation. Only a fraction of that one percent dealt with sexual exploitation and the rest were related to forced labour.<sup>221</sup> In the Asia-Pacific region, only 0.1 percent of calls made to child helplines between 2012 and 2013 had to do with SEC.<sup>222</sup>

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214 Facebook page, "Children's Advocacy Centre of Thailand" (ACT), accessed on 6 July 2016, <https://www.facebook.com/Childrens-Advocacy-Centre-Thailand-1600454320221552>.

215 See e.g. UN Special Representative of the Secretary-General on Violence against Children (2013), "Toward a World Free from Violence: Global Survey on Violence against Children," 75-79 (calling for child-friendly counselling, complaint and reporting mechanisms); UN Model Strategies (2014), Arts.19, 20 (States should implement safe, child and gender sensitive reporting mechanisms and make sure they are well-publicized and easily accessible).

216 *Ibid.*, 76.

217 Examples include Child Helpline-Nepal, a government-funded, NGO-operated hotline. In the Philippines, telephone reporting hotlines are operated by Department of Social Welfare & Development; the Child Health and Intervention and Protective Service (CHIPS); Anti-Child Abuse, Discrimination, Exploitation Division (ACADED); National Bureau of Investigation; Commission on Human Rights Child Rights Centre; Philippine National Police Operation Centre; and DOJ Task Force on Child Protection. In Thailand, the One-Stop Crisis Centre 1300 Hotline is run by the Ministry of Social Development and Human Security.

218 Child Helpline International, "The Voices of Children and Young People: Child Helpline Data from 2003-2013," 6, (data retrieved from 173 helplines in 141 Countries), accessed 6 July 2016, [http://www.childhelplineinternational.org/media/70982/chi\\_global\\_web\\_final.pdf](http://www.childhelplineinternational.org/media/70982/chi_global_web_final.pdf).

219 *Ibid.*, 2.

220 *Ibid.*, 6.

221 *Ibid.*, 3.

222 Child Helpline International, "The Voices of Children and Young People: Child Helpline Data from 2012-2013," 29, accessed 6 July 2016, [http://www.childhelplineinternational.org/media/125077/vac\\_english.pdf](http://www.childhelplineinternational.org/media/125077/vac_english.pdf).



Even if children do not use helplines to report SEC, helplines can connect them to justice in other ways. Vulnerable or exploited children may access information or counselling that enables them to report later. Concerned adults may report suspicions that link children to the proper authorities.<sup>223</sup>

While the reasons for underuse of helplines are not clear, it seems likely that sexually exploited children do not use helplines for the reasons cited earlier in this report – because they do not see themselves as victims, they do not trust the justice system, or they wish to avoid the risk of arrest, retaliation, stigma and long-term confinement that comes with filing a report.

## b) Specialized Outreach

The Study suggests that many SEC victims will only engage directly with state systems as a result of specialized outreach. Professionals in the Study emphasized that SEC victims only report after they have had time to understand their exploitation and build trust with authorities. There are many different types of outreach activities conducted by non-governmental organizations, including the creation of drop-in centres, organization of child clubs, and coordinated efforts to contact children on the streets, local hangouts, karaoke/videoke bars, dance clubs, and internet cafes.<sup>224</sup>

While state actors do not typically engage in these kinds of outreach efforts, a notable exception is the Big Brother Project in Chiang Mai, Thailand, where the police act as “Big Brothers” to children who are exploited or at risk of sexual exploitation. Officers play sports with the children, take them on outings, and find other ways to spend time and get to know them. By building a trusting relationship over time, officers hope that these children will someday feel comfortable enough to share what they have experienced and seek help. The programme also has secondary benefits, allowing police to build stronger cases against exploiters because children are more willing and able to serve as witnesses.<sup>225</sup> According to one officer participating in the program, prosecutions involving children identified through the program have “100 percent success”. This is an important model and it is hoped that it can be studied and shared throughout Thailand and elsewhere.

***“Prosecution is a little piece of the work we are doing. It’s a crucial point but we go beyond that, so we see prosecution as one of the branches that we are running. For many cases when we started a real relationship with a child, 70 percent of them have [already] passed through victimization; so the real prevention would be to minimize the number of child. But we have a really good strategy going ... and when we start the prosecution with them we have 100 percent success.”***

*Thailand, Police Officer #4*

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223 See e.g. ECPAT International “Global Monitoring Status: Nepal” (about 1900 of 2000 calls reported by Child-Helpline Nepal in 2008 were from adults).

224 ECPAT International (2015), “Submission to the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography,” 18 May 2015, 15, accessed 30 September 2016, <http://www.ohchr.org/Documents/Issues/Children/SR/CareAndRecovery/ECPAT.pdf>

225 See Facebook page, “Big Brother Project,” at <https://www.facebook.com/BigBrother.Project.Thailand/info>; See also Cadigan, Hillary (2014), “Undercover Brothers”, *Citylife Chiang Mai*, accessed 6 July 2016, <http://www.chiangmaicitylife.com/citylife-articles/undercover-brothers/>.



## A Promising Access-to-Justice Practice: The Big Brother Outreach Project in Chiang Mai Thailand

The Big Brother Project is a joint initiative between the Royal Thai Police, the Chiang Mai Office of the Ministry of Social Development and Human Security, and the non-governmental agency, the HUG Project. The project's intent is to reach out to sexually exploited children and children at risk of exploitation and rebuild their trust in adults, including the police. Officers act like "big brothers" to the children, taking part in daily activities, such as guitar and football lessons, school work, and outings. The goal is to help children understand their exploitation, to show them that the police are there to support them, and to encourage them to seek help when they are ready. The programme has a secondary benefit of helping children become stronger witnesses in the criminal case against their exploiters, and prosecutions involving children in the programmes are reported by one officer to have a 100 percent success rate.

### c) Delayed Reporting and Short Statutes of Limitations

When sexually exploited children do disclose their abuse, their disclosure is often delayed. In these cases, their access to justice can be thwarted by short statutes of limitations for sex crimes.

While statutes of limitations for trafficking crimes can be long, or as in the case of Nepal, non-existent, statutes of limitations for sexual offenses have traditionally been short. The short period for bringing these cases has been attributed to a gender-biased notion that rape charges are easy for women to bring but hard for men to defend.<sup>226</sup> While some countries have extended or eliminated the limitations periods for serious sex offenses, Nepal and Thailand are among the countries that retain restrictive limitations periods.

In Nepal, women and girls aged 16 years or older have merely 35 days to report cases of rape or other SEC-related offenses, such as physical assault and illegal detention.<sup>227</sup> Despite the Nepali Supreme Court's repeated ruling that the statute of limitations is unreasonable and unconstitutional, it persists.<sup>228</sup> Thailand also imposes a short limitations period for some SEC-offenses, with only a 3-month period for compoundable offenses, including rape and sexual assault of victims over age 15 when the crimes are committed in private without physical injury.<sup>229</sup> This combination of delayed reporting and short limitations periods blocks many SEC victims' access to justice.

226 See e.g. Smith, Jordan M., (2014), "These Laws Let Accused Rapists Off the Hook," *Mother Jones*, accessed 6 July 2016, [www.motherjones.com/politics/2014/11/rape-sexual-assault-statutes-limitations-laws](http://www.motherjones.com/politics/2014/11/rape-sexual-assault-statutes-limitations-laws) (tracing certain biases against rape complainants to English common law, when influential 17th-century British jurist Sir Matthew Hale argued, "the party ravished" must promptly pursue justice or "otherwise it carries a presumption that her suit is but malicious and feigned").

227 Nepal, General Code, Part 4, Chapter 8(7) (illegal detention); Chapter 9(27) (hurt/battery, with 90-day limitations period for cases of 'grievous' hurt); Chapter 13(6) (intention of sexual intercourse) and 14(11) (rape).

228 According to reports, the Nepali Supreme Court has ordered the revision of the statute three times, finding that the limitation period was 'unreasonable' and 'unrealistic' in *Sapana Pradhan Malla v. Government of Nepal*, and that denies victims justice in *Mandamus order vs. Government of Nepal and others*. The latest opinion was issued April 18, 2015, in which the court reminded the government to amend or remove the statute of limitations for rape cases. See: Nepal Monitor (2015), "Republica: Amend 35-day statute of limitations for rape cases," accessed 6 July 2016, <https://www.nepalmonitor.org/reports/view/5633> (reporting that police continue to refuse to act on rape complaints if more than 35 days have passed, and the statute of limitations remains a barrier to justice for child and adult survivors of rape).

229 Thailand, Criminal Code, §§ 96, 281.



## Promising Access-to-Justice Practice: Expanded or Eliminated Statutes of Limitations for Human Trafficking

In acknowledgement of the gravity of trafficking crimes and the prevalence of delayed reporting, some countries have expanded or eliminated statutes of limitations for trafficking cases, including the sex trafficking of children. In Nepal, trafficking cases may be brought no matter how much time has passed.<sup>230</sup> The Philippines' *Expanded Anti-Trafficking in Persons Act* provides a lengthy period of limitation and delays the running of the limitation period until the child reaches adulthood:

“Trafficking cases . . . against a child, shall prescribe in twenty (20) years . . . The prescriptive period shall commence to run . . . in the case of a child victim, from the day the child reaches the age of majority.”

*Section 12, Philippines' Expanded Anti-Trafficking in Persons Act (2012).*

## 2. Feeling Invisible: Sexually Exploited Children Are Rarely Rescued by Police

Another barrier to entering the justice system, according to respondents in the Study, is that local police often fail to act proactively to identify children being exploited in the sex trade and help them to escape. The Study shows that the Study Countries rely heavily on non-governmental organizations to search for, identify, and rescue children from brothels, clubs and other sex venues. When police do conduct raid and rescue operations, they face numerous challenges in distinguishing child victims from adult offenders, and sexually exploited children risk falling through the cracks, returning to the streets or finding themselves under arrest

### 2.1 The Right to Rescue

The CRC requires States to take all appropriate measures to protect children from exploitation,<sup>231</sup> and Article 7 of the ILO Convention No. 182 specifically requires States to “provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour,” including sexual exploitation, and to “identify and reach out to children at special risk.” As explained by the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, States should “provid[e] law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers,” and “support the development of proactive investigatory procedures that avoid over-reliance on victim testimony”.<sup>232</sup>

### 2.2 Strengths and Weaknesses of the States' Response

In light of these obligations, Nepal, the Philippines and Thailand have taken steps to improve identify and rescue of children from prostitution and pornography.<sup>233</sup> These steps focus mainly on identifying trafficking victims and include (depending on the country) new victim-identification protocols and

230 Nepal, Anti-Trafficking Act. *See also*: Interview with Nepal Service Provider, N-CW (“For other kind of crime there is a rule that you must report and file the case within 35 days of the incidents, but for human trafficking you can file the case anytime”).

231 CRC, Arts. 19, 34.

232 UN Office of the High Commissioner for Human Rights (2002), Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002, E/2002/68/Add.1, Guideline 5(3).

233 *See*: Thailand (2015), “Thailand’s Progress Report on Anti-Human Trafficking Efforts,” 35-37 (describing steps taken by Thailand to improve its anti-trafficking response).



trainings,<sup>234</sup> specialized police units and task forces,<sup>235</sup> and in some cases, a greater allotment of resources for anti-trafficking investigations and prosecutions.<sup>236</sup>

In Thailand, NGO respondents had praise for trafficking-specialized police officers whom they credited with taking proactive steps to find and rescue SEC victims.<sup>237</sup> As noted earlier in this report, police officers in Northern Thailand are running an exceptional programme, in partnership with a SEC-specialized NGO, to reach out to sexually exploited children and help them to escape prostitution. One officer explained the importance of being pro-active in these cases:

***“[W]e focus on working with the children on the street where the paedophile are hanging around where street kids are potential victims, and start proactively work with them...having an eye on them, so we have information about them. In no way they ask for help...Nowadays we try to get them in a proactive way. Try to build a connection with them.”***

*Thailand, Police Officer #4*

Despite these positive examples, local police in all three Study Countries were criticized for not taking sufficient action to find children caught in prostitution and pornography and rescue them from those situations. Police inaction was a common theme, whether children were prostituted on the streets or held in sexual service in brothels, clubs, bars and other venues.

### Street-Based Prostitution

In the Study Countries, it is still possible to find children for sex on the streets of cities and tourist destinations, including Kathmandu in Nepal, Cebu in the Philippines, or Pattaya in Thailand.<sup>238</sup> According to ECPAT International’s recently released *Global Study on Sexual Exploitation in Travel and Tourism*, in South and Southeast Asia, boys are more likely than girls to be involved in street-based prostitution at beaches, parks, entertainment areas and transit hubs.<sup>239</sup>

Survivors and professionals in the Study reported that local police did not do enough to rescue children on the streets from sexual exploitation. In Nepal, respondents noted that police did not understand the sexual exploitation of boys and transgender youth and were unlikely to offer them help. A Thai survivor reported that, in his experience, police tended to harass street children, rather than assist them.<sup>240</sup> A survivor in the Philippines expressed her frustration that

234 See e.g. Philippines, SEC Case Management Protocol; Philippines (2006), “Guidelines for Protection of Trafficked Children,” accessed 10 June 2016, <https://www.humanitarianresponse.info/system/files/documents/files/Philippine%20Guidelines%20for%20the%20Protection%20of%20Trafficked%20Children.pdf>; Thailand Ministry of Social Development and Human Security (2006), “The Scope and Elements of Identification of Trafficked Persons”, accessed 9 June 2016, [http://www.no-trafficking.org/reports\\_docs/legal/thailand/se\\_vicid\\_pamph\\_en.pdf](http://www.no-trafficking.org/reports_docs/legal/thailand/se_vicid_pamph_en.pdf); Thailand (2009), “National Anti-Human Trafficking Training Curriculum,” cited in ECPAT, “Global Monitoring Status: Thailand,” 35.

235 Examples include the Philippines Inter-Agency Council Against Trafficking and the Anti-Human Trafficking Division of the Royal Thai Police, as well as cybercrime divisions in both the Philippines and Thai police departments.

236 Sevilla, Cristina, telephone conversation with author, 20 July 2015 (discussing increased resources and training in Philippines in area of human trafficking). See also: Forum for Women, Law and Development (2014), “Nepal Human Trafficking and Transportation (Control) Act 2007: Its Implementation (2014),” (FWLD Nepal Implementation Study), accessed 30 September 2016, <http://fwld.org/wp-content/uploads/2016/07/Human-Trafficking-and-Transportation-Control-Act-2007-ITS-IMPLEMENTATION.pdf> (reporting Nepal’s increased efforts to identify Nepalis trafficked abroad).

237 Interview with Thailand, Lawyer #1, SW#1.

238 *Ibid.*, 40-43.

239 *Ibid.*

240 Committee on the Rights of the Child (2012), “Consideration of reports submitted by States parties under the OPSC, Concluding Observations: Thailand,” 5, accessed 6 July 2016, [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_OPSC\\_THA\\_CO\\_1.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_OPSC_THA_CO_1.pdf) (“Police largely ignore the law against prostitution, allowing prostitution to be practiced quite openly, with the involvement of large numbers of children.”) See also: Hookway, J. (2014), “Police Seek to Carry



police looked the other way when children were involved in the sex trade in the red light districts or sometimes took part in the trade themselves:

***“Why are there lots of clubs and lots of bars still existing? Why are they still open? These kinds of businesses should be closed. Even if you put some policeman forces there, they’re also involved. The police also buy the women.”***

*Philippines, SEC Survivor, P-SI*

There are many reasons why police may not respond to sexually exploited children on the streets. Local police lack the training and resources that specialised trafficking units have. Children may be mistaken as adults willingly engaged in street-based prostitution, sometimes viewed as a victimless crime. Some children will simply not accept help, and if they do, there is often a shortage of good places where police can bring them. Several respondents (including a judge, a prosecutor, a police officer, and a number of survivors and NGO workers) cited corruption.<sup>241</sup> They criticized local police for protecting the sex industry in exchange for bribes, political favours, or free sexual services.<sup>242</sup> Similar criticisms have been lodged against the Study Countries by the Committee on the Rights of the Child and others.<sup>243</sup>

***“Aware [of the trafficking law]? I think they know, but the problem is corruption. Money. Trafficking can bring a lot of profits so they can pay lots of money to police officers. This is the problem. We had a lot of allegations but none of the cases have been conducted because of the involvement of police.”***

*Thailand, Prosecutor #2*

***“Corruption by police and perpetrator. That leads to SEC crimes.”***

*Nepal, Judge #1*

### Sexual Exploitation Behind Closed Doors

Although some children are prostituted on the streets, SEC increasingly occurs behind closed doors. Children are sold for sex in brothels, cabin restaurants,<sup>244</sup> massage parlours, karaoke bars, night clubs, hotels, guesthouses, and a host of other sex establishments.<sup>245</sup> They are also

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Out Junta’s Mission by Targeting Transgender Sex Workers,” *Wall Street Journal*, 10 October 2014, accessed 14 October, 2015, <http://www.wsj.com/articles/a-thai-morality-drive-comes-to-pattaya-1412940352> (recent crackdown on street prostitution resulted mainly in arrest of transgender youth and young adults).

241 In the Philippines, criminal justice professionals and others spoke about corruption among judges and public officials, rather than corruption of local police. Philippines, Focus Group Report, 9.

242 A Thai survivor interviewed for this Study also recounted that he and other SEC victims living or working on the street were harassed and arrested by police, rather than given help. Interview, Thailand, SEC Survivor, T-SEF.

243 See e.g., Committee on the Rights of the Child (2012), “Consideration of reports submitted by State Parties under the OPSC: Concluding Observations: Nepal,” 11, accessed 6 July 2016, [www.bayefsky.com/pdf/nepal\\_t4\\_crc\\_sc\\_60\\_2012.pdf](http://www.bayefsky.com/pdf/nepal_t4_crc_sc_60_2012.pdf) (reporting that impunity remains pervasive in the context of trafficking-related investigations); Committee on the Rights of the Child (2013), “Consideration of reports submitted by State Parties under the OPSC, Concluding Observations: Philippine Government”, 8, accessed 6 July 2016, <https://www.state.gov/documents/organization/245365.pdf> (“Impunity remains pervasive in the context of child pornography and trafficking-related investigations and prosecutions mainly due to the complicity of law-enforcement, judiciary and immigration officials in human trafficking and corruption”); ECPAT International Journal (2012), “The Fights Against Trafficking of Children for Sexual Purposes,” Thailand Edition, Bangkok: ECPAT International (reporting that corruption impedes SEC cases).

244 Cabin restaurants in Kathmandu, Nepal are reported to be a site of child sexual exploitation. Waitresses are often young women and teenage girls who have migrated to the city from poor villages and are forced to “entertain” clients in small, private back rooms or cabins. IRIN Humanitarian News & Analysis (2008), “Nepal: Cabin waitresses subjected to sexual exploitation,” accessed 6 July 2016, <http://www.irinnews.org/report/78846/nepal-cabin-waitresses-subjected-to-sexual-exploitation>.

245 Global Study on SECTT, 29. See also: ECPAT Recovery and Reintegration Study (noting that in Nepal, there is a new trend of children being exploited in private residences at house parties).



exploited in places less-expected. For example, it is reported that children in the Philippines are made to perform sex acts in their own homes for live viewing worldwide;<sup>246</sup> children from Thailand’s neighbouring countries are delivered to hotel rooms just inside the Thai border and then secreted quickly back to their homes;<sup>247</sup> and children in Nepal are sold for sex out of the orphanages where they have taken refuge.<sup>248</sup>

Respondents reported that police do not take the initiative to investigate these places and rescue the children being exploited there.<sup>249</sup> Instead, police are reported to wait until after NGOs have conducted surveillance and completed an investigation before they get involved.

***“If someone tells police that there is a girl being maintained in a bar, they will not go to the bar. They need the whole trafficking case spelled out. Basically they just rely on what the NGOs give them.”***

*Philippines, Private Child Lawyer, #10*

***“Mostly we don’t involve them, because of corruption and the ‘tip off’...If we involve the local police it’s at the very end after we already did the operation”***

*Thailand, Service Provider, SW#1*

NGOs conduct a wide range of police functions, including:

- Reaching out to children who are at high-risk of sexual exploitation;
- Monitoring suspicious clubs, restaurants or other entertainment venues;
- Cultivating informants;
- Conducting undercover interviews and sting operations;
- Drafting investigation reports to establish cause for raids;
- Helping to plan and coordinate raids;
- Identifying victims during and after the raid;
- Searching for, collecting, and photographing crime-scene evidence, including ledgers, money, false identification documents, clothing, and condoms; and
- Helping to draft arrest reports.

One NGO lawyer in Thailand described the investigatory work that her anti-trafficking organization conducts in the following way:

***“After [a] report, we start the investigation to find out what happened and collect evidence. We both collect the evidence ourselves and support police. For example, when we are reported that there is a child in a brothel, we first go to the brothel and collect evidence and ask for some girls and take pictures.***

246 See: Schweizer, Kristin and Batino, Clarissa (2014), “The ‘Queen of Cyberporn’ and Her Town’s Industry of Abuse,” accessed 6 July 2016, <http://www.bloomberg.com/news/articles/2014-12-21/how-jailed-cyberporn-queen-molested-daughter-for-profit>.

247 Interview, Thailand, Prosecutor #2.

248 Global Study on SECTT (noting that SECTT has occurred in the guise of volun-tourism and children have been victimised in orphanages in countries as diverse as Cambodia, Haiti, Honduras, Kenya and Nepal). See also Pandey, Sunir (2014), “Bal Mandir Rapists Jailed,” *Nepali Times*, 11 December 2014, accessed 6 July 2016, <http://nepalitimes.com/article/nation/bal-mandir-rapists-jailed.1861> (Nepali orphanage workers convicted of sexually exploiting children in their care).

249 The Committee on the Rights of the Child expressed similar concerns with respect to Nepal, reporting its “deep concern that although thousands of children are involved in prostitution in [Nepal], especially in the cabin restaurants, the dance bars and the massage parlours of the Kathmandu Valley and in the major cities of [Nepal], limited measures have been taken to rescue them from those prostitution places.” Committee Concluding Observations: Nepal, 9-10; FWLD, Nepal Implementation Study, 47.



*We go undercover, pretending to be a client. We also interview the potential victims, trying to find out the age and the other elements of trafficking.”*

*Thailand, Lawyer, #2*

Some NGOs devote significant resources to rescuing trafficking victims, while also helping to fund and train police to better perform the work themselves. International Justice Mission’s Project Lantern in Cebu, Philippines is a good example. Cebu is a beach destination well-known for sex tourism. Between 2007 and 2010, IJM conducted surveillance, stings and investigations to facilitate the rescue of children from exploitation, while also training police to do the same. IJM-initiated or IJM-trained police operations were reported to result in a 79 percent reduction in children available for sex over the three-year period, with 259 sex trafficking victims rescued, compared to 27 in all of the three years prior.<sup>250</sup>

In countries with limited resources, police-NGO collaborations can be a positive way to tackle the problem of SEC and increase the number of children who can be rescued from harm. However, police inaction was identified as a significant issue in all of the Study Countries, regardless of the level of resources available, and appears to have links to corruption.<sup>251</sup> States bear the duty of identifying and rescuing children trapped in the sex trade, and the Study Countries are urged to re-assess whether they have allocated sufficient resources to enable their police to meet this obligation and to reduce the lure of corruption.

### 2.3 Raid and Rescue Operations

When raid and rescue operations do occur, the Study identified a number of issues that may result in sexually exploited children being overlooked or misidentified. Raids on brothels, clubs and other venues can be frantic affairs, and properly identifying victims under these conditions is challenging. Authorities must quickly determine how each person became involved in prostitution and if that person is an adult or a child. In Nepal, there must be evidence that the child engaged in prostitution against his or her will, while in Thailand and the Philippines, anyone under the age of 18 years is automatically deemed a victim.<sup>252</sup>

The following factors contribute to the challenges of identifying SEC victims during raid and rescue operations:

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250 International Justice Mission (2010), “Project Lantern: Game-Changing Results in the Fight against Trafficking,” accessed 6 July 2016, <https://www.ijm.org/projectlantern>.

251 After a mission trip to the Philippines in 2013, the UN Special Rapporteur on Trafficking in Persons made a similar finding, reporting as follows: “Besides corruption and absence of political will in various parts of the country, law enforcement agencies lack the funding required to be adequately equipped in terms of financial, technical and human resources. Operating under such circumstances makes it more difficult for officers to support high demands for intervention and assistance and to rapidly and accurately identify trafficked persons. Consequently, they do not proactively pursue investigations and instead only act upon complaints, relying to a large extent on CSOs’ assistance in carrying out rescue operations.”, UN Special Procedures (2013), “Report of the Special Rapporteur on trafficking in persons, especially women and children,” A/HRC/23/48/Add.3.

252 Nepal, Anti-Trafficking Act, § 4; Philippines, Anti-Trafficking Act, as amended by Expanded Anti-Trafficking Act, § 4 and Philippines, Anti-Child Abuse Act, §5; Thailand, Anti-Trafficking Act, § 6(2). Note that Nepal is not a signatory to the Palermo Protocol, which requires State Parties to eliminate the requirement that child victims of trafficking prove they were forced, tricked or otherwise made to engage in sex or labour against their will.



### Poor victim interview conditions

Some of the problems identified by respondents in Thailand including a shortage of translators;<sup>253</sup> poor collaboration between law enforcement and social workers; the absence of safe, private meeting spaces; and limited time to develop rapport with victims. Respondents also reported that most Thai officials used a two-page screening form that was too short to capture individuals' full stories. Finally, it was noted that some police and social workers were reluctant to identify "too many" victims because of their already high workloads and the complex nature of trafficking cases, and they would simply stop identifying victims at an arbitrary point in the screening process.

***"Sometimes social workers from governmental shelter also push to reduce cases of victims. They say 'that's enough, don't put more'. They don't want to deal with too many cases."***

*Thailand, Service Provider, SW#1*

***"Most of the law enforcement doesn't want to identify the case as human trafficking case because they don't want to get involved in the process. When we work with the multi-disciplinary team, we encourage them to apply the rules. In reality, this doesn't happen."***

*Thailand, Prosecutor #2*

## An Impediment to Proper Identification of SEC Victims: Tension between Police and Social Workers

Despite Thailand's ongoing efforts to improve its response to trafficking victims, a lack of coordination between law enforcement and social workers was reported to be a continuing problem that adversely impacts the identification and rescue of sexually exploited children. Exemplifying the tension between these professionals are the following responses from two Thai respondents:

***"For social workers or NGOs, 99.99 percent they say are victims."***

*Thailand, Police Officers, #1-2*

***"In one case, I had the feeling that three girls were underage and I pointed this out, but DSI [Department of Special Investigations] said it was a gray area, it was not clear so it was better not to take them, and I couldn't do anything because I have no authority, I am just NGO...DSI says 'Have you written the law? It's a gray area better not to take them."***

*Thailand, Social Worker, SW#1.*

### Difficulty determining the victim's age

Determining the age of potential victims is a significant challenge that can lead to a failure to rescue. Prostituted children typically appear older than they are, due to the make-up and clothing they wear and the life they lead. According to respondents, children often say they are adults, because they fear being placed in protective custody or arrested and deprived of their income and freedom. Other children lie about their age to protect their exploiter or avoid retaliation. Some respondents also noted that sexually exploited children are "drugged as a controlling mechanism of traffickers," and as a result, they "are not coherent in their testimonies."<sup>254</sup>

253 According to one police officer in Thailand who specializes in trafficking cases, "the main problem is the language barrier. There are never enough translators." Interview with Thailand, Police Officers, #1-2.

254 Philippines Focus Group Report, 2.



***“The biggest problem is that the victims are lying. They all always say that they are willing to do that, even if they are underage. It’s possible that they have been told to say that, but the majority of them really want to. If they are children, they will lie about their age, saying that they are 19.”***

*Thailand, Lawyer #2*

Adding to the difficulty of determining the child’s age is the fact that many SEC victims have no identity documents or carry false ones. In Thailand, for example, police and prosecutors noted that Burmese and Laos victims of sex trafficking rarely had legitimate passports or birth registration. One survivor in Thailand noted that girls used in prostitution were often from indigenous and ethnic minority groups, such as the northern Hill Tribes, and were stateless without proper identification.<sup>255</sup>

Under the OPSC, States must ensure that “uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.”<sup>256</sup> The Philippines and Thailand have adopted a legal presumption that a potential trafficking victim is to be treated as a child whenever age is uncertain, until further investigation can confirm the true age.<sup>257</sup> These presumptions are meant to ensure that older-looking children are not mistaken as adult law-breakers and are instead connected with appropriate child protection and law enforcement services.

While these presumptions are promising practices, it is not clear whether they are effective at protecting SEC victims. For example, while police officers in Thailand were familiar with the presumption, some reported that most child victims of prostitution are so young – about ten years old – that there is “no need” to resort to the presumption. This observation appears to be at odds with studies that show that prostituted children are generally in their teens.<sup>258</sup> ECPAT International’s 2015 Situational Analysis on Thailand indicates that the average age of girls prostituted in entertainment venues is 16 or 17 years old, with boys tending to be a bit younger, though still in their teens.<sup>259</sup>

255 Interview with Thailand, SEC Survivor, T-SEE.

256 OPSC, Art. §8(2).

257 Philippines, Juvenile Justice and Welfare Act, § 7 (children presumed to be under the age of 18 years in cases where their age is in doubt). A similar presumption is established through memoranda of understanding among agencies in Thailand’s provinces. See: Thailand (2006), “Memorandum of Understanding on Operational Procedures for Concerned Agencies in Combating Human Trafficking in 8 Eastern Provinces,” [Chantanaburi, Rayong, Trat, Sa Kaeo, Prachin Buri, Chachoengsao, Chon Buri and Nakhon Nayok], paras. 7.3, 7.7, 8.3, 8.6.; Thailand (2006), “MOU on Operational Procedures for Concerned Agencies in Combatting Human Trafficking in 19 Northeastern Provinces,” [Kalasin, Khon Kaen, Cahiyaphum, Nakhon Ratchasima, Buri Ram, Maha Sarakham, Mukdahan, Yasothon, Roi Et, Si Sa Ket, Sakon Nakhon, Surin, Nong Khai, Nong Bua Lam Phu, Udon Thani, Ubon Ratchathani and Amnat Charoen], paras. 7.3, 7.7, 8.3, 8.6.; Thailand (2007), “MOU on Operational Procedures for Concerned Agencies in Human Trafficking in 6 Southwestern Eastern Provinces,” [Krabi, Phang Nga, Phuket, Ranong, Satun and Trang], paras. 8.3, 8.7, 10.3, 10.7; Thailand (2008), “MOU on Operational Procedures for Concerned Agencies in Prevention, Suppression, and Solution for Human Trafficking Problem in 8 Upper Central Provinces” [Chai Nat, Nonthaburi, Pathun Thani, Phra Nakhon Si Ayutthaya, Lop Buri, Saraburi, Sing Buri and Ang Thong], paras. 8.3, 8.7, 10.3, 10.7; Thailand (2007), “MOU on Operational Procedures for Concerned Agencies in Prevention, Suppression, and Solution for Human Trafficking Problem in 17 Northern Provinces” [Kamphaeng Phet, Chiang Rai, Chiang Mai, Tak, Nakhon Sawan, Nan, Phayao, Phichit, Phitsanulok, Phetchaban, Phrae, Mae Hong Son, Lampang, Lamphun, Sukhuthai, Uttaradit, and Uthai Thani], paras. 8.3, 8.7, 10.3, 10.7.

258 ECPAT International (2015), “Internal Review of ECPAT International Country Monitoring Reports,” 17 April 2015 (a review of ECPAT reports on SEC in countries around the world shows that children engaged in prostitution are generally reported to be in their teens). Of the 67 SEC survivors interviewed for the Access to Justice, Recovery and Rehabilitation, and Compensation Studies, the average age of entry into prostitution was 14 years old.

259 ECPAT International, Situational Analysis: Thailand, 39,41 (reporting that average age of girls found in entertainment bars is 16 to 17; boys tended to be younger, though studies indicate that they generally enter prostitution in their teens).



One explanation for the discrepancy may be that police require more training to ascertain when age is uncertain. They may presume that older children who have the appearance and demeanour of adults are, in fact, adults. As a result, they may overlook cases in which the presumption should be applied.

### Promising Access-to-Justice Practice: Presumption That SEC Victim Is a Child When Age Is Uncertain

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography requires that States “ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.”<sup>260</sup> The Philippines and Thailand have set a good example by adopting a legal presumption that a potential trafficking victim is a child whenever age is uncertain, until further investigation can confirm the true age.

“Maybe for a European eye it is difficult to say if she is underage or not, but we can see...Normally traffickers target the girls who look like 10 years old. They don’t target the 17-year-old. Very small girls. The younger, the better.”

*Thailand, Police Officers, #1-2*

“Normally you can see that they are underage...you have a doubts you check, but mostly you know they are children, as they are very young.”

*Thailand, Police Officer #3*

## 3. Feeling Like a Criminal: Sexually Exploited Children Are Often Viewed as Willing Sex Workers

***“The police should not arrest children when they did not do something wrong”.***

*Thailand, SEC Survivor, T-SEF*

In addition to barriers to self-reporting and rescue, there is another barrier that impacts these children uniquely: the risk that they will be treated as criminals rather than victims when they come forward. One of the positive findings of the Study is that arrests of SEC victims were reported to be less frequent than in the past. However, arrests still occur, and foreign-born, homeless, male and transgender victims appear to be at particular risk.

### 3.1 Criminalization and the Impact on Adolescents

When children are caught in the sex trade, they may come into conflict with a wide range of laws as a result of their exploitation, including laws against prostitution, use of false identification, unlawful entry into the country, illegal drug use, underage drinking, loitering, trespassing, and a variety of status offenses (crimes that only apply to children), such as violating curfew or frequenting adult-only venues.

<sup>260</sup> OPSC, Article 8.



Children are legally responsible for the crimes they commit from a young age: age 7 in Thailand (children up to age 14 are subject to non-criminal sanctions), age 10 in Nepal, and age 15 in the Philippines.<sup>261</sup> As many or most children are already in their teens when they become involved in prostitution,<sup>262</sup> they are often above the age of criminal responsibility and subject to arrest for crimes arising out of their involvement in the sex trade.

Many are also old enough to consent to sex, further increasing their vulnerability to arrest. The legal age of consent is only 12 in the Philippines, 15 in Thailand and 16 in Nepal.<sup>263</sup> Although a child's consent is irrelevant when they are bought and sold for commercial sex,<sup>264</sup> some officials may be reluctant to view teens as victims when they are old enough to decide whether or not to engage in sex with others, especially when the child claims to have made the decision independently.

### 3.2 Strengths and Weaknesses in the State's Response

It is a sign of significant progress that, as perceived by criminal justice respondents in the Study Countries, arrests of sexually exploited children are on the decline:

- In the Philippines, all of the criminal justice respondents believed that arrest of teens in SEC cases was inappropriate and that arrests were less frequent than in the past. They did acknowledge, however, that child victims are still sometimes arrested for vagrancy and prostitution crimes.<sup>265</sup>
- In Nepal, most of the criminal justice respondents reported that SEC victims were not arrested. One police officer disagreed, however, stating that teens involved in prostitution were sometimes arrested for engaging in “wrongdoing or illegal” activities.<sup>266</sup>
- In Thailand, the accounts of respondents were mixed. One juvenile court judge stated that sexually exploited children were arrested and that the “normal” charges were sale of sex and distribution of child pornography,<sup>267</sup> while others felt that children were no longer arrested on prostitution charges, though they risked being arrested during raid and rescue operations and held at least briefly for purposes of victim identification, or arrested on other types of charges, such as illegal drug use, theft or immigration violations.<sup>268</sup>

261 Thailand, Criminal Code, §§ 73-74; Nepal Children's Act, § 11; Philippines, Juvenile Justice and Welfare Act, § 6. The draft Philippines Penal Code published in August 2014 included provisions that would reduce the minimum age of criminal responsibility to 13.

See also: Committee on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice (noting that the Committee has repeatedly advised that State parties to increase minimum ages of criminal responsibility that are lower than 12 years).

262 ECPAT International (2015), “Internal review of ECPAT International country reports,” (memo on file with author).

263 Consent is irrelevant under international law: OPSC, Art.2(b), (c) (consent not a required element of crimes of child prostitution and pornography); Palermo Protocol, Art. 3(c) (same with respect to child trafficking). Consent is also irrelevant under the Study Countries' domestic legislation: Nepal, Amending Some Nepal Acts to Maintain Gender Equality, § 2(12); Philippines, Revised Criminal Code, § 335; Thailand Criminal Code, § 277.

264 Thailand, Anti-Trafficking Act, § 6(2); Philippines Expanded Anti-Trafficking Act, § 3(a).

265 Philippines, Focus Group Report, 3. Note that in 2016, the World Organization against Torture reported very different findings, noting that “young girls who are victims of serious crimes such as sexual abuse, exploitation and human trafficking are locked in [child detention] centres all over metro Manila and elsewhere. They are not treated as victims of crimes committed against them, but seen as children in conflict with the law.” World Organization Against Torture (2016), “Submission to the UN Committee Against Torture in relation to its examination of the Third Periodic Report of the Philippines: 57th Session of the Committee Against Torture,” 10, accessed 6 July 2016, [http://www.omct.org/files/2016/04/23738/philippinescatreport\\_final\\_newversiondocx.pdf](http://www.omct.org/files/2016/04/23738/philippinescatreport_final_newversiondocx.pdf)

266 Interview with Nepal, Police Officer #1.

267 Interview with Thailand, Judge #1.

268 Interview with Thailand, NGO Specialist, SP#1; Lawyer, #3.



Attitudes about arrest of sexually exploited children varied among the Study Countries. While the justice professionals in the Philippines were uniformly opposed to arrest, this was not the case in Nepal and Thailand. Instead, some criminal justice respondents spoke about SEC victims who choose to engage in commercial sex and emphasized the need to hold these children accountable for this choice. They distinguished between children who were driven into prostitution by poverty and those who were seduced by a vision of a more independent and glamorous lifestyle. While sympathetic to the first group, they felt that the latter was deserving of arrest.

***“They engage in the business with their will, because they want to buy cars, luxurious stuff. You can find them on XXX Road. The other group of children they do it to survive, and these should be called victims. Maybe they are in the situation of exploitation and abuse already. We should think about the different nature of these groups.”***

*Thailand, Prosecutor #2*

***“Yes, I believe arrest is appropriate. Teens involved in crime should realize that they are involved in wrongdoing or illegal activities.”***

*Nepal, Police Officer, #1*

In addition to viewing arrest as a way to hold “willing” child victims accountable, some Nepali and Thai respondents also saw arrest as a way to protect children from their own bad choices.

***Teens are involved in sexual activity because of modernization and easy earning. ... If we think of the future of the teen, then it is appropriate to arrest and give them a chance to improve their life with alternative jobs.”***

*Nepal, Lawyer, #1.*

***Q: “What is normally the charges against the child?”***

***A: “The cases are normally sale of sex and distribution of abuse images.”***

***Q: “So the child is accused for these crimes?”***

***A: “Yes.”***

***Q: “Do you think this is OK?”***

***A: “In the law in Thailand, we don’t accuse them to punish them but we accuse them to introduce them into the protection.”***

*Thailand, Judge, #1*

A complicated aspect of SEC cases is that some teens do show a great deal of agency in deciding to enter the sex trade, either to escape poverty or earn extra money, and they can be unwilling to give it up, as respondents confirmed. This behaviour can blur the lines between criminal responsibility and child protection. Yet, the Study Countries are bound by international and national laws that protect children up to the age of 18 from being sexually exploited (or the age of 16 in non-trafficking cases in Nepal).<sup>269</sup> These laws are designed to protect children of all ages from the combination of predatory adults and their own immature and sometimes poor decision-making.

<sup>269</sup> See CRC, Article 1 (a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”); Nepal, Anti-Trafficking Act, § 2(d) (under age 18); See also: Nepal, Children’s Act § 2(a) (under age 16, except with respect to trafficking); Philippines, Anti-Child Abuse Act, § 3(a) (under 18 or sometimes older); Philippines, Expanded Anti-Trafficking, §3(b) (same age limit); Philippines, Anti-Child Pornography Act, §3(a) (same age limit); Thailand, *Child Protection Act*, § 4 (under age 18); Thailand, Anti-Trafficking Act, §4 (under age 18).



### 3.3 Particular Groups of Sexually Exploited Children at Higher Risk of Arrest

According to the Study, certain SEC victims may be at higher risk of arrest, including undocumented migrants in Thailand, children living on the street, boys, and transgender youth.

**Undocumented Migrant Children:**<sup>270</sup> Thailand has faced criticism from the Committee on the Rights of the Child and others for failing to distinguish between trafficking victims and immigration offenders and subjecting victims to arrest, detention, and deportation.<sup>271</sup> Thailand has recently intensified efforts to improve its response to trafficking,<sup>272</sup> and received an improved rating in the latest U.S. State Department Trafficking in Persons report.<sup>273</sup> While some respondents confirmed the ongoing risk of arrest, one respondent believed that victim-identification training over the past five years has, in fact, helped to reduce arrests.

*“If the police don’t have knowledge about...the issues about the trafficking. Sometime they abuse the children twice. Because I got a case...the police complain the child [gained] entry the country like an illegal, and prosecutor also put the child [gained] illegal entry country like that. So we also complain many, many [times].”*

*Thailand, Service Provider, T-CFG*

*“[Under] the Trafficking Act in Thailand, if the victim is illegal immigrant, police cannot accuse her for illegal immigration. This used to not be followed at the beginning, but after five years...police and government are developing well, especially after training.”*

*Thailand, Lawyer, #1*

**Children Living on the Streets:** Children living or working on the streets often resort to selling sex for survival and may be at greater risk of arrest. Evidence from survivors and other respondents suggests that street children in the Philippines and Thailand are still arrested on vagrancy, prostitution, or other charges.<sup>274</sup> In the words of a Thai survivor living on the street, he and his friend “just only walk along the street and they just arrest us, just like that.”<sup>275</sup>

270 Thailand is considered a destination country for trafficking victims, with a greater number of foreign children and adults being brought into the country for forced sex and labour than brought into the other Study Countries. U.S. State Department (2015), Trafficking in Persons Report: Thailand.

271 Committee on the Rights of the Child, Concluding Observations: Thailand, (expressing concern that during the process of repatriation, child victims of trafficking are often held for long periods of time against their will, which results in their providing false testimonies to the police in order to attain permission to leave shelters and return to their home countries); U.S. State Department (2014), “Trafficking in Persons Report: Thailand,” (trafficking victims are arrested, detained and deported); Human Rights Watch (2014), “Two years with No Moon: Immigration Detention of Children in Thailand,” accessed 7 July 2016, [http://www.hrw.org/sites/default/files/reports/thailand0914\\_ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/thailand0914_ForUpload_0.pdf) (irregular migrant children are subject to arrest and detention if not identified as victims of trafficking).

272 Thailand (2015), “Progress Report on Anti-Human Trafficking Efforts.”

273 U.S. State Department (2016), “Trafficking in Persons Report: Thailand.”

274 Philippines, Focus Group Report, 6 (“Child victims of commercial sexual exploitations still get arrested for prostitution and vagrancy. However, not so much as before.”). Interview with Thailand Survivor, T-SEF (reporting repeated arrests of street children, including himself).

275 Interview with Thailand, SEC Survivor T-SEF. *See also:* continuing media reports related to arrest and detention of street children in the Philippines: Tubeza, Philip (2009), “Rescued Filipino street kids still abused,” 17 November 2009, *Philippine Daily Inquirer*, accessed 7 July 2016, <http://www.preda.org/world/rescued-filipino-street-kids-still-abused/> (citing pattern of arrest and noting similar findings in a 2009 UNICEF report); Campbell, Charlie (2015), “Pope Francis and the Mystery of Manila’s Vanishing Street Children,” *Time Magazine*, 21 January 2015, accessed 7 July 2016, <http://time.com/3676027/pope-francis-manila-street-children-philippines/> (rounding up of street children for visit of Pope in 2015).



**Boys & Transgender Youth:** Finally, survivors and adult professionals reported that police were reluctant to believe that boys, including those identifying as transgender, could be victims of sex crimes. Some respondents suggested that boys were more likely to be arrested on criminal charges related to their exploitation, including drug offenses, and be placed in remand homes.<sup>276</sup> The most recently published statistics from Thailand’s juvenile justice department confirm that the overwhelming majority of juvenile detainees are boys, while media reports on a recent prostitution crackdown in the country indicate that arrests involved almost exclusively transgender youth.<sup>277</sup>

### 3.4 Safe Harbour Laws and Their Impact on Arrests of SEC Victims

Concerned about the risk that sexually exploited children will be treated as offenders rather than victims, the Committee on the Rights of the Child often examines State efforts to prevent arrest of children for crimes arising out of their exploitation.<sup>278</sup>

To reduce arrests, the Philippines and Thailand (but not Nepal) have taken the important step of enacting “safe harbour” laws that protect children from prosecution for crimes arising out of their exploitation. In the Philippines, safe harbour laws prevent children from being prosecuted for vagrancy or prostitution and prevent trafficking victims from being prosecuted for “unlawful acts committed as a *direct result of, or as an incident or in relation to, being trafficked*” or “in obedience to the order made by the trafficker”<sup>279</sup> (Emphasis added) In Thailand, anti-trafficking legislation protects trafficking victims from prosecution for certain offenses except with the special permission of the Minister of Justice, including prostitution and some immigration-related offenses such as illegal entry into the country and use of false identification documents.<sup>280</sup>

#### Promising Access-to-Justice Practice: Safe Harbour Laws in the Philippines and Thailand

To reduce arrests, the Philippines and Thailand have taken the important step of enacting “safe harbour” laws that protect children from prosecution for crimes arising out of their exploitation.

##### The Philippines:

Section 17, Expanded Anti-Trafficking in Persons Act (2012): “Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed

276 These respondents included Nepal Police Officer #1, Philippines Lawyer #10, Thailand NGO Specialist, SP #1 (arrests less frequent, except for exploited boys who tend to be arrested on drug or theft charges).

277 Thailand, Department of Juvenile Observation and Protection (2012), “Annual Report 2012: Case Statistics,” accessed 7 July 2016, <http://www2.djop.moj.go.th/images/djopimage/stat2555.pdf> (in 2012, there were almost 35,000 children in detention centres; more than 40 percent were convicted on drug offences and about 5 percent on sex offences. The overwhelming majority were Thai males between the ages of 15 and 18 years, though more than 2000 were girls).

278 UNICEF (2009), “Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography,” Florence: Innocenti Research Centre, February 2009, 16, accessed 30 September 2016, [https://www.unicef-irc.org/publications/pdf/optional\\_protocol\\_eng.pdf](https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf). See e.g., Committee on the Rights of the Child, Concluding Observations on the OPSC: Nepal, para. 31.

279 Philippines, Juvenile Justice and Welfare Act, § 58 (exempting children from prosecution for crimes of vagrancy and prostitution); Philippines, Expanded Anti-Trafficking Act, § 17 (exempting trafficked persons from prosecution for crimes related to being trafficked or committed under order of the trafficker).

280 Thailand, Anti-Trafficking Act, § 41 (exempting trafficked persons from prosecution for prostitution and immigration offences except with special permission of the Minister of Justice); Thailand (2003), “MOU on Common Operational Guidelines for Government Agencies Engaged in Addressing Trafficking in Children and Women,” accessed 7 July 2016, [http://www.no-trafficking.org/resources\\_laws\\_regional.html](http://www.no-trafficking.org/resources_laws_regional.html) (children are “considered to be victims of trafficking, irrespective of whether they consent to or collude with the misdeeds”).



as a direct result of, or as an incident or in relation to, being trafficked...or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant. Victims of trafficking for purposes of prostitution as defined...shall not be prosecuted, fined, or otherwise penalized [for violation of the law against vagrancy and prostitution].”

**Thailand:**

Section 41, Anti-Trafficking In Persons Act (2008): “Unless the Minister of Justice grants a permission in writing, the inquiry official is barred from taking criminal proceeding against any trafficked person on the offence of entering, leaving, or residing in the Kingdom without permission under the law on immigration, giving a false information to the official, forging or using a forged travel document under the Penal Code, offence under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing and soliciting a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or offence of being an alien working without permission under the law on working of the alien.”

While the Philippines and Thailand are to be commended for enacting these safe harbour laws, arrests continue, even if less frequently than in the past, and additional training may be needed. For example, anti-trafficking safe harbour laws only come into effect when a child is identified as a trafficked person, and as noted earlier, it is often difficult to determine when someone is a child victim of trafficking as opposed to a willing adult sex worker or immigration offender.

It is also important to assess the scope of safe harbour protections. While the safe harbours in the Philippines are quite broad, the safe harbours in Thailand are narrow, covering only certain prostitution and immigration offenses. Thus, children may be prosecuted on offenses viewed as more attenuated to their exploitation. For example, they may be arrested on drug crimes, despite the link between illegal drug use and SEC: as attested to by survivors and others in the Study, exploiters often use drugs to control children, and children use drugs to blunt the pain of abuse.<sup>281</sup>

Some may argue that arrest of SEC victims on drug crimes and certain other crimes, such as petty theft or recruitment of others into prostitution, is warranted, and safe harbours should not apply. While it is not always clear where to draw the line with respect to criminal responsibility, it is important to take a close look in each case at the influence of the exploiter on the child’s actions. In many cases, criminal sanctions may be appropriate for the adult, while recovery, reintegration and, in certain cases, restorative justice measures may be better suited for the child.

## CONCLUSION: SECTION A

Although the Study Countries have made efforts to provide greater access to justice for children, children used in the sex trade continue to face obstacles on the path toward justice. Their entry into the justice system is blocked by their failure to understand their own exploitation, their reluctance to report, the difficulty of proper identification and rescue, and the persistent, even if declining, risk of arrest. Ultimately, even the most child-friendly criminal justice system can be of little use, if States do not find a way to bring more children into it. Addressing barriers to entry is the first step to helping sexually exploited children have the same opportunity as other victims to hold their offender accountable and secure the legal remedies that they deserve.

<sup>281</sup> Philippines, Focus Group Report, p. 2; Interviews with Philippines and Thailand, SEC Survivors, P-SA, P-SH, P-SK, T-CA, T-SC; Thailand, Lawyer #3, Service Provider, #1. Note that the Philippines does prohibit arrest of children for sniffing glue, regardless of any involvement in sexual exploitation. Philippines Juvenile Justice and Welfare Act, § 58.



## A Child's Story: Barriers to Coming Forward

One survivor spoke about his reluctance to come forward after being sexually exploited by a foreign man. He explained that, when he was young, he “got into drugs” with the man. The man would supply drugs and the two would engage in sex. At some point, he began to “steal” drugs from the man without giving him anything in return. He began to feel so “bad about himself” that he thought about turning himself into the police, but he feared that authorities would send him to a remand home. He thought about running away and only later, after being assured by shelter workers that he was the person who was wronged, did he decide to participate in the criminal case against the man. He was 12 or 13 years old.

*Thailand, SEC Survivor, T-SC*

## B. Barriers to Securing Justice Once in the System

Once they enter the justice system, sexually exploited children often encounter a number of additional challenges that make participating in the case difficult and potentially re-traumatizing. They may not be able to serve as effective witnesses. Or they may abandon the case and run away before trial. In either case, their opportunity to secure remedies – restitution, compensation and rehabilitation – diminishes or disappears.

This chapter is organized in several parts. It first provides a brief overview of the criminal justice process in the Study Countries and identifies their special obligations under international law to protect children involved in that process as victim-witnesses. The remaining sections consider the experience of sexually exploited children at each stage of the process: from the initiation of the case; through the investigation, prosecution and trial; to the award, if any, of legal remedies.

### Overview of the Criminal Justice Process

In the Study Countries, as in other countries around the world, the State is responsible for investigating and prosecuting crimes.<sup>282</sup> In most cases, the State does not need a complaint from the victim, or even the victim's consent to proceed.<sup>283</sup> Instead, public prosecutors decide whether or not to prosecute a suspected law-breaker on behalf of all citizens of the State. The victim's role is as a witness (or “victim-witness”) in the State's case.<sup>284</sup>

In general, a SEC investigation in the Study Countries is triggered by a report by an individual who has information that a SEC crime may have been committed. This individual could be the child victim, him/

<sup>282</sup> Sexually exploited children may also seek legal remedies through civil proceedings. In civil suits, SEC victims and/or their legal guardians are responsible for initiating and pursuing the legal action against the offender. They are the plaintiff in civil cases, whereas the State is the plaintiff in criminal cases. *See e.g.* Nepal, Government Cases Act, § 23 (State is the plaintiff in criminal cases).

<sup>283</sup> Nepal, Government Cases Act, §§ 3, 23; Philippines, Revised Rules of Criminal Procedure, Rule 110(5); Thailand, Code of Criminal Procedure, § 28.

<sup>284</sup> In most SEC cases, since the child is the only witness or lead witness in the State's case, criminal justice actors and others sometimes refer to the child as “pursuing” the case or “pressing charges” against his or her offender. With some exceptions, however, this is the State's decision.



herself.<sup>285</sup> Police have a duty to register the report promptly and conduct an initial investigation into the facts.<sup>286</sup>

After the investigation, the police must make a recommendation to the prosecutor about whether sufficient evidence exists to proceed, and the prosecutor decides whether to decline or accept the case for prosecution.<sup>287</sup> While a victim complaint may not be required, a prosecutor may conclude that the case is not strong enough to proceed without the victim's evidence.<sup>288</sup> On the other hand, the prosecutor may also proceed without the victim's cooperation if there is other evidence to support the charges. If the prosecutor accepts the case, he or she will arrange for any additional investigation needed and prepare the case for trial.<sup>289</sup>

During this period, the accused may be arrested.<sup>290</sup> In most cases, he or she has the right to be released on bail while the case is pending. However, the accused may be subject to pre-trial detention under special circumstances, such as when there is a risk that the accused might flee, tamper with evidence, commit more crimes, or cause danger.<sup>291</sup> In Nepal and the Philippines, certain offenses, such as rape and human trafficking, are deemed so serious that pre-trial detention is always required.<sup>292</sup>

When SEC cases reach trial, they are usually heard in criminal courts,<sup>293</sup> though SEC cases may be heard in specialized family courts in the Philippines, when these courts are available.<sup>294</sup> At trial, the prosecutor

285 Nepal, Government Cases Act, § 3(1) (“Any person who knows about a crime ... shall verbally or in writing inform about such crime to nearby Police Office”); Nepal, Anti-Trafficking Act, § 4 (same); Nepal, Children’s Act, § 51 (cases may be initiated by the government or by the victim, his/her parents or guardian); Philippines, Anti-Child Abuse Act, § 27 (complaints may be filed by a long list of individuals, including the victim or his/her relatives, police officer, social worker, *barangay* chairman; at least three concerned responsible citizens residing in the place where the violation occurred; or any person with person knowledge of the commission of a crime); Philippines, Anti-Child Pornography Act § 7 (same); Thailand, Criminal Procedure Code, §§ 121-123 (police may investigate any criminal offense regardless of how they learn about the offence; a victim’s complaint may be filed but is only required in the case of certain ‘compoundable offences’). *See also*: Philippines, Expanded Anti-Trafficking Act, §8 (only a person with personal knowledge of the commission of a trafficking offence may file a complaint).

286 Nepal, Government Cases Act, §§ 3, 7; Philippines, Revised Rules of Criminal Procedure, Rules 110, 112; Thailand, Criminal Procedure Code, §§ 124, 130.

287 Nepal, Government Cases Act, § 17; Philippines, Revised Rules of Criminal Procedure, Rule 112; Thailand, Criminal Procedure Code § 142.

288 *See e.g.* Philippines, “Guidelines for the Protection of a Trafficked Children,” 18 n.33, accessed 7 July 2016, <http://site.clkss.org.ph/resources/policies/guidelines/philippine-guidelines-for-the-protection-of-trafficked-children> (“For a preliminary investigation to prosper, a complaint affidavit from the child victim must also be secured and submitted to the child prosecutor. . . .the child may say that he or she has not yet recovered from the trafficking incident or can even retract his/her statements, making it more difficult to pursue the case.”).

289 Nepal, Government Cases Act, §§ 17-18; Philippines, Revised Rules of Criminal Procedure, Rule 110(5); Thailand, Criminal Procedure Code, § 143.

290 Nepal, Government Cases Act, § 14; Philippines, Revised Rules of Criminal Procedure, Rule 112(6-7); Thailand, Code of Criminal Procedure, § 66.

291 Nepal, Government Cases Act, §§ 15, 21 (brief detention); Nepal, General Code, Part 2, Chapter 118 (longer pre-trial detention permitted when the accused has no permanent residence in Nepal); Philippines, Revised Rules of Criminal Procedure, Rule 114 (5-7) (right to bail except in certain cases, including when there is a risk that the accused will flee or commit more crimes); Thailand, Code of Criminal Procedure, § 88 (court may detain or provisionally release the accused), § 108/1 (right to bail except under conditions such as risk of flight, witness-tampering, or danger).

292 Nepal, General Code, Part 2, Chapter 118 (no bail for offences punishable by more than three years in prison, including rape and sodomy but not certain other sexual acts or kidnapping); Nepal, Anti-Trafficking Act, § 8 (no bail for trafficking offences); Philippines, Revised Rules of Criminal Procedure, Rule 112 (7) (no bail for offences punishable by 20 years in prison including rape, trafficking and production/distribution of child pornography). *See also*: Thailand, Code of Criminal Procedure, § 108 (gravity of offence is only one factor relevant to release on bail).

293 Thailand, Juvenile Court Act, §§ 95-98, as described at <http://www.coj.go.th/en/judicialsystem.html> (no family court jurisdiction over SEC cases).

294 Philippines, Family Court Act, § 5 (family court jurisdiction over SEC).; Interview with Philippines, Service Provider, P-CY. A prominent judge from Nepal reported that there were plans to hear SEC cases in special juvenile courts in Nepal, as



presents the State's case, and the defence counsel defends the accused. The child victim is typically not represented by counsel.<sup>295</sup> At the end of the trial, a judge determines guilt.<sup>296</sup> If the accused is found guilty, the judge imposes a sentence and may (or must, in some cases) order the offender to pay compensation to the victim.<sup>297</sup>

There are important exceptions to the procedure described above. In the Philippines and Thailand, the State has no power to bring certain SEC-related cases without a victim complaint and must dismiss the case in the event that the victim and offender reach a private settlement. In Thailand, these include cases of rape of a child aged 15 years or older when the rape occurs in private and the child sustains no serious injuries.<sup>298</sup> In the Philippines, a victim complaint is needed in cases involving offenses against "chastity", such as seduction, abduction or acts of lasciviousness (unwanted sexual touching)<sup>299</sup> against a child.<sup>300</sup>

These offenses can also be settled financially or by marrying the victim to the offender. In Thailand, the victim need not be an adult, but can be married as long as she is older than age 13.<sup>301</sup> In Nepal, rape and other crimes may also be settled by the parties privately.<sup>302</sup>

In the Study Countries, it is also possible for victims to pursue private prosecutions against their offenders.<sup>303</sup> A SEC victim could potentially pursue a private prosecution in the event a public prosecutor declined to act,<sup>304</sup> but such prosecutions are rare.<sup>305</sup> None of the survivors in this Study reported being involved in this type of action.

well. Interview with Nepal, Judge #1.

295 See: discussion of legal counsel for child victims at Section 5 of this chapter.

296 The Study Countries do not have jury trials.

297 Nepal, General Code, No. 4, Chapter 14 on Rape, No. 10C (must order compensation); Nepal, Anti-Trafficking Act, §17 (must order compensation); Nepal, Children's Act, § 53(6) (may order compensation); Philippines, Revised Rules of Criminal Procedure, Rule 111 (when a criminal case is initiated, a civil action by the victim for compensation is deemed instituted at the same time); Thailand, Code of Criminal Procedure, § 44/1 (victims must submit a motion for compensation during the criminal case, which will be treated as civil complaint); Thailand, Anti-Trafficking Act, § 35 (prosecutor must file claim for compensation on behalf of trafficking victims).

298 Thailand, Criminal Code, § 281. Other SEC-related offences that require a victim complaint and can be privately settled include seducing or taking a child aged 16 years or older to commit an indecent act and unlawfully confining another person; Thailand, Criminal Code, §§ 284, 321. Child victims must file a complaint or consent to settlement through a 'statutory agent,' Thailand, Code of Criminal Procedure, § 6.

299 Acts of lasciviousness include "intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person." Philippines, Implementing Rules and Regulations for Anti-Child Abuse Act, § 2(h).

300 Philippines, Revised Criminal Code, § 344. Note that a child can bring the complaint independently, but the case can be settled by a pardon from the child or his/her parents, grandparents or guardian.

301 Thailand, Criminal Code, § 277.

302 Nepal, Government Cases Act, §29. Although rape cases are reported to be settled out of court, it is not clear if trafficking cases may be settled; Nepal, Anti-Trafficking Act, § 21 (preventing reduction in penalty in child trafficking cases when trafficker provides cooperation to the State).

303 Nepal, General Code, Part 2, Chapter 1, Number 10; Philippines, Revised Rules of Criminal Procedure, Rule 110(5); Thailand, Code of Criminal Procedure, §§ 28-31. Note that, in Nepal, the government is only required to act as a plaintiff in certain cases, such as rape and human trafficking, and it may require a victim to pursue a private prosecution in other cases, such as sexual or physical assault; Nepal, Government Cases Act, §§ 23, 27.

304 Philippines, Revised Rules of Criminal Procedure, Rule 110(5) (child victims can privately prosecute seduction, abduction and acts of lasciviousness).

305 A private prosecution should be distinguished from a "private prosecutor" in the Philippines. The latter are private attorneys who may be permitted to work with public prosecutors on criminal cases. In practice, they often enter a case when there is a desire to move the case to a more neutral court. According to one respondent, private prosecutors are sometimes engaged in SEC cases when they have a desired expertise and often act as an advocate for the victim. Sevilla, Cristina, telephone conversation with author, 8 June 2015.



## Special State Obligations When Victim-Witness Is a Child

When children serve as victim-witnesses in criminal cases, they have special rights that adult victim-witnesses do not.<sup>306</sup> Most notably, the OPSC requires State Parties, including Nepal, the Philippines and Thailand, to “ensure that, in the treatment by the criminal justice system of children who are victims of [child prostitution and pornography], the best interest of the child shall be a primary consideration.”<sup>307</sup> States must also “adopt appropriate measures to protect the rights and interests of child victims of [prostitution and pornography] at all stages of the criminal justice process,” and do each of the following:<sup>308</sup>

- Recognize the vulnerability of child victims and adapt procedures to recognize their special needs, including their special needs as witnesses;
- Inform child victims of their rights, their role and the scope, timing and progress of the proceedings, and of the disposition of their cases;
- Allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;
- Provide appropriate support services to child victims throughout the legal process;
- Protect, as appropriate, the privacy and identity of child victims;
- Provide, 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;
- Avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims;

As the following sections of this report show, the Study Countries have made progress toward meeting these obligations, but gaps continue to exist and impede the ability of sexually exploited children to access justice through the criminal system.

### 4. Feeling Pressured: Sexually Exploited Children Need Time, Information and Assistance at the Outset of SEC Cases

When children come to the attention of the criminal justice system, they almost immediately face one of the most difficult decisions of their lives: whether or not to file a criminal complaint against

their offenders and participate in a criminal case against them. Children often need time to heal and understand their exploitation before they can make that decision. They also need information to help them understand the challenges that lie ahead if they agree to help bring their offender to justice. Yet, the Study shows that SEC survivors often have little time and information at the outset of criminal cases, and many are under tremendous pressure from the adults around them to make a decision that is not necessarily in their best interests.

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306 OPSC, Article 8.

307 OPSC, Article 8(3).

308 OPSC, Article 8(1) (a-g).



## 4.1 A Reflection and Recovery Period

***“After rescues mostly victims don’t want to say anything. We must give them time, to think and change her mind. Some girls don’t know or understand they were exploited...Some cases, victim needs long time before she talk.”***

*Thailand, Lawyer, #1*

When sexually exploited children enter the justice system, many are not ready to participate effectively with authorities. They are still experiencing the impact of sexual, physical and emotional abuse, and harmful drug addictions.<sup>309</sup> In addition to physical injuries, they often struggle with a wide range of psychological problems, including anxiety, low self-esteem, depression or post-traumatic stress disorder,<sup>310</sup> as well as “attachment difficulties, mistrust of adults, antisocial behaviours, and difficulties relating to others.”<sup>311</sup>

Professionals in the Study Countries confirmed that when children come into contact with authorities, they are often in no state to engage with them. As noted earlier in this report, many sexually exploited children do not understand their victimisation and others are reluctant to speak about what happened to them due to feelings of guilt, fear, shame and distrust.<sup>312</sup> Some children were reported to have deep attachments with exploiters, who may be family members, a “second parent”<sup>313</sup> or someone they fell in love with, and who, they mistakenly believe, loves them back.<sup>314</sup> Their testimony may also be incomplete or unreliable due to “brainwashing” by their exploiters or their own drug addictions.<sup>315</sup> Thus, after their rescue, sexually exploited children often need time to heal and build trust with authorities before they truly understand their situation and can decide what to do next:

***“Victims do not disclose everything at once. They need time and a safe environment to disclose.”***

*Nepal, Lawyer, #1.*

***“Trust must be first established. Sometimes in inquest proceedings, when time is of the essence, the testimony extracted from the victim may not be complete or true.”***

*Philippines, Criminal Justice Professionals Focus Group.<sup>316</sup>*

309 Willis, B. and Levy, B. (2002), “Child prostitution: global health burden, research needs, and interventions,” *Lancet*, Vol. 359 (9315), 22 April 2002 1418-19; Farley, M. et al. (2003), “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder,” *Journal of Trauma Practice*, Vol. 2, No. 3/4, 33-74; See also: ECPAT International (2008), “Questions and Answers about the Commercial Sexual Exploitation of Children,” 24, Bangkok: ECPAT International (sexual exploitation can have “serious, lifelong, even life-threatening consequences for the physical, psychological, spiritual, emotional and social development, and well-being of a child”).

310 Willis and Levy, Child prostitution, 1419; Siwach Sunita (2006), “Human Trafficking - Its Causes & Prevention,” *The Indian Police Journal*, Vol. LIII No. 3., 57, accessed 30 September 2016, [http://www.academia.edu/1345085/HUMAN\\_TRAFFICKING-ITS\\_CAUSES\\_and\\_PREVENTION](http://www.academia.edu/1345085/HUMAN_TRAFFICKING-ITS_CAUSES_and_PREVENTION); Robinson, Laurie (1997), “The Globalization of Female Child Prostitution: A Call For Reintegration and Recovery Measures,” *Indiana Journal of Global Legal Studies*, Vol. 5, Issue 1, Article 12, accessed 7 July 2016, <http://www.repository.law.indiana.edu/ijgls/vol5/iss1/12>.

311 Rafferty, Yvonne (2008), “The impact of trafficking on children: Psychological and social policy perspectives,” *Child Development Perspectives*, 2(1), 13–18.

312 See: Section 1 of this report.

313 Interview with Philippines, SEC Survivor, P-SC.

314 Interview with Thailand, Police Officer #3.

315 Philippines, Focus Group Report, 5 (comments of Prosecutor #2 and Attorney, Police Department’s Women and Child Protection Centre #6).

316 Philippines, Focus Group Report, 5.



***“In no way they ask for help...it take time. It doesn’t take just few days, you must build a relationship that takes time, months.”***

*Thailand, Police Officer, #4.*

Certain States now give trafficking victims an initial period of “recovery and reflection” before they must decide whether or not to cooperate in cases against their offenders.<sup>317</sup> Though not binding on the Study Countries, the Council of Europe’s *Convention on Action against Trafficking in Human Beings* requires State Parties to provide a “reflection and recovery period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim,” so that the victim may “recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.”<sup>318</sup> During this period, State Parties must assist in victims’ physical, psychological and social recovery, and protect their safety, regardless of whether the victims ultimately decide to cooperate with authorities.<sup>319</sup>

### **Promising Access-to-Justice Practice: A Recovery and Reflection Period for SEC Victims**

The Council of Europe Convention on Action against Trafficking in Human Beings provides a “recovery and reflection period” for trafficking victims that begins as soon as they are identified by authorities. The period is designed to help them recover from abuse and make an informed decision about whether to cooperate with authorities in criminal cases against their offenders. Child victims of sexual exploitation could also benefit from the option of having a similar recovery and reflection period before they decide to participate in SEC cases.

#### **Article 13 -- Recovery and reflection period:**

“Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities...During this period, [victims]...shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.”

#### **Article 12 – Assistance to victims**

“1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

- a. standards of living capable of ensuring their subsistence, through such measures as:  
appropriate and secure accommodation, psychological and material assistance;
- b. access to emergency medical treatment;
- c. translation and interpretation services, when appropriate;
- d. counselling and information, in particular, in regards to their legal rights and the services available to them, in a language that they can understand;

317 UN Special Procedures (2012), “Report of the Special Rapporteur on trafficking in persons, especially women and children,” A/HRC/20/18, 10-11, (noting that Canada provides trafficking victims with a 180-day period of reflection; Netherlands offers a three-month period that is not conditional on participation in the justice process; Norway offers a six-month period of reflection free of conditions; Italy does not limit the time given to trafficking victims to recuperate and to decide whether to assist authorities).

318 COE (2008), Convention on Action Against Trafficking in Human Beings, CETS No. 197, § 13 (noting that one purpose of the period is to stay deportation of foreign trafficking victims, which is a factor in some but not all SEC cases).

319 COE, Trafficking Convention, §12.



- e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - f. access to education for children.
2. Each party shall take due account of the victim's safety and protection needs."

*Council of Europe, Convention on Action Against Trafficking in Human Beings (2008)*

The Study Countries do not provide a similar recovery and reflection period to SEC victims, even to those who have been trafficked for prostitution or pornography. In fact, it is reported that the authorities must often hurry to initiate SEC cases before legal timelines expire. Since most cases depend on the child's testimony, police can feel compelled to secure the child's cooperation quickly, leaving children swept up in the rush to file, without fully comprehending what they are getting into.<sup>320</sup>

For example, in Nepal, police have 25 days to investigate a case before registering it in court, a time limit that has been criticized as being "far too short for cases of human trafficking."<sup>321</sup> In the Philippines and Thailand, respondents reported that police feel pressured to file the case before they have to release the accused from custody in 36 to 48 hours.<sup>322</sup> While the police can always release the suspect and try to re-arrest, the concern is that the suspect will have flee or go into hiding.<sup>323</sup> According to one Thai police officer, once released, suspects so often flee that only two out of ten cases are able to proceed to trial.<sup>324</sup>

***"Thailand police have just 48 hours to maintain the accused in arrest before starting with the allegations and send it to the prosecutor. So, basically in these 48 hours the victim has to decide if she want to go on."***

*Thailand, Lawyer #1*

***"Another challenge is when the case is an urgent case, police tend to rush through and try to get the information as soon as possible, when they [SEC survivors] is not ready, because victims are still at the stage that they will say what they were trained to say. For example, they say they are just waitresses. And police just use this information."***

*Thailand, Lawyer #3*

320 See e.g. Philippines, "Guidelines for the Protection of a Trafficked Children," 18 n.33, accessed 7 July 2016, <http://site.clkss.org.ph/resources/policies/guidelines/philippine-guidelines-for-the-protection-of-trafficked-children>, ("For a preliminary investigation to prosper, a complaint affidavit from the child victim must also be secured and submitted to the child prosecutor. There are cases wherein without the victim's complaint, there is no probable cause. Further, the child may say that he or she has not yet recovered from the trafficking incident or can even retract his/her statements, making it more difficult to pursue the case").

321 FWLD, Nepal Implementation Study, 73.

322 Thailand, Code of Criminal Procedure, § 86 (arrested suspect may only be detained for 48 hours before he must be brought before the court. The court can order successive detentions if there is sufficient evidence against the accused, for a maximum detention of 48 to 84 days, before bail must be considered).

323 Philippines, Guidelines for the Protection of a Trafficked Children, 18 n.33 ("If the case is not filed within the prescribed time, the suspect must be released from detention...this is very demoralizing for most policemen considering that the suspect is someone who has already been arrested, has been let go of and may already be in hiding, but must be pursued again".) Thailand Code of Criminal Procedure, § 86 (arrested suspect may be detained for 48 hours before he must be brought before the court. The court can order successive detentions if there is sufficient evidence against the accused, for a maximum detention of 48 to 84 days, before bail must be considered).

324 Interview with Thailand, Police Officers, #1-2.



While acknowledging the challenges involved in balancing the rights of the accused with the needs of child victims, reflection and recovery periods are “now recognized as an effective best practice and humanitarian measure aimed at protecting the human rights of trafficked persons”<sup>325</sup> and are offered in many countries around the world.<sup>326</sup> Not only can these periods help children make a more meaningful decision about filing a complaint and participating in a SEC case, but they can also help States obtain more useful and reliable information from the children and build stronger criminal cases.

It should be noted that a recovery and reflection period may not be appropriate for all SEC victims. Some children may benefit from getting criminal proceedings out of the way as quickly as possible so that they can focus completely on their recovery.<sup>327</sup> The key is for States to provide the option, applying it when it is in the child’s best interest and would help the child engage more safely and effectively in the justice process.

#### 4.2 An Informed Decision to Participate

Sexually exploited children also often lack adequate information at the start of the case to make an informed decision about whether to file a criminal complaint and participate in a prosecution against their offenders.

Under Article 8 of the OPSC, States have a duty to inform SEC victims about “their rights, their role and the scope, timing and progress of the proceedings,” and to consider their views, needs and concerns. According to the UN Guidelines on Child Victims and Witnesses, the right of child victims to be informed and to be heard applies from the start of the justice process and continues throughout the proceedings.<sup>328</sup>

In opening remarks to the Human Rights Council’s full-day meeting on *Access to Justice for Children*, the Deputy Commissioner recognized that, for children to be empowered to claim their rights through the justice process, they must be able to make informed decisions on all matters that concern them. One of the most important of these decisions is the decision whether to become involved in the criminal justice process in the first place.<sup>329</sup>

In the Study Countries, there is no procedure in place which requires police or social workers to sit down with children when they first come forward and talk to them about what happens after they file a complaint. In many cases, the child is the only witness and the success of the prosecution will depend on the child’s testimony. Yet, children are not made aware of what will be expected of them during the investigation and trial or what hardships they might encounter.<sup>330</sup> Several respondents

325 UN Office on Drugs and Crime (2008), “Reflection Period,” 326, *Toolkit to Combat Trafficking in Persons*, Tool 7.1., accessed 7 July 2016, [https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_7-1.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-1.pdf). See also: UN Special Procedures, “Report of the Special Rapporteur on trafficking in persons, especially women and children,” 6 June 2012, A/HRC/20/18, paras. 41-42. See also: UNICEF (2006), “Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe,” accessed 7 July 2016, [http://www.unicef.org/ceecis/protection\\_4440.html](http://www.unicef.org/ceecis/protection_4440.html) (advocating for a recovery and reflection period for child victims of trafficking).

326 Some countries having these periods include Belgium, Canada, Czech Republic, Georgia, Germany, Italy Moldova, Montenegro, Netherlands, Norway, Portugal. See: references in n.323.

327 Hargitt, Katherine, e-mail communication to author, 16 May 2016.

328 UN Guidelines on Child Victims and Witnesses, para. 29.

329 Office of the High Commissioner on Human Rights, *Access to Justice*, (“Pansieri emphasized that for children to be empowered to claim their rights, they must be able to give their informed consent to decisions that concern them and they also need to be aware of, and have access to, information about their rights and how to obtain a remedy”).

330 Philippines law requires that child victims of trafficking and pornography be provided basic information about the procedure for filing complaints; Philippines, Anti-Trafficking Act § 23(c); Philippines, Anti-Pornography Act, § 18.



spoke about how difficult it is for children to make that initial decision when they do not understand what filing a complaint will mean for them and their families:<sup>331</sup>

***“It is scary when you suddenly go to the police and then you have to speak. So before going to police and starting all that process, if the child is oriented about what’s going to happen next, who to expect to see, what they are going to ask, and how to respond or how to behave, if such things are told beforehand, it would help a lot.”***

*Nepal, SEC Survivor, N-P/S*

***“In the beginning, when they give the child the option of whether to file a case or not, it’s very difficult for the child to decide whether to file a case or not. The process of deciding or the dilemma is very difficult for the children...”***

*Nepal, Service Provider, N-PC*

***Q: “In your experience what is the hardest part of the process for them?”***

***A: “One is to make a decision whether to file or not. That’s the first decision, the big decision they have to make.”***

*Philippines, Service Provider, P-CY*

The Study shows that most SEC survivors received information about the filing of the complaint, including the potential risks and benefits of engaging in the criminal justice process, from NGO caretakers and advocates rather than from State actors.

***“They [NGO workers] orient the children. They take all the legal advices, what could be the risk assessments.... Most important thing, they prepare the children for the statement [to the police], everything, they do all they can.”***

*Nepal, Translator for Service Provider, N-CJ.*

***“If they do agree on filing a case then [we inform] them, the nitty-gritty, the process, what they can tell etc. The second step is bringing them there to give their stories, so we have to orient ... So every step of the way, the children are consulted and explained of the process and oriented of the whole thing going on and all their questions are answered and all there are dealt with.”***

*Philippines, Service Provider, P-CY.*

***“[When] the child are here, we look after them. We have relationship. We build trust, so when we take the child to enter the legal process, they are willing to go and come with us.”***

*Thailand, Service Provider, T-CD.*

While these NGOs provide a valuable service, States should also ensure that their professionals (police, social workers or other specialists) provide child victims and their families with an orientation at the outset of the case to enable them to make an informed decision about filing a complaint and

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331 Note that not all survivors felt that the decision to make a statement to the police was difficult or frightening. One Thai survivor, for example, stated that she “was asked by the NGO to come talk with the police. She had never talked with police before. She was older and not afraid.” Thailand, SEC Survivor, T-SA.



participating in a criminal case. States may take guidance from the informed consent procedures used when children are enlisted in other types of risk endeavours, such as medical treatments or scientific research.<sup>332</sup>

While there are certainly differences between asking a child to participate in a criminal proceeding and asking a child to participate in medical or scientific procedures, there are also meaningful similarities. In both cases, children have a legal right to be informed and have their views taken into account. In both cases, children are asked by adults to assume significant risks, and in both cases, they are asked to assume these risks to benefit others as much as, or more than, themselves.

In the medical and scientific fields, an informed consent procedure usually requires that children be informed about the nature of the project, the risks and benefits, and any available alternatives before they agree to participate. They must receive information in age-appropriate language, often in written form, and have the opportunity to ask questions. A parent or guardian gives legal consent on behalf of the child and the child is asked to indicate his/her understanding and provide “assent”.<sup>333</sup> In the criminal justice context, a similar procedure could take place when children meet with authorities to file a complaint. They could be informed about how the criminal process works and what their role is likely to be. They could be given an idea of how long the case is likely to take and what, if any, financial costs the child and family will have to bear. They could be alerted to the risks of participating, including disruptions to their lives, unwanted publicity, and other potential hardships, as well as the benefits of participating, including the possibility of bringing their offender to justice, protecting other children from similar harm, and receiving compensation. They could also be made aware of alternatives to participating in the prosecution, including the pros and cons of mediation and settlement, available options in the Study Countries.<sup>334</sup> The child and his/her family could then make a much more informed decision about engaging in the criminal justice process.

No matter how States choose to inform children at the outset of the case, it is hoped that they will find a way to pause the forward motion of the prosecution and take a moment to focus on the child victim at the centre of the SEC case.

#### 4.3 Pressure to Decide Whether to Participate in a SEC Case

Sexually exploited children face another hurdle when facing the decision to file a criminal complaint against their offenders: they often find themselves under tremendous pressure from the adults

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332 Key among these differences is the fact that a child may be compelled to appear in court, while a child may not be compelled to participate in clinical research. However, a child cannot be made to file a complaint or prevented from withdrawing it later. Moreover, a child’s best interests are always to be a priority in SEC cases, including in any decision to force a child to appear at trial against his/her wishes.

333 There are four key elements of informed consent in the medical context: the nature of the process, the risks, the benefits, and the alternatives. Bottrell, Melissa *et al.* (2000), “Hospital Informed Consent for Procedure Forms: Facilitating Quality Patient-Physician Interaction,” *Journal of American Medicine*, 1 January 2000, Vol. 135, No. 1, accessed 11 July 2016, <http://archsurg.jamanetwork.com/article.aspx?articleid=390482>. Informed ‘assent’ is a process by which a child gives affirmative agreement to participate in the research. It gives the child the opportunity to decide if he or she wishes to take part or decline if not interested. It involves a procedure similar to obtaining consent of an adult. An assent form is provided to the child, which can be read with or to the child. The child is free to ask questions. While it is usually necessary to obtain the parent’s consent, in addition to the child’s assent, this requirement can be waived when parents are neglectful or abusive. In this case, a guardian *ad litem* or other advocate may participate.

334 Thailand, Criminal Code, § 277, 281, 284, 321; Philippines, Revised Criminal Code, § 344; Nepal, Government Cases Act, §29.



around them to make a decision that may not be in their best interests. Respondents reported that children are pressured by family, perpetrators, and, sometimes, criminal justice officials to recant their accusations or settle with offenders. Simultaneously, they feel pressure from law enforcement and NGO caregivers to file a complaint and push forward.

This dilemma is illustrated by the following account of a SEC survivor in the Philippines, provided through her translator:

***“She could not understand what choice she will take: whether she will listen to the people outside the shelter...who would suggest to her that it’s better if she forgives her relative...But here it’s different in the centre, because the shelter itself suggests to her that she better not listen to the people outside. It’s better if she would file a case against her [relative]. That’s why for now she is in a dilemma on what choice to take; whether to listen to the people outside or to listen to the people here in the shelter.”***

*Philippines, Translator for SEC Survivor, P-SY*

#### **4.4 Pressure to Recant Accusations or Settle with Offender**

Many survivors in the Study expressed a desire to see their exploiters brought to justice, as illustrated by the following remarks:

***“The good thing in this process is that I’m participating and I’m helping this thing to stop so it doesn’t happen to other children.”***

*Thailand, SEC Survivor, T-SB.*

***“Important to have laws where can punish abuser. Very important to bring perpetrator to justice system. Has to pay in some way.”***

*Nepal, SEC Survivor, N-SI.*

***“She wants to voice out her concern that they really need help for justice to be moved so that others would not sacrifice as to what they experience.”***

*Translator for Philippines SEC Survivor, P-SZ*

Despite this desire to see their offenders brought to justice, the Study revealed that many SEC survivors felt immense pressure to recant their accusations against their exploiters or to accept a private settlement. The family of a survivor from Thailand agreed to settle after being worn down by the offender’s persistent phone calls, offering money and making threats.<sup>335</sup> The young Filipina in the account above also struggled with the decision to settle, trying not to be “distracted” by her family’s pleas to pardon the family member who exploited her.<sup>336</sup> Still another survivor in the Philippines express her wish to persevere in her pursuit of justice even though she was terrified by the fact that several associates of the exploiter were working together to intimidate her and her family.<sup>337</sup>

Professionals interviewed for the Study identified several factors that contribute to the pressure on children to recant their accusations and forego filing a criminal complaint, or to settle the case after the complaint is filed:

335 Interview with Thailand, SEC Survivor, T-SF.

336 Interview with Philippines, SEC Survivor, P-SY.

337 Interview with Philippines, SEC Survivor, P-SZ.



**Legal barriers to filing complaints and legal incentives to settle:** As noted above, some SEC cases, including certain “private” rapes of children over age 15 in Thailand and certain types of sexual abuse in the Philippines, require a victim complaint before the State can prosecute. One survivor in Thailand reported that authorities refused to pursue a case against a foreign sex offender, because she was older than 15 and her parents refused to file a complaint.<sup>338</sup> Laws in all three Study Countries also permit private settlements of SEC-related cases with the consent of the child victim’s guardian but do not require consideration of whether the settlement would be in the child’s best interests.

**Family preference for a quick and private settlement:** SEC cases often last a long time and the chance of receiving compensation at their conclusion is slim. As a result, respondents in Nepal and the Philippines reported that families find it more “practical” to settle with the offender and receive an up-front payment rather than go through lengthy and difficult criminal proceedings.<sup>339</sup>

***“Indeed, victims’ families find it more practical to accept thousands and even millions of pesos rather than pursue prosecution where the damages/compensation they will receive is very minimal, especially when the accused would argue that they would rather give the fines of five million pesos to the victims and escape prosecution.”***

*Philippines, Lawyer, #10.*

***“The children and family are influenced by the exploiter and money offered by him. They expect immediate compensation and don’t want to go through a court procedure that is lengthy and annoying.”***

*Nepal, Lawyer, #1*

In Nepal, families were also motivated to resolve SEC cases outside of the justice system by the strong stigma that applies to sexual crimes:

***“SEC victims do not dare to file the case due to fear of social stigma...they settle the case within their family and do not disclose or lodge complaint.”***

*Nepal, Police Officer, #1.*

***“If file case, his family will reject him so he has to leave all these things to file this. And this is the hardest thing he have to decide.”***

*Nepal, Service Provider, N-CQ*

***“[They think] ‘I’m a sex worker, if I go ahead and file a complaint I’m going to be despised by the community further.’ The hatred of the family. And sometimes even spouse’s pressure not to file charges. And family pressure. Most of the time they have a fear of losing face. Like, ok, ‘I’m in this business. I’ve already lost my reputation. If I go ahead and file charges things will get even worse.’”***

*Nepal, SEC Survivor, N-SR*

In Nepal, it was also noted that some families prefer settlements because they simply cannot afford to participate in the criminal case, which will require them to pay filing fees, cover the cost of their child’s forensic medical exam, incur transportation expenses, and miss work.

338 Interview with Thailand, SEC Survivor, T-SA. It is not clear whether this case actually involved rape in a private setting, as the survivor reported that her abuse was recorded on camera. If not, the State would have had the authority to prosecute without a complaint filed by the parents, pursuant to Section 281 of the Criminal Code, but still chose not to proceed.

339 Sevilla, Cristina, telephone conversation with author, 20 April 2015.



***“[SEC victims and families] are poor. So they don’t have money to go file a case which takes a long time and which needs the person to go here and there, which again takes money.”***

*Nepal, SEC Survivor, N-SH.*

***“Most of the time, family cannot bear that cost because they are already poor. And the proceedings take too long, and when the proceedings start the children have to be taken for medical check-ups and these medical check-ups cost money too. Even though they go to government hospitals, it’s not for free.”***

*Nepal, Service Provider, N-CTUV.*

Finally, families often prefer to quietly dispose of SEC cases when family members are complicit in the crimes against the child. One Nepali police officer reported that “most of the victims in [SEC] cases suffered by their relatives,” and this is a reason they do not file complaints.<sup>340</sup> The story of the survivor from the Philippines, quoted above, illustrates the powerful dilemma in which children can find themselves when they are exploited by their own family. On the one hand, the young woman wanted to “take [her relative] to jail” but on the other hand, she worried about the harm a case might cause the rest of the family. Ultimately, she hoped that she would get the help she needed to resist the pressure to settle and allow the case to proceed.<sup>341</sup>

**Bribery and Corruption:** The Study suggests that SEC exploiters in the Study Countries frequently resort to bribery to escape criminal liability. One SEC-specialized lawyer in the Philippines explained that the steep criminal fines for SEC offenses provides an incentive for exploiters to offer substantial sums, first to families, and if that is unsuccessful, then to justice officials.

***“If the victim doesn’t accept the offer to settle, offenders resort to bribing prosecutors or judges. There would also be instances when the lawyers would actually make money by facilitating settlement of the cases.”***

*Philippines, Lawyer, #10.*

Official corruption in all of the Study Countries is an exacerbating factor.<sup>342</sup> It is reported to foster an environment where sexually exploited children and their families can be “bought off” and settlements can be easily entered. Survivors in Nepal spoke about corruption at all levels of the judicial system that enables the rich to “buy” justice, and the Committee on the Rights of the Child recently criticised judicial authorities for encouraging private settlements in SEC cases rather than ensuring that offenders are “brought to justice.”<sup>343</sup>

Respondents in the Philippines also expressed concern about judicial corruption which led judges to approve inappropriate settlements. According to one lawyer, corruption in the Philippines justice system is an attraction for travelling sex offenders, with one accused SEC offender explaining that he came to the Philippines because “[p]eople say that legal matters are settled out of court in the Philippines.”<sup>344</sup>

340 Interview with Nepal, Police Officer #1.

341 Interview with Thailand, SEC Survivor, T-SA.

342 See e.g. Human Rights Council (2015), “Report of the Special Rapporteur on Trafficking in persons, especially women and children,” A/HRC/29/38/Add.2; Committee on the Rights of the Child, Concluding Observations: Nepal; Committee on the Rights of the Child, Concluding Observations: Thailand; U.S. State Department (2014, 2015), Trafficking in Persons Reports for Thailand, the Philippines, Nepal.

343 Committee on the Rights of the Child, Concluding Observations: Nepal.

344 Sevilla, Cristina, Access to Justice Responses, 16 November 2015.



***“Even if they file case, the abusers will make sure that the victim loses. They try to make the survivor take the case back. It’s all about money. If someone is rich they will try to buy lawyers and judges and verdict.”***

*Nepal, SEC Survivor, N-SL.*

***“There is always a strong possibility that the victim will accept an offer of settlement from the accused, particularly when the offender is a foreign sex tourist or a powerful/influential local personality.”***

*Philippines, Lawyer, #10.*

**Threats and intimidation:** As described more fully later in this report, the Study also indicates that SEC victims and their families are not well-protected after they file complaints and are threatened and harassed to recant or settle.

***“The reason that they take statements back is because there is no security after giving statement. They don’t know what is going to happen to them. They are scared of physical and mental harm, threats...”***

*Nepal, Social Service Provider, N-CJ.*

A promising approach for dealing with settlements in cases of violence against children was recently offered in the UN General Assembly’s *Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*. The Model Strategies recognize that, for some children, a settlement may be better than having to endure long criminal proceedings. However, they urge States to pay close attention to the “power imbalance and the vulnerability of the child or his or her family” when reviewing settlement proposals and to ensure that settlements only take place when they are in the best interests of the child and do not expose other children to danger.<sup>345</sup>

### **Promising Access-to-Justice Practice: Restricting Private Settlements in Cases of Violence Against Children**

“To more effectively protect child victims of violence through the criminal justice process,” the *UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice* (2014) urges States to:

Article 20(h): “Ensure that an informal or mediated settlement of cases involving violence against children takes place only when it is in the best interests of the child, and does not involve harmful practices, such as forced marriage, taking into account any power imbalance and the vulnerability of the child or his or her family in consenting to a settlement, with due regard for any future risk to the safety of the child or other children.”

#### **4.5 Pressure to Cooperate in the Prosecution**

At the same time that sexually exploited children face pressure from family, offenders, and even some officials to recant or settle SEC cases, they are also under pressure from others to push forward. As illustrated by the story of the young survivor from the Philippines who faced conflicting demands from family, shelter workers and others about whether to forgive her offender or file a

<sup>345</sup> UN General Assembly (2014), “Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice,” A/C.3/69/L.5, 25, accessed 11 July 2016.



complaint, child victims often find themselves caught in the middle of the push-and-pull of adults around them.<sup>346</sup>

Law enforcement and NGO respondents in all three Study Countries spoke about having to “convince” children to participate in criminal cases or keep them isolated from others who might “convince” them to do otherwise.

***“They must be convinced through the legal officers and psycho-social counsellor to file a case.”***

*Nepal, Lawyer #1*

***“The challenges that [criminal justice professionals] face when working with SEC victims during investigations and prosecutions are that they are not cooperative...You have to convince them to file a case.”***

*Philippines, Focus Group of Criminal Justice Professionals*

***“Sometimes the family or someone from the offender side try to contact the child and try to convince the child to reverse their testimony. So usually we won’t allow the child to be contacted by the family or by the person on the offender side, so that we can go through with the legal process.”***

*Thailand, Service Provider, T-CD*

The use of the word “convince” by police, prosecutors and advocates may simply suggest the need to build a trusting relationship with survivors and empower them to speak out against those who hurt them. Yet, the passion of some advocates to bring SEC offenders to justice may sometimes cause them to push a child harder than may be best, and in at least one case, the use of the word “convince” appears to suggest an element of undue pressure.

In the Philippines, a survivor described how she desperately wanted to go home after being confined in a shelter for a very long time. She wanted the chance to “plead” with the court for her release, based on her good behaviour in the shelter and her promise to continue to participate in the case from her home. A member of the shelter staff warned her that, if she recanted, she would be held in the shelter even longer, and she would bear responsibility for any other child or woman who fell victim to her exploiter. When asked if the staff member meant to suggest that the survivor would be “letting other woman be abused” if she chose not to assist in the case against her offender, she answered, “yes, that’s what she meant.”<sup>347</sup>

## **5. Feeling Alone: Sexually Exploited Children Often Lack Caring Adult Support During SEC Cases, Including from Their Own Families**

***Q: “What is the hardest part of the justice process for sexually exploited children?”***

***A: “To go through it alone.”***

*Thailand, Service Provider, T-CH*

346 Interview with Philippines, SEC Survivor, P-SY.

347 Interview with Philippines, SEC Survivor, P-SB.



The Study's respondents emphasized that family support is essential if child victims of crime are to report SEC crimes and participate in cases against their exploiters. But when child victims of sexual exploitation engage with the criminal justice system, they are often very much alone, separated, abandoned, or mistreated by their families. In these cases, the support of an appointed guardian or dedicated child advocate is essential if a child is to navigate through the justice process successfully. Yet, unless a child is connected with a well-resourced NGO, the Study shows that this is unlikely to be the case.

### 5.1 The Right to Support

Under Article 8 of the OPSC, States have a duty to provide “appropriate support services to child victims throughout the legal process.”<sup>348</sup> The UN Guidelines on Child Victims and Witnesses specify that child victim-witnesses “should receive assistance from support persons...commencing at the initial report and continuing until such services are no longer required.”<sup>349</sup> Support persons might include the victim's family, or victim-witness advocates, social workers or case managers, guardians *ad litem*, or legal counsel.<sup>350</sup> States are urged to “ensure continuity in the relationships between children and the [support] professionals in contact with them.”<sup>351</sup>

### 5.2 The Absence of Support from Family

Respondents repeatedly cited the importance of family support to sexually exploited children involved in SEC proceedings.

***“According to her experience, the most crucial things are family support and motivation to the child. Family support because most of the children when they don't have family support they are scared to even file the case or even give the statement.”***

*Nepal, Service Provider, N-PC*

***Q: “[W]hat are the main reasons that children decide against pursuing SEC cases?”***

***A: “When parents, particularly, the mother, would not support them. But if they know that there is support system coming from, say, Department of Social Welfare and Development or an NGO, and protective custody is exercised, then they have stronger resolve.”***

*Philippines, Lawyer, #10.*

***“If there is family support, you don't really need to get scared of community or societal judgment.”***

*Nepal, SEC Survivor, N-SR*

Despite the essential role of family, more than 25 percent of the survivors in the Study who spoke about their experience in the justice system had no family supporting them during the justice process. A number of forces appear to work together to deprive SEC victims of the family support that sustains other child victim-witnesses:

348 *See also*: Basic Principles of Justice for Victims of Crime and Abuse of Power (requiring States to provide victim assistance during judicial processes).

349 UN General Assembly, Guidelines on Child Victims and Witnesses, Art. 24.

350 *Ibid.*, Art. 25.

351 *Ibid.*, Art. 30.



### Living apart from families

Children exploited through prostitution are often far from their homes when found by authorities. They are often trafficked across borders or moved long distances within their countries.<sup>352</sup> Thailand has “large populations of undocumented migrants, stateless persons, refugees and ethnic minorities, with children representing significant percentages of these groups.”<sup>353</sup> In Nepal, children are vulnerable to being trafficked out of Nepal into India and other countries for sex work.<sup>354</sup> While in all of the countries, children were trafficked from remote rural areas to work at brothels and other sex venues in the countries’ urban and tourist centres.<sup>355</sup>

***“Most of human trafficking cases, especially sex trafficking cases, mostly the victims are from Cambodia, some from Laos and rarely we can find victims from European [countries].”***

*Thailand, Police Officer, #1-2.*

Other sexually exploited children have been orphaned, abandoned or neglected by families and live on their own or have chosen to run away.<sup>356</sup> Most of the survivors interviewed for this Study and its companion studies were living apart from families, either in shelters, on the street, with friends, or on their own, even those who had one or more living parents.<sup>357</sup>

### Fear of confiding in family

According to respondents, children are also afraid to speak to their families about their exploitation, fearing that they would bring such shame on their families that they would be despised, rejected, or even forced to leave their homes. This fear was particularly strong among survivors in Nepal.

***“They are scared [for] their family [to] know their reality of being a transgender. If the family knows they are going to take it as a shame and when the society knows it would be very hard for family to deal with all the stigma. Even if the family accepts, society will make it difficult for the family to survive the harassment. It is a very difficult situation.”***

*Nepal, SEC Survivor, N-SM.*

### Family preference for private settlement

Respondents in Nepal and the Philippines reported that families often preferred to negotiate privately with exploiters rather than support their children through long, public, and disruptive SEC cases that offered only a slim chance of compensation.

352 UN Office on Drugs and Crime, Global Report on Trafficking in Persons 2014, 11 (Children comprise nearly one third of all human trafficking victims worldwide, and an even higher percentage in the region of the Study Countries.)

353 ECPAT Situational Analysis: Thailand, 18-19. (Vulnerable children include children from Cambodia, Laos or Myanmar, as well children from the northern Hill Tribes, many of whom lack Thai citizenship, and children from conflict zones in the South.)

354 Committee on the Rights of the Child, Concluding Observations: Nepal, 10 (thousands of children trafficked each year within and without the country).

355 UN Special Rapporteur on Trafficking: Philippines, 6. ECPAT Situational Analysis: Thailand, 18-19. Committee on the Rights of the Child, Concluding Observations: Nepal, 10.

356 See e.g. ECPAT International, “Youth-Led Study on the Vulnerability of Young Girls Working in Restaurants, Bars and Massage Parlors in Kathmandu,” May 2010, 54, Bangkok: ECPAT International (62.9% of children used in the red-light district of Kathmandu lived away from their families).

357 The lead researcher for the Access to Justice, Recovery and Reintegration, and Compensation Studies interviewed 67 survivors in shelters and drop-in centres. Of these, the majority lived at an NGO or governmental shelter, on the streets, with friends or on their own. The researcher did not visit family homes. See: ECPAT Recovery and Reintegration Study.



### Family involvement in exploitation

It is also not uncommon for families to be involved in the sexual exploitation of their own children. Respondents in Nepal and the Philippines spoke about the special challenges of participating in criminal cases when the child's exploiter is a family member.<sup>358</sup>

A new manifestation of SEC exists in the Philippines, where families are reported to be involved in the online sexual exploitation of their children, live-streaming images of them while naked or engaged in sexual performances, sometimes from their own homes.<sup>359</sup> Some families are motivated by poverty or by greed, and some are reported to believe that cybersex is not as damaging to their children as actual prostitution.<sup>360</sup> A prosecutor in the Philippines argued that while poverty was surely a factor, the "crisis in values and degradation of family structure and morals must be readily seen as other more serious factors."<sup>361</sup>

### Difficulty of family reunification

In the Philippines and Thailand, sexually exploited children often spend the pre-trial period in residential facilities, apart from their families.<sup>362</sup> Some children come from abusive or neglectful families and cannot be reunited.<sup>363</sup> Other children conceal their true identity or lack proper identification, and in Nepal, it was reported that some children do not know or remember the name of the village where they are from.<sup>364</sup>

### A Child's Story: The Vital Role of Family

One respondent from the Philippines shared the story of a young girl who was sold into prostitution by her mother. The child repeatedly went to local authorities to report her mother's exploitation, but each time, her mother would convince the authorities that she was lying. At home, her mother warned her to give up trying to get help, telling her that no one would believe that she was being exploited in her hometown by her own mother. The child's case was only filed after she fled her home and went to live with an older brother, who believed and supported her, having lived in a community that had undergone SEC trainings and education.<sup>365</sup>

358 Twenty-two percent of the survivors interviewed for the Access to Justice, Recovery and Reintegration, and Compensation Studies provided evidence that they had entered SEC through their families. The involvement of families in their child's exploitation varied by country, from 32% in Nepal, to 19% in the Philippines, and 13% in Thailand. The most common means of entry in all of the countries was peer pressure. See: ECPAT Recovery and Reintegration Report.

359 UN Special Rapporteur on Trafficking, 6; ECPAT International (2014), Field Trip to ECPAT Philippines, 23-25 April 2014, Bangkok: ECPAT International; Schweizer, Kristen and Batino, Clarissa, "The 'Queen of Cyberporn' and Her Town's Industry of Abuse," *Bloomberg News*, 22 December 2014, accessed 27 June 2016, <http://www.bloomberg.com/news/articles/2014-12-21/how-jailed-cyberporn-queen-molested-daughter-for-profit>.

360 ECPAT International, Field Report: Philippines, 23-25.

361 Interview with Philippines, Prosecutor #2.

362 See: Section 6 of this report.

363 Respondents reported that NGOs must sometimes oppose habeas corpus motions filed by complicit parents to force their children to be released from shelters and returned to their care. These actions are often financed by the owner of the club, bar or cybersex den that had exploited the child. Philippines, Service Provider, P-CD.

364 Hargitt, Katherine, e-mail communication to author, 16 May 2016.

365 Sevilla, Cristina, telephone conversation with author, 8 June 2015.



### 5.3 Strengths and Weaknesses of the States' Response

Sexually exploited children who lack supportive family may still be able to access justice with the help of a dedicated support person, but the Study shows that children rarely have a single professional whom they can count on for guidance and support throughout SEC cases. The lack of a state-appointed support person was identified by respondents as an important access-to-justice barrier for SEC victims.<sup>366</sup>

In SEC cases, victims' need for an advocate is particularly acute. The misconception that they are willingly engaged in sex work can make it difficult for victims to speak up and to have their views taken seriously. It can also lead to insensitive or antagonistic treatment in the justice system. A support person can help children, not only to navigate through the system, but confront biases against them. As explained by an NGO respondent from Thailand:

***"I think it just goes back to...having an advocate there for the child. And not only with the [non-profit] organizations, because they might not be confident enough to say to that police officer or lawyer (who is, in their mind, above them), 'hey, back off!' or that sort of thing. So having maybe a court-appointed advocate or something like that would be amazing."***

*Thailand, Service Provider, T-CE.*

Another experienced Thai advocate noted that support from the State is particularly important in SEC cases because the children have no one in their lives to rely upon except their traffickers.

***"[W]ithout immediate support...child victims of sex trafficking are left only with the support and understanding offered by their traffickers."***

*Thailand, NGO Specialist, SP#1.*

#### **Victim-Witness Advocates**

One way that child victims can receive support during criminal proceedings is through specialised victim-witness advocates. These are state-employed professionals who are trained to support victims of crime during criminal cases and offer information, emotional support, help in obtaining needed services, trial preparation and sometimes assistance at trial.<sup>367</sup>

While none of the Study Countries has a system of victim-witness advocates in place, the Philippines' *Protocol for Case Management of Child Victims of Abuse, Neglect, and Exploitation* (2013) envisions a multi-disciplinary approach in which social worker/case managers perform a similar function. Each SEC case is managed by a multi-disciplinary team that may include police, prosecutors, judges, lawyers, health care providers, barangay officials and others.<sup>368</sup> A social worker serves as the case manager, coordinating the team and ensuring that the child and family are kept informed.<sup>369</sup> The social worker ensures that the child has the assistance he

366 Respondents in Thailand and the Philippines cited the lack of support for SEC victim-witnesses as a gap in the States' justice system. Thailand, NGO Specialist, SP #2 ("A lack of support, like an adult that the child knows and trust that can accompany him through the proceeding." Philippines, Focus Group of Criminal Justice Professionals ("lack of support system for the child").

367 See e.g., US National Centre for Victims of Crime, "What is a Victim Advocate," accessed 28 June 2016, <https://victimsofcrime.org>.

368 Philippines, Case Management Protocol, 5.

369 Philippines, Case Management Protocol, 23-26.



or she needs from the point of rescue to reintegration.<sup>370</sup> The social worker may accompany the child to interviews and hearings during the investigation to lend “moral support,”<sup>371</sup> and prepare and assist the child at trial.<sup>372</sup>

The Protocol is still relatively new and respondents in the Philippines did not mention it. Still, it has the potential to help sexually exploited children participate in criminal cases more effectively, particularly those who lack strong family support.

### Promising Access-to-Justice Practice: Philippine’s Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation

Introduced in 2013 by the Philippines’ Department of Justice and the Committee for the Special Protection of Children, the Protocol establishes a multi-disciplinary process for managing cases of child abuse, neglect and exploitation. Each SEC case is assigned a team that may consist of police, prosecutors, judges, lawyers, health care providers, local government officials, and others. A social worker from the Department of Social Welfare and Development serves as the case manager, coordinating the team and providing assistance to the child and family from rescue to reintegration. The case manager helps to ensure that the child and family understand the court process and that police, prosecutors, and judges understand the child’s needs.

Under the Protocol, each SEC victim would be supported by a team of professionals and a designated social worker throughout the criminal process, which, if well-implemented, could greatly improve the child’s access to justice.

### Guardians *ad litem* (GAL)

Another way in which child victim-witnesses may be supported during criminal proceedings is through the appointment of a guardian *ad litem* or GAL. GALs are social workers, lawyers or other professionals who are assigned to a child victim-witness and promote the child’s best interests throughout the criminal case. They explain the proceedings to the child in child-appropriate language, seek the child’s views, help the child cope with hardships, and make recommendations to judges about how best to meet the child’s needs.<sup>373</sup>

The Philippines is the only one of the Study countries with a comprehensive guardian *ad litem* rule. Rule 5 of the Supreme Court *Rule on the Examination of a Child Witness* permits (but does not obligate) the court to appoint a GAL to represent child victims involved in criminal proceedings and provides detailed guidance about the GAL’s qualifications and functions. While the Rule is a noteworthy measure that could provide child victims with the support they need during cases against their offenders, respondents in the Philippines noted that there is insufficient funding for a GAL program and GALs are not generally appointed in SEC cases.<sup>374</sup>

370 *Ibid.*, 2-3.

371 *Ibid.*, 30.

372 *Ibid.*, 32.

373 See e.g. Philippines, Rule on the Examination of a Child Witness, § 5 (describing function of a GAL).

374 According to the Philippines focus group of criminal justice professionals, “CASA/GAL volunteers are not available,” contributing to a “lack of a support system” for SEC victim-witnesses. Philippines, Focus Group Report, 9.



## Promising Access-to-Justice Practice: Guardians *Ad Litem*

In the Philippines, the Supreme Court Rule on the Examination of a Child Witness authorizes courts to appoint guardians *ad litem* (GAL) to support child victim-witnesses during criminal proceedings. The rule provides specific guidance on the qualifications and functions of GALs and may be a good model for other States.

### “Sec. 5. Guardian *ad litem*

(a) The court may appoint a guardian *ad litem* for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child. In making the appointment, the court shall consider the background of the guardian *ad litem* and his familiarity with the judicial process, social service programmes, and child development, giving preference to the parents of the child, if qualified. The guardian *ad litem* may be a member of the Philippine Bar. A person who is a witness in any proceeding involving the child cannot be appointed as a guardian *ad litem*.

(b) The guardian *ad litem*:

- (1) shall attend all interviews, depositions, hearings, and trial proceedings in which a child participates;
- (2) shall make recommendations to the court concerning the welfare of the child;
- (3) shall have access to all reports, evaluations, and records necessary to effectively advocate for the child, except privileged communications;
- (4) shall marshal and coordinate the delivery of resources and special services to the child;
- (5) shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which the child is involved;
- (6) shall assist the child and his family in coping with the emotional effects of crime and criminal or non-criminal proceedings in which the child is involved;
- (7) may remain with the child while the child waits to testify;
- (8) may interview witnesses; and
- (9) may request additional examinations by medical or mental health professionals if there is a compelling need therefor.

(c) The guardian *ad litem* shall be notified of all proceedings but shall not participate in the trial. However, he may file motions...If the guardian *ad litem* is a lawyer, he may object during trial that questions asked of the child are not appropriate to his developmental level.

(d) The guardian *ad litem* may communicate concerns regarding the child to the court through an officer of the court designated for that purpose.

(e) The guardian *ad litem* shall not testify in any proceeding concerning any information, statement, or opinion received from the child in the course of serving as a guardian *ad litem*, unless the court finds it necessary to promote the best interests of the child.

(f) The guardian *ad litem* shall be presumed to have acted in good faith in compliance with his duties described in Sub-section (b).”

### Court-Appointed Special Advocates

A less expensive alternative to GALs are court-appointed special advocates (CASA), volunteers who are trained to perform the same functions. CASA programmes began in the United States and it was reported that more than 76,000 volunteers helped more than 250,000 abused and neglected children through court proceedings in 2015.<sup>375</sup> A CASA programme was implemented in the Philippines in 2000 with the help of the Philippines Judicial Academy, the Philippines Supreme Court, UNICEF, and others.<sup>376</sup> Justice professionals in the Study reported that the programme was recently disbanded, and they advocated for its re-establishment.<sup>377</sup>

375 CASAforChildren, “Evidence of Effectiveness,” accessed 4 July 2016, [http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332511/k.7D2A/Evidence\\_of\\_Effectiveness.htm](http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332511/k.7D2A/Evidence_of_Effectiveness.htm).

376 Honourable Judge Vilches, M., “CASA/Volunteer GAL Program, Jurisdiction: Philippines,” Thailand Law Forum, accessed 28 June 2016, <http://www.thailawforum.com/articles/casavilches.html>.

377 Philippines, Focus Group Report, 9.



### **Legal Counsel**

Appointing legal counsel to represent child victim-witnesses is another way to support children during criminal cases. Like other countries around the world, the Study Countries require that child victims be provided with certain types of free legal advice but do not go so far as to provide them with free legal representation.<sup>378</sup> Children who can afford to retain their own attorney may benefit from this kind of support, but this is rare.<sup>379</sup> According to respondents, State authorities may instead try to connect child victims with pro bono attorneys who are willing to provide legal support for free during SEC proceedings.<sup>380</sup>

One police officer in Thailand emphasized the importance of connecting SEC victims with pro bono attorneys at the earliest possible date. He explained that, while prosecutors sometimes support child victims at trial, they are not usually available to provide support to children during the period leading up to the trial.<sup>381</sup>

***“The prosecutor act as the lawyer of the victim during the trial. But the time period – from the police, to the prosecutor – it would take three months, and the prosecutor mainly prosecute the bad guy, rather than look at the right of the victim...That’s why we try to get the lawyer from the beginning of the case and he can think and help in many ways...The purpose is to ensure that the rights of the victims are ensured in the proper ways from the beginning.”***

*Thailand, Police Officer, #4.*

SEC victims are fortunate that, in the Study Countries, there are a number of NGOs that can provide free legal support during criminal cases. In the Philippines, for example, child victims may be assisted by a private attorney who acts as a private prosecutor in the SEC case, serving as the child’s primary support person, while also helping to prosecute the exploiter.<sup>382</sup> One respondent explained that private prosecutors are particularly valuable in SEC cases where court personnel may be unfamiliar with SEC and potentially biased against victims.

***“Another challenge is judges or prosecutors who have no understanding of victimisation in SEC...[In one case], the court where it was raffled was a corporate court, and the trial prosecutor was antagonistic, including the judge and the court personnel...I can just imagine what would become of my client and her case if she had no private lawyer helping her.”***

*Philippines, Lawyer #10.*

378 See e.g. Philippines, Anti-Trafficking Act, § 23(c) (government agencies must provide free legal advice about victim rights, how to file a complaint and how to claim remedies); Philippines, Anti-Pornography Act, § 18 (same); Thailand, Anti-Trafficking Act, § 33 (authorities may “consider to provide” free legal aid).

379 See: Nepal, Anti-Trafficking Act, Art. 10 (trafficking victims have right to retain their own lawyer during trafficking proceedings). See also: FWLD, Nepal Study, 41 (Most trafficking victims are not aware of their right to retain an attorney, and “in instances where they are, they are unable to afford a private lawyer”).

380 Philippines, Expanded Anti-Trafficking Act, § 16 (requiring Justice Department to establish mechanism for providing free legal assistance to trafficking victims); Thailand, Anti-Trafficking Act, § 33 (authorities must consider providing legal aid).

381 Note that one public prosecutor in the Philippines reported that she did stay connected with SEC victims throughout cases to offer support and build rapport, but she was not legally required to do so and appears to be exceptional in this regard. Interview with Philippines, Prosecutor, #2.

382 Philippines, Supreme Court En Banc Resolution, A.M. NO. 02-2-07-SC, 1 May 2002, accessed 30 September 2016, [http://www.lawphil.net/courts/supreme/am/am\\_02-2-07-sc\\_2002.html](http://www.lawphil.net/courts/supreme/am/am_02-2-07-sc_2002.html) (authorizing private prosecutors in case of “heavy work schedule of the public prosecutor or in the event of lack of public prosecutors”).



Indeed, interviews with SEC survivors and NGO staff members suggest that children depend heavily on NGO support during SEC cases. As illustrated by the following report, NGO workers accompany children through the criminal process, provide them with legal and emotional support, prepare them for trial, and often attend the trial with them:

***“We prepare victims. We tell them the truth. It’s going to be stressful. It could get loud. But you need to control yourself you tell the truth. You don’t need to lie something you don’t know. We help prepare from before court and make sure we there. So every case our client has to testify, our team always go.”***

*Thailand, Service Provider, T-CH.*

The Study showed, however, that NGOs can suffer from the same lack of resources and coordination that can affect States, with one respondent reporting that children must sometimes work with a number of different caregivers from different organizations during their cases.

***“We are good with child victim interview. We are good with the restoration. But like one organization they are very good with having lawyers and legal stuff, file police report you know stuff like that. And then there’s another place that shelter but it’s all fragmented.”***

*Thailand, Service Provider, T-CH*

Thus, the Study suggests that many SEC survivors are missing the strong and continuous support they need, from their own families or from the State, to make their way successfully through the criminal process and ultimately secure legal remedies.

## **6. Feeling Scared: Sexually Exploited Children Are Exposed to Intimidation and Retaliation During SEC Cases**

***“Their fear is more dominant than their need for justice.”***

*Philippines, Prosecutor #2*

The Study shows that sexually exploited children and their families are often subject to intimidation and retaliation during the pre-trial and trial periods, and witness protection is a priority for ensuring their access to justice. More than one in four of the survivors in the Study stated that their greatest fear was that their exploiters would try to cause them or their families harm during the SEC case, and the State would be unable to protect them. As explained by one prosecutor, this fear is greater than the desire for justice for many children, and it results in children giving up hope of holding offenders accountable or receiving needed remedies.

### **6.1 The Right to Safety**

Article 8 of the OPSC requires States to protect “child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.” The UN Guidelines on Child Victims and Witnesses urge States to put specific witness protection measures in place, including:



- “(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; and
- (e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.”<sup>383</sup>

## 6.2 Strengths and Weaknesses in the States’ Response

The Study Countries have taken steps to protect children and their families from harm during criminal cases. They have authorized pre-trial detention of offenders under certain conditions, and according to respondents, have greatly improved the way they protect the privacy of victims and families during cases. Yet, the Study revealed a number of gaps that continue to expose sexually exploited children to danger and impede their ability to participate in the justice process.

The Study revealed that, during the period leading up to the SEC trial, it is not uncommon for sexually exploited children and their families to be contacted by exploiters or their associates, threatened, harassed and manipulated.

***“[I]f they file a case they start getting threats to be killed or harmed.”***

*Nepal, SEC Survivor, N-SH*

***“Most of the time when [we ask] whether they want to file a case, their first reaction is fear. They fear about safety, that during the legal process they might not be safe. They might be harmed or attacked by the perpetrator in some way.”***

*Nepal, Service Provider, N-CW*

***“The victims are easily threatened or bribed by the perpetrators. The cases are draining and sometimes frustrating for the lawyer.”***

*Philippines, Focus Group of Criminal Justice Professionals<sup>384</sup>*

A Thai survivor provided the following example of how her exploiters intimidated her and her family to withdraw their cooperation from the SEC case:

***“Offender called often. [Her family members] were scared and told officer and police. They said there would be protection sent to them, but no protection. There were two persons kept calling and threatening if she did not drop case something could happen. They offered any amount she wants. She is tired... So, she agreed to what amount [her family] wants, so issue drop.”***

*Thailand, SEC Survivor, T-SF.385*

383 UN, Guidelines on Child Victims and Witnesses, paras. 32-34. See e.g. Model Strategies on Elimination of Violence Against Children, paras. 22, 24.

384 Philippines, Focus Group Report, 6.

385 A SEC survivor from the Philippines also recounted that associates of her exploiter were threatening and offering her family members money to get her to “stop the case” Interview with Philippines, SEC Survivor P-SZ.



When asked how he would improve the justice process for other SEC victims, one survivor from Thailand stated simply:

***“What I would like it to be improved is that do whatever is needed that will help children not to be afraid of the danger involved in this process.”***

*Thailand, SEC Survivor, T-SC*

#### a) Pre-trial Release of Accused SEC Offenders

Pretrial detention of accused offenders is a powerful tool for protecting the safety of children and maintaining the integrity of the justice process in SEC cases. In Nepal and the Philippines, pretrial detention is required for certain serious offences whenever there is sufficient evidence of their guilt. In Nepal, these include rape and human trafficking.<sup>386</sup> In the Philippines, these include rape and trafficking, as well as child prostitution or pornography.<sup>387</sup> In Thailand, accused SEC offenders may be held in pre-trial detention or released on restrictive bail conditions (such as no-contact orders) in certain circumstances, such as when there is a reasonable belief that he or she may abscond, tamper with evidence, cause another danger, or impede the judicial process.<sup>388</sup>

While the Study indicates that some individuals charged with sexually exploiting children are detained pre-trial, it also shows that this is not always the case. Professionals in the Philippines and Thailand, in particular, expressed frustration that child sex offenders were released on bail.

***“Actually not many cases reach the court, because once we press charge on the perpetrator most of the time they run away, or get out of bail, you only have an arrest warrant. Out of ten cases just two.”***

*Thailand, Police Officers, #1-2*

***“When [SEC victims] are convinced to file the case, the perpetrator has left (jumped bail).”***

*Philippines, Focus Group of Criminal Justice Professionals*

Police officers in Thailand were particularly concerned about foreign suspects fleeing once released on bail.<sup>389</sup> They claimed that these individuals were able to escape because foreign embassies provided replacement passports and immigration officials do not maintain records of accused offenders on bail.<sup>390</sup>

***“The problem is that even when we confiscate the passport, the offender go and request a new one and it’s beyond our control – and receive a new passport and go back to European country.”***

*Thailand, Police Officers, #1-2*

386 Nepal, General Code, Part 2, Chpt. 118 (no bail for offences punishable by more than three years in prison, including rape and sodomy); FWLD, Report, 20, 28. (Pursuant to Nepal Supreme Court ruling, Section 8 of Nepal’s Anti-Trafficking Act is construed to give courts discretion to impose pre-trial detention in trafficking cases).

387 Philippines, Revised Rules of Criminal Procedure, Rule 114 § (7) (no bail for offences punishable by 20 years in prison including rape, trafficking and production/distribution of child pornography).

388 Thailand, Criminal Procedure Code, § 108/1. Note that the Philippines rule on bail does not specifically authorize release on restrictive conditions. Philippines, Revised Rules of Criminal Procedure, Rule 114.

389 Issues related to extradition and extraterritorial jurisdiction were not addressed in the research tool for this Study and are not addressed in this report.

390 See also: UNICEF Manila and UP Centre for Integrative and Development Studies (2005), “Child Pornography in the Philippines”, 112, accessed 30 September 2016, [http://www.unicef.org/philippines/Child\\_Pornography.pdf](http://www.unicef.org/philippines/Child_Pornography.pdf), (discussing problem of foreign paedophiles being able to flee after posting bail).



***“The problem that I found is that the bad guy come in Thailand and get arrested and...the officer at immigration do not have the black list of offenders, so some foreign go back, change the passport and come back...They simply go to the embassy and say they lost it and they receive a new passport.”***

*Thailand, Police Officer, #3.*

For survivors in the Study, the idea that their exploiter was at large could be just as frightening as actual threats. More than one survivor shared their experience with accused offenders being released during the pre-trial period and expressed their fear that they may “be harmed, get hurt” by an offender on the loose.<sup>391</sup>

Independent reports in each of the Study Countries also cite incidents in which accused offenders in serious trafficking cases were released, even when bail was legally barred.<sup>392</sup> A Philippines prosecutor expressed anger about a case in which a defendant who faced life imprisonment for trafficking a child for prostitution was released on bail, despite the offense being non-bailable by law. The judge granted bail without the accused even filing a bail petition. After the judge’s misconduct was reported, the judge received only a short suspension and returned to work.<sup>393</sup>

Defendants have a right, of course, to be presumed innocent until proven guilty, and pre-trial detention should not be imposed lightly. However, the Study suggests that there is an imbalance between the rights of the accused and the rights of alleged victims to be protected from danger and to be able to exercise their right to access justice. To address this imbalance, respondents in the Philippines pointed to the need for greater judicial training, as well as sanctions for judicial misconduct with respect to bail decisions.<sup>394</sup>

## b) Gaps in Witness Protection Measures

Even if dangerous SEC offenders are placed in pre-trial detention, the Study shows that SEC victims and families still face danger and require additional witness protection.

- Respondents reported that exploiters start to make threats as soon as they realize a child has escaped, even before authorities have a chance to arrest and detain them.<sup>395</sup>
- The exploiters’ family members or associates are reported to harass victims and families on behalf of an exploiter who is detained. Indeed, survivors and professionals in the Study noted that child sex offenders are often part of a network, and multiple people in that network will threaten the child, the child’s family, or the child’s supporters during the SEC case.<sup>396</sup>

391 Interviews with Thailand, SEC Survivor, T-PS (one of his exploiters absconded); SEC Survivor, T-SF (expressing anger that her exploiter was not “locked up without bail”); SEC Survivors, T-SA (afraid she would “be harmed, get hurt” by offender on the loose); SEC Survivor T-SC (“afraid that he might get out of the jail and that he might hire someone to come after me”).

392 FWLD, Report, 28 (reporting a case in which a trafficking offender was released and suggesting that some Nepali courts view bail as discretionary even in serious trafficking cases); UN Special Rapporteur Report: Philippines, 17 (“alleged perpetrators in a trafficking case were released on bail despite it being a non-bailable offence.”); U.S. Trafficking In Persons Report: Thailand (2015) (criticizing Thailand for failing to restrict bail and noting a notorious case in 2015, in which Thai officials released two defendants who had enslaved, brutalized and permanently disfigured a 14-year-old girl). *See also:* Thailand’s Progress Report on Anti-Human Trafficking Efforts, 31 March 2015, 16 (promising to take a harder line on restricting bail in trafficking cases).

393 Philippines, Focus Group Report, 4.

394 Philippines, Focus Group Report, 3, 4.

395 Interview with Thailand, Police Office, #1-2; Nepal, SEC Survivor, N-SH.

396 One survivor living in a Philippines shelter reported that “a lot of people” were contacting and threatening her family members at home. Professionals in Nepal and Thailand also noted that SEC offenders had associates in the child’s village who would harass the child in the offenders’ absence and foreign sex offenders sometimes were a part of networks



- Even detained exploiters must be released to participate in the SEC proceedings, including line-ups, depositions, and court dates. It is reported that exploiters take these opportunities to confront children, and threaten and plead with them to drop their accusations, as illustrated by the following case from Nepal.

### A Child's Story: Confronting The SEC Defendant at the Courthouse

An NGO respondent shared a story about a sexually exploited child who encountered the defendant at the courthouse. Police had escorted the defendant to the bathroom at the same time that NGO employees were leaving the bathroom with the child. They stopped briefly seeing each other, and the perpetrator said 'you will take the case back or I do something to you.' And he sensed that the threat did not work, so he started yelling 'oh you know you are my [child], you are like my [child], you know I haven't done anything to you.'

The respondent reported that the child had not seen the exploiter for more than a year and was so traumatized by the encounter that the child clung to her, fainted, and fell to the floor.

Nepal, Service Provider, N-CK

The Study Countries have taken steps to reduce the risk of confronting offenders at the police station or courthouse. For example, in Thailand, children give police interviews and trial testimony in private rooms away from the defendant and public.<sup>397</sup> Some courthouses in Nepal and the Philippines are reported to have special waiting rooms for child victim-witnesses.<sup>398</sup> Survivors and caregivers also spoke about police and NGO staff attending court dates to provide protection.<sup>399</sup>

***"Myself and senior friends sit there [in court] with police...Felt safe in that setting because police is there."***

Thailand, SEC Survivor, P-PS

However, a key finding of the Study is that, while children felt relatively safe in police stations and in private rooms in courthouses, outside of these areas they felt vulnerable to harm. As reported by this Study's legal consultant in Nepal:

***"Their safety was protected only either in police office or in court. Besides these places they felt unsafe. In those areas outside of court and police office, exploiter's family may misguide or influence the victim's family. Sometime even the [NGO] lawyer also was threatened".<sup>400</sup>***

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that could apply pressure on children and families. Nepal, Service Provider, N-CW; Thailand, Lawyer 3; Thailand, Service Provider, SW #1; Thailand, Service Provider, T-CC.

397 Thailand, Criminal Procedure Code, §§ 133 *bis* and 133 *ter*

398 Nepal, Judge 2 ("We have child friendly and witness protection room "); Philippines, Focus Group Report, 5 (reporting that there is a waiting room for the children). Philippine law also calls for a special waiting room for child witnesses: Philippines, Rule on Examination of a Child Witness, § 12; Philippines Case Management Protocol, 11, 28, 34. It is not clear if there are special waiting rooms in the courthouses in Thailand, though there are special rooms for giving trial testimony.

399 Thailand, SEC Survivor, T-PS; Thailand Service Provider, T-CH.

400 Nepal, Report on Criminal Justice Interviews, 3.



In fact, the Study suggests that areas of high risk are the victim's family home (where more than one survivor in this Study reported receiving threats), public transportation to and from court,<sup>401</sup> and hallways, bathrooms, and other public areas in courthouses where exploiters may cross paths with victims during trials.<sup>402</sup>

***“They don’t make any efforts to keep the client away from their perpetrator or enough efforts in my opinion when they are going through court cases. Even when the client is visibly traumatized, even knowing they might see their perpetrator in court, they don’t make enough effort to protect the client, to protect the victim.”***

*Philippines, Service Provider, P-CA*

In Nepal, a prominent judge joined with NGO advocates to devise a simple and cost-free solution to help children avoid these kinds of confrontations. As described below, SEC victims are now permitted to use the judges' private hallway to enter and exit the courtroom, rather than use public corridors where they risk seeing their offender. This small step was reported to be a “historic achievement” that has spared many SEC victims needless pain.

### **Promising Access-to-Justice Practice: Special Use of Judge’s Entrance to Access Courtroom in Nepal**

In the district court in Kathmandu, child victim-witnesses and their offenders wait in separate rooms and give testimony separately. But they can cross paths in the hallways and encounters can be traumatic to the children. In one case reported by a Nepali NGO, the child victim had not seen his exploiter for more than a year. When he saw the exploiter directly in front of him in the courthouse hallway, he was so terrified that he clung to his caregiver and then fainted and fell to the floor. To improve security, the judge and NGO representatives devised a simple, cost-free solution: children are now allowed to access the courtroom through the judge's private entryway. According to one respondent, this small step has been a “historic achievement.”

*Nepal, Service Provider, N-CK*

### ***c) Underused Witness Protection Programmes***

The Philippines and Thailand have state-run witness protection programmes that could address some of these gaps in witness protection for SEC victims and families.<sup>403</sup> These programmes offer a variety of security measures, including escorts or bodyguards, secure housing, change of identity, permanent relocation where necessary, and financial assistance.<sup>404</sup> Protection may sometimes be extended to the witness's relatives.<sup>405</sup> Nepal does not have a witness protection programme, but police are required to provide protection if trafficking victims make a reasonable request at the local police station.<sup>406</sup>

401 Hargitt, Katherine, e-mail communication to author, 16 May 2016.

402 Interview with Thailand, Service Provider, T-CC.

403 Thailand, Witness Protection Act, § 8; Philippines, Witness Protection, Security and Benefit Act, R.A. No. 6981, 1991, § 3; *See also*: Philippines, Expanded Anti-Trafficking Act, § 18; Philippines, Anti-Child Pornography Act, § 14. (making child victims of trafficking and pornography automatically eligible for protection under the Witness Protection Act).

404 Thailand, Witness Protection Act, §§ 6, 10.

405 Thailand, Witness Protection Act, § 7; Philippines Witness Protection Act, §8(a).

406 Nepal, Anti-Trafficking Act, §26. (“If a person provides reasonable ground and requests the nearest police office for security against any type of retaliation . . . that police office should provide any or all of the following protection measures to him/her: (a) To provide security during travelling in course of attending case proceeding in the court, (b) To keep or cause to keep under police protection for a certain period, (c) To keep at rehabilitation centre”). *See also*: Committee on the Rights of the Child, Concluding Observations: Nepal, para. 39(d) (criticizing Nepal for having no



In the words of a judge in Thailand, however, “the law is there, but its implementation may be lacking.”<sup>407</sup> Thai respondents noted that the witness protection law was difficult to apply in SEC cases, while Philippines respondents felt that the law was not well-suited to children’s needs.<sup>408</sup> While respondents in Nepal agreed that police will provide protection when requested, one officer said that families sometimes do not want police protection<sup>409</sup> and an independent report found that victims were not always aware of their right to request protection.<sup>410</sup>

***“There is the witness protection act that could help...but it’s hard to apply it, and we should push more for its use.”***

*Thailand, Lawyer #1*

***“The office on witness protection should come into contact with children and provide protection to children.”***

*Thailand, Service Provider, T-CC*

***“The safety and privacy of victims and families are not adequately protected during cases because the set up in the witness protection programme is not best suited to their needs.”***

*Philippines, Prosecutor #2*

***Q: “In your experience, are the safety and privacy of victims and families adequately protected during cases?”***

***A: “Not entirely protected.”***

*Nepal, Judge #1*

In the Study Countries, NGOs often provide needed security to SEC victims and families. They arrange for private transportation, escort children during court dates, and even hire their own bodyguards.

***“Our organization is always aware on safety and protection measures. We provide our private vehicle service to victim and victim's family during the legal procedure. We are always concern about their safety and security.”***

*Nepal, Lawyer #1*

As a result, NGO workers are at risk of being threatened or harassed themselves,<sup>411</sup> or even ambushed while transporting children.<sup>412</sup> According to media reports, one leading anti-trafficking NGO in Nepal has had its offices destroyed twice by suspected traffickers.<sup>413</sup>

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witness protection law and failing to protect child witness from the risk of retaliation).

407 Interview with Thailand, Judge #1.

408 Interview with Thailand, Lawyer #1, Service Provider, T-CC, Philippines, Prosecutor #2.

409 Interview with Nepal, Police #1 (“We advise the victim and family about safety and security and ask them if they require security. But usually family do not ask for deploying personal security”).

410 *See also*: FWLD Report, 65-66 (trafficking survivors did not know how to request security or failed to receive it after making a request).

411 *See also*: Manila News Online, “Taclobanon named as Ninoy and Cory Aquino Fellow for Public Service,” 24 June 2014, accessed 29 October 2015, <http://www.manilanewsonline.com/taclobanon-named-as-ninoy-and-cory-aquino-fellow-for-public-service> (reporting that a SEC-specialized prosecutor had received multiple death threats for assisting SEC victims and recording her thanks to the social workers and NGOs who “risked their lives in this fight” and to the mayor for providing her with security when she needed it).

412 ECPAT International, Recovery and Reintegration Study.

413 Sarup, Kamala, “Lost Daughters of Nepal” (reporting that “Maiti Nepal’s main office in Kathmandu has been destroyed twice and Maiti workers must travel with a bodyguard when overseeing rescue missions in India”); *See also*: CNN



#### *d) Use of Protective Shelters to Keep SEC Victims Safe*

One way that States try to keep sexually exploited children safe is by placing them in protective shelters during the criminal proceedings.<sup>414</sup> These shelters are often tightly secured to prevent children from coming into contact with exploiters, their associates, or members of the child's family who have come under the exploiters' influence.<sup>415</sup> Children are

rarely allowed off the grounds and only in the company of a staff member, and the premises are protected by security features that could include barred windows, locked gates, security guards, or tall walls surrounding the property.<sup>416</sup>

***“Their freedom [in the shelter] is really limited and they just want to go home. Being there and not being able to go out or contact anyone for safety reasons and the legal process can be as long as two to three years and they are stuck there.”***

*Thailand, Lawyer #3.*

According to one shelter worker in the Philippines, some children look forward to their court dates, despite all of the hardships those entail, for the chance to see their friends and family.

***“Going to court hearing they are excited because they will meet their family, their friends that they have.”***

*Philippines, Service Provider, P-CD*

While conditions may be harsh, these shelters are often necessary to keep sexually exploited children safe. One survivor recounted an incident, for example, when workers were able to shield her from associates of her exploiter who tried to reach her at the shelter where she lived.<sup>417</sup> However, the Study also shows that survivors can sometimes feel as if they are the ones being held in pre-trial detention, believing that they are there to guarantee their participation in the State's case and only be allowed to go home when the case is done. One survivor stated that she intended to plead with authorities to be allowed to go home, citing her good behaviour and her promise to attend her hearings:

***“What she has in mind is to ask a favour to the court to be allowed to be out from the centre and they would still continue attending their hearings even if they are at home or they're already out...A lot of us are not allowed to go out from the centre due to our hearing cases. That is what is taking us too***

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Heroes website, accessed 28 July 2016, <https://www.facebook.com/CNN-Heroes-2010-Anuradha-Koirala>.

414 Philippines, Anti-Child Abuse Act, § 28 (immediate protective custody for SEC victims). *See also*: Philippines Expanded Anti-Trafficking Act, § 15 (government must provide rehabilitation centres for trafficking victims); Philippines, Child & Youth Welfare Code, Presidential Decree No. 603, 10 December 1974 (if placement with appropriate family member not possible, child may be placed in a residential facility); Thailand, Anti-Prostitution Act, § 34-38 (court may order children used in prostitution to undergo rehabilitation in government facilities for two years or longer and returned by police if they escape); *See also*: Thailand, Anti-Trafficking Act, § 33 (authorizing shelter care for trafficking victims); Thailand, Child Protection Act, §§ 40-47 (authorities may place the child with family or guardian under close supervision and conditions in lieu of placement in a residential facility); Nepal, Children's Act, § § 21, 35 (may be placed in Child Welfare Home if there is no suitable guardian).

415 One respondent from the Philippines spoke about the problem of parents, under the influence of bribes or threats from exploiters, filing habeas corpus motions to demand that their children be released from shelters; Philippines, Service Provider, P-CD.

416 Hargitt, Katherine, e-mail communication with author, 3 November 2015.

417 Interview with Philippines, SEC Survivor, P-SZ.



***long here. But if someone would talk to the court. I think it's ok because our behaviour here are good!...When prostituted [youth] are arrested, it would be better to give them work or job instead of instantly bringing them to a shelter because they may have families whom they reach to and stay with."***

*Philippines, SEC Survivor, P-SC*

Another survivor in the Philippines reported that she had been in the shelter for three years without being called to testify and had no idea when she would be allowed to leave.<sup>418</sup> Another described residents who had lived in shelters for six to eight years while waiting for SEC cases to conclude so that they could be released.<sup>419</sup>

Professionals in the Study acknowledged that the shelters can feel like a form of pre-trial detention for children. During a focus group of criminal justice professionals held in the Philippines, both governmental and non-governmental lawyers agreed that "a shelter is not a detention centre but...the victims can feel detained as they cannot go out as they like."<sup>420</sup> According to one Thai lawyer, while it is true that SEC victims can request to go home, in practice, they are generally not allowed to leave until they provide testimony.

***Q: "If they want to go home [from the shelter], they can't go home?"***

***A: "If they are witness no."***

***Q: "What if they don't want to be [a witness]?"***

***A: "It's a big process, because in reality they can say they want to go home but it's a long process even so."***

*Thailand, Lawyer #3.*

Justice professionals expressed frustration with the fact that, when sexually exploited children are released from shelters before SEC cases conclude, they often run away or succumb to pressure to recant, and this usually results in a failed prosecution.

***"If victims are let with the family, then most of offenders pay the victim not to go to court (or threaten them). And the solution could be to put them in shelter, but they run away. So none of these solutions has been effective."***

*Thailand, Police Officer #3.*

***"Thai [SEC victims] don't want to go to shelter and when they stay out of shelter, the defendant can find them more easily and threaten them."***

*Thailand, Lawyer #2*

***"Those victims who are no longer in the custody of the DSWD cannot be reached by subpoenas or they simply refuse to testify."***

*Philippines, Prosecutor #2*

While recognizing that shelters are necessary to protect many victims, the UN Special Rapporteur on Trafficking expressed concern with what she viewed as Thailand's practice of "automatically" confining trafficking victims, including children, in government shelters during lengthy legal proceedings.<sup>421</sup>

418 Interview with Philippines, SEC Survivor, P-SA.

419 Interview with Philippines, SEC Survivor, P-SB.

420 Philippines, Focus Group Report, 3.

421 UN Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons, A/HRC/20/18, 11.



*“In Thailand, concerns persist that children and women identified as victims of trafficking are automatically placed in Government-run shelters, pursued if they “escape” and, in some cases, forced to spend years awaiting processing. Such detention not only impedes the rights of victims but also discourages and diminishes the quality of victim cooperation with authorities. Above and beyond the infringement of victims’ human rights, the Special Rapporteur observes that such an approach can serve as a disincentive for victims to report cases to authorities.”<sup>422</sup>*

*UN Special Rapporteur on Trafficking in Persons (2012)*

The Study also shows that while residential facilities are keeping children safer during SEC cases, long-term placements can sometimes feel and look like a form of pre-trial detention to children, especially those who are made to live many years under restrictive conditions. The Study Countries should be commended for putting shelter care in place for children who need it, but the Study suggests that shelter reform is needed. It may be possible, for example, to keep children safe in staff-secured, remotely-located safe houses rather than

locked government facilities, and more children may be able to live safely outside shelters if gaps in pre-trial detention and witness protection programmes are addressed.

### 6.3 Advances in Protection of Privacy

One of the positive findings of the Study was a widely-reported improvement in the Study Countries’ protection of the privacy of SEC victims and families during cases, an important measure for also protecting their safety. Nepal, the Philippines and Thailand have a number of procedures in place to protect the privacy of child victims of sexual exploitation, including:

- Requiring that SEC cases be filed under a pseudonym or code,<sup>423</sup> or under seal;<sup>424</sup>
- Allowing children to use separate waiting rooms or interview rooms;
- Taking the child’s testimony in *in camera* hearings,<sup>425</sup> such as in judges’ chambers or courtrooms closed to the public;<sup>426</sup>
- Permitting children to withhold in-court testimony that reveals their identity;<sup>427</sup>
- Prohibiting authorities from disclosing any information that could lead to identification of the child,<sup>428</sup> or any material that relates to the case,<sup>429</sup>
- Banning media coverage,<sup>430</sup> and

422 *Ibid.*

423 Nepal, Anti-Trafficking Act, § 5; Philippines, Case Management Protocol, 11 (recommending that an alias be used in court papers in SEC cases).

424 Philippines, Expanded Anti-Trafficking Act, § 10; Anti-Child Pornography Act, § 13; Rule on Examination of Child Witnesses, §31.

425 Nepal, Children’s Act, § 49, 50; Nepal, Anti-Trafficking Act, § 27; Philippines, Anti-Child Abuse Act, § 30; Philippines, Expanded Anti-Trafficking Act, § 10; Philippines, Anti-Child Pornography Act, § 13; Philippines, Rule on Examination of a Child Witness, § 31.

426 Philippines, Rule on Examination of a Child Witness, § 25; Thailand, Criminal Procedure Code, § 172*ter*.

427 Philippines, Rule on Examination of a Child Witness, § 31.

428 Thailand, Child Protection Act, §50; Nepal, Anti-Trafficking Act, § 25

429 Thailand, Anti-Trafficking Act, §56

430 Philippines, Expanded Anti-Trafficking Act, Sec. 10; Special Protection Act, Sec. 29; Anti-Child Pornography Act, Sec. 13.



- Using protective orders to restrict disclosure of video tapes or sexual abuse images of the child admitted as evidence.<sup>431</sup>

With only a few exceptions, respondents spoke positively about authorities' efforts to guard victims' personal information, and survivors did not complain of harmful disclosures made to the public or to exploiters during their SEC cases.<sup>432</sup>

***“The case will be filed under the name of [the NGO]. There will not be personal names involved...That’s why they will remain anonymous so they don’t need to be scared...This sense of anonymity really helps them.”***

*Nepal, Service Provider, N-CW*

***“Everything is confidential...The [authorities] help him to protect that, and his photo, his information is not known to other. Everything is confidential so he feels good about it.”***

*Thailand, Translator for SEC Survivor, T-SB.*

***“All child protection laws have provision in confidentiality, and in the cases I have handled, it has been observed. Ten years ago, this was not the case. Media would be informed and identities of victims are exposed.”***

*Philippines, Lawyer, #10.*

While substantial progress has been made, the Study did uncover some examples of violations of privacy. In Nepal, a shortage of private interview rooms has reportedly led to incidents when children were made to tell their story out in the open in a police station or courtroom.

***“When they [the children] go to the police station or court to give statement, they don’t even have a separate room for taking the statement. Everything is done in open, with no confidentiality. The government should mention confidentiality as a service they provide. That it is a must!”***

*Nepal, Service Provider, N-CJ*

***A Thai respondent shared an incident in which a judge required a child to provide information in open court about where she lived and went to school. In the respondent’s opinion, this disclosure allowed the exploiter to locate a friend of the child and send a group of children in his control to find and beat her.***<sup>433</sup>

*A Child’s Story: Disclosure of a Child’s Private Information and the Risk of Harm*

431 Philippines, Rule on Examination of a Child Witness, § 31.

432 However, according to ECPAT lead researcher, Dr. Katherine Hargitt, some survivors expressed concerns about the lack of privacy when speaking with their social workers or counsellors in shelters, which permitted other children and staff to overhear sensitive information.

433 See also: U.S. State Department (2015) Trafficking in Persons Report: Thailand (“victims, including children, were at times forced to testify in front of alleged perpetrators or disclose personal information such as their address, which put them at serious risk of retaliation”).



### In Thailand, an NGO caregiver for one SEC survivor shared the following story about a child trafficking victim whose identity was disclosed in court:

“She testify in court. We go to court, five of us. We’re always there. She has to testify against two traffickers on different cases...That day was not good. Somehow the judge want to speed up the case and ask her to testify in court. She has to give school name, where she live. She was in front of court, she was, like, this is not right. And a while after, her friend, she was beaten up by the other SEC [children] of the same trafficker.”

*Thailand, Service Provider, T-CH*

Thus, while the Study Countries have taken some important steps to protect child victim-witnesses from harm during criminal cases, including by better protecting their privacy, the Study shows that sexually exploited children are still exposed to intimidation and retaliation during SEC cases. Improved witness protection is essential if these children are to engage with the criminal justice system to access the remedies they deserve.

## 7. Feeling Mistreated: Sexually Exploited Children Often Lack Access to Needed Recovery Services and Many Run Away During SEC Cases

As noted earlier in this report, sexually exploited children often enter the criminal justice system suffering from a wide range of problems resulting from their sexual abuse and exploitation, including bodily injuries, sexual diseases, post-traumatic stress disorder, drug and alcohol addictions, pregnancy and early motherhood, among other issues.<sup>434</sup> The Study shows, however, that Nepal, the Philippines and Thailand, like many countries around the world, struggle to meet the varied and often extensive needs of sexually exploited children, leaving these children poorly equipped to participate in SEC cases and access justice.

### 7.1 The Right to Recovery Services

Rehabilitation is a type of legal remedy that can include state-delivered medical, psychological and social services.<sup>435</sup> It is also a type of assistance that States are obligated to provide to child victim-witnesses who participate in criminal proceedings. Under Article 9 of the OPSC, the Study Countries must take “all feasible measures with the aim of ensuring all appropriate assistance to victims of [child prostitution and pornography] offences, including their full social reintegration and their full physical and psychological recovery.<sup>436</sup> The UN Guidelines on Child Victims and Witnesses recommend that justice professionals adopt a multidisciplinary approach to ensure that child victim-witnesses receive needed physical, psychological, social and legal services while criminal cases are pending.<sup>437</sup>

434 See: Section 4.1, above. See also: ECPAT Europe Law Enforcement Group (2006), “Combating the Trafficking in Children for Sexual Purposes: A Training Guide,” Amsterdam, Bangkok: ECPAT, 57-58 (“All children who have been sexually exploited will suffer some form of physical or mental harm. Where children have been enslaved and have had no control over their lives during their exploitation, they suffer trauma that is equivalent to the results of torture. Usually, the longer the exploitation goes on, the more health problems that will be experienced. But some children will suffer life-long damage very quickly, such as by contracting HIV”).

435 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art.14; Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 14, 17-19; Basic Principles on the Right to a Remedy and Reparation, para. 21.

436 See also: Palermo Protocol, Art. 6 (3)(c), (“Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking including . . . [m]edical, psychological and material assistance”); ILO, Convention, Art. 7(2)(b) (Each State shall take 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”).

437 UN Guidelines on Child Victims and Witnesses, para. 43.



These services help children begin the process of healing and engage more safely and effectively as witnesses during cases. These services are also to be provided after the criminal case has concluded; they are to continue as long as is necessary for the child to fully recover from abuse and reintegrate into his or her community.

## 7.2 Strengths and Weaknesses in the States' Response

In recent years, the Study Countries have improved delivery of services to child victims participating in the criminal process through the creation of one-stop hospital clinics that address victims' medical and legal needs,<sup>438</sup> and expanded use of multi-disciplinary teams during cases of crime against children in the Philippines and Thailand (though it is reported that these teams do not always exist outside metropolitan areas, and even where they do exist, may not be used in SEC cases).<sup>439</sup> As highlighted

earlier, a promising new approach was recently implemented in Northern Thailand, where SEC survivors can go to a single child advocacy centre to access multi-disciplinary services during SEC cases.<sup>440</sup> An experienced prosecutor expressed her desire for the creation of child advocacy centres in the Philippines as well.<sup>441</sup>

Yet, the children's needs are often great and the States' services are limited, and when asked if these needs were adequately addressed during SEC cases, criminal justice respondents in the Study Countries almost uniformly answered no. In Nepal, multiple respondents noted the shortage of state resources to provide all of the care that sexually exploited children require. In the Philippines, respondents focused on the inadequacy of psycho-social services, while in Thailand, respondents reported that children receive basic necessities from the government, but in the opinion of one experienced police officer, none of the "love" and compassion they need.

***"We need to improve our criminal justice system. We do not have all the facilities that SEC victims need. We are providing very basic needs."***

*Nepal, Police Officer, #2*

***"The needs are more on basic and psycho-social needs which may not be adequately addressed in the criminal justice system."***

*Philippines, Focus Group of Criminal Justice Professionals*

***"When the government runs the shelter, they give them everything – food education, clothes – but what they lack is love."***

*Thailand, Police Officer, #4*

438 Note that, in Nepal, it was reported that victims must still pay for their forensic exams at these centres, and this expense can be a separate barrier to justice for SEC victims from poor families.

439 Sevilla, Cristina, "Access to Justice Responses," 3. Interview with Thailand, Police Officer #3 (a "multidisciplinary team is required by law on the Anti-Trafficking act, but . . . if it's another [type of] SEC case, the protection is not there").

440 Children's Advocacy Centre of Thailand, Facebook Page; See also: Wilson, Edie (2016), "Taking Action to protect Children from Trafficking," 1 May 2016, accessed 3 July 2016, <http://www.chiangmaicitylife.com/citylife-articles/taking-action-protect-children-trafficking/>.

441 Philippines, Focus Group Report, 4.



Aftercare was a particular concern. In the Philippines, respondents felt that children were not given adequate psychological and social support once they completed their duties in the criminal case and returned to their communities. They emphasized the need to follow up with children for at least two years after the SEC case concludes and to empower social workers to oversee the care for children in local communities.<sup>442</sup>

***“Children are linked to recovery and reintegration services, however, the challenge comes when the child is brought back to her community of origin and there is no proper turn over, or the local social welfare officers of such community lacks capacity, and no after-care services are provided. If the case is pending, the child no longer appears in court, since there is no one that coordinates.”***

*Philippines, Lawyer #10<sup>443</sup>*

Thai respondents emphasized the critical importance of ongoing services to ensure that sexually exploited children achieve a full recovery and do not return to the sex trade. They pointed out that children may need a variety of help, including physical and mental health services, as well as family counselling, education, vocational training, and support to overcome drug addictions.

***“We should think about re-integrate them back. Make them back to life or [give them] what they lack in the past, or something missing. For example, if a family was missing, we need to find something to replace it, and give something back. It’s fulfil.”***

*Thailand, Police Officer #4*

***“We’re talking about kids who can’t read and write or who are damaged or are doing drugs or are into sex work. Many of the survivors go back to sex work. That’s all they know.”***

*Thailand, Service Provider, T-CA*

The Philippines Case Management Protocol offers guidance to state justice officials on how to connect child victim-witnesses with care and support during SEC cases, and ensure that they continue to receive needed services after cases are complete.

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442 Philippines, Focus Group Report, 7.

443 Sevilla, Cristina, Access to Justice Responses, 3. *See also*: Philippines, Focus Group Report, 4, 10 (“shelters also lack the resources especially on after care . . . After SEC cases are terminated, the concerned government agencies should conduct a follow-up supervision over the victims, for at least two years, to ensure that the victims are able to recover from the incident”).



## Promising Access-to-Justice Practice : Philippines Protocol for Continuum of Care in SEC Cases<sup>444</sup>

Sexually exploited children too often return to exploitive situations after their rescue and participation in the criminal justice system. The Philippines Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation seeks to ensure that children transition back to their communities safely and successfully and their recovery and reintegration is closely monitored. While the protocol is a promising practice, it is still new and the Study suggests that better implementation may be needed.

- “Before any reintegration is done, the case manager must ensure that the parents and other family members are able to provide a safe, protective and nurturing environment for the child.
- The case manager shall conduct an evaluation conference with the multidisciplinary team to assess the readiness of the child and the family for the eventual reintegration.”
- “Once the child is discharged from the child-caring agency or foster home, the social worker must facilitate the provision of after-care services to sustain the gains and achieve healing and recovery process. If the parents are found to be unfit and incompetent, the child shall be placed under an alternative family care.”
- “Arrangements for the child’s continuing education and medical services, etc. shall be made by the social worker before discharge. In close coordination with the social worker, the barangay help desk person shall constantly monitor the child’s progress in the community.”
- “The child and the family should be prepared by the social worker before the transfer to address fears, apprehension, doubts, among others to build and sustain the child’s and family’s trust on the receiving social worker”<sup>445</sup>

### 7.3 Special Challenges in SEC Cases

Certain gaps in the State’s provision of recovery and reintegration services have specific impact on sexually exploited children:

*Limited availability of specialized care:* Many sexually exploited children require ongoing, trauma-informed, and specialized psychological support, but there are a limited number of qualified, specialized staff (outreach workers, house parents, social workers, mental health professionals) able to work with SEC survivors.<sup>446</sup>

In most cases, SEC survivors are placed in mixed-population shelters,<sup>447</sup> where caregivers may be unprepared for the unique challenges presented by SEC victims, including their denial of victimization, their distrust of authorities, and as one respondent put it, their “brainwashing” by exploiters. According to ECPAT International:

444 Philippines, Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation on Healing, Recovery and Reintegration, 38-40. *See also:* Philippines, Anti-Pornography Act, § 18 (requiring sustained supervision and follow-through to track child victim’s recovery and reintegration).

445 Philippines, Case Management Protocol, 39-40.

446 ECPAT International, Recovery and Reintegration Study; *See also:* ECPAT International Submission to the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, 15.

447 ECPAT Field Report: Philippines, 13, 23-25 (NGO respondents noted that although there have been some improvements in service delivery to SEC victims in the Philippines, there are still few available recovery centres and most are not SEC-specialized and generally house mixed populations).



*[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>448</sup>

Caregivers, like others who interact with SEC survivors, can be affected by negative stereotypes that these are “bad” children, which can cause caregivers to overlook the children’s needs or fail to provide compassionate care during their cases.<sup>449</sup>

*Special difficulties based on age:* Respondents in the Philippines and Thailand noted that older SEC survivors, including adolescents, find it particularly difficult to live in restrictive shelters and are more likely to run away than younger children.<sup>450</sup> As reported by ECPAT International in other studies, older children may also have difficulty accessing age-appropriate services. These might include opportunities for more independent living, authorization to earn income, or childcare for any children they may have.<sup>451</sup>

*Special difficulties based on gender:* Boys and transgender SEC victims also have greater difficulty accessing services. As noted earlier in this report, the sexual exploitation of boys is not well-understood, and boys risk being disbelieved and treated as criminals rather than victims in need of services. There are also fewer services and shelters for boy and transgender victims.<sup>452</sup> In Nepal, for example, there appear to be no government shelters for boy victims of trafficking, and specialized police centres respond only to female victims of sexual crimes.<sup>453</sup> In the Philippines, one respondent noted that, while there are government shelters for boys, conditions are poor and the boys risked physical and sexual assault.<sup>454</sup> In Thailand, an NGO lawyer noted that when boys are placed in shelters, it is particularly difficult to provide adequate care because they tend to run away.<sup>455</sup>

*Special difficulties based on legal status:* In Thailand, for example, trafficking victims must be repatriated “without delay,” except when humanitarian concerns weigh in favour of allowing the victim to stay.<sup>456</sup> It has been reported that Thailand rarely makes use of the exception to allow victims to stay and start to receive services toward their recovery.<sup>457</sup> A police officer expressed concern about the revolving door in Thai trafficking cases, by which foreign children are quickly repatriated to their home countries and just as quickly return to the same bars and brothels in Thailand, having received few or no services in either country.

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448 ECPAT Submission to the UN Special Rapporteur, 15. This finding was confirmed by respondents in ECPAT’s Recovery and Reintegration Study.

449 See: Sections 1 and 3, above. Philippines, Access to Justice Report, 3. See also: ECPAT Recovery and Reintegration Study; ECPAT Submission to the Special Rapporteur, 15.

450 Philippines, Focus Group Report, 4.

451 ECPAT International, Recovery and Reintegration Study; ECPAT Submission to the Special Rapporteur, 18-19.

452 See: e.g., U.S. State Department (2014) Trafficking in Persons Report: Nepal (reporting no shelters for male trafficking victims); Philippines, Access to Justice Report, 3 (inadequate services for boy SEC victims).

453 Nepal Police website, <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>.

454 Sevilla, Cristina, telephone conversation with author, 8 June 2015.

455 Interview with Thailand, Lawyer #1.

456 Thailand Anti-Trafficking Act §§ 37-38.

457 U.S. State Department (2015), Trafficking in Persons Report: Thailand.



***“The other problem is that when we send them back home, there are no steps taken by, for example, the Myanmar government, to assure they will not come back...There are no programmes of recovery and reintegration. It’s very easy for them to come back. This happened in several countries, not just Laos and Myanmar.”***

*Thailand, Prosecutor #2*

#### 7.4 Shelter Care and Running Away

Another unique challenge in SEC cases is the tendency of many sexually exploited children to run away from shelter care during the legal proceedings, cutting off their access to needed services, as well as their access to justice.<sup>458</sup>

***Q: “Is there a risk for victims to run away from shelters?”***

***A: “So many times, it happen very often, these kids they have special skills to run away.”***

*Thailand, Lawyer #2*

***“I would run away too. If they are foreign victim in Thailand, their freedom is really limited and they just want to go home. Being there and not being able to go out or contact anyone for safety reasons, and the legal process can be long as two to three years, and they are stuck there. This is the main reason. Plus, they don’t get any income.”***

*Thailand, Lawyer #3*

***“There’s a problem with children running away while the criminal case is pending against their exploiter...they are not used to the rules and the atmosphere in the centre, they have problems relating to others in the centre, they find the process too long and sometimes it’s because they accept a settlement (through their parents).”***

*Philippines, Focus Group of Criminal Justice Professionals<sup>459</sup>*

In contrast to the Philippines and Thailand, the respondents in Nepal reported that there was no problem with children running away during SEC cases.<sup>460</sup> One experienced police officer remarked that he had never had a case in which a sexually exploited child chose to flee before trial.<sup>461</sup> One reason for the disparity may be that SEC cases in Nepal tend to resolve fairly quickly and children do not need to stay put for long periods of time.<sup>462</sup> State actors in Nepal also placed great emphasis on family reunification and reported that they maintained close contact with the children and their families throughout the SEC case.<sup>463</sup>

458 States do not necessarily have to dismiss SEC cases if the child victim runs away, particularly if they are able to take a statement from the child early in the proceedings and admit that statement at trial in the child’s absence, but respondents report that this practice is not the norm. Without the child’s evidence, respondents reported that most cases against offenders are too weak to succeed. See Section 10, below, for a fuller discussion of admission of “advance statements.”

459 Philippines, Focus Group Report, 4.

460 See also: U.S. State Department (2015), Trafficking in Persons Report: Nepal (trafficking victims not often placed in restrictive shelters while cases are pending).

461 Interview with Nepal, Police Officer, #1.

462 FWLD, Nepal Implementation Report, 34 (average length of a trafficking case in 2013 was six months, although some cases lasted much longer).

463 Interviews with Nepal, Judge #1, Police Officer, #2.



***“No, none has run away from the case after filing the complaint yet.”***

*Nepal, Police Officer #1*

***Q: “In your experience, is there a problem with children running away while the criminal case is pending against their exploiter?”***

***A: “No, they are in touch with us through police, psychosocial counsellor, social worker or court staff. We have contact number of victim's family too.”***

*Nepal, Judge #1*

The importance of staying in touch with children and families throughout SEC proceeding was also emphasized by other professionals, noting that when children get to know and trust authorities, they are less likely to run away.<sup>464</sup>

***“She thinks that giving them your time, attention and establishing trust help in making them stay and go through the process. She says that connection must be maintained throughout the process.”***

*Philippines, Focus Group of Criminal Justice Professionals, referring to Prosecutor #2*

Further research is needed, but the Study suggests that a promising approach to the problem of children running away during SEC cases is to maintain contact and develop trust with them while they live outside of shelters and expedite the proceedings. In some cases, this approach could replace long-term placement of children in restrictive shelters.

### **The Contrasting Example of Nepal: Sexually Exploited Children Rarely Run Away During Criminal Proceedings**

An access-to-justice barrier in many SEC cases is the tendency of sexually exploited children to run away before the criminal case against their offender reaches trial. While this was reported to be common in the Philippines and Thailand, it was said to be rare in Nepal. None of the respondents had experienced a case in which a sexually exploited child had run away before the SEC case could be concluded.

One reason for the disparity may be that SEC cases in Nepal resolve fairly quickly compared to cases in the other countries. Nepal justice officials also appeared to place great emphasis on family reunification over shelter care during SEC cases and claimed to maintain close contact with children and families throughout proceedings.

More study is needed but the Nepali example suggests that it may be possible for officials to reduce the problem of children running away during SEC cases by maintaining contact and developing trust with children and families and expediting proceedings. In some cases, this may be a good alternative to long-term placement of children in secured shelters.

464 See e.g. Interviews with Thailand, Police Officers #3, #4; Philippines, Prosecutor #2.



## Participation as a Victim-Witness During the SEC Case

### 8. Feeling Overlooked: Sexually Exploited Children Rarely Have Their Best Interests Prioritized During SEC Cases

In criminal cases involving child victim-witnesses, criminal justice officials have a special duty: to give primary consideration to the child’s best interests when making decisions that affect them. In the Study Countries, SEC cases are generally (although not always) heard in criminal courts where the best interests principle is less familiar than in family-specialized courts. Although the Study’s participants often expressed great concern and compassion for the well-being of SEC victims, the best interests principle was hardly mentioned. Indeed, there appears to be no systematic way of assessing and considering the best interests of SEC victim-witnesses in criminal cases and their interests are not always given the weight they deserve in the balance with competing interests of the accused and the State. This can lead to unnecessary hardship and make it more difficult for children to access justice through the criminal justice process.

#### 8.1 The Right to Have Best Interests Considered During SEC Cases

The best interests doctrine is one of the core principles of child law, ensuring that the well-being of the child is at the heart of any case involving that child.<sup>465</sup> Article 3 of the CRC provides that “the best interests of the child shall be a primary consideration” in all actions concerning the child. Under Article 8 of the OPSC, this principle specifically applies when child victims of prostitution and pornography participate in the criminal proceedings against their offenders.<sup>466</sup> The Committee on the Rights of the Child has provided useful guidance to state actors on how to apply the best interests doctrine in legal actions, including SEC cases:

- In criminal cases, the best interests principle applies to children in contact (as victims or witnesses) with the law.<sup>467</sup>
- Whenever justice officials make a decision that affects the child victim in a case, “the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child.”<sup>468</sup>
- This process is mandatory and States “may not exercise discretion as to whether children’s best interests are to be assessed and ascribed the proper weight as a primary consideration.”<sup>469</sup>
- To determine a child’s best interests, officials should engage in a “formal process with strict procedural safeguards.”<sup>470</sup>
- This process includes having a qualified professional interview with the child in a child-friendly environment. Interviews with adults close to the child may also be conducted.<sup>471</sup>

465 See: CRC, Art. 3(1) (in all actions concerning children, “the best interests of the child shall be a primary consideration.”); See also: Committee General Comment No. 14, para. 2 (the concept of the “child’s best interests” is not new. Indeed, it pre-dates the Convention on the Rights of the Child and was already enshrined in the 1959 Declaration of the Rights of the Child (para. 2), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 5 (b) and 16, para. 1 (d)), as well as in regional instruments and many national and international laws”).

466 OPSC, Art. 8(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”).

467 Committee on the Rights of the Child, General Comment No. 14, para. 28.

468 Committee on the Rights of the Child, General Comment No. 14, para. 6(c).

469 *Ibid.*, para. 36.

470 *Ibid.*, para. 47. See also: *Ibid.*, para. 20 (While a full and formal procedure is not always required, in criminal cases “where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate”).

471 *Ibid.*, para.92.



- A wide range of factors should be explored and balanced, including the child’s views, identity, special vulnerabilities, need for family preservation (where possible), and right to “care, protection and safety,” health and education.<sup>472</sup>
- A best interests assessment should be done promptly and reviewed regularly,<sup>473</sup> and when a decision must be made that varies from the child’s best interests, it must be clearly explained and justified.<sup>474</sup>

The Committee recognizes that the child’s interests must be balanced against the interests of others in a legal action, including the accused’s right to a fair trial, as well as the State’s interest in a successful prosecution. In any balance, however, the child’s interests are to be primary and “not to be considered on the same level as all other considerations.”<sup>475</sup>

## 8.2 Strengths and Weaknesses in the States’ Response

One way that the Study Countries have begun to consider the well-being of sexually exploited children during SEC cases is by incorporating a more multi-disciplinary approach to managing cases, which involves child welfare professionals in the justice process and recognizes that child victim-witnesses have a variety of medical, social and legal needs that require attention.

While none of the Study Countries has put in place a formal best interests procedure, along the lines recommended by the Committee on the Rights of the Child,<sup>476</sup> the Philippines Supreme Court Rule on the Examination of a Child Witness is noteworthy. It explicitly requires justice officials to consider

the best interests of child victim-witnesses in criminal cases against their offenders and provides a basic best interests test to help officials do this.<sup>477</sup> The Rule does not provide specific guidance, but it is nevertheless an exceptional measure that, if well-implemented, could be of great help to children participating in SEC cases.

Unfortunately, neither the respondents in the Philippines nor in any other Study Country reported having experienced a SEC case in which a best interests determination was conducted. Many police, prosecutors and judges in the Study cared deeply about the well-being of child victim-witnesses. However, when they were asked how children’s best interests were considered during SEC cases, they cited a variety of procedures that they perceived as helpful to children, ranging from reuniting the child with family, to meeting the child’s immediate medical needs, to requiring the presence of social workers at trial, but did not mention any type of formal process.

472 *Ibid.*, paras. 52-79.

473 *Ibid.*, para. 93.

474 *Ibid.*, para. 97.

475 *Ibid.*, para. 37. *See also*, para. 40 (“Viewing the best interests of the child as ‘primary’ requires a consciousness about the place that children’s interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned”).

476 The principle is not mentioned at all in Nepali law and is only briefly referenced in Thailand’s Child Protection Act: Section 22 provides: “Treatment of the Child in any case shall give primary importance to the best interests of the child and any discrimination of an unfair nature shall not be allowed. In determining if an act is in the best interests of or unfairly discriminatory to the child, guidelines stipulated in the ministerial regulations shall be applied.” The Study failed to uncover any such guidelines.

477 Philippines, Anti-Child Abuse Act, § 2 (child’s best interest must be “the paramount consideration” in SEC cases).



## Promising Access-to-Justice Practice: The Philippines “Best Interests” Test

The Supreme Court Rule on the Examination of a Child Witness (2000) directs courts to uphold children’s best interests in all legal actions and make the “maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.”<sup>478</sup>

To determine a child’s best interests, courts must consider “the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development” and choose the “the least detrimental available alternative for safeguarding the growth and development of the child.”<sup>479</sup> Courts may also appoint a guardian ad litem to ensure that the child’s best interests are fully considered.<sup>480</sup>

The Rule is a positive example of how the best interests doctrine could be incorporated into SEC cases. However, the Rule could be strengthened by providing more specific guidance about how and when criminal justice officials are to determine the best interests of child victim-witnesses in criminal cases, which could lead to better implementation.

### 8.3 The Need for a More “Victim-Centred” Approach

Without mentioning the best interests principle by name, NGO representatives did express concern that children’s interests were too often given low priority in SEC cases. Some were frustrated by the lack of any mechanism to adjust the way cases are handled to accommodate the special needs or vulnerabilities of children participating in them.

**Q: “How is the best interest of the child taken into consideration during trial?”**

**A: Some victims are already traumatized by the system and there is not much we can do. For example, in one case, the victim has no witness. The offender hired three lawyers, and there was the prosecutor and the lawyer. So she had been interviewed five times in court, from 6:30 a.m. until 5:00 p.m. with one-hour lunch break, and we can’t change that.”**

*Thailand, NGO Specialist, SP#1.*

**“It’s an extremely traumatizing experience for the clients to go through... The clients are just instructed that this is part of the process you have to go through if you want to go forward with your case. The social worker or the lawyer just instructs the clients that you just have to go through that if you want to go forward with your case. It’s just part of the process. Nothing we can really do about that at this point.”**

*Philippines, Service Provider, P-CA.*

Respondents reported that the interests of the State or of the accused were given greater consideration than the interest of child victim-witnesses. Police and prosecutors in the Philippines and Thailand, for example, were concerned that children were “used” as means to secure convictions without giving adequate attention to their needs, and they called for a new, more “victim-cantered” approach to prosecutions.

478 Philippines, Rule on Examination of a Child Witness, § 3.

479 Philippines, Rule on the Examination of a Child Witness, § 4(g).

480 Philippines, Rule on the Examination of a Child Witness, § 5.



***“[We must] protect them in legal process...we are “using” them to achieve the purpose to prosecute the bad guy. This is not really the purpose. We should think about re-integrate them back. Make them back to life.”***

*Thailand, Police Officer #4*

***“The main need is we don’t re-traumatize them, that we don’t treat them just to get the information but treat them as persons and care about them as persons. The challenge is that the victim-centred approach...should be in the whole system.”***

*Thailand, NGO Specialist, SP #1*

***“[Respondent] recommends...measures towards a victim-centred approach and holistic approach on cases involving women and children.”***

*Philippines Focus Group of Criminal Justice Professionals referring to Prosecutor #2*

In Nepal, there was consensus among justice officials that the law weighed in favour of the rights of the accused at the expense of the rights of child victims.

***“Our criminal justice system is perpetrator-centred rather than victim-centred. Our criminal procedure is silent about victims.”***

*Nepal, Judge #2.*

***“Victims’ needs are not adequately addressed. Our criminal justice system talks more about exploiter than victims.”***

*Nepal, Lawyer #1.*

One reason for the imbalance is that SEC cases are typically heard in criminal courts, where professionals are accustomed to working with adult victim-witnesses whose interests do not require special attention. These professionals may not be familiar with the special duty to give “primary consideration” to the interests of children in that role.

By contrast, personnel in family courts work with child victims and witnesses on a daily basis and are specially-trained in child rights principles.<sup>481</sup> In the Philippines, SEC cases may be heard in family courts,<sup>482</sup> and according to a Nepali judge in the Study, may soon be heard in special juvenile courts

there as well.<sup>483</sup> Respondents praised some specially-trained family court judges for being particularly attentive to the needs of child victims and accommodating them as much as possible.<sup>484</sup> However, respondents also reported that family courts were not widely available and family judges were not always properly trained.<sup>485</sup>

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481 See e.g. Sevilla, Cristina, Access to Justice Responses, 4.

482 Philippines, Family Court Act, § 5; Philippines, Anti-Child Abuse and Exploitation Act, § 30.

483 Interview with Nepal, Judge #1 (“If the child is a victim of crime, then case is followed by criminal bench. We are working to implement the CRC that cases involving children be followed by juvenile courts”).

484 Philippines, Focus Group Report, 7. Interview with Philippines, Service Provider, P-CX (“In the Philippines, we have what is called the family court. The judges, the prosecutors are trained in handling because they know that cases involving children needs specialized training. So, most of our family courts are trained”).

485 Interview with Philippines, Service Provider, P-CY (“in the provinces, there are not much family courts. They just have ordinary trial courts and then assign them as family courts”); Nepal, Service Provider, N-CTUV (“Though there is a saying that there is child friendly court, but in practice it’s not in regular . . . in reality there is no such [thing.]”).



Thus, the Study suggests a need for improved training on the best interests principle among justice professionals who are involved in SEC cases,<sup>486</sup> as well as the establishment of a clear best interests procedure, along the lines recommended by the Committee on the Rights of the Child. Appointment of a guardian *ad litem*, CASA volunteer or other advocate would also help court officials better understand and consider each child’s interests with respect to the SEC case.

## 9. Feeling Left in the Dark: Sexually Exploited Children Are Rarely Informed or Asked Their Views During SEC Cases

In addition to the duty to consider children’s best interests, justice officials also have a duty to keep child victim-witnesses informed and listen to their views on important matters during cases against their offenders. However, many survivors interviewed for the Study had little or no understanding about what was transpiring in the SEC case, and because cases still tend to move slowly through the courts, some survivors reported being without news about the case for months or even years. Poor communication with SEC victim-witnesses adds to the challenges these children face when trying to navigate through the legal process in the pursuit of justice and remedies.

### 9.1 The Right to Be Informed and to Express Views

Article 12 of the CRC states that children must be provided with the opportunity to be heard in any judicial proceedings affecting them.<sup>487</sup> Article 8(b) of the OPSC specifically requires States to make sure that child victims of sexual exploitation are informed of “their rights, their role, and the scope, timing and progress of the proceedings and of the disposition of [SEC] cases.” Article 8(c) requires States to allow children to present their views, needs and concerns, and have them considered during proceedings, wherever their personal interests are affected.<sup>488</sup>

As explained by the UN Guidelines on Child Victims and Witnesses, justice officials should ensure that, during criminal proceedings, child victims are:

- Notified and “consulted” about their legal rights, the time and place of court events, and the availability of support mechanisms; health, psychological, social and legal services; protective measures; and child-specialized justice procedures.
- Updated on the progress and disposition of the criminal 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,” as well as alternate means for securing compensation.
- Enabled to express 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.”
- Given an explanation when their views and concerns are unable to be accommodated.<sup>489</sup>

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486 Philippines, Focus Group Report, 3; Sevilla, Cristina, Access to Justice Responses, 5.

487 CRC, Art. 12.

488 OPSC, Art. 8(b)(c). *See also*: Palermo Protocol, Art. 6; UN Guidelines on Child Victims and Witnesses, Arts. 8(d), 19, 20, 21, 30(b); UN Model Strategies on Elimination of Violence Against Children, Arts. 21, 24.

489 UN Guidelines on Child Victims and Witnesses, paras. 19-22.



## 9.2 Strengths and Weaknesses in the States' Response

Some professionals in the Study reported that they tried to communicate with children during cases. A judge in Nepal, for example, stated that he met personally with each child victim-witness in SEC cases and listened to their concerns.<sup>490</sup> A prosecutor in the Philippines explained that she visits and spends time with each child who participates in her SEC cases. Police officers in Nepal and Thailand spoke about how they tried to maintain contact with children and families throughout the proceedings.<sup>491</sup>

Nevertheless, child victim-witnesses in the Study Countries do not have a general right to be informed and heard during SEC cases. In Nepal, there appear to be no legal requirements that justice officials communicate with victim-witnesses participating in judicial proceedings, while in the Philippines and Thailand, requirements are incomplete and scattered. Victims have a right to be informed about legal aid and compensation, but not about other aspects of the case.<sup>492</sup> Officials may seek victims' views on certain matters, such as pre-trial detention, but not on all matters affecting them.<sup>493</sup> Some specific gaps include the absence of requirements to:

- Provide children and families with written notice of their rights at the outset of the case;
- Orient them to the justice process and their role in it before the filing of a complaint;
- Seek children's views on decisions to accept private settlements and discontinue cases;
- Communicate with them at regular intervals or at certain key decision-making stages;<sup>494</sup>
- Allow children to have input into the type of support, care, and protection they receive, and the selection of child-friendly interview and trial procedures; and
- Provide children with the opportunity to give a victim impact statement during the sentencing phase of the SEC case.

Respondents expressed concern about the lack of a comprehensive system for communicating with children in SEC cases. One prosecutor in the Philippines, having extensive experience with SEC cases, reported that she was “not aware of the steps that are taken to keep children informed and solicit to their views during the SEC case.”<sup>495</sup>

***“There is no systematic way of informing them...After they file the case, the children come here [shelter]...It was almost one and a half years, and they were not even sent a letter from the court.”***

*Nepal, Service Provider, N-CK*

490 Interview with Nepal, Judge, #2.

491 Interview with Thailand, Police Officers, #1-2

492 Thailand, Anti-Trafficking Act, § 34 (notification about right to compensation and legal aid); Philippines, Anti-Trafficking Act, § 23(c) (requiring notification about complaint filing procedures); Philippines, Anti-Child Pornography Act, § 18.

493 Thailand, Criminal Procedure Code, §§ 108, 108/1, 108/2 (victims have right to submit motion to oppose provisional release of defendant and to be notified about decision). Thailand, Anti-Trafficking Act, § 33 (victims' views to be sought regarding witness protection in during trafficking cases); Philippines, Case Management Protocol at 24, 27 (child's views to be considered at pre-trial conferences); Philippines, Rule on Examination of Child Witness, § 5 (allowing, but not requiring, appointment of a guardian ad litem to ensure child is informed and allowed to give views).

494 *But see*: Philippines Focus Group Report, 5 (noting that parents are invited to pre-trial conferences).

495 Philippines, Focus Group Report, 5.



***“Different people or organizations have different pieces of information and it’s not centralized.”***

*Thailand, Service Provider, T-CH*

In fact, the Study revealed that one in four survivors who spoke about their experience in the justice process had little or no understanding of their legal rights or the progress of the case against their offenders. They did not know, for example, when they would go to court, if they would see the accused, why there were delays, or when they would be allowed to go home. In one case, a Thai survivor did not know if he had received compensation that he believed had been awarded five years before,<sup>496</sup> and in another, a survivor reported that children were so ill-informed about compensation that they sometimes thought they had to go to the perpetrators themselves to collect.<sup>497</sup>

### **9.3 An Important Gap in Communication: Trial Preparation**

Respondents noted that trial preparation is essential in SEC cases, because children often dread the trial experience and know very little about it. NGO respondents often view trial preparation as an important part of their work with survivors. As one NGO respondent explained:

***“[We] prepare them to testify in court and answer questions...every time that they have hearing we have to prepare them and be with them and give them you know the confidence and the assurance that ‘you are the resource person; you are the one who knows the story. No one can change that and be confident because this is your story. Whatever they ask they put on different questions because you know your own story just tell what you know about your story.’ That’s the most difficult thing. Preparing them to testify in court.”***

*Philippines, Service Provider, P-CY*

One survivor expressed gratitude to NGO workers who helped him to understand what to expect at trial, prepare for the chance he might see his offender, and soothe his fears.

***“Before he go to the court, [staff] talk with him about, give him information before go to the court, say to him that he does not need to worry. He will see the police. He will see the judge. He will see these people. He does not need to worry because he is not on the wrong side. So if they ask anything just say the truth.”***

*Thailand, Translator for SEC Survivor, T-SC*

In the Study Countries, there are protocols that urge prosecutors to meet with children to prepare them for trial,<sup>498</sup> but justice officials have no legal obligation to provide trial preparation. One prosecutor stated that he only met with child victim-witnesses before trial when he “had the time”.<sup>499</sup> Thus, the Study suggests that communication with SEC victims, particularly with respect to their appearance at trial, is an area for improvement that could help children participate more meaningfully in criminal cases and access justice.

496 Interview with Thailand, SEC Survivor, T-SC. See also: FWLD, Nepal Implementation Report, 57-58 (reporting that trafficking victims were not kept informed of their cases, unless they were being aided by an NGO. Many survivors were unaware of compensation awards and some were even unaware of the outcome of the trafficking case).

497 Interview with Nepal, SEC Survivor, N-P/S.

498 See e.g. Philippines, SEC Case Management Protocol, 32-33.

499 For example, one prosecutor stated that he did not regularly meet with child victim-witnesses to prepare them for trial, but only when he “had the time.” Interview with Thailand, Prosecutor #1.



## 9.4 Unexplained Delays

The lack of information, when coupled with long delays in proceedings, can be particularly hard on children. Survivors who lived in the Philippines shelters reported being left in the dark about cases against their offenders for long periods of time, sometimes years. Without information on the progress of the case, they assumed that they had been forgotten by authorities, or worse, that their cases had been derailed by corruption. These long information blackouts caused them a great deal of distress and intensified their distrust in the justice system.

Stating that she felt “anger and rage,” one survivor reported that she had been living in the shelter for three years and still had no news about when she would go to court for her first hearing.

**Q: “Are you going to go to court?”**

**A: “I don’t know.”**

**Q: “You haven’t decided?”**

**A: “No. I’m ready but no. It’s very slow. I’m three years now and no hearing, that’s why.”**

**Q: “How does that make you feel?”**

**A: “Anger and rage. Cause I think if they won. Because I think if they want, they would really make a way.”**

*Philippines, SEC Survivor, P-SA*

Another survivor was so frustrated by unexplained delays in the case against her offender that she believed that authorities must have been bribed to make sure justice was not done.

***“It is so slow. I don’t know if there is still justice in the Philippines. I don’t think so. Or maybe there is but it would take how many years? Like in other cases, it took, I think, six years, seven years?...it is up to them, and the cases do not move. Here, if you are rich, you can easily put someone in jail no matter how little the offense. But if you are poor and expect something from the government, nothing happens.”***

*Philippines, SEC Survivor, P-SB*

A third survivor reported that she could not be at peace until the case against her offender was resolved. She had not had an update about the case since “way back before” and she had no idea when the case would come to an end.



*“When she was asked...if she is ready for an interview [for this Study], she came to think about that person again, about her case. She recalled her case, when the case will end. She is still wondering until now when the case will end, be resolved. There is no update for the case because it was way back before...Here in the Philippines, the process is really [slow]. It would take too long.”*

*Philippines, SEC Survivor, P-SZ*

States have a duty, under Article 8 of the OPSC, to try to “avoid unnecessary delay” in the disposition of SEC cases, and the Study Countries have begun to put measures in place to do so. At the time of the Study, many of these measures were still new and their full effects may not have yet been felt.

- Philippines law requires courts to give priority to SEC cases,<sup>500</sup> and the Supreme Court has ordered all courts to prioritize trafficking cases.<sup>501</sup> The Study’s respondents reported that SEC cases still generally took at least five years to conclude.<sup>502</sup> To address the problem, the Philippines initiated a pilot programme of continuous hearings that has begun to show results, with seven trafficking cases in 2015 reportedly completed in less than one year, a remarkable reduction in time.<sup>503</sup>
- Thailand’s Supreme Court recently issued judicial guidelines urging courts to resolve trafficking cases within six months from the first witness interview,<sup>504</sup> and it has created specialized trafficking courts to expedite cases.<sup>505</sup> Respondents in the Study reported that cases typically resolve within two to three years, with some resolving in less than a year.<sup>506</sup>
- Nepal has made significant strides in reducing the length of SEC cases through the use of continuous hearings and fast-track courts for cases of child rape and trafficking.<sup>507</sup> While continuous hearings are still new, a number of recent SEC cases have been resolved in just a few months, and it is reported that the length of cases is declining generally.<sup>508</sup> One respondent even cited a case that resulted in conviction in less than one week.<sup>509</sup>

500 Philippines, Anti-Child Abuse Act, § 30.

501 Philippines Supreme Court Directive (2010), Circular No. 151-2010 (ordering judges to fast-track trafficking cases), reported in Philippines National Report, submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/13/PHL/1, 19 March 2012, 14, accessed 30 September 2016, [https://www.hrw.org/sites/default/files/related\\_material/2012\\_Philippines\\_NationalUPRReport.pdf](https://www.hrw.org/sites/default/files/related_material/2012_Philippines_NationalUPRReport.pdf). See also: International Justice Mission (2014), “More Than 140 Criminals Convicted for Violent Crimes So Far This Year,” 11 December 2014, accessed 9 November 2015, <https://www.ijm.org/articles/more-140-criminals-convicted-violent-crimes-so-far-year> (reporting a case of swift justice in the Philippines, when “[o]ne man pled guilty to attempted trafficking just six months after IJM helped police rescue eight girls and one adult that he was trying to sell to customers for sex. He was sentenced to 15 years in prison and ordered to pay a 500,000 peso fine”).

502 Philippines, Focus Group Report, (SEC cases generally take more than five years). Interview with SEC Survivor, P-SB (reporting cases lasting up to eight years).

503 U.S. State Department (2015), Trafficking in Persons Report: Philippines.

504 U.S. State Department (2015), Trafficking in Persons Report: Thailand.

505 Thai Anti-Human Trafficking Action (2015), “New Criminal Court division set up to tackle human trafficking crimes,” 15 June 2015, accessed 9 November 2015, <http://www.thaianti-humantraffickingaction.org/Home/?p=1425>.

506 Interview with Thailand, Police Officers, #1-2 (SEC cases last six months to two years); Thailand, Service Provider, T-CC (eight months is minimum, but usually two to three years). See also: U.S. State Department (2015) Trafficking in Persons Report: Thailand (“The justice system increased the speed at which it resolved criminal cases for most cases, though some trafficking cases continued to take three years or longer to reach completion.”)

507 FWLD, Nepal Implementation Report, 34, citing District Court Regulation, R.23. (The continuous hearing process for trafficking cases means that once a case is open for hearing, it may not be adjourned until the verdict is delivered.). See also: *General Secretary of Women Rehabilitation Centre v. Nepal, Writ No. WO-0424 of the year 2064* (12 August 2009) (calling for implementation of continuous hearings).

508 FWLD, Nepal Implementation Report, 34.

509 Interview, Nepal, Lawyer #2. While efforts to expedite SEC cases are welcome, it is important to ensure that cases are not moved too quickly. Children need time to reflect and recover and should not be pushed to submit to interviews and hearings before they are ready. Child-friendly measures must also be balanced against the defendant’s right to prepare



## Promising Access-to-Justice Practice: Continuous Hearings for SEC Cases in Nepal

Nepal's use of continuous hearings in SEC cases has recently produced swift results in two prominent cases, with significant compensation awarded to the child victims.

### Canadian Volun-tourism Case, March 2015

A convicted child sex offender from Canada entered Nepal on a tourist visa in August 2014. Posing as a volunteer, he made frequent visits to a children's shelter in Lalitpur. He lured a young, disabled boy into a sexual relationship by promising to buy him a prosthetic arm. The case was investigated and the offender was convicted in 49 days. The offender was sentenced to seven years in prison and ordered to pay one million rupees, the highest amount ever awarded in a SEC case.<sup>510</sup>

### Bal Mandir Case, December 2014

In December 2014, two Bal Mandir orphanage workers in Kathmandu were found guilty of sexually abusing three autistic girls in their care. The workers engaged in sex parties with the girls at the orphanage and brought them to local dance bars to groom them for prostitution. The defendants were arrested three days after the last incident and, within four months, the investigation was concluded and the offenders were convicted. They were sentenced to more than sixteen years in prison and ordered to pay each victim 100,000 rupees in compensation.<sup>511</sup>

## 10. Feeling The Pain All Over Again: Sexually Exploited Children Risk Re-Traumatization During SEC Cases

While sexually exploited children must overcome many obstacles to achieve justice through the criminal system, one of the most daunting is the requirement that they tell the story of their exploitation, often many times, during the criminal proceedings. Respondents emphasized that this experience is even more painful when children must share the details of exploitation in the presence of the one who exploited them, particularly when that person is a parent or loved one. While all of the Study Countries now offer special protections for children during interviews and at trial, the Study revealed gaps that continue to expose children to unnecessary hardship. These include inconsistent implementation, a one-size-fits-all approach to applying available procedures, and the tendency of SEC cases to be more child-dependent than child-supportive, with children made to serve as State's witnesses with little or no other evidence to support their testimony.

### 10.1 The Right to Be Protected from Hardship

Under Article 8 of the OPSC, States must recognize "the vulnerability of child victims and adapt [ing] procedures to recognize their special needs, including their special needs as witnesses." The UN Guidelines on Child Victims and Witnesses emphasize that children who participate in criminal proceedings as victim-witnesses have a right to be protected from hardship throughout the process<sup>512</sup> and recommend a number of child-sensitive interview and trial procedures, including:

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and present a defence.

510 CBC News (2015), "Ernest Fenwick MacIntosh's Canadian victim helped jail him," 3 March 2015, accessed 12 January 2016, <http://www.cbc.ca/news/canada/nova-scotia/ernest-fenwick-macintosh-s-canadian-victim-helped-jail-him-1.2979555>.

511 Pandey, Sunir, "Bal Mandir Rapists Jailed," *Nepali Times*, 5 December 2014, accessed 16 December 2015, <http://nepalitimes.com/article/nation/bal-mandir-rapists-jailed,1861>.

512 UN Guidelines on Child Victims and Witnesses, para. 29.



- interview rooms designed for children;
- the videotaping of interviews to limit the need for repeated questioning;
- examination procedures that allow children to be questioned outside the presence of the alleged perpetrator, without jeopardizing the rights of the defence;
- use of testimonial aids and child specialists during questioning;
- courtroom environments modified to be more child-sensitive (e.g., child-sized chair, furniture arranged to avoid direct views of offender, informal modes of dress, etc.);
- recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, and an appropriate notification system to ensure the child goes to court only when necessary; and
- separate courthouse waiting rooms.<sup>513</sup>

## 10.2 Strengths and Weaknesses in the States’ Response

A positive finding of the Study is that the Study Countries have a number of child-friendly interview and trial procedures in place. For example, in Nepal, female police officers are assigned to interview sexually exploited girls in special police centres for women and child crime victims (there is no similar protection for boys).<sup>514</sup> Cases involving rape, trafficking and other SEC-related crimes must be heard in courtrooms closed to the public,<sup>515</sup> and respondents reported that, at least in some metropolitan courtrooms, these cases may be heard by specialized juvenile benches with the help of social workers or psycho-social counsellors.<sup>516</sup>

Thailand employs a special procedure for questioning children in certain criminal cases, including cases of child sexual assault, prostitution, and trafficking. All interviews must take place in a child-suitable place with a psychologist or social worker present. Any question that might severely impact the child’s mental state must be passed to the psychologist or social worker, who then poses the question to the child.<sup>517</sup> A similar procedure is used at trial. Children are placed in a private room outside of the courtroom in the company of a psychologist or social worker,<sup>518</sup> and the judge may require lawyers to put questions to the child through those specialists.<sup>519</sup> The judge, lawyers, and defendant observe the child’s testimony from outside the room, through closed circuit television, live-link transmission, or one-way glass.<sup>520</sup> In cases of extreme necessity, the court may admit a video-recording of the child’s pre-trial testimony (called an advance statement) instead of requiring the child to appear.<sup>521</sup>

513 UN Guidelines on Child Victims and Witnesses, paras. 30-31. *See also*: UN Model Strategies, Art. 24(i).

514 Nepal, General Code, Chpt. 14 on Rape, No. 10A (note that Nepali law does not punish rape or other sex crimes against boys).

515 *Ibid.*, No. 10B; Anti-Trafficking Act, § 27; Children’s Act, §§ 49 (closed courtroom for cases involving rape, trafficking and using child in an immoral profession).

516 In juvenile justice cases, the bench must include a social worker and child specialist, as well as the judge. Nepal, Children’s Act § 55; Nepal; Juvenile Justice Procedural Rules, 2063 (2006), Rule 6. The law appears to apply only cases involving children in conflict with the law, not child victim-witnesses, but Nepali respondents reported that these specialists are sometimes used in SEC cases, as well. Interview with Nepal, Judge, #1, #2.

517 Thailand, Code of Criminal Procedure, § 124/1 (interview when taking the child’s complaint); § 133 *bis* (investigation interviews), § 133 *ter* (identification of perpetrator).

518 *Ibid.*, § 172 *ter*.

519 *Ibid.*

520 *Ibid.*

521 *Ibid.*, §§ 172 *ter*, 173/2, 237 *bis*; Thailand, Anti-Trafficking Act, § 31.



In the Philippines, relevant protocol requires that police and social workers jointly interview children in child-friendly rooms, preferably at Women and Child Protective Units in local hospitals.<sup>522</sup> In cases where a multi-disciplinary team is involved, the other members of the team (prosecutors, private lawyers, doctors, counsellors, barangay officials and/or others) observe the interview from outside the room.<sup>523</sup> At trial, SEC cases must be heard in judges' chambers or courtrooms closed to the public,<sup>524</sup> and judges have discretion to put in place any of a large number of child-friendly trial procedures, including allowing children to tell their story with support persons by their side; modifying the courtroom environment to make it more child-friendly; and in special circumstances, permitting children to testify outside the defendant's presence through live link technology or from behind a screen, or admitting their prior recorded testimony in lieu of live testimony at trial.<sup>525</sup>

### Promising Access-to-Justice Practice: Child-Friendly Trial Procedures in the Philippines Supreme Court Rule on Examination of a Child Witness (2000)

The Rule provides an impressive list of child-friendly examination procedures designed to create "an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings and facilitate the ascertainment of truth." Most of the procedures are discretionary, requiring the prosecutor or the child's attorney to submit a pre-trial motion for a court order or raise objections at trial.

#### Presence of a support person and other measures to increase child's comfort

The child has the right to be accompanied by one or two adults of his/her choosing for emotional support and to use emotional security items. The court may also appoint certain adults to assist the child at trial, including a guardian ad litem, interpreter, or a facilitator who can help with questioning. It may grant frequent recesses and modify the environment make it more child-friendly.<sup>526</sup>

#### Measures to prevent child from seeing or coming into contact with the accused

To protect the child from confronting the accused during trial, the court may provide a separate waiting room, re-arrange the courtroom to block the child's view of the defendant through use of barriers, one-way mirrors or other devices, or allow the child to testify from a separate room through live-link technology.<sup>527</sup>

#### Special evidentiary rules

There are a number of evidentiary protections, including a child sexual abuse shield rule that prevents admission of the child's sexual history, a special hearsay exception that allows parents, caregivers or other confidants to share what the child said to them about the abuse, and limits on questioning to prevent intimidation or undue embarrassment of the child.<sup>528</sup>

522 Philippines, SEC Case Management Protocol, 21-22.

523 *Ibid.*

524 Philippines, Anti-Child Abuse Act, § 30 (cases of child sexual exploitation must be held in judges' chambers); Philippines, Expanded Anti-Trafficking Act, § 10 (child trafficking cases may be held in closed courtroom); Philippines, Anti-Child Pornography Act, § 13 (child pornography cases may be held in closed courtroom); Philippines, Rule on Examination of a Child Witness, Rule 23 (cases involving child victim-witnesses may be held in closed courtroom).

525 *Ibid.*, Rule 25, 27-29.

526 *Ibid.*, Rules 5, 9-17.

527 *Ibid.*, Rules 12, 13, 25, 26.

528 *Ibid.*, Rules 18, 19, 21, 28, 30.



## Alternatives to appearing for trial

Under special circumstances, the court may admit recorded pre-trial depositions or interviews in lieu of the child's presence at trial.<sup>529</sup>

## Protection of privacy

All of the child's records are kept under seal, protective orders are used to restrict disclosure of videotape and audiotapes of the child, and the child may withhold testimony of identifying information that could endanger his/her safety.<sup>530</sup>

The Study uncovered positive examples of these procedures in practice. Judges and lawyers in the Kathmandu region of Nepal reported that SEC cases are consistently heard in judge's chambers, and in a recent case, the child was reportedly allowed to testify by camera from a private room outside of the accused's presence.<sup>531</sup> In Thailand, there was consensus among respondents that special interview and trial procedures were consistently followed in cases involving children.<sup>532</sup> In the Philippines, respondents confirmed that SEC cases were usually heard in private settings, such as judges' chambers or closed courtrooms and gave accounts of judges taking special steps to reduce the hardship of testifying for children, as described by one NGO respondent, below:

***"So during court hearings, if it's not the regular court, sometimes the hearing would be conducted at the chamber. Or sometimes the judge will not wear the usual dress of the judge. He will not wear that. And then the child will not be asked to sit in the witness stand, so we have the round table. And the judge, and then the social worker is allowed and the child...and if the judge, if she is trained, she would inform the different [lawyers], 'Ok sir, our witness is a child so be careful of how you say the questions, not in a loud voice.' I experienced that in one of the family courts."***

*Philippines, Service Provider, P-CX*

The Study also revealed gaps. According to respondents, child-friendly procedures were more likely to be followed in the metropolitan areas, where police stations and courthouses are better-equipped and professionals are better trained on child-friendly interview procedures. There was a reported shortage of trained family judges in the Philippines,<sup>533</sup> social workers and translators in Thailand,<sup>534</sup> and female police officers, psycho-social counsellors, and child-friendly interview rooms in Nepal.<sup>535</sup>

***"Though there is a saying that there is child friendly court, but...in reality there is no such."***

*Nepal, Service Provider, N-CTUV*

529 *Ibid.*, Rules 27-29.

530 *Ibid.*, Rule 31.

531 Interviews with Nepal, Judge #1, Judge #2, Lawyer #1.

532 Interviews with Judge#1, Prosecutor #2, Lawyer #1.

533 Philippines, Focus Group Report, 3; Interview with Philippines Service Provider, P-CX.

534 Interviews with Thailand, Lawyer #1, NGO Specialists, SP#1 and SP #2, Police Officers, #1-2.

535 Every criminal justice respondent interviewed in Nepal noted the insufficient number of female police officers and need for more social workers or counsellors to help at trial. Respondents also noted the shortage of child-friendly rooms. Interviews with Nepal, Service Providers, N-CTUV, N-CJ.



Technology was also cited as a weakness in all of the Study Countries. According to respondents, interview rooms in Thai police stations do not always have recording equipment, so that children are sometimes re-interviewed unnecessarily.<sup>536</sup> The use of live link technology is still relatively new in the Philippines and Nepal, and not regularly available.<sup>537</sup> Even in Thailand, where use of the technology is more common, an NGO worker reported technical difficulties that resulted in the child being made to testify in the courtroom in front of her offender:

***“I found this one time I took a [child] to the court and separate the room and the social worker ask the [child] questions but the judge couldn’t hear and said “please ask again” and the social worker asked and the [child] answer. Maybe it is the electronic process that is a problem, and the judge cannot hear and said “bring the [child] here in this room.’ Our director was very upset about that.”***

*Thailand, Service Provider, T-CFG*

### 10.3 The Hardship of Having to Recount Abuse

Indeed, the Study revealed that, even with child-friendly procedures, the process of sharing the details of their sexual abuse and exploitation is still one of the most difficult aspects of the justice process for children.

***“The most difficult thing is that they have gone through a lot of trouble, difficulty and pain and they might not be willing to share their experience. Sharing such pain over and over again is hard. It is even harder when people have done wrong to you and you have to repeat it in front of people again and again. The feeling of being wronged is difficult to express because you cannot be sure who understand it and who doesn’t.”***

*Nepal, SEC Survivor, N-SJ*

***“The hardest part is testifying in court...I had a case...[the child] was not able to speak, just cry only in court...[the child] was saying to me that ‘I’m frozen each time I stand at the witness stand. And as they ask questions, I realize how I was treated and abused. I recall.’ Such difficult!”***

*Philippines, Service Provider, P-CY*

***“At the court...I was afraid. I was afraid that I may not be able to say [any] thing.”***

*Thailand, SEC Survivor, T-SC*

According to respondents, the experience is made even more difficult by the fact that children must often tell the story of their abuse many times, including at the intake interview, medical exam, investigation interview(s) and trial, and they may relive the pain of the experience with each retelling.<sup>538</sup>

536 Interview with Thailand, Lawyer #2.

537 Interview with Nepal, Judge #2 (reporting first case of live-link testimony in Lalitpur); Philippines, Service Provider C-X.

538 See: ECPAT Europe Law Enforcement Group (2006), “Combating the Trafficking in Children for Sexual Purposes: A Training Guide,” 103 (urging officials to “[a]void a multiplicity of interviews. If possible, arrange one interview only, taking time to involve all the relevant authorities in its planning. Care should be taken to avoid intimidating the child with too many people present, but it is also important to ensure that the child will not be subjected to several interviews and to re-live the abuse repeatedly. All persons participating in the interview must clearly understand their roles”).



***“They have to repeat the story many times, to tell the investigator and to tell the psychologist and tell the court. Many process, tell, repeat. They trauma.”***

*Thailand, Service Provider, T-CB*

***“For us, it’s them retelling the same story. It re-traumatizes them...So the child having to tell the story three times doesn’t work. It doesn’t work for these kids. It doesn’t work for us.”***

*Thailand, Service Provider T-CA*

In some cases, a long period of time will pass between questioning, and revisiting the details of abuse can set back any recovery the child has managed to achieve.

***“Suddenly there is the case again. They would go back to what happened to them previously, like the trauma. It will go back again. They will experience again. Their self-esteem would be affected again. “***

*Philippines, SEC Survivor, P-SB*

***Q: “So for the child, what part of the process do you think is the hardest?”***

***A: “I think the having to relive what happened to them repeatedly, over and over. And for lot of times, cases go on for years. So you really can’t ever put it behind you.”***

*Philippines, Service Provider, P-CZ*

These long delays also cause children’s memories to fade. For some survivors, many years will pass before they appear at trial and are asked to give detailed accounts of what happened to them. Respondents reported that these delays add to children’s anxiety and make the trial a much more difficult experience for them.

***“The problem is the process take long time to finish. Sometimes they did not recognize or remember the whole story, what happened to them...Children cannot remember the whole story about the time, how many times, or something like that. Is too difficult.”***

*Thailand, Service Provider, T-CB*

Some respondents in Thailand and the Philippines advocated for courts to admit recordings of the child’s pre-trial interviews instead of requiring them to appear at trial many months or years later and repeat their story.<sup>539</sup> However, judges were said to be unwilling to admit these recordings (even when the defence had the opportunity to cross-examine the child at the original interview), preferring to see and hear the child themselves.<sup>540</sup>

#### **10.4 The Special Difficulties of Giving Testimony in SEC Cases**

Respondents identified certain aspects of the interview and trial process that were particularly difficult for SEC survivors, including having to testify in front of their exploiters and endure victim-

539 Professionals also advocated for use of prior recorded testimony to allow children to be released from shelters before trial, as well as to guarantee their testimony in the event they run away. Interviews with Thailand, Service Providers, T-CB, T-CC, Lawyers #2, #3.

540 Interview with Philippines, Service Provider, P-CX (“Although some of the family courts would allow the videotape in their interview but seldom. . . It would prefer again the physical presence of the [child].”); Interview with Thailand, Service Provider, T-CC (“That part of the legal process [child interview] is done by the multidisciplinary team . . . and there is the videotape of that process, but that videotape has never been used in court. So what I would like to see is to have that videotape to use in court without the child to go into the court again”).



blaming questioning. Certain groups of children, including adolescents, boys and transgender youth, and migrant children, were likely to experience even greater challenges.

### Confronting the SEC Offender

Professionals reported that, for many sexually exploited children, the most difficult part of telling their story was having to do so in front of their exploiter.<sup>541</sup>

***“Most difficult for children is facing the perpetrator and talking about their experience...the trial is there and the child has to face the abuser, that’s really difficult.”***

*Thailand, Service Provider, T-CA*

***“Ah, the hardest? Facing the abuser during the court hearings. They are so afraid of seeing the perpetrator. Especially if that is their father, you know, family members.”***

*Philippines, Service Provider, P-CX*

Survivors confirmed that speaking about their abuse in the presence of their abusers was the “hardest” part of the justice process, especially when their abuser was a family member.

***“The hardest part was when she pointed to the perpetrator, because that perpetrator is a relative. She felt guilty but since it’s a need, it’s important to have it for justice.”***

*Philippines, Translator for SEC Survivor, P-SE*

***“The perpetrators are put in front of the [children] because of which they get scared...They definitely cannot talk in front of the perpetrator because they are already so scared. This is a wrong practice”***

*Nepal, SEC Survivor, N-SK*

For some survivors, the worst part of testifying was not seeing the exploiter, but being seen by him. One young woman in Thailand was afraid that, if her offender saw her at court, he would be able to find and hurt her later on.<sup>542</sup> Another survivor had a similar fear and advocated for a way to allow children to testify while out of the defendant’s sight.<sup>543</sup>

***“I don’t want to go to the court because the [offender] will know that it’s me, will see me, and then I might be harmed, get hurt, later on.”***

*Thailand, SEC Survivor, T-SA*

***“What I would like it to be improve...is that I would not want that the offender can see children in the court.”***

*Thailand, SEC Survivor, T-SC*

541 Thai criminal justice respondents felt that children usually gave testimony remotely, through live link technology or other means, so that they do not normally testify in the defendant’s presence. These respondents represent a select group from metropolitan areas, and their experience is representative of the country as a whole.

542 In a study of the experience of SEC survivors in the British criminal justice system, survivors reported that they were afraid of the offender seeing them at court, because it was common for a great deal of time to have passed since the crime and they did not want the offender to see what they looked like more grown-up. They feared that this would allow the offender to be better able to find and hurt them if acquitted. Helen Beckett and Camille Warrington (2015), “Making Justice Work,” University of Bedfordshire (March 2015), 39-41, accessed 30 September 2016, [www.beds.ac.uk/\\_data/assets/pdf\\_file/0011/461639/MakingJusticeWorkFullReport.pdf](http://www.beds.ac.uk/_data/assets/pdf_file/0011/461639/MakingJusticeWorkFullReport.pdf).

543 Interview with Thailand, SEC Survivor, T-SC.



## a) Victim-Blaming and Insensitive Questioning

Respondents also reported that sexually exploited children were subject to victim-blaming during questioning, based on the perception that they were willingly engaged in sex for pay. They faced this treatment from, not just the defence counsel, but also police, prosecutors and judges – “the people that you would think should be for the child.”

***“Even in court they talk so badly with [children]. They do know in advance what happened to [children] but just to discourage the [children] from speaking up they ask very shameful and awkward questions to the [child]. They always try to make perpetrator win.”***

*Nepal, SEC Survivor, N-SK*

***“I found that people that are working in the criminal justice field are not sensitive to the nature of [SEC] cases. They don’t really know how to talk to clients, how to ask questions, they’re very judgmental, very much sole victim-blaming and the children are crying.”***

*Philippines, Service Provider, P-CA*

***“Absolutely the hardest part of going to court is the interrogation by people that you would think should be for the child. “***

*Thailand, Service Provider, T-CE*

According to one advocate in Thailand, police ask questions that suggest the child has consented to engage in commercial sex, such as “you go out to the abuser’s house by yourself or like that.”<sup>544</sup> In the Philippines, a prosecutor was reported to dismiss a SEC case on technical grounds after telling the child’s lawyer that she felt the child “wanted it.”<sup>545</sup> In Nepal, a survivor reported that judges sometimes treated sexually exploited children coldly, betraying in their manner that they thought the children were “spoiled” and not entitled to justice.<sup>546</sup>

***“And even if the case is reached to the court, the judges they are very judgmental and they think that, ‘you [children] you are already spoiled. So what kind of justice are you seeking?’ There can be no justice for sex workers who are the sickness of the society.”***

*Nepal, SEC Survivor, N-SS*

### A Child’s Story: Victim-Blaming in the Courtroom.

The Study revealed that sexually exploited children who engage with the justice system often encounter judges and prosecutors who have no understanding of SEC victimization and blame the children for their involvement in sex work. A lawyer representing a child victim of prostitution shared a case in which the female prosecutor took her aside and said, “just between the two of us, your client looked like she wanted it.” The prosecutor then dismissed the case on technical grounds. The child’s lawyer won a motion for reconsideration. This time, the case was assigned to a corporate court, where the judge, prosecutor and court personnel were also antagonistic toward the child. At the time of the interview for this Study, the lawyer was still not sure how the case would be resolved and could not “imagine what would become my client and her case if she had no private lawyer helping her.”<sup>547</sup>

544 Interview with Thailand, Service Provider, T-CFG.

545 Sevilla, Cristina, Access to Justice Responses, 5.

546 Interview with Nepal, SEC Survivor, N-SS

547 Sevilla, Cristina, Access to Justice Responses, 5.



## b) Special Challenges for Particular Groups of Sexually Exploited Children

The Study also revealed special challenges faced by particular groups of SEC survivors:

### *Adolescents*

Children who are exploited through prostitution are often adolescents.<sup>548</sup> Because disclosures are often delayed and SEC cases often move slowly, many of these children will be older teens or even young adults by the time their cases reach trial. As a result, they may no longer be eligible for child-friendly procedures. In Nepal, only children who have not completed their sixteenth birthday may have cases heard with the aid of child-specialized counsellors.<sup>549</sup> In the Philippines and Thailand, special procedures are available to children under age 18 (or even older in the Philippines in exceptional cases), but many procedures are discretionary. Professionals may consider special accommodations unnecessary or unfair to defendants when victims are older children – even when those procedures might be appropriate for the individual child. One respondent reported that “young kids” were in greater need of protection and more likely to be allowed to testify outside the defendant’s presence than older children.<sup>550</sup>

### Promising Access-to-Justice Practice: Expanded Eligibility for Child-Friendly Procedures

Section 4(a) of the Philippines Supreme Court Rule on the Examination of a Child Witness (2003) provides a broad definition of “child witness”, which extends child-friendly protections to children under age 18 and older in certain cases. A person older than age 18 may be deemed a child for purposes of accessing special trial procedures if the court finds that he was “unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.” Section 3 also requires courts to construe the rule liberally in order to promote maximum accommodation of child witnesses without prejudice to the defendant.

### *Boys and transgender youth*

Child-friendly interview and trial procedures are not always available to boys and transgender youth. In Nepal, for example, rape laws apply only to women and girls,<sup>551</sup> and only females have the right to be interviewed by a police officer of the same gender. Specialized police and hospital units in the Study Countries also seek to employ female professionals to better serve female victims.

### *Migrant children*

Migrant children may be diverted into immigration systems that do not contain the same types of child-friendly procedures available to child victims of crime. Even when these children participate in SEC proceedings as victim-witnesses, the shortage of translators was reported to make questioning particularly difficult.<sup>552</sup> In Thailand, respondents noted that there were “never enough” translators for the many victims that come from neighbouring

548 See, Section 2 of this report.

549 Nepal, Children's Act, 1992, § 2(a) (child is anyone under age 16); but see Nepal Anti-Trafficking Act, § 2 (a child is defined as anyone under 18, but the Act contains no child-specific procedures).

550 Interview with Thailand, Service Provider, T-CA.

551 Nepal, General Code of Nepal, Chpt. 14 on Rape. Note, however, that Nepal’s anti-trafficking law applies to all adults and children, regardless of gender. Nepal, Human Trafficking and Transportation (Control) Act, 2064, §. 2.

552 Interviews with Thailand, Police Officers #1-2, #3; Lawyer #3. U.S. State Department (2014, 2015) Trafficking in Persons Report, Thailand.



countries. In the Philippines, one respondent noted that, while pre-trial interviews might be conducted in the child's local language, trials are generally in English. It is not uncommon for the child to be the only person in the courtroom who cannot speak or understand English and, even with a translator, this can be a confusing and frightening process.

*"I have testified many times in court, child abuse cases, and the lawyers are speaking in English and the interpreter interpreting it for the child...[I]t's a way of controlling the situation. And these children fear because they don't know the language...That's very frightening to the children...If, for example, the child is not able to understand well, they speak in loud voices. The courts sometimes will remind them 'this is a child counsel, speak in a lower voice. So you won't frighten the child.'"*

*Philippines, Service Provider, P-CY*

## 10.5 The Need for a More Flexible Approach to Child-Friendly Interview and Trial Procedures

While improving implementation of existing child-friendly interview and trial procedures would surely reduce these hardships, the Study also shows that, when procedures are applied, they are not necessarily suited to the individual needs of the SEC survivor.

### a) Limiting the Number of Interviews

For example, while many professionals in the Study Countries advocated for reductions in the number of times that children are made to tell their story during the criminal proceedings, this approach may not be best in all cases.

As previously noted, sexually exploited children often need time to develop trust before they fully reveal what happened to them. If the child's first interview is recorded and used to inform the rest of the proceedings, the child's story may never be completely and accurately told. As explained by a lawyer in Thailand,

*"[P]olice try to get the information as soon as possible when they are not ready, because victims are still at the stage that they will say what they were trained to say. For example, they would say that they stay outside the bar or the brothel, and in this case they are not considered trafficked. Or sometime they say that they are just waitress. And police just use this information."*

*Thailand, Lawyer #3.*

Moreover, the Study shows that some children want the opportunity to tell their story fully and to play a role in bringing their offenders to justice.

*"I understand the court is where I give an answer to the question and it will be honest answer...I did not want to involve in this at the beginning. But then, what I explained, I changed my mind because I want to help the police to be able to close the case, to go into the process and finish it...The good thing in this process is that I'm participating and I'm helping this thing to stop so it doesn't happen to other child."*

*Thailand, SEC Survivor, T-SB*



***“The advice that I would give to junior is they have to prepare mentally to be ready to go to the court...Meaning to prepare about talking. To talk about our own story. He said he feels proud of himself. He feels good about having gone to court.”***

*Thailand SEC Survivor, T-SD*

***“She would speak honestly so that the case would be easy.”***

*Philippines, SEC Survivor, P-SC*

***“[C]hildren are suppressed. They don’t listen to children. That’s why most of the time, they are not courageous enough to come forward and report. So if you make survivors independent and capable, they can identify such cases and bring them out.”***

*Nepal, SEC Survivor, N-SG*

Rather than set arbitrary limits on the number of interviews, it may be better to empower children to fully express themselves in a safe and appropriate environment, including a specially-trained interviewer, child-sensitive questioning, support persons of the child’s choosing, and a warm and comfortable environment.

Along similar lines, advocates sometimes seek to have the child’s pre-trial statements admitted at trial to spare the child from having to appear and tell his or her story again. However, survivors in the Study were willing to tell their story to the judge if they could be spared from having to do so in the presence of the defendant. One way to empower these children to give their trial testimony is to allow them to testify remotely through live link technology or other means. One survivor even suggested that if she did not have to look at her exploiter at trial, it would be “easy” for her to answer questions about what the exploiter had done to her. For children who are terrified by the prospect of being seen by the defendant, simple options may be to allow them to testify from behind a screen or to arrange furniture in the courtroom to obscure the defendant’s line of vision.<sup>553</sup>

***“She would just listen to the judge so she can easily answer. She would answer without looking at the perpetrator...Do not let the child or the victim look at the perpetrator so she can easily answer, so that the child would not be afraid.”***

*Philippines, SEC Survivor, P-SE*

## **b) In Camera Hearings**

*In camera* hearings are another child-friendly procedure that is often implemented in the Study Countries and elsewhere around the world. SEC survivors are permitted to provide testimony in the judge’s chambers in a private and more informal setting. While these hearings exclude the public, they do not generally exclude the defendant. The defendant is present to exercise his or her right to cross-examine the child. Some of these rooms can be quite small and the parties may be seated together around a single table. As a result, *in camera* hearings can require children to speak about the details of their abuse while in even tighter quarters with their offender than if they had been seated at separate tables on opposite sides of a courtroom.<sup>554</sup>

553 Some may argue that these methods impinge the accused’s right to confront the witnesses against him or her. However, it is important to recognize that child victims also have a right to have their best interests given primary consideration. Allowing the child to give testimony outside of the defendant’s presence or line of vision alters but does not deprive the defendant of the opportunity to cross-examine the child. For this reason, these methods are authorized by law in the Philippines, Thailand and other countries around the world, and live-link testimony has been admitted in all of these countries.

554 FWLD, Report, 68 (reporting that trafficking victims in Nepal are sometimes not allowed to have anyone with them when interviewed in judges’ chambers).



One survivor in the Philippines acknowledged that, while she was glad to tell her story in the judge's private chambers to avoid feeling "ashamed," she found it difficult to speak while seated so close to the family member who exploited her. She struggled to "not allow the perpetrator to look at me so that I would not feel pity and could answer directly."<sup>555</sup>

A judge in the Philippines reported that she sat next to the child and placed the prosecutor between the child and the defendant.<sup>556</sup> While the arrangement may have spared the child from having a direct view of the defendant, it may not have prevented the child from feeling the presence of the abuser so nearby.

Taking the child's testimony in private settings is a child-friendly accommodation that may be best for many children. But, it does not address the fear of testifying in front of the accused that distressed so many of the survivors in this Study, and it may, in fact, make it worse. A better option for some children may be to allow them to testify by live link technology or in a courtroom with dividing screens.<sup>557</sup> Indeed, a lawyer in the Philippines described the relief that her client felt when allowed to testify remotely, rather than in an *in camera* setting with the defendant:

***"During her testimony, I utilized the live-link television which was installed in one of the family courts in Manila Regional Trial Court. There was much relief on the face of my client after testifying and, compared to the other cases I have handled were there was no live-link television, there is obvious advantage."***

*Philippines, Lawyer #10*

International law and standards call for a more flexible approach to child-friendly procedures, one in which child-friendly procedures are selected based on consideration of the needs, interests and preferences of each child.<sup>558</sup> This approach would help sexually exploited children engage more effectively in proceedings against their offenders and access justice.<sup>559</sup>

## 10.6 Child-Dependent, Rather than Child-Supportive Cases

Adding to the hardship of the trial experience for sexually exploited children is the fact that SEC cases are often child-dependent, rather than "child-supportive," with little or no evidence to corroborate the child's testimony. While this approach is not unusual for SEC cases and is sometimes the only way a case can proceed, the Study revealed significant gaps in the way that SEC investigations are conducted. As a result, SEC prosecutions often depend on the child's testimony alone to convict exploiters.

555 Interview with Philippines, SEC Survivor, P-SF.

556 Philippines, Focus Group Report, 7.

557 Yet, even live-link technology may not be suited to all children. One survivor in the Philippines gave it a less positive appraisal than the professionals in the Study, finding it troubling to have many people "asking things through video." Interview with Philippines, SEC Survivor, P-SG. In a study of SEC survivors in Britain, some children did not like live-link technology because everyone in the courtroom (including the defendant) could see them but they could only see their examiner, making them feel unfairly exposed and vulnerable. Helen Beckett and Camille Warrington, "Making Justice Work," 39-41. It may also not be appropriate to use electronic means of testimony when children were sexually exploited online through similar means. See: Palmer, Tink (2004), "Just One Click from Abuse," *The Guardian*, 10 February 2004, accessed 22 November 2015, [www.theguardian.com/technology/2004/fed/10/society.childprotection](http://www.theguardian.com/technology/2004/fed/10/society.childprotection).

558 OPSC, Art. 8 (should adopt appropriate measures to protect the rights and interests of child victims . . . 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"); UN Guidelines on Child Victims and Witnesses, paras. 19, 21 (officials should inform and consult with children on "the manner of testimony, and ways in which "questioning will be conducted during the investigation and trial").

559 See: Section 5 of this report on best interest's determinations.



Survivors in the Study understood the key role they played in the SEC case, and some were terrified that their evidence would be insufficient to convict and would allow their offender to go free and harm again.

***“Another thing that he said he was apprehensive [about] during the court process is that he not sure whether or not what he said, it would be strong enough evidence to get this man. He was afraid that this man might escape jail.”***

*Thailand, Translator for SEC Survivor, T-SC*

***“I think it is scary because the perpetrator might deny his crimes. The big person in the court [judge] might decide that the perpetrator is innocent. The perpetrator also might hurt us.”***

*Nepal, SEC Survivor, N-SI*

Prosecutors acknowledged the need to build SEC cases that were less “victim-dependent” in order to support child victims at trial, to present stronger cases, and sometimes, to allow cases to proceed even when the child cannot take part.

***“We should not be victim dependent but must gather evidence other than the testimony of the victim.”***

*Philippines, Prosecutor #2.*

***“Instead of relying just on the statements of the victims, we push them to collect other evidence too...normally police would rescue the victims and take care of them, sending them to shelter and just leave the place without screening it. So this means that you can rely only on their words. Other evidence in the crime scene were not collected.”***

*Thailand, Prosecutor, PP #2.*

Prosecutors advocated for a more modern approach to SEC cases that views each location related to child’s exploitation (a bar, brothel, massage parlour, nightclub, motel room or residence) as a crime scene that should be screened for evidence.<sup>560</sup> According to respondents, this approach can yield a wide range of corroborative physical evidence, including business ledgers, bills, tickets, photographs, cash, and condoms, as well as identify witnesses who can provide useful testimony.<sup>561</sup> Even evidence that corroborates small details of the child’s story can help demonstrate the child’s credibility when the evidence is viewed as a whole.<sup>562</sup>

560 Mangubat, Eileen (2014), “Courage to fight human traffickers: Tacloban lady prosecutor is 24th Aquino fellow,” *Cebu Daily News*, 22 June 2014, accessed 20 July 2016, <http://cebudailynews.inquirer.net/33564/courage-to-fight-human-traffickers-tacloban-lady-prosecutor-is-24th-aquino-fellow#ixzz4Eyq93beO>.

561 For more information on the crime scene approach to SEC investigations, see: Clayton, Ellen, Krugman, Richard and Simon, Patti (2013), “Confronting commercial sexual exploitation and sex trafficking of minors in the United States,” Washington, DC: The National Academies Press, 197-234, <http://www.nap.edu/catalog/18358/confronting-commercial-sexual-exploitation-and-sex-trafficking-of-minors-in-the-united-states>.

562 Long, Jennifer, Wilkinson, John, and Kays, Julie (2011), “10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member,” *Strategies: The Prosecutors’ Newsletter on Violence Against Women*, September 2011, accessed 2 August 2016, [http://www.aequitasresource.org/10\\_Strategies\\_for\\_Prosecuting\\_Child\\_Sexual\\_Abuse\\_at\\_the\\_Hands\\_of\\_a\\_Family\\_Member.pdf](http://www.aequitasresource.org/10_Strategies_for_Prosecuting_Child_Sexual_Abuse_at_the_Hands_of_a_Family_Member.pdf). Lynch, Darlene *et al.* (2012), “Improving offender accountability in CSEC cases: Tools for investigating and prosecuting adult exploiters,” Barton Child Law and Policy Centre, Emory University School of Law, Atlanta: Georgia, accessed 30 September 2016, [www.bartoncentre.net](http://www.bartoncentre.net).



***“The place of the crime scene always has documentation, bills, tickets, or simply interviewing the convenient store owner, or toy machine place around, the cleaner, or doctor. In one place there was a doctor coming to check the children, and we found the medical records. So I was asking why don’t we use these evidence?...They [police] didn’t get it, because since it was a trafficking case they wanted to rely on victim-witness.”***

*Thailand, Prosecutor, PP #2*

NGO workers in Thailand reported that they often help conduct these kinds of crime scene investigations, bringing their own gloves and bags to collect evidence and video-cameras to record the scene.<sup>563</sup>

***“When they rescue, my duty is to follow police and see how they are collecting evidence, because they don’t know...Some police are not graduate from law. They don’t know the chain of custody, or which evidence they shall take. Sometime we prepare them like bags and other facilities, and after we collect evidence we go to the police station.***

*Thailand, Lawyer #1*

***A: “We help police in every process, because we also go to the raid, usually we bring video camera and record everything, and collect evidence...”***

***Q: “So they use your videos and other evidence in court?”***

***A: “Yes, videos, pictures, bank [records], condoms, the money, every single thing [in] the room, the book, the register. In the register, there are many evidence on the money received by each girl, the organization, and also the medical evidence, like days off that they need, mainly for STD.”***

*Thailand, Lawyer #3*

Medical evidence is another critical type of evidence in SEC cases that can be used to support the child’s story of sexual abuse and exploitation. This type of evidence was identified as an area of weakness in Nepal by justice officials, who reported that there are few adequate forensic labs, and exams are only conducted when victims can afford to pay for them.<sup>564</sup>

In addition to collecting evidence to corroborate the victim’s account of criminal events, some prosecutors advocate for the introduction of evidence to educate courts about SEC victimology and to combat harmful misconceptions.<sup>565</sup> This evidence may include expert testimony by SEC-specialised police officers or caregivers, that explains how children are lured into the sex trade,

563 A lack of coordination between police and prosecutors was reported to contribute to less complete SEC investigations. One Thai prosecutor explained that even when prosecutors want to build stronger cases around child victims, they must wait for the initial police report before they can request any additional investigation. By then, he said, “sometimes it’s too late for us. Because the crime scene has already changed and it’s contaminated. Nothing is left or something has been changed.” Interview with Thailand, Prosecutor #1.

564 Judge #1, Lawyer #1, Prosecutor #1, Service Provider, N-CTUV (“Most of the time, family cannot bare that cost because they are already poor. . . [W]hen the proceedings start the children have to be taken for medical check-up and these medical check-ups cost money too. Even though they go to government hospitals, it’s not for free.”).

565 For similar approaches used in SEC cases in the United States, See e.g. Lynch, Darlene C., Tucker, Kosha and Widner, Kristen (2012), “Improving offender accountability in CSEC cases: Tools for investigating and prosecuting adult exploiters,” Atlanta, GA: Emory University School of Law Barton Child Law and Policy Centre, accessed 30 September 2016 <https://traffickingresourcecenter.org/sites/default/files/Improving%20Offender%20Accountability%20in%20CSEC%20-%20Emory%20Law.pdf>; See also: “Confronting commercial sexual exploitation and sex trafficking of minors in the United States,” 197-234.



what prevents them from leaving, and why they exhibit victim behaviours that may seem unusual (delays in reporting, denial of abuse, attachment to the abuser, distrust or hostility toward authorities).<sup>566</sup>

Another way that SEC survivors may be supported at trial is by making maximum use of protective evidentiary rules. Philippines has a number of beneficial rules, including a child hearsay exception that allows the child's confidants to share what the child told him or her; a sexual abuse shield law that prohibits evidence of the child's consensual sexual history; and limits on questions that could harass or embarrass the child (though it is not clear if these rules are well implemented).<sup>567</sup>

Moving toward a more child-supportive approach to SEC cases can have benefits for the State, as well as the child. It enables children to be more effective witnesses and allows prosecutors to present more compelling cases that could yield more successful prosecutions. It could, in turn, be an effective way to enhance the child's access to justice.

## 11. Feeling Defeated: Sexually Exploited Children Are Unlikely to Receive Legal Remedies

***“He said that he himself he did not want to ask for compensation because he know this offender as well. But he was saying it would be good if he could have just small pay. He did not want to ask for millions and millions. Just small thing that he can help with their life to buy thing to live on.”***

*Thailand, SEC Survivor, T-SB*

Compensation is often essential if sexually exploited children are to access the long-term and often extensive services they need to recover and take steps to rebuild their lives. Although court-ordered restitution is a primary avenue for compensation, it appears to be an overlooked part of the justice process. State compensation programs are a welcome alternative, but awards are usually small. The Study shows that the compensation process is not well-understood by children and families involved in SEC cases and hindered by a perception that children who have “earned” money for engaging in sex do not deserve monetary awards.

### 11.1 The Right to Remedies

Sexually exploited children have a right to remedies and reparation. Article 39 of the CRC and Article 9(3) of the OPSC requires States to take steps to promote the full physical and psychological recovery and social reintegration of SEC survivors. Article 9(4) of the OPSC also requires States to help children seek financial compensation from their offenders.<sup>568</sup>

566 Lynch, Darlene *et al.*, “Improving offender accountability in CSEC cases: Tools for investigating and prosecuting adult exploiters”; Long, Jennifer, *et al.*, “10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member,” *Strategies: The Prosecutors’ Newsletter on Violence Against Women*, September 2011, accessed 2 August 2016, [www.ncptc.org](http://www.ncptc.org); Sevilla, Cristina, telephone conversation with author, 8 June 2015 (reporting that a private prosecutor considered introducing an expert from the Women and Child Protection Unit to explain SEC victimology in the Philippines but was wary of how to prevent a battle of experts).

567 Philippines, Rule on Examination of a Child Witness, Rule 19, 28, 30. Nepal appears to have no child-specialized evidentiary rules. While Thailand has a rape shield law, Criminal Procedure Code, § 226/4, it has been reported that “[e]vidence of the victim's background, sexual history or sexual relationship with the perpetrator - inadmissible in many countries - are often used in Thai courts to undermine a victim's credibility.” Win, Thin Lei (2013), “For Thai rape victims, seeking justice is another assault,” *Thomson Reuters*, 8 March 2013, accessed 2 August 2016, <http://www.trust.org/item/?map=for-thai-rape-victims-seeking-justice-is-another-assault/>.

568 OPSC, Art. 9(4) (States must help children “seek, without discrimination, compensation for damages from those legally responsible”).



As explained in the UN Guidelines on Child Victims and Witnesses, remedies 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”. Wherever possible, they should cover the costs of the child’s social and educational reintegration, medical treatment, mental health care and legal services. States should also take measures to ensure enforcement of restitution orders.<sup>569</sup>

## 11.2 Strengths and Weaknesses in the States’ Response

Court-ordered restitution from a SEC offender is a principal way that sexually exploited children access remedies. In Nepal, criminal courts must order restitution in all SEC cases involving rape and trafficking.<sup>570</sup> In the Philippines and Thailand, criminal courts can choose whether to order restitution at the end of a SEC criminal case.<sup>571</sup> Criminal courts in those countries adjudicate a civil action for damages on behalf of the victim as part of the criminal proceedings against the offender.<sup>572</sup> Damages may include compensation for the child’s physical and mental harm, injury to liberty or reputation, and loss of property.<sup>573</sup>

### Criminal Convictions

For sexually exploited children to receive restitution, the offender must first be criminally convicted. The Study shows that this is rare. As previously discussed, few children report sexual exploitation or file criminal complaints against their offenders, and even when they do, they often have trouble participating in the criminal case until a successful conclusion. Respondents emphasized that, without the effective participation of the child victim, most SEC prosecutions will fail and offenders will go free.<sup>574</sup> The following account from a caregiver in Nepal illustrates this type of case.

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569 UN Guidelines on Child Victims and Witnesses, paras. 35-37.

570 Nepal, Anti-Trafficking Act, § 17 (court shall award compensation equal to at least half of the fine levied against the offender); Nepal, General Code, Chpt. 14 on Rape, No. 10C (court shall award “reasonable compensation”); Nepal, Children’s Act, § 53(6) (in cases involving use of a child in an immoral profession, court may order the convicted offender to pay “reasonable amount” of compensation).

571 Philippines, Revised Rules of Criminal Procedure, § 120 (court may order defendant to pay damages caused by his wrongful act); Thailand, Code of Criminal Procedure § 44/1 (prosecutor may make a claim for restitution on behalf of the victim or the victim may file a motion to have the court order the defendant to pay compensation).

572 Philippines, Revised Rules of Criminal Procedure § 111 (“When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless”); Thailand, Code of Criminal Procedure, § 44 (“A claim for restitution . . . may be exercised by the public prosecutor together with the institution of a prosecution or by way of motion subsequently submitted at any stage of the criminal proceedings... A judgment as to the claim for restitution . . . shall be rendered as part of that as to the criminal case”).

573 Philippines, Revised Rules of Criminal Procedure 111 (court may award “moral, nominal, temperate, or exemplary damages”); Thailand, Code of Criminal Procedure § 44/1 (court may award “compensation in as much as the commission of offence by the defendant has caused him to lose his life, or sustain bodily or mental harm, personal liberty injury, reputation impairment or proprietary damage”).

574 See e.g. Interviews with Philippines, Prosecutor #2, Thailand, Prosecutor #2.



## A Child's Story: When a Child's Trauma is Too Great to Access Justice

For some children, the trauma of their abuse and exploitation is so great that it is not possible for them to engage with the criminal justice system to access justice. In these cases, children are too fragile or frightened to provide evidence, and cases against their exploiters must often be withdrawn. An example was provided by a Nepali caregiver in the Study:

"They [children] were locked in a room, and were given only one packet of noodles per day, no water no nothing. The owner used to send customers to them for sexual purposes. They somehow managed to escape from there, but they were chased by the owner. They were beaten badly and they came [to the NGO] in a state where they were bleeding. So they filed a case at the police station, but they were threatened with life, and they could not speak in front of the police that they were abused. So the case had to be withdrawn."

Nepal, Service Provider, N-CLM

It is difficult to ascertain the total number of convictions for child prostitution, pornography and sex trafficking in the Study Countries. These cases may be prosecuted under a number of different criminal laws, including rape, sexual abuse, prostitution, pornography and trafficking statutes. However, respondents reported that many child sexual exploitation cases today are prosecuted under trafficking laws, with virtually all SEC cases in the Philippines treated as trafficking cases, even local cases of child prostitution and pornography.<sup>575</sup>

There is available data on the number of convictions under the Study Countries' trafficking statutes. According to this data, the Study Countries convicted 42 to 260 traffickers in 2015. This number includes defendants who were convicted of trafficking adults as well as children, for forced sex as well as for forced labour.<sup>576</sup> While disaggregated data is not available, the Philippines reported that, out of 282 police trafficking investigations in 2014, 12 involved child victims.<sup>577</sup> Five out of 42 trafficking convictions in 2015 involved offenders who sexually exploited children online.<sup>578</sup>

SEC prosecutions are difficult, and any conviction should be viewed as a success. However, these statistics suggest that the opportunity for sexually exploited children to receive restitution from convicted offenders is still small.

575 Sevilla, Cristina, telephone conversation with author, 20 July 2015. See: Philippines, Expanded Anti-Trafficking Act, § 3 (trafficking does not require transportation but may include the recruitment, transfer, harbouring, or receipt of a child and may occur within or across borders); Thailand, Anti-Trafficking Act § 6 (trafficking does not require transportation but includes "procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child") Nepal, Anti-Trafficking Act (human trafficking is distinct from human transportation and includes using someone in prostitution). *But see*: U.S. State Department (2016), "Trafficking in Persons Report: Nepal" (trafficking numbers may not include domestic trafficking cases if prosecuted under rape or other criminal laws).

576 U.S. State Department (2016), Trafficking in Persons Reports for Nepal, the Philippines and Thailand.

577 U.S. State Department (2015), "Trafficking in Persons Report: Philippines."

578 U.S. State Department (2016), "Trafficking in Persons Report: Philippines."



Table 7: Trafficking Cases in Nepal, 2012-2015<sup>579</sup>

Nepal	2012 <sup>581</sup>	2013	2014	2015
Investigation	Not reported	144	185	181
Conviction	190	119	203	260

Table 8: Trafficking Cases in the Philippines, 2012-2015<sup>581</sup>

Philippines	2012 <sup>583</sup>	2013	2014	2015
Investigation	Not reported	155 Police 82 NBI <sup>584</sup>	282 Police 187 NBI 12 police investigations involved child victims	329 Police 71 NBI
Conviction	25	31	53	42, including 5 for online child sex trafficking

Table 9: Trafficking Cases in Thailand: 2012-2015<sup>584</sup>

Thailand <sup>585</sup>	2012	2013	2014	2015
Investigation	306	674 (mostly sex trafficking)	280	317
Conviction	10	255	104	241

### Access to Restitution

When SEC cases do result in conviction, it is possible for survivors to be awarded restitution from their offenders. Some of these awards have been considerable: A judge in Nepal recently ordered a SEC offender to pay 1,000,000 rupees (more than \$ 9,000 USD) to his child victim<sup>586</sup> and a judge in the Philippines reported that she had ordered an offender to pay 2,000,000 pesos (more than \$40,000 USD).<sup>587</sup>

However, the Study shows that it is rare for children to receive restitution, even when it is ordered. None of the survivors in the Study reported receiving restitution, and justice professionals confirmed that only a very few ever receive money from their offenders. One NGO advocate reported that, out of more than one hundred SEC cases in which she had been

579 U.S. State Department, Trafficking in Persons Reports: Nepal, 2013, 2014, 2015 and 2016.

580 Committee on the Rights of the Child, Concluding Observations: Nepal, 10 (impunity is pervasive with respect to child sexual trafficking)

581 U.S. State Department, Trafficking in Persons Reports, Philippines, 2013, 2014, 2015 and 2016.

582 Committee on the Rights of the Child, Concluding Observations (2013): Philippines, 8 (impunity is pervasive with respect to child pornography and sexual trafficking). See also: Special Rapporteur Report: Philippines, (2013) para. 80 (“the prosecution rate remains very low, perpetuating the impunity of traffickers”).

583 Philippines National Bureau of Investigation.

584 U.S. State Department, Trafficking in Persons Reports, 2013, 2014, 2015 and 2016.

585 U.S. State Department, Trafficking in Persons Reports, 2013, 2014, 2015 and 2016.

586 See: CBC News (2015), “Ernest Fenwick MacIntosh’s Canadian victim helped jail him,” 3 March 2015, accessed 12 January 2016, <http://www.cbc.ca/news/canada/nova-scotia/ernest-fenwick-macintosh-s-canadian-victim-helped-jail-him-1.2979555>.

587 Philippines Focus Group Report, 7.



involved, only one resulted in children receiving restitution, and another spoke of restitution as just a “name” with no meaning. A judge in Nepal explained that restitution was an ineffective remedy, because offenders are often poor themselves, and he called for the creation of a state-managed compensation fund that could provide victims without at least some small amount of money.

***“So in my experience, the one case when the children did receive [compensation] each, it was a [foreign] paedophile...but that is extremely rare. I’ve seen only one case like that. I’ve helped about one hundred kids, ballpark number.”***

*Thailand, Service Provider, T-CA*

***“It’s like being asked but never, no clients has received one...It was just like name, spoken of but never they receive.”***

*Philippines, Service Provider, P-CF*

***“The court decides to provide compensation to the victim from the perpetrator. But we think it is better to provide from the State if the perpetrator is from poor economic condition then difficult to provide.”***

*Nepal, Judge #1*

Several Thai respondents reported that children are only likely to receive restitution in cases involving foreign offenders.

***“Only with the foreign sex offender, there are cases of children receive compensation.”***

*Thailand, Service Provider, T-CB*

***“So far there’s very, very, few cases that received compensation. Those who received compensation are from [names of foreign countries]..”***

*Thailand, Service Provider, T-CC*

### **Access to State Compensation Funds**

The Philippines and Thailand also offer compensation through state compensation programmes, including general crime victim funds, and in Thailand, a specialized anti-trafficking fund.<sup>588</sup> While a criminal conviction is not necessary to access these funds, children must provide evidence that they are victims of a serious crime, such as SEC,<sup>589</sup> and a criminal case can help do that. In the Philippines, a police report may be sufficient evidence,<sup>590</sup> but in Thailand, victims must provide “clear evidence” that they are crime victims and they may be forced to return funds if it “appears later that the act claimed by the injured party for damages is not the criminal offense.”<sup>591</sup>

588 General crime victim funds are authorized by the Philippines, Act Creating a Board of Claims, R.A. 7309 (1992); Thailand, Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act, B.E. 2544 (2001). Funds for trafficking victims are authorized by Thailand, Anti-Trafficking Act, § 44. Funds to support witnesses are also available through the Philippines, Witness Protection Security and Benefit Act, § 8; Thailand, Witness Protection Act, §§ 10, 15, 18.

589 The burden of proof to access state funds is considerably less than the burden of proof to secure a conviction, which requires that the defendant be proved guilty beyond a reasonable doubt.

590 Philippines, Implementing Rules and Regulations of Republic Act 7309, An Act Creating a Board of Claims for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes (1992), Title III § 2(d).

591 Thailand, Damages for the Injured Person Act § 19.



Respondents in the Philippines and Thailand were glad for these programmes because children are unlikely to receive restitution from offenders. However, they noted that the State programmes have limited resources and cannot possibly fund the full recovery and reintegration of every crime victim. In fact, they require victims to go through a long, complicated process for relatively small awards. Maximum awards in the Philippines are 10,000 pesos (or about \$ 100 USD), while in Thailand, awards were reported to be less than 30,000 baht (or less than \$900 USD).<sup>592</sup>

**Q: “So normally the only form of compensation which is working is the one from the anti-human trafficking fund and the compensation from victims of crimes?”**

**A: “Yes. But it’s small, and it take very long. You have to file the application to the department then you have to ask for the long line from application to examine your case, it can take one or two years.”**

*Thailand, Prosecutor #2*

**“It’s small money [from the State’s anti-trafficking fund]. It think it should be more. Because some case she was forced to have sex with many guys and some just one, so the range should be larger.”**

*Thailand, Lawyer #2*

### 11.3 Challenges to Securing Compensation

The Study uncovered a number of challenges that sexually exploited children face when trying to secure compensation in the Study Countries.

#### Lack of Awareness and Understanding about Compensation

Respondents reported that, although officials have a duty to inform SEC victims of their right to compensation,<sup>593</sup> most children were unaware of it. Only five of the 41 survivors in the Study reported that they knew about compensation, though none had received it. One survivor from Nepal reported that, in her experience, children knew so little about compensation that they sometimes thought that they had to go to the perpetrator and claim it themselves.

**“Compensation has been mentioned in the justice system but they [SEC survivors] are not informed how can they get compensation. Nobody informs them whether they should go to the perpetrator themselves and ask for compensation or if it is the court which will take the compensation from perpetrator and give it to them or is there a system of confiscating perpetrator’s property by the government and if the victim should get a part of the property. They do not know about the process.”**

*Nepal, SEC Survivor, N-P/S*

<sup>592</sup> In the Philippines, the maximum award from the State’s victim compensation programme is 10,000 pesos or about \$100 USD. Philippines, Department of Justice website, “Victims Compensation Programme,” accessed 30 September 2016, <https://www.doj.gov.ph/victims-compensation-program.html>. In Thailand, respondents reported that sexually exploited children generally received no more than 25,000 to 30,000 baht, or about \$700 to \$900 USD. Interview with Thailand, Lawyer #2.

<sup>593</sup> Thailand, Anti-Trafficking Act, § 34 (requiring notification of right to compensation); Philippines, Anti-Trafficking Act, § 23(c) (same); Philippines, Anti-Child Pornography Act, § 18 (same).



Other children mistakenly believed that they needed to hire a lawyer to access compensation<sup>594</sup> or that requesting compensation would extend their time living in shelters.

***“[T]he girls themselves tell each other not to ask for compensation because this means they will stay longer, because it will make the process longer. So everyone tell each other no to ask for it. So we are trying to fix this problem... but they don’t know it. And if you are a kid in a shelter you just want to go home.”***

*Thailand, Lawyer #2*

Survivors in the Study who were aware of compensation learned about it from foreign police officers or shelter staff.<sup>595</sup> Thai respondents reported that, while specialised police do tend to inform children about the right to compensation, other police often forgot. They also reported that police, shelter workers and prosecutors sometimes neglected to file the proper paperwork.<sup>596</sup>

***“Another problem is that there are cases in which police don’t even ask the girls if they want compensation. They forget.”***

*Thailand, Lawyer #3*

***“When the offender are Thai, [compensation] is rarely happened for the reason that the victims doesn’t know the law and the police did not recommend or advice what channel they can file the application for this. So if the police did not do it on their behalf, then it won’t happen...If the case is involved by this special police unit, then often they will be advised for the compensation.***

*Thailand, Service Provider, T-CB*

According to respondents, one reason officials failed to follow through on duties to inform and assist children with compensation is that these duties fall “far” outside the normal scope of their job to investigate and prosecute criminal cases against accused offenders.

***“Compensation is very necessary for them...Many cases in the past we tried [to get compensation] but, again, it takes long time. And it seems like the people who are involved especially government officer, they don’t care. They don’t concern too much about the damages they suffered, in the karaoke bars or also from the shelters. Compensation is something far.”***

*Thailand, Social Worker, #1*

### **Bias Against SEC Victims**

Bias against SEC victims was also reported to be a barrier to receiving compensation. According to one Thai respondent, police sometimes choose not to inform sexually exploited children about compensation, because they view them as opportunists who have already earned money from sex work and do not deserve a financial award:

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594 Interview with Thailand, Lawyer #1.

595 Interview with Thailand, SEC Survivor, T-SA (“I have heard about compensation. The [foreign] police told me”); Thailand SEC Survivor, T-SB (“The foreign police told him he can ask for compensation. If he doesn’t ask by the law of their country they will ask on behalf of him.”); Thailand, SEC Survivor, T-SD (“He has heard of compensation. . . The social worker told me that I would get it but never got it”).

596 Thailand, Lawyer #3.



***“Police asked me, ‘Why are you doing this? Why are you claiming for their compensation? They already received [money] every time they had sex with him. He didn’t get any damage and they got profit.’ This is the mentality.”***

*Thailand, Lawyer, #1*

SEC victims also risk being deemed ineligible for state funds as a result of their involvement in prostitution and pornography. In Thailand, victims who were “involved” in the crimes against them are explicitly disqualified from the general crime victim programme, and Thai respondents reported that SEC victims had trouble accessing state compensation for this reason.<sup>597</sup> Even in the Philippines where there is no similar bar to eligibility, children who are perceived as participants in sex crimes may not qualify as crime “victims” entitled to funds.

***“One of the legal requirement [is that] victim who are entitled to claim for this compensation has to be the real injured person. They can’t have been engaged in the crime. So, for victims that come to sell sex by their own will, they are not entitled.”***

*Thailand, Prosecutor #2*

***“For some case, they didn’t get [compensation] because the kids volunteer by themselves...The way the police present the report as if the child consent to it rather than presenting in the way that the child was cheated or deceived.”***

*Thailand, Service Provider, T-CFG*

***“We try to claim compensation, from the Ministry of Justice, but in our cases, the court rejected the claim saying that the victim volunteers (especially in trafficking cases), they pursue the sex for money.”***

*Thailand, NGO Specialist, SP #1*

## **Challenges of Enforcing Restitution Orders Against SEC Offenders**

Another barrier to receiving compensation is the reported frequency with which SEC offenders flee or tamper with the justice process. In Thailand, respondents expressed frustration that foreign offenders were able to escape the jurisdiction, and they noted that, even if foreign law enforcement agencies are willing to help enforce restitution orders, payment comes many years later and usually only in cases with many victims.

***“When paedophiles are caught, they either walk out of the station because they pay a ransom or they just pay a fee and walk out. Or, if it’s a foreign paedophile, or a high profile case, they go back home, and then it takes five years to do the trial, to do the paperwork [for compensation], and there has to be a number of victims.”***

*Thailand, Service Provider*

SEC offenders were also reported to be adept at hiding their assets, preventing restitution orders from being enforced.

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<sup>597</sup> Philippines, Board of Claims Act, §§ 2, 3 (the Board of Claims may evaluate applications made by “any person who is a victim of violent crimes.”); Thailand, Compensation and Expenses for Injured Persons and the Accused Act, § 3 (an “injured person” eligible for compensation is a person who has been injured by a criminal offense and was “not involved in committing such offense”).



***“But we need to find the asset of the offender. But nobody find the asset of the offender. So the only money victim receive is the one from the anti-human trafficking fund or the one according to the injured law, but is very little money.***

*Thailand, Prosecutor #1*

***“I have had convictions on SEC cases, the decisions provided for compensation but we have not been able to recover because there has been no property of the accused that’s been identified”***

*Philippines, Lawyer #10.*

Even in Nepal, where the law requires officials to attach the defendant’s property immediately after a rape case is filed, respondents complained that it was often not possible to identify the property because families colluded with offenders to shield it.<sup>598</sup>

***“The major barrier here is, after the court, the perpetrator is supposed to give compensation. The child has...to go to the police, give applications there, and the family of the perpetrator who are supposed to give the compensation (because the perpetrator goes to the jail), the family starts hiding their property.”***

*Nepal, Service Provider, N-CK*

It can take a great deal of time and effort to hunt down an offender’s assets and secure them for later payment of restitution. According to one prosecutor in the Philippines, officers do not include an investigation of assets into their build-up of the SEC case, because their main concern is with finding proof of the alleged SEC crimes.<sup>599</sup>

***“Law enforcers do not include in the case build-up possible properties of the accused that may cover compensation, since essentially their interest is the criminal aspect.”***

*Philippines, Lawyer #10*

A Thai police officer emphasized that, because state actors “mainly prosecute the bad guy, rather than look at the rights of the victim,” it is important to connect children with a pro bono attorney at the outset of the case to help them access compensation.<sup>600</sup>

Respondents also noted that when the defendant’s property is forfeited under money laundering laws, the law requires that the property go to the government, and some respondents called for these laws to be amended to so that the property could be split with the victim.<sup>601</sup>

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598 Nepal, General Code, Chpt. 14 on Rape, No. 10C (court shall attach the accused’s property immediately after the filing of a rape case so that compensation may be paid).

599 Sevilla, Cristina, Access to Justice Responses, 6.

600 Interview, Thailand, Police Officer #4.

601 In Thailand and the Philippines, criminal justice professionals recommended that the money laundering laws is amended. Currently, for example, forfeited funds in Thailand are split between the anti-money laundering office and the government, and it has been proposed that half of the funds should go to the victim instead. See, e.g. Philippines, Anti-Pornography Act, § 17 (forfeited property to go to government); Thailand (1999), Anti-Money Laundering Act, B.E. 2542, as amended in 2009, §§ 49-51.



### Pressure to Settle SEC Cases, Rather Than Seek Compensation

According to respondents, SEC offenders are often willing to pay families up front to avoid criminal sanctions, and families have little incentive to engage in lengthy criminal or administrative proceedings to secure compensation.<sup>602</sup> One lawyer in the Philippines reported that offenders tell families that they would rather give the money to the family now than give it to the government later.<sup>603</sup>

In the Philippines, it was reported that settlement amounts can be ten times as high as any compensation from the State,<sup>604</sup> while in Nepal, a prosecutor explained that the amount families must spend on a SEC case in filing fees, transportation costs, medical exams and other expenses can outweigh any potential award from offenders who are often poor themselves.<sup>605</sup>

### Delayed Reporting and Short Deadlines for Filing for Compensation

To apply for state crime victim funds, it is necessary to submit an application quickly, within six months in the Philippines, or one year in Thailand, from the time of the injury – not the time of filing the criminal case. Because sexually exploited children tend to delay reporting their abuse, sometimes for many years, these short deadlines often cut off this avenue of compensation.<sup>606</sup>

## CONCLUSION: SECTION B

In sum, the Study Countries are to be commended for enacting a variety of specialized laws, procedures and policies that help child victims of crime participate in criminal cases. However, the experience of SEC survivors shows that there is still much room for improvement. Many children will make their way through difficult and complex SEC cases without the full support, protection, care, and child-friendly accommodations that they need and are entitled to. Most will confront harmful stereotypes and increased hardships that do not impact other crime victims. In the end, only a few will receive any compensation to help them recover and move on with their lives.

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602 Interviews with Thailand, Lawyer #1, Lawyer #2, Judge #1. There has been some concern that state victim compensation schemes may provide an incentive to families to exploit their children. The Study found, however, that the current schemes are so ineffective and potential awards so small that there is little danger of this.

603 Sevilla, Cristina, Access to Justice Responses, 7.

604 ECPAT Field Report: Philippines, pp. 14-15 (NGO informants state that children can get 10,000 pesos per crime from the State, but the accused often offers 100,000 to drop the case).

605 Interview with Nepal, Prosecutor #1.

606 Philippines, Board of Claims Act, § 5; Thailand, Compensation Act, § 22.



### III. SPECIAL BARRIERS AFFECTING CHILDREN EXPLOITED ONLINE

Children who are sexually exploited online face special access-to-justice barriers. While the Study focused primarily on children who were exploited through prostitution and sex trafficking, it did uncover issues relating to online sexual exploitation – including the production, distribution and viewing of child sexual abuse images or live sexual performances – that merit further attention.

#### A. Reporting

While all sexually exploited children are reluctant to report abuse, children used in online child pornography or live performances are likely to be more reluctant than most. “Probably the greatest inhibitor to children disclosing their abuse is the humiliation of it having been recorded, and the fear they will be recognized,” according to one leading advocate.<sup>607</sup> “As children are frequently forced to smile by their abusers in abusive images, sometimes they feel it looks as though they are enjoying the abuse or “let” it happen,” which makes any disclosure even more humiliating.<sup>608</sup>

Children who are sexually exploited online may also be deterred from reporting by strong attachments to exploiters. As one specialized police officer reported, many are “groomed” by adult offenders through online chats and social media contacts, before they enter a sexual relationship.<sup>609</sup> In the Philippines, children are also reported to be exploited online by their families, who sometimes view the activity as less harmful to their children than conventional prostitution.<sup>610</sup>

Another reason for the low rate of self-reporting may be that many victims of online sexual exploitation are very young, some not even old enough to speak.<sup>611</sup> One law enforcement respondent in the Study spoke about a case involving a child aged only five or six, while Interpol has reported cases involving children as young as 18 months.<sup>612</sup>

***“If these kids don’t have the money to play [video] game, the bad guy use the back of the shop and abuse children and let the child play for free. So we were able to identify the victims – two victims. One was just 5 or 6 year old. We identify them through the pictures and asking people around the area, and finally we identify the two victims of that video.”***

*Thailand, Police Officer #5*

607 Palmer, Tink, “Just One Click from Abuse.”

608 *Ibid.*

609 Interview with Thailand, Police Officer #5

610 See: ECPAT Field Report: Philippines. See also: Kuntz, Katrin (2014), “The Lost Children of Cebu,” *International Herald Tribune*, 20 April 2014, accessed 22 November 2015, [www.iht.com/2014/04/20/the-lost-children-of-cebu/](http://www.iht.com/2014/04/20/the-lost-children-of-cebu/).

611 International Center for Missing and Exploited Children (2008), “Child Pornography: Model Legislation and Global Review,” 5<sup>th</sup> Ed, 2008, 2, [http://www.missingkids.com/en\\_US/archive/documents/CP\\_Legislation\\_Report.pdf](http://www.missingkids.com/en_US/archive/documents/CP_Legislation_Report.pdf) (reporting a US National Center for Missing and Exploited Children study that shows 83% of arrested child-pornography possessors had images of children 6 to 12 years old; 39% had images of children 3 to 5 years old; and 19% had images of infants and toddlers under age 3).

612 INTERPOL Media Release (2012), “US and Dutch police cooperation using INTERPOL tools in child sex abuse investigation sets a global example,” 7 August 2012, accessed 30 September 2016, <http://www.interpol.int/News-and-media/News/2012/PR063>.



## B. Identification

The challenge of identifying child victims of sexual exploitation is likely to be even greater when the exploitation takes place online. This type of abuse takes place behind closed doors, in the child's home, a hotel room, or the back room of a cybercafé.<sup>613</sup>

There are also significant technical challenges to identifying children based on the digital image. Victims' faces may be obscured, and the age of the victim may be hard to discern, according to one cybercrime-specialized police officer in Thailand.<sup>614</sup> There may be no visual clues of their location in the sexual abuse images. Sophisticated technology and expertise is sometimes needed to decipher and follow the perpetrators' "digital footprints." The money trail can also be murky, as e-money is increasingly used for payment, as illustrated by the case in Thailand described in the box below.<sup>615</sup>

### Access-to-Justice Challenge for Victims of Online Sexual Exploitation: Use of "E-Money" To Obstruct Investigations

One police officer from Thailand described the role that "e-money" plays in online child pornography enterprises and the way in which it obstructs criminal investigations. He noted that, in some cases, the most officers can do is shut the offending site down without being able to identify perpetrators or rescue the child victims.

"This is a website from which you can create your own website and create your e-commerce for free. And this guy registered this site...with very cheap stickers to sell. So it looks like child stickers, but if you go on with the website, you will be ask a password that you can obtain once you pay with e-money... The price for child abuse images here is very low, but you have to buy a certain amount of images... The problem with e-money is that we cannot track who pay. Anyone can pay with e-money, there is no system to track back them...So in this case we just shut down the website, there's nothing else we can do. We also said to the [website] provider that they will face problems if they don't check what their clients are selling."

Thailand, Police Officer #5

Although each of the Study Countries has established specialized cybercrime investigation units, online cases are particularly complicated. They often involve perpetrators who live in many different countries and use sophisticated technology to view and share sexual abuse images of children across jurisdictions. The police officer in Thailand, for example, recounted one investigation of a child pornography website in which the operator was in Thailand, the email server was based in the United States, and the domain name was registered in Australia.<sup>616</sup>

613 ECPAT International (2014), "Stay Safe from Online Sexual Exploitation," 31 October 2014, 10, accessed 24 July 2016, [http://www.ecpat.org/wp-content/uploads/legacy/Guide%20to%20protection-online\\_layout%203\\_home\\_2014OCT31\\_ONLINE.pdf](http://www.ecpat.org/wp-content/uploads/legacy/Guide%20to%20protection-online_layout%203_home_2014OCT31_ONLINE.pdf).

614 Interview with Thailand, Police Officer #5.

615 ECPAT International (2016), "Briefing Paper: Emerging Global Threats Related to the Sexual Exploitation of Children Online," May 2016, accessed 24 July 2016, [http://www.ecpat.org/wp-content/uploads/2016/05/Briefing-Paper\\_Emerging-global-threats-related-to-the-sexual-exploitation-of-children-online.pdf](http://www.ecpat.org/wp-content/uploads/2016/05/Briefing-Paper_Emerging-global-threats-related-to-the-sexual-exploitation-of-children-online.pdf).

616 Interview with Thailand, Police Officer #5.



A successful investigation, including the identification of the child victim, frequently requires collaborating with international agencies and companies, such as Interpol, the FBI, Google and Facebook.<sup>617</sup> It is a positive finding of the Study that these law enforcement partnerships exist, transcending national boundaries and sharing expertise and resources in the fight against online offenders.

## C. Investigation and Trial

The investigation and trial of online SEC cases poses additional challenges for child victims who seek to participate in the criminal justice process.

### i. Initial contact with the child

Unlike other SEC victims, online victims have a permanent record of their abuse that lives on in many different places throughout the world. The children may not be aware of these images or they may have spent a long time trying to move past them when police finally identify them. It is critical that police use special care when they make initial contact with these children.

Special protocols for handling this initial encounter should be considered. For example, only specialized police or child protection professionals should conduct the initial interview. Special precaution should be exercised when deciding how to confirm that the child is the person depicted in the images. Some children might be traumatized to view the images in order to make that confirmation, especially if the perpetrator appears with in the photos. While others may be ashamed to have the images shown to their parents and would rather authenticate the images themselves.<sup>618</sup> One young survivor reported that, in her case, police came to her house with photos depicting sexual abuse that occurred when she was a pre-adolescent. The police did not allow her to see the images but asked the parents to identify her instead.<sup>619</sup>

At this initial meeting, children often want authorities to assure them that their images have been completely deleted from the internet. Experts stress the importance of speaking honestly and compassionately with children, explaining what is being done to remove the images, without over-promising that the images have been completely removed.<sup>620</sup>

### ii. Use of Cameras and Other Digital Technology in the Proceedings

Pre-trial interviews can be painful for children who have been exploited online, just as they are for any other child who must recount the details of their abuse. In some cases, it may be possible to avoid interviewing the child or having the child testify at trial. As reported by the Thai officer, the images and testimony of the child's parent may be sufficient to secure a conviction.<sup>621</sup>

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617 For example, Interpol operates the ICSE, the International Child Sexual Exploitation image database, which uses sophisticated image comparison software to make connections between victims and places. The ICSE database allows investigators to upload material from their national databases, to compare against international records. They analyze all data that can be drawn from the images in order to amass clues, identify any overlap in cases, and combine their efforts. The ICSE platform also provides a forum for police to request immediate checking of information and therefore enabling swift action. As of November 2015, a total of 48 countries are connected to the ICSE database. Interpol website at <http://www.interpol.int/Crime-areas/Crimes-against-children/Victim-identification>

618 Palmer, Tink, "Just One Click from Abuse."

619 Interview with Thailand, SEC Survivor, T-SF.

620 Carr, John (ECPAT International Expert Consultant on online sexual exploitation), telephone conversation with author, 11 June 2015.

621 Interview with Thailand, Police Officer #5. See also Palmer, Tink, and "Just One Click from Abuse" (advocating that victims of child pornography be spared interviews when the images are sufficient to build a case against the exploiter).



In other cases, it may be necessary to interview children about criminal acts that were not captured on film. It may be necessary to handle these interviews differently than interviews with other child victims of sexual exploitation. For example, videotaping the interview may help avoid repeated interviews but it could be distressing for children who were videotaped during their abuse.

The use of live-link technology to question the child at trial may also be inappropriate. Although it allows the child to testify outside the defendant's presence, testifying in this way may remind the child of his or her abuse before a camera and cause additional pain.<sup>622</sup> A recent study shows that not all children prefer live link testimony and some would rather testify in court with a barrier blocking the view of their exploiter.<sup>623</sup> Again, the views and best interests of each child should influence the choice.

### iii. Disclosure and Discovery of Child Sexual Abuse Images

Confidentiality is of utmost importance in cases of online sexual exploitation. One survivor explained that he gained the strength to participate in a SEC case only after he was confident that "his photo, his information, is not known to others" and "everything is confidential."<sup>624</sup>

The Philippines has comprehensive anti-pornography and cybercrime laws, which require that child sexual abuse images used in evidence in a criminal case be protected from disclosure by a protective order from the public and media.<sup>625</sup> Defendants are still able to view the images in order to exercise their right to prepare a defence.<sup>626</sup> Children may be re-traumatized by the idea of their offender reviewing the images of the child's abuse. In these cases, the child's best-interest right will weigh in favour of permitting defence counsel, but not the defendant, to view the images. Other protections include prohibitions on the copying of images by the parties and requiring the images to be kept in the court's custody and only inspected there with the court's permission.<sup>627</sup>

## D. Recovery and Reintegration

The fact that a permanent record exists of the child's abuse in online SEC cases also impacts the child's recovery and reintegration and may increase the need for long-term psychological counselling and social services. The unique nature of the harm was recently explained in ECPAT International's *amicus curiae* brief to the U.S. Supreme Court in the landmark *Paroline v. United* case on restitution for child pornography victims:

622 Palmer, Tink, "Just One Click from Abuse."

623 See: Beckett, Helen and Warrington, Camille (2015), "Making Justice Work," University of Bedfordshire, 39-41.

624 Interview with Thailand, SEC Survivor, T-SB.

625 Philippines, Anti-Child Pornography Act; Philippines, Cybercrime Prevention Act.

626 Philippines, Anti-Child Pornography Act, § 13(d) ("Any form of child pornography that is part of the court records shall be subject to a protective order that provides as follows: (1) Any form of child pornography may be viewed only by the parties, their counsel, their expert witness and guardian ad litem").

627 See e.g. United States, U.S. Code, "Child Victims' and Child Witnesses' Rights," Title 18, Part II, Chpt. 223, § 3509 (m) ("Prohibition on Reproduction of Child Pornography: (1) In any criminal proceeding, any property or material that constitutes child pornography . . . shall remain in the care, custody, and control of either the Government or the court.(2) (A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant. (B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial").



*“Often, the recovery from the persistent psychological and social harm requires years of therapy and continued care. This is because the child’s recovery can be undermined by the continued existence of the pornographic materials online, forcing the victim to continuously confront the evidence of his or her abuse. In this sense, victims of child pornography suffer in ways that are unique compared to those who are subject to sexual abuse that ends at a certain point in time.”<sup>628</sup>*

There may also be an increased need for community education and sensitization. Survivors and other respondents in the Study, particularly in Nepal, spoke about the intense stigma surrounding SEC. The availability of sexual abuse images online is likely to exacerbate the child’s stigmatization and increase the shame that the child’s family may feel, making reintegration back into the home and community more difficult.

## E. Legal Remedies

The issue of compensation is particularly complex in online cases of SEC. Children are harmed when they are sexually abused before the camera and each time images of their abuse are viewed online by others.<sup>629</sup> Even in countries where restitution for child pornography victims is required by statute, as in the United States,<sup>630</sup> it has proved difficult for courts to calculate the amount of restitution each viewer should pay to the child based on a causal link between the viewer’s act and the child’s harm.<sup>631</sup> These challenges require special attention if child victims of online forms of SEC are to fully exercise their right to access justice and remedies.<sup>632</sup>

## F. Conclusion

The Study was able to give only a glimpse into the special access-to-justice needs of children who are sexually exploited online, and a fuller analysis is warranted. It is clear even at this early stage, however, that, with more and more children at risk of online sexual exploitation every day, States must begin to consider ways to help them engage with the justice system more effectively.

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628 ECPAT International (2014), “Brief as Amicus Curiae in Support of Respondents in *Paroline v. United States*,” 134 S. Ct. 1710 (2014), 20, accessed 30 September 2016, <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/11/12-8561-bsac-ECPAT-International.pdf>. This brief provides detailed information about the harms caused to children by online SEC.

629 Cassell, Paul & Marsh, James, “Full Restitution for Child Pornography Victims: The Supreme Court’s *Paroline* Decision and the Need for a Congressional Response,” *Ohio State Journal of Criminal Law*, 13, accessed 30 September 2016, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2711478](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2711478).

630 United States, U.S. Code, “Mandatory Restitution,” Title 18, Part I, Chpt.110, § 2259.

631 *Ibid.*

632 *Ibid.*



## IV. CROSS-CUTTING THEMES: ACCESS TO JUSTICE BARRIERS FOR SEXUALLY EXPLOITED CHILDREN

Certain cross-cutting themes emerged from the Study, which are at the root of the problems that sexually exploited children experience in today's justice systems. All reflect the States' failure to fully institutionalize the four core principles of child-friendly justice: (1) to treat all child victims with dignity and compassion; (2) to protect them from discrimination; (3) to give primary consideration to their best interests during criminal cases; and (4) to enable them to participate in cases to the full extent that their age, intellectual maturity and evolving capacity allows.<sup>633</sup>

- 1. The Myth of the “Willing” Victim:** A dominant theme arising out of the Study is the failure of adults in the justice system to see the injured child beneath the image of a sex worker or troubled teen, which negatively impacts the child's experience at every stage of the process – from the initial contact with police, to the investigation and trial, to the final judgment and award of remedies.
- 2. Discrimination against the Adolescent Victim:** The prostitution of children is largely a crime against adolescents, but child-friendly justice often provides greatest protection to young children. The Study revealed that sexually exploited children who are, or appear to be, old enough to consent to sex are more likely to be treated as criminals than victims. Their ability to access justice may be thwarted by shorter statutes of limitations and private settlement laws that apply to older children. Because delayed disclosures and slow-moving cases are still common in SEC prosecutions, older children also risk being deemed ineligible or undeserving of child-friendly protections by the time they reach trial.
- 3. Discrimination against Certain Groups of Sexually Exploited Children:** Certain groups of sexually exploited children also appear to be at a disadvantage when accessing justice, including migrant or trafficked children, children living or working on the streets, and prostituted boys and transgender youth. The Study shows that these children often lacked the family support needed for successful participation in SEC cases and risk being treated as immigration violators or juvenile offenders rather than child victims.
- 4. Elusive Nature of the Child's Best Interests:** Because the duty to consider the best interests of child victim-witnesses in criminal cases is not institutionalized in the Study Countries, SEC cases tend to be managed in the same way as criminal cases involving adult victim-witnesses. As a result, inadequate attention is paid to the special needs of children in that role, exposing them to unnecessary hardships at all stages of the case and making it more difficult for them to access justice through the criminal process.
- 5. Few Opportunities for Meaningful Participation:** The right of child victims to have a say in criminal cases against their offenders is also not widely recognized in the Study Countries. The Study shows that SEC survivors are rarely informed or given a chance to express their views on important matters during cases against their offenders, from the decision to file a criminal complaint to the selection of child-friendly procedures to the making of a victim impact statement at the sentencing of the offender.

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633 UN Guidelines on Child Victims and Witnesses, para. 8.



# RECOMMENDATIONS

While recognizing the progress that has been made to create “child-friendly” justice systems in Nepal, the Philippines, Thailand and other countries around the world, the Access to Justice Study has identified certain areas for improvement.

To move forward, States must commit to incorporate the core principles of dignity, non-discrimination, best interests and participation into their laws and policies. Police, prosecutors and judges must see the injured child beneath the image of the sex worker and treat that child with dignity and compassion during the criminal justice process. They must recognize that they owe a special duty to that child – a duty they do not owe to adults – to protect the child’s well-being during the criminal case and do their best not to inflict additional harm. They must view the child, not as a key piece of evidence in the prosecution’s case, but as a wronged human being with the right to seek justice and the right to participate, to the best of the child’s ability, in efforts to secure it.

ECPAT proposes a number of concrete steps to help States improve access to justice for sexually exploited children. They are grounded in international law and based on the insights of SEC survivors and criminal justice professionals in the Study Countries. They are designed to be relevant to SEC cases worldwide, with certain additional recommendations targeted to the Study Countries.

## ▪ Identifying and Rescuing Sexually Exploited Children

1. Because sexually exploited children are particularly unlikely to report their exploitation to authorities, States should ensure that specialized outreach programmes are implemented to build trust with sexually exploited children and children at risk of exploitation. Programmes may include “safe places” where children can drop in, receive food, shelter, other necessities, and, if desired, counselling. States should consider involving specially-trained police officers, following the promising practice of the HUG Programme in Chiang Mai, Thailand.
2. The Study revealed a lack of awareness about the sexual exploitation of children and persistent stigma surrounding the issue. States should take steps to educate children, families, and communities about child sexual exploitation, the rights of child victims, and the criminal liability of exploiters and those who aid or protect them.
3. The Study uncovered evidence that sexually exploited children are not making full use of child helplines. Further study is recommended to determine appropriate measures to increase awareness and usage among sexually exploited children and children at risk.

## ▪ Treating Sexually Exploited Children as Victims, Not Criminals

4. Because the Study shows that sexually exploited children are at risk of prosecution for crimes arising out of their exploitation, States should ensure that the minimum age of criminal responsibility is in accord with international standards and, under no circumstances, below age 12.<sup>634</sup> The following recommendations are respectfully submitted:
  - a. Nepal: to amend Section 11 of the Children’s Act to raise the MACR to 12 or above.
  - b. Thailand: to amend Section 73 of the Penal Code to raise the MACR to 12 or above.

<sup>634</sup> Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, (recommending a minimum age no lower than 12 years old).



5. States should implement safe harbour protections to prevent SEC victims from being prosecuted for crimes “as a direct result of, or an incident or in relation to” their exploitation,<sup>635</sup> including prostitution, immigration violations, false statement and document offenses, public nuisance crimes, illegal alcohol and drug use, and status offenses. The following recommendations are respectfully submitted:
    - a. Nepal: to amend Section 15 and 16 of the Anti-Trafficking Act to expand the safe harbour provision and eliminate liability for disclosing details of abuse gradually. Amend Section 2 of the Some Public (Crime and Punishment) Act to prevent prosecution of children for prostitution and related crimes.
    - b. Thailand: to amend Section 41 of the Anti-Trafficking Act to broaden the safe harbour provision and eliminate the possibility of prosecution with consent of the Ministry of Justice. Amend Section 286 of the Criminal Procedure Code and Sections 5 and 6 of the Prevention and Suppression of Prostitution Act to exempt children from prosecution as prostitution “offenders.” Improve efforts to identify trafficking victims to avoid arresting, detaining and deporting child victims as illegal migrants.
  6. States should also establish a legal age of sexual consent in accord with international standards and ensure that the age of consent cannot be used as a defence against charges of commercial sexual exploitation of a child under age 18.<sup>636</sup> The following recommendation is respectfully submitted:
    - a. Philippines: to amend Article 335 of the Revised Penal Code to raise the legal age of sexual consent to age 16, in accord with prevailing international standards.
  7. States should also provide SEC-specialized training to police, prosecutors, judges and other criminal justice professionals to combat the perception of sexually exploited children as willing sex workers and help professionals understand the mechanisms of exploitation, including the initial grooming of the child, and the effects of exploitation on victim behaviours, including the possibility that children will deny that they are victims.<sup>637</sup> The following recommendation is respectfully submitted:
    - a. Philippines: to expand SEC-specialized judicial training and ensure judges nationwide are properly prepared to handle the special challenges of SEC cases.
- **Helping the Child to Make an Informed Decision About Whether to File a Criminal Complaint and Participate in the SEC Case**
8. The Study shows that sexually exploited children often need time to heal, come to terms with their exploitation and develop trust before they can effectively participate in criminal cases against exploiters. States should ensure that SEC victims have the option of a reflection and recovery of 30 days or more before deciding whether to participate in the criminal process. During this time, victims should receive needed services, including food, shelter, physical and mental health care, education and, where appropriate, immigration relief. These services should not be conditioned on their agreement to participate in the case. Model language can be found in Council of Europe *Convention on Action Against Trafficking in Human Beings* (2008).

<sup>635</sup> This model language is taken from Section 17 of the Philippines Expanded Anti-Trafficking Act.

<sup>636</sup> Model language can be found in Section 17 of the Philippines’ Expanded Anti-Trafficking Act: “the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.”

<sup>637</sup> Recommended victim identification training programmes include: 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.



9. To further ensure that children are able to make an informed decision about participating in SEC criminal actions, States should implement a protocol that ensures that, before children file a criminal complaint, they have notice of their rights; understand the judicial process and their potential role in it; appreciate the risks and benefits of participating in the case, and are aware of the alternatives to participation.
10. Because delayed disclosures are common among sexually exploited children, States should eliminate statutes of limitations for SEC-related offenses or ensure they are of reasonable length and do not begin to run until the victim reaches age 18.<sup>638</sup> The following recommendations are respectfully submitted:
  - a. Nepal: to amend Part 4 of the General Code to repeal the 35-day statute of limitations for rape and other SEC-related crimes, such as illegal detention, hurt/battery, intention of sexual intercourse, and the 90-day statute of limitations for battery with grievous injury.
  - b. Thailand: to amend Section 96 of the Penal Code to eliminate the three-month statute of limitation on compoundable offenses, such as rape, sexual assault, false imprisonment when they take place in private without bodily injury.
11. The Study revealed that sexually exploited children often face pressure to settle with offenders, even when the children wish to participate in a criminal prosecution. States should ensure that plea or settlement agreements are only approved after consideration of the child’s views and best interests, as well as the potential risk of harm to others.<sup>639</sup> A promising approach to approving settlements is found in Article 20 of UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014). The following recommendations are respectfully submitted:
  - a. Thailand: to amend Sections 281 and 321 of the Criminal Procedure Code to remove the classification of rape, sexual abuse and false imprisonment of children as compoundable offenses subject to private negotiations. Amend Section 277 of the Criminal Procedure Code to prevent adults who engage in sex with children between age 13 and 15 to settle criminal charges through marriage.
  - b. Nepal, Philippines and Thailand: to strengthen judicial training on the issue of settlement and the need to consider the child victims’ best interests.

▪ **Ensuring Adult Support During The SEC Case**

12. Because many sexually exploited children lack effective adult support, States should ensure that each child is assigned a specially trained advocate for the duration of the case, such as a victim-witness advocate, guardian ad litem, court-appointed special advocate (CASA) or legal counsel. The following recommendations are respectfully submitted:

638 *See e.g.*, Philippines, Expanded Anti-Trafficking Act, § 14 (“The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused”).

639 Trafficking cases may not be dismissed through private settlement in the Philippines. Philippines, Expanded Anti-Trafficking Act, § 11(c) (“Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal”).



- a. Nepal: to take necessary state action to ensure that child victims of crime, as well as child defendants, have adequate, ongoing support and representation.
  - b. Philippines: to amend Section 5 of the Philippines' Rule on the Examination of a Child to guarantee the child victim's right to a GAL or CASA. Resume funding of these programmes.
  - c. Thailand: to amend Section 6 of the Criminal Procedure Code to do the same.
13. Respondents in the Study cited family support as vital for access to justice in SEC cases. Justice officials should initiate a process at the outset of the case to trace the child's family, and where appropriate, provide mediation and/or reunification services.<sup>640</sup> The following recommendations are respectfully submitted:
- Nepal: to amend Section 13 of the Anti-Trafficking Act to require family reconciliation efforts on behalf of non-Nepali, as well as Nepali victims.
- a. Philippines and Thailand: to amend anti-trafficking and other SEC-related statutes to make explicit that family tracing and reunification are services guaranteed to child victims of trafficking and sexual exploitation.
14. Legal aid and translation services were also cited as necessary for the child's effective participation in SEC cases. States should provide, or arrange for, free translation services and legal aid and ensure that each child victim-witness is informed about how to access these services. The following recommendations are respectfully submitted:
- a. Nepal: to amend Section 10 and 11 of the Anti-Trafficking Act, which currently requires that victims arrange for their own translation and legal services.
  - b. Philippines: to amend Section 9 of the Rule on Examination of a Child Witness so that courts must, rather than may, provide a translator when requested by the child victim-witness.
  - c. Thailand: to amend Section 33 of the Anti-Trafficking Act to require the State to provide legal aid, rather than "consider to provide" it, and guarantee translation services. Address persistent gaps in implementation of Section 13 of the Criminal Procedure Code, which requires provision of translation services to crime victims, generally.

#### ■ Protecting Safety During the SEC Case

15. States should create a presumption of pre-trial detention in SEC cases in recognition of the risk in SEC cases that defendants will flee, intimidate witnesses and supporters, or manipulate criminal proceedings. States should also take steps to ensure enforcement of pre-trial detention orders, including better judicial training and accountability. The following recommendations are respectfully submitted:
- a. Nepal: to amend Section 8 of the Anti-Trafficking Act to remove the exception to pre-trial detention that applies to trafficking suspects accused of trafficking for prostitution.
  - b. Philippines: to improve implementation of existing pre-trial detention provisions for rape, child trafficking and certain child pornography crimes through judicial training, monitoring and disciplinary actions.

<sup>640</sup> In the Philippines and Thailand, there is no explicit obligation to seek family reunification in trafficking cases, although child welfare law requires efforts be made on behalf of abandoned children, generally. Section 13 of Nepal's Anti-Trafficking Act requires the State to help only Nepali trafficking victims reconcile with their families.



- c. Thailand: to amend Section 86 and related provisions of the Criminal Procedure Code to create a presumption of pre-trial detention in SEC cases.
16. The Study revealed that sexually exploited children are at risk of confronting their exploiters and experiencing re-traumatisation in and around police stations and courthouses. Police and justice officials should take steps to improve security for children and families by providing police escorts or vehicles for transportation, as well as specially-designated waiting rooms, bathrooms and corridors.
  17. States should establish or make greater use of witness protection programmes in SEC cases. SEC victim-witnesses should be automatically eligible and informed about the programs at the outset of the SEC case. Programs should include child-specific measures, such as consideration of the child's views and best interests when developing safety plans. States should ensure that these programmes are adequately funded to accept and protect SEC victim-witnesses and, where appropriate, their families. The following recommendations are respectfully submitted:
    - a. Nepal: to develop a witness protection programme.
    - b. Philippines: to amend the Witness Protection, Security and Benefit Act to make SEC victims automatically eligible for witness protection, without having to go through application procedures. Require programme representatives to contact victims to establish services and funds. Add child-specific measures.
    - c. Thailand: to amend the Witness Protection Act to do the same.
  18. Recognizing the importance of protecting the privacy of children involved in SEC cases, States should create a legal presumption that SEC hearings are to be closed to the public and press. States should also prohibit disclosure of the child's personal details and any identifying information from SEC proceedings without the consent of the child and parent/guardian. The following recommendations are respectfully submitted:
    - a. Thailand: to amend Section 177 of the Criminal Procedure Code to include a presumption of closed-door hearings in SEC cases.
    - b. Thailand: to amend Section 50 of the Child Protection Act and Section 56 of the Anti-Trafficking Act to strengthen non-disclosure rules and prevent any release of information without consent of the child and parent/guardian.
    - c. Philippines: to amend Section 10 of the Expanded Anti-Trafficking Act, Section 13 of the Anti-Pornography Act, and Section 13 of the Rule on the Examination of a Child Witness to do the same.

#### ▪ Ensuring Appropriate Care and Counselling During the SEC Case

19. Because SEC survivors require medical, psychological, social, legal and other services to participate effectively in criminal cases, States should assign multi-disciplinary teams to SEC case to coordinate services and ensure that child victim-witnesses receive the help they need. A promising protocol for a multi-disciplinary approach to SEC cases is the Philippines' Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation. The following recommendation is respectfully submitted:
  - a. Philippines: to ensure training of state actors on the Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation



20. States should also consider the development of child advocacy centres to coordinate delivery of multi-disciplinary services in SEC cases and provide a child-friendly setting for holding pre-trial interviews, depositions and conferences during proceedings. A model worth considering is the joint state-NGO initiative that led to the establishment of the Children’s Advocacy Centre (“ACT”) in Northern Thailand.
21. States should ensure that shelter care is a last resort for SEC victims and that any decision to commit a child to shelter care is reviewed at regular intervals before a judge. States should also consider the development of non-residential care and protection programmes that enable child victim-witnesses to live outside of residential facilities during criminal cases, including the establishment of protocols for maintaining close contact with these victims. The following recommendations are respectfully submitted:
  - a. Philippines: consistent with Presidential Decree 603 (1974), to re-evaluate the current reliance on restrictive shelters to care and protect SEC victims during criminal proceedings and prioritize placement with parents, relatives, or qualified guardians.
  - b. Thailand: to amend Sections 33-37 of the Prevention and Suppression of Prostitution Act to require that any judicial decision regarding a child’s commitment to a Protection and Occupational Development Centre be made with due consideration to the best interests of the child and reviewed at regular intervals.
22. States should take action to improve the quality of government-run residential facilities that house SEC victims, including providing separate and specialized programmes for SEC victims and age-appropriate services, such as opportunities for older children to participate in decision-making and more independent living, earn income, and access childcare for any children they may have. The Study also identified a need to expand services for male SEC victims and those identifying as transgender. States should consider using staff-secured, rather than locked, facilities to protect children and eliminate laws that would subject children to criminal arrest if they leave these facilities. The following recommendation is respectfully submitted:
  - a. Thailand: to amend Section 38 of the Prevention and Suppression of Prostitution Act to prevent children who run away from rehabilitation facilities from being subject to arrest.
23. State child welfare professionals should coordinate with justice officials to ensure that the SEC victim-witnesses are provided with continuous recovery and reintegration services after SEC cases are concluded, to the full extent needed, and their progress is carefully monitored for at least two years. State should consider ways to develop the capacity of social workers who oversee care of SEC victims after they return to their communities.<sup>641</sup>

▪ **Giving Primary Consideration to the Child’s Best Interests During the SEC Case**

24. Study indicates that the best interest principle is not institutionalized in criminal cases involving child victim-witnesses. States should require that specially-trained judges, prosecutors and other justice actors handle SEC cases and develop a comprehensive set of child-friendly criminal procedures and evidentiary rules that can be applied in SEC cases in whatever court they are heard. A noteworthy example is the Philippines Supreme Court Rule on the Examination of the Child (2000).
25. States should make the assessment of the “best interests” of SEC victims an integral part of the criminal proceedings against exploiters, in accordance with the guidance provided by General Comment No. 14 (2013) of the UN Committee on the Rights of the Child.

641 The Philippines Protocol for Case Management of Victims of Neglect, Abuse and Exploitation offers some guidance on creating a reintegration plan for SEC victims.



### ▪ Informing and Seeking the Views of the Child During the SEC Case

26. States should strive to keep SEC survivors informed and to give them opportunities to be heard during cases against their exploiters, in accordance with their age, maturity and evolving capacity. One way to do this is to establish legal benchmarks for communicating with SEC victim-witnesses at regular time intervals and/or key decision-making stages.
27. Justice officials should ensure that each child is provided with a written notice at the outset of the case, which explains the rights and responsibilities of victim-witnesses and the legal process. The notice should be written in simple, age-appropriate language and reviewed with child and parents/guardian to confirm understanding. They should also consult with the child and parents/guardian about the preferred method of communication, striving to minimize disruption to their lives and limit the need to make repeat visits to government offices.
28. Trial preparation was identified as an area of concern. Prosecutors or other justice actors should develop and implement a trial preparation programme that ensures that SEC victim-witnesses and parents/guardians are familiar with the courtroom and relevant actors, understand the trial process and their role in it, have a safety plan in place, and are given the opportunity to review their testimony and address any questions or concerns they may have.
29. SEC victim-witnesses should have the opportunity to make a victim impact statement at sentencing, if desired.

### ▪ Reducing Delays During The SEC Case

30. The Study shows that delays in criminal proceedings presented a significant hardship for SEC victim-witnesses. States should expedite SEC cases through methods such as priority tracking, specialized courts, and continuous hearings, and consider the child's best interests before granting requests for delays. The following recommendation is respectfully submitted:
  - a. Nepal, Philippines and Thailand: to continue efforts to expedite SEC cases and takes steps to ensure that SEC cases are completed no later than one year after the offender is formally charged.
31. States should offer SEC victim-witnesses the opportunity to provide advance testimony instead of testifying at trial, when in the child's best interests and consistent with the defendant's right to a fair trial. The following recommendations are respectfully submitted:
  - a. Thailand: to encourage prosecutors and judges to admit advance statements pursuant to Section 31 of the Anti-Trafficking Act and Sections 173/2 and 237/3 of the Criminal Procedure Code, after considering the child's best interests and opinions.
  - b. Philippines: to encourage admission of recorded depositions pursuant to Section 27 of the Rule on Examination of the Child Witness to do the same.
  - c. Nepal: to enact legislation to permit the same.

### ▪ Reducing the Hardships of Recounting Abuse During the SEC Case

32. States should create a single protocol of child-friendly interview and trial procedures applicable to SEC cases. Examples of child-friendly procedures include those in the Philippines Supreme Court Rule on Examination of a Child Witness (2000) and include appointing the child a guardian *ad litem* or lawyer, using a child specialist to pose questions, allowing the child to testify with support persons or comfort items, and requiring child-friendly interview rooms or modified courtrooms.



Procedures should be available to all children under age 18, or older when necessary to ensure that the victim can participate in proceedings without suffering additional trauma.<sup>642</sup> They should be flexibly applied to address the individual needs and interests of each child, with due consideration given to the child’s own views about the types of interview and trial procedures he or she is most comfortable with.

33. Testifying in the physical presence of the exploiter was identified as one of the most difficult and potentially traumatizing aspects of the justice process for SEC victim-witnesses. As a priority, States should authorize and develop new methods that allow children to give testimony remotely, while still respecting defendants’ fair trial rights. These methods may include use of live-link technology, closed circuit television, one-way mirrors, and courtroom modifications. States are also urged to re-evaluate the conduct of *in camera* hearings, which may cause children to testify in close proximity to the defendant. The following recommendations are respectfully submitted:
  - a. Nepal: Amend Section 2 of the Children’s Act to increase the age of majority from 16 to 18 and ensure all child victim-witnesses are eligible for child-friendly accommodations.
  - b. Nepal: Amend Sections 49 and 50 of the Children’s Act and Section 27 of the Anti-Trafficking Act to make *in camera* hearings optional, dependent on consideration of the child’s wishes and best interests.
34. To ensure that child-friendly interview and trial procedures are institutionalized in SEC cases, states should devote sufficient resources to provide specialized professional training, create child-friendly interview rooms; and provide live link and other technology. Resources should also be allocated to provide training and facilities that are appropriate to sexually exploited migrant, male, and transgender youth. The following recommendation is respectfully submitted:
  - a. Nepal: to amend Chapter 14 of the General Code on Rape to ensure protection of sexually exploited boys, including those who identify as transgender. Give these victims the option to be interviewed by police or social workers of the gender that would make them most comfortable.
35. Police and prosecutors are urged to adopt a law enforcement strategy of “child-supportive” SEC cases, rather than child-dependent cases. This strategy may include collecting crime scene evidence from every place at which the child was sexually exploited; introducing evidence to improve understanding of SEC victimology and combat negative stereotypes, including expert evidence from specialized police or caregivers on SEC victimization; and making use of special evidentiary rules to protect child victim-witnesses, such as rape shield laws, child hearsay exceptions, and restrictions on the use of sexual abuse imagery in evidence.

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642 For an example of this type of provision, see Section 4 of the Philippines Rule on Examination of a Child Witness (“A ‘child witness’ is any person who at the time of giving testimony is below the age of eighteen (18) years. In child abuse cases, a child includes one over eighteen (18) years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition”).



## ▪ Ensuring Adequate Compensation for SEC Survivors

36. To help SEC survivors receive court-ordered restitution from offenders, States should put in place procedures for identifying and attaching defendants' assets at the earliest possible time, providing law enforcement with sufficient resources and training to conduct investigations into assets available for restitution and provide greater enforcement of court orders, and assisting child victims and families with all procedural requirements. States should also consider amending money laundering laws to permit victims to share in forfeited assets. The following recommendations are respectfully submitted:
- a. Philippines: to amend Rule 127 of the Revised Rules of Criminal Procedure to eliminate the requirement that child victim post a bond in an equal amount of any attached property.
  - b. Thailand: to amend Section 49-51 of the Anti-Money Laundering Act to permit forfeited assets to be applied toward restitution payments.
37. States should ensure that SEC victims are not denied eligibility for funds from state-managed crime victim compensation programmes based on their involvement in SEC-related crimes. States should also take steps to simplify application procedures, increase awareness among SEC victims and families, and ensure adequate funding for the programmes. The following recommendations are respectfully submitted:
- a. Nepal: to develop and fund a state crime victim compensation fund.
  - b. Philippines and Thailand: to extend the short deadlines for filing claims with state compensation funds by amending Section 5 of the Philippines Board of Claims Act and Section 22 of the Thailand Compensation Act, taking into account the special challenges children face when reporting their abuse and filing claims promptly.
  - c. Philippines and Thailand: to amend the compensation acts to prevent denial of benefits based on the child's involvement in SEC-related offenses, including a specific amendment to Section 3 of Thailand's Compensation Act, which currently disqualifies "injured persons" who were "involved in committing" the offense that caused them injury.
  - d. Nepal, Philippines and Thailand: to ensure that the award of funds is sufficient to remove the strong incentive on victims to negotiate privately with SEC offenders, contributing to an atmosphere of impunity.

## ▪ Recommendations Related to Access to Justice for Child Victims of Sexual Exploitation Online

38. The Study suggests that child victims of online sexual exploitation may have special needs with respect to access to justice. States should consider developing a specialized protocol for interviews and examination of child victims of online sexual exploitation, including child-sensitive methods for confirming the identity of the child in sexual abuse imagery and specialized interview and trial procedures that consider each child's views and best interests before making use of camera equipment or digital technologies.



39. States should also consider specialized evidentiary protections that restrict disclosure and admission into evidence of child sexual abuse imagery. At a minimum, evidence laws should allow courts to subject sexual abuse images to protective orders; permit inspection by defence counsel, but not defendant, to the extent necessary to prepare a defence; and specify a retention policy that calls for the destruction of the images at an appropriate time. The following recommendations are respectfully submitted:
- a. Philippines: to strengthen Section 13 of the Anti-Pornography Act to prevent disclosure of any record related to a child victim of online sexual exploitation except after consideration of the child’s views and best interests, and prevent defendant from viewing any child sexual abuse imagery in evidence. Strengthen Section 31 of the Rule on Examination of a Child Witness to require destruction, not only of audio and videotapes, but any other electronic evidence of child sexual abuse imagery included in the record of SEC cases.
  - b. Nepal and Thailand: to enact evidentiary procedures to do the same.
40. Recognizing that the children are increasingly at risk of online forms of sexual exploitation, States should consider further study of the special challenges child victims face when accessing justice and remedies, including the impact of a permanent record of abuse on recovery and reintegration and the award of compensation.



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# ANNEX

## 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>643</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 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

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<sup>643</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”).



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>644</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.

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<sup>644</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).



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.

#### **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.



### **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.

### *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.

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645 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.”



### Art. 6(3), Palermo Protocol<sup>646</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.

#### *Informing and Consulting with the Child during the SEC Case<sup>647</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: (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.

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646 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."

647 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."



### 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 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.



### **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;
  - (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.

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648 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."



### **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.

### **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 victimised 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.

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<sup>649</sup> 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”).





