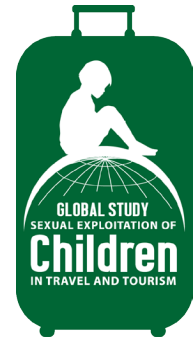


EXPERT PAPER



# ACCESS TO JUSTICE FOR CHILD VICTIMS OF SEXUAL EXPLOITATION IN TRAVEL AND TOURISM

ECPAT INTERNATIONAL

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## INTRODUCTION

A lack of data exists pertaining to the unique challenges and barriers that child victims of sexual exploitation, including sexual exploitation in travel and tourism, face when accessing justice. To address this knowledge gap, ECPAT International conducted a study (A2J Study) to explore why “child-friendly justice” is so elusive for sexually exploited children and to identify the specific barriers that continue to prevent these children from accessing justice.

Specifically, in 2014 and 2015, ECPAT conducted an in-depth, qualitative study into the ability of sexually exploited children to access justice in Nepal, the Philippines and Thailand. These countries were selected because they struggle with the problem of child sexual exploitation in all of its different forms, and ECPAT, through its member groups, has a strong presence there.

A key goal of the A2J Study was to listen to the voices of CSEC survivors. ECPAT conducted more than 40 access to justice interviews with young people in Nepal, the Philippines and Thailand, making the A2J Study the first of its kind to benefit from the input of young survivors in such great number.

ECPAT also interviewed more than 50 criminal justice and social service professionals who work with CSEC survivors, including NGO caregivers, police, prosecutors, judges, child-specialized lawyers and other advocates. Extensive desk research on relevant laws, policies and norms supplemented this field research.



The Study identified unique and powerful barriers that prevent sexually exploited children from entering the justice system or securing justice and remedies when they do. These obstacles not only impede the ability of sexually exploited children to access justice, but also interfere with state efforts to protect them from SECTT and prosecute SECTT offenders. The charts below summarize the barriers and cross-cutting themes that negatively impact these children at each stage of the justice process.

## UNIQUE BARRIERS TO ACCESS TO JUSTICE FOR CHILD VICTIMS OF SEXUAL EXPLOITATION IN NEPAL, THE PHILIPPINES AND THAILAND

### Cross-Cutting Themes

- **The Myth of the “Willing” Victim:** Police, prosecutors, social workers and even NGO workers perceive the child as a “willing” participant in the sex industry. Sometimes child victims engage in the sex trade out of desperation to assist their impoverished families. Other times child victims engage in the sex trade in hopes of gaining wealth or luxury goods. Believers in the myth of the “willing” participant ignore international law granting protections and rights to all persons under age 18. This myth creates barriers at all stages of the justice process, including the investigation and prosecution of SECTT, as well as access to compensation for child victims.
- **Discrimination Against the Adolescent Victim:** Victims of child prostitution are often adolescents; however, the A2J Study revealed that authorities are more apt to ignore cases where the victims are, or appear to be, old enough to give legal consent to sexual relations.

Due to laws subjecting adolescents to criminal liability, as well as discriminatory practices, adolescents are at risk of being arrested or dismissed as willing sex workers, rather than treated as victims. Short statutes of limitations and private settlement laws often apply to older children and prevent them from pursuing criminal cases against exploiters and securing justice.

- **Elusive Nature of the Child’s Best Interests:** International law requires that the child victim’s best interests be the “primary consideration” at all stages of the justice process. Yet, CSEC cases are often heard in adult criminal courts, where the principle is less familiar than in child-specialized courts. Even when the laws governing CSEC cases mention the idea of “best interests,” most fail to provide specific guidance about how and when to make the best interests determination. Although child-friendly justice procedures have improved, they do not require an individualized best interests determination and justice actors tend to apply a one-size-fits-all approach that may be ill-suited to the needs of the sexually exploited child.
- **Failure to Inform and Consult Victims:** International law requires justice actors to inform and consult with child victims. Yet, sexually exploited children are too often kept in the dark about their cases and have little understanding about what is transpiring during them. Despite the significant risks they assume when they participate in a case against their exploiter, they are not given information at the outset of the case to make an informed decision. Laws requiring children to be informed are scattered and incomplete in the Study Countries, and children consistently reported suffering “information blackouts” regarding the cases, sometimes lasting for years.

## Barriers to Entering the Justice System

- **Reluctance to Report:** The silence of child victims of sexual exploitation is one of the most significant barriers to access to justice. The A2J Study revealed several reasons for this barrier: child victims often fail to perceive themselves as victims; have a poor relationship with police and distrust the justice system; face a heightened risk of retaliation and stigma associated with the sex trade; and fear long-term confinement in the shelter-system once they are identified.
- **Police Inaction:** While specialized police units have improved the State's response to CSEC, local police continue to fail to act proactively to search for and rescue children exploited in the sex industry. They too often turn a blind eye to children prostituted on the streets and rely heavily on non-state actors such as NGOs to conduct investigations and initiate raid and rescue operations.
- **Being Treated as a Criminal:** Justice actors tend to dismiss older child victims of sexual exploitation as willing participants in commercial sex and fail to bring them into the justice system to get help and prosecute their adult offenders. The A2J Study found that migrant, homeless, male and transgender child victims were at even greater risk of arrest in Nepal, the Philippines and Thailand.

## Barriers to Securing Justice Once in the System

- **Pressured to Make a Decision:** Soon after rescue, sexually exploited children must decide whether to participate in a case against their exploiter. In Nepal, the Philippines and Thailand – as in many countries around the world – they are not given a period of reflection and recovery to start their recovery and come to terms with their victimization before deciding whether to pursue the case.

They are not given information about the risks and benefits of their participation nor asked to provide informed consent before agreeing to proceed. Instead, they are often forced to make the decision while under tremendous pressure from the adults around them. Perpetrators, corrupt officials and often the child's own family pressure the child to drop the charges or settle out of court, while NGO actors, prosecutors and others place pressure on the child to move forward, even when this may not be in the child's best interests.

- **Lack of Family Support of Other Adult "Champion":** Although 25% of victims in the A2J Study reported having no support from their families, family support is key to their ability to access justice. Some families refuse to support their child in bringing a CSEC case due to the associated stigma. Others prefer to accept settlements offered by perpetrators rather than go through long, disruptive, and costly public proceedings. Still others are complicit in, or facilitators of their child's exploitation, including through SECTT. In some instances, a prosecution cannot go forward without parental consent. Yet, even when familial participation is not legally required, lack of an adult champion makes navigating the justice system extremely complicated, and the Study Countries rarely provide children with a dedicated, state-appointed advocate, lawyer or guardian to assist them during proceedings.
- **Threats to Safety:** In Nepal, the Philippines and Thailand, child victims of CSEC and their families are frequently subjected to threats, harassment and retaliation by perpetrators. Perpetrators are often released on bail during the pre-trial period and witness protection measures are weak. Child victims suffer from fear throughout the process, but their fear of confronting the perpetrator before or during trial was reported as the most significant.

- **Therapy, Shelter Care and Running Away:** States rarely provide the specialized care and counselling that CSEC victims need to begin their recovery during the criminal proceedings. Victims in the Philippines and Thailand tend to be confined in restrictive shelters throughout the lengthy justice process, which may take years. Child victims report abhorrent conditions in many government shelters with inadequate therapy and little contact with the outside world. As a result, many child victims are unable to participate safely and effectively in the case against their exploiter or they run away before the case is complete, cutting off their access to justice.
- **Hardships of the Criminal Process:** Despite the existence of a number of child-friendly interview and trial procedures in the Study Countries, sexually exploited children still suffered great hardship during CSEC cases, including long and repeated interviews where they were forced to recount their abuse, often in excruciating detail; insensitive and victim-blaming questioning by attorneys and judges; inadequate trial preparation; and traumatizing encounters with the exploiter, either during hearings or when crossing paths in and around the courthouse. Where child-friendly procedures were implemented, they did not always meet the special needs of CSEC victims. In the Philippines, for example, cases of sex crimes against children are heard in judges' chambers, where the atmosphere is more private and informal. Yet, this practice often forces children to recount their abuse in even closer proximity to the defendant; CSEC survivors in the A2J Study cited

having to testify *in front of their exploiter* as one of the most traumatizing aspect of their cases.

The hardship of participating in CSEC cases is also compounded by the fact that most cases are child-dependent rather than child-supportive, with the prosecution relying almost exclusively on the testimony of the child victim to convict the exploiter. There is often little corroborative physical evidence or witness testimony. In the Study Countries, there is no practice of introducing expert or other types of evidence to dispel negative CSEC stereotypes, and the use of evidentiary rules to protect a child from unfair attacks on his/her character tends to be rare or unsuccessful.

- **Failure to Secure Convictions and Post-Trial Remedies:** Only a tiny fraction of sexually exploited children will see their exploiters brought to justice; even fewer will be adequately compensated for the harms they suffered. The compensation process is poorly understood by children, families, and even justice professionals and hindered by the attitude among some government actors that children who have already "earned" money for engaging in sex do not deserve monetary awards. In SECTT cases, it can be particularly difficult to enforce compensation awards against foreign perpetrators who have assets overseas. Finally, while many child victims of sexual exploitation require long-term care, sometimes for the rest of their lives, quality aftercare is typically lacking, and children often struggle to rebuild their lives, with too many returning to the sex trade, where the cycle of abuse begins again.

# ABOUT THE AUTHORS

## Darlene C. Lynch

Darlene C. Lynch is an expert legal consultant to ECPAT International. She recently led ECPAT's groundbreaking study on Access to Justice and Legal Remedies for Child Victims of Sexual Exploitation and authored the first report on Nepal, the Philippines and Thailand, to be released later this year. Darlene continues to serve as a consultant on ECPAT's ongoing Access to Justice work and other legal projects. In 2014 and 2015, Darlene was ECPAT's representative in Geneva, assisting with international advocacy for the Secretariat and its member groups. Prior to joining ECPAT, Darlene was engaged in law and policy work on behalf of child victims of commercial sexual exploitation and trafficking in the United States for many years. She previously taught law at Emory, Harvard, and Boston University law schools and worked as a practicing attorney in Massachusetts.

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Lindsay Schenk served as a legal intern with the ECPAT International Legal Department from October 2015 through March 2016. She helped research and draft the report on access to compensation mechanisms through criminal, civil and state-managed victim compensation programs for child victims of sexual exploitation in 14 countries. Lindsay is also a qualified attorney with over four years of litigation experience in the United States. She graduated from the University of Virginia in 2006 with a degree in Philosophy and from the University of Tennessee, College of Law in 2010.

# ABOUT ECPAT INTERNATIONAL

ECPAT International is a global network of civil society organisations dedicated to ending child prostitution, child pornography and the trafficking of children for sexual purposes. It seeks to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of commercial sexual exploitation. ECPAT International is a network of 90 local organisations in 82 countries. Network activities are supported and coordinated by the International Secretariat.