

**RIGHT TO ACCESS
JUSTICE – CHILD VICTIMS
IN ONLINE CHILD SEXUAL
EXPLOITATION AND
ABUSE CASES**



Right to Access Justice – Child Victims in Online Child Sexual Exploitation and Abuse Cases

This discussion panel organised by ECPAT Norway as part of the World Congress on Justice with Children was held on 17th November from 18-19-30. This event was part of a series of workshops that took place at the regional and national levels to define key challenges and advocacy priorities in justice for children.

The panel was held online and consisted of 6 experts:

- Jennifer Newman, Executive Director, Texas & ECD, National Center for Missing & Exploited Children (NCMEC)
- Nadine Finch, Associate Member of Child Circle and trustee of Love 146.
- Thomas Andersson, Senior Advisor, ECPAT Sweden.
- Nina Vaaranen-Valkonen, Executive Director, Senior Specialist and Psychotherapist, Suojellaan Lapsia ry/Protect Children Finland.
- Ann-Kristin Vervik, Executive Director and Co-Founder, ECPAT Norway
- Kym Sylwander (PhD), Consultant, ECPAT Norway and Post-Doctoral researcher at Malmö University

The panel discussion detailed both the challenges faced by victims in accessing justice and the nature of effective remedies to adequately address the harm suffered in this complex and often reoccurring crime. The speakers have a large amount of experience dealing with child victims in online child sexual exploitation and abuse cases (OCSEA) and an in depth understanding of the challenges faced by child victims in accessing justice systems and effective support or remedy.

Importantly, the WeProtect Global Threat Assessment 2021 highlights an alarming increase of child sexual exploitation and abuse online and so the matters discussed in this panel are timely. The result of this increase will be enormous numbers of victims and survivors who are children or young adults.



The main objectives of the panel discussion were to:

1. Identify new challenges in providing access to justice for victims of child sexual exploitation and abuse online
2. Share good examples of comprehensive and effective legislation, policy and practice
3. Identify models of effective remedy and reparations globally, regionally and within domestic jurisdictions.

1. The Prevalence and New Trends relating to OCSEA

A. Detection and Removal of Images

The respondents highlighted the increase in the prevalence of child sexual abuse material (CSAM) worldwide and the problems that arise with the large volume globally. Ms Newman from NCMEC detailed how reports to their Cybertip line have increased by 28% in 2020 in comparison to 2019.¹ 94% of the tips are resolved outside the United States. There were 16.9 million reports in 2019 and this increased to 21.7 million in 2020. This number has already been surpassed in the 1st three quarters of 2021. There are 8 categories of CSAM and there has been an increase in all of these – one example is the 148 % increase in reports of sexual molestation.

There has also been an increase in reports of CSAM by the public, which doubled in 2020, rising to 300 000. The optimistic aspect of this was highlighted as a result of better engagement. A better collective response by industry partners and improved detection has also been a source of positivity. There was a rise in video clips being reported rather than just images – a factor which is reflected in the increased usage of apps. There were 33.6 million images and 31.6 million videos reported by ESPs to the CyberTipline in 2020. A further encouraging development is the increase in reporting images to law enforcement, rather than recirculating the images.

Content is classified into 2 types:

¹ <https://www.missingkids.org/theissues/csam#bythenumbers>



1. Youth-produced content in which someone has chosen to produce the material and share it willingly with someone. However, it has then been reshared in a manner they did not expect.
2. Online enticement which is connected to someone who has been coerced into sending either by grooming or sextortion.

Mr Andersson from ECPAT Sweden is in charge of the Swedish work on Project Arachnid, a web crawler designed to detect and remove CSAM images.² Project Arachnid is a proactive tool to remove CSAM created by the Canadian Centre for Child Protection.³ The innovative technology works as a targeted crawler of the internet and searches the internet in a rapid speed, so far analysing over 3 billion urls. He highlighted the scale of the problem and the need for a coordinated approach as part of the new trends and problems. An important challenge arising from the fact that the Internet has been unregulated for 25+ years. Regulation should take the form of a mandatory detection, reporting and removal regime.

Finally, Ms Vaaranen-Valkonen, who is in charge of the Finnish work on Project Arachnid, reinforced the need for proactive and coordinated approaches.⁴ The large number of OCSEA is described by Protect Children Finland as a shadow pandemic. One of the trends is that increasing numbers of younger children now have mobile phones. There has been an increased amount of both forced and voluntary sharing of images. Indeed, in Finland there have been over 300 cases involving 8–13-year-old children. It is important therefore to start educating children earlier about online safety. In accordance with the other speakers the need for more regulation was highlighted.

B. Barriers for Child Victims in accessing justice

Ms Nadine Finch, Associate Member of Child Circle and trustee of Love 146, explained that the UK and Philippines are closely aligned in this area, with abuse often carried out by UK perpetrators travelling abroad. The UK response to this has been quite advanced. In the Modern Slavery Act 2015 the definition of

² <https://ecpat.se/aboutecpatsweden/>

³ <https://projectarachnid.ca/en/>

⁴ <https://protectchildren.fi/>



exploitation allows the courts to prosecute OCSEA cases.⁵ This means that the UK courts can try cases in which exploitation has occurred in the Philippines. In practice however only a limited number of cases have gone to court and, even though there is publicly funded legal aid to instruct lawyers, this is not generally available to victims who are abroad. Child trafficking guardians are also only accessible by children in England and Wales. Child victims of online abuse and exploitation are often isolated, full of shame and unwilling to disclose necessary details. The reality in the Philippines is that lots of children are being abused. The local police department and social services are prepared to work to protect children and in conjunction with international actors. One example of this is a report developed by the local Philippines social services and UNICEF. An aspect that could exacerbate the potential numbers of child victims, is that culturally online abuse is at times considered as less harmful and could be facilitated by family members. This creates additional problems for effective prosecutions, as victims maybe unwilling to incriminate family members.

A challenge experienced by child victims in the UK arises for those who do not have the requisite immigration status. They may be unwilling to cooperate with proceedings, especially if this places them at risk of being removed from the country.

Cross-border co-operation between lawyers, support workers and the police would improve the potential for child victims to access justice and would enhance evidence-sharing between different jurisdictions. Transnational Referral mechanisms can facilitate this sharing of information.⁶ A 2-year project, funded by the European Commission, will enable the Council of the Baltic Sea States, Child Circle and others to develop guidance and training on both transnational referral mechanisms and National Referral Mechanisms. This will hopefully strengthen referral mechanisms both within the Baltic Sea Region and other states in Europe.

Ms Sylwander, who is a researcher, described various obstacles for children accessing justice based on experiences from the Norwegian case law. The central issue being the difficulty of identifying victims of CSAM, particularly in regard to the scale of the number of images and videos. Often one offender has images of

⁵ <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

⁶ <https://bsr-trm.com/>



large numbers of victims and many of these victims are never identified. In practice in Norwegian case law if the victim is not identified then they are not part of any justice system and have no opportunities to receive justice.⁷ Child victims abroad have the opportunity to receive justice when a case is tried in Norway, but these victims have to be identified to be able to access justice, and to date there are only a handful of victims that have been identified in CSAM cases, whereas the total number of victims of CSAM related offences in a small country like Norway is in the millions. The identification of victims is therefore the first step to ensure child victims of OCSEA access justice, which requires further technological innovation and international cooperation.

⁷ Sylwander, K.R., Vervik, A-K. & Greijer, S. (2021). Online child sexual exploitation and abuse: A review of Norwegian case law. Oslo: ECPAT Norway.
<https://static1.squarespace.com/static/55e5a4aae4b0a8e8abf5dcac/t/6062d3248f03b063e7d4b72a/1617089319499/ECPAT+Norway+Report+Online+and+media+facilitated+child+sexual+abuse+19+March+2021.pdf>



2. International Standards on Access to Justice for Child Victims

Ms Vervik from ECPAT Norway, set out the international requirements in providing access to justice for child victims – namely 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 of the Rights of the Child.⁸

In accordance with the UN Guidelines on Justice in Matters involving Child Victims and Witnesses for Crime and other standards, children must be treated in a child-sensitive manner with respect for:

- Their dignity and compassion
- Protection from discrimination and hardship during the justice process
- The right to be informed, to be listened to and to express their views
- The right to effective assistance
- The right to privacy
- The right to reparation
- The right to safety and protection from secondary victimisation.

Ms Vervik stressed the need for periodic reviews and continuous improvements in legislation. She highlighted a recent judgement at the court of appeal in Norway which has been criticised for letting down a vulnerable 16-year-old victim due to inaccurate translation from an international Convention into law at national level.⁹ The Norwegian penal legislation is similar to the Lanzarote Convention article 18(b), however the Norwegian legislation includes the narrower term of ‘life situation’ rather than ‘situation’ as included in the Convention.¹⁰ There have been calls from parliamentarians in the Socialist Left

⁸ (A/HRC/25/35)

⁹ [Loven kunne ikke hjelpe Tonje \(16\): To menn frikjent for overgrep – Nordland \(nrk.no\)](https://www.nrk.no/loven-kunne-ikke-hjelpe-tonje-16-to-menn-frikjent-for-overgrep-nordland-1.11888888)

¹⁰ Article 18

Sexual abuse

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

a. engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;

b. engaging in sexual activities with a child where:

- use is made of coercion, force or threats; or
- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or



Party that the law should urgently be amended in accordance with the intention of the Lanzarote Convention.

A. Access to Justice in the European Context

Ms Vaaranen-Valkonen explained that at all stages there is significant room for improvement. Recognition needs to be given to the long-term reality of the impacts of online child sexual abuse. Side effects of the crime may only be demonstrated years later and those affected can experience the trauma at this stage. In relation to OCSEA images, these are difficult to take down and there is often on-going circulation. In her work she has witnessed images being uploaded multiple times and reuploaded year after year.

Ms Finch examined the EU victims' rights strategy in conjunction with the EU Strategy on the Rights of the Child and EU Strategy on Combatting Trafficking in Human Beings (2021-2025) to analyse evidential issues and their impact upon access to justice.¹¹ Children have a huge disadvantage as they do not know how to evaluate the relevance or information and evidence. The Combatting Trafficking Strategy refers to tools that are available when online exploitation has occurred. These include Europol's Internet Referral Unit and the Interpol referral mechanism.¹² The instances of child live streaming demonstrate a test in uncovering potential evidence. In practice children, both in the UK and the Philippines, often have more of a paper trail than adults occurring through schools or social services. These could be potential sources of evidence for criminal trials.

- abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0171&from=EN>
[The EU Strategy on the Rights of the Child and the European Child Guarantee | European Commission \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0171&from=EN)

¹² <https://www.osce.org/files/f/documents/0/4/13967.pdf>



B. Good practice, Policy and Legislation: Global Examples

Mr Andersson detailed good practice occurring through mandatory detection, reporting and removal routines. Complementing this is a crucial approach. This is currently seen in the USA with NCMEC and the EU need to follow this example.

In Sweden it is now possible to be sentenced for rape even if it occurs via webcam.¹³ The perpetrator and child do not need to be in the same country. However, a limitation was demonstrated in 2018 when the Swedish supreme court ruled that sexual assault did not occur if the child records the sexual act when the perpetrator is not present in real time – this does not meet the standard of sexual assault with a child under Swedish law.¹⁴ It requires one step further in Sweden to remove this requester of the act being carried out in real time.

Ms Newman detailed the good practice in USA legislation which includes mandated reporting to the NCMEC Cybertip line, 18 U.S. Code § 2258A. This requires companies to make reports of potential CSAM, images and videos, to the Cybertip line. In addition, there are important preventative tools such as grooming detection, which can detect online enticement. Good practice can be witnessed as well through the proactive reporting by industry partners. Legislation has been introduced in the USA, which has strengthened victims' rights, such as the Amy, Vicky and Andy Act.¹⁵ This allows victims to seek restitution from the offenders who have their images files on their computer.

¹³ <https://www.regeringen.se/4950e9/contentassets/20977a5e47ab41bd89e4ff609208bfa8/en-ny-sexualbrottslagstiftning-byggd-pa-frivillighet-prop.-201718177>

¹⁴ <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2015/b-5680-14.pdf>

¹⁵ S.2152 - Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018

(Sec. 3) This bill amends the federal criminal code to modify procedures for determining the amount of mandatory restitution in child pornography cases.

If a defendant is convicted of trafficking in child pornography, then the court must order mandatory restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than \$3,000. The full amount of the victim's losses includes costs incurred as a proximate result of all trafficking in child pornography offenses involving the same victim.

(Sec. 4) If a defendant is convicted of trafficking in child pornography, then a victim of the offense may elect to receive a one-time payment in the amount of \$35,000 (adjusted for inflation) from a Child Pornography Victims Reserve, subject to limitations.

(Sec. 5) The bill amends the Victims of Crime Act of 1984 to establish the Child Pornography Victims Reserve within the Crime Victims Fund. Courts must impose additional assessments on persons convicted of child pornography offenses, and the additional assessments must be deposited into the Child Pornography Victims Reserve.

(Sec. 6) In a criminal proceeding, a victim of a child pornography offense must have reasonable access to the pornographic material depicting the victim for inspection, viewing, and examination by the victim, his or her attorney, and potential expert witnesses



This mitigates the challenges which have arisen previously in which offenders claimed in their defence that there was no harm as they were ‘just collecting’.

There is now greater post identification support for victims and survivors to address the legacy of abuse and provide resources and services, especially to support those who do not know their rights or how to navigate the legal landscape.¹⁶ In Thailand the HUG project has produced a handbook of survivor services, ensuring victims and survivors know their rights and can be supported in seeking justice.¹⁷ Additionally, in the USA NCMEC has developed a legal assistance handbook for attorneys. This is especially important for OCSEA cases in which children may not identify as victims and may be unwilling to share details of what they have experienced. The handbook therefore provides attorneys with templates to build off and aid them with the cases.

Ms Sylwander detailed how the update to the Norwegian penal law included new text which strengthens the understanding of the seriousness of CSAM.¹⁸ Fictitious depictions of child sexual abuse have now been brought to court and a more extensive jurisprudence has arisen to include detailed chat of abuse and fictitious CSAM such as animated images and sex dolls depicting children. In Norway the law is casting a wide net to protect children. It is technology neutral and recognises that sexual offences do not have to be perpetrated physically by the offender. It includes the potential to prosecute offenders if they encourage a child to perform a sexual action on themselves. The understanding of rape online can arise if a victim is pressured, threatened or misled into performing a sexual act, including performing a sexual act on him or herself.¹⁹ The law enables

¹⁶ <https://www.missingkids.org/gethelpnow/support>

¹⁷ <https://www.hugproject.org/>

¹⁸ Norwegian Penal Code 2005

§ 311. Depiction of sexual abuse of children or depiction which sexualizes children 82 A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who a) produces a depiction of sexual abuse of children or a depiction which sexualises children, b) publishes, offers, sells, supplies to another person, makes available or otherwise seeks to disseminate depictions as specified in a), c) acquires, imports or possesses depictions as specified in a), or intentionally acquires access to such material, d) gives a public presentation or arranges a public performance or exhibition of depictions as specified in a), or e) induces a person under 18 years of age to allow himself/herself to be depicted as part of commercial production of moving or still pictures with sexual content. In this section «children» means persons who are or appear to be under 18 years of age. A person who negligently commits an act specified in the first paragraph shall be subject to a fine or imprisonment for a term not exceeding six months. The same penalty shall apply to any proprietor or superior who intentionally or negligently fails to prevent the commission of an act as specified in the first paragraph within an enterprise.

¹⁹ Section 299. Sexual assault on a child under 14 years of age

A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who



prosecution even if there is not physical contact. Additionally, attempting to commit offenses online can also be prosecuted.

An important aspect is the length of time IP addresses are stored by the police to be used as part of an investigation. If the online user data can only be kept for a short amount of time, then it limits the possibility of prosecuting an offender.²⁰

3. Effective Remedies and Reparations in Domestic Jurisdictions.

A. Remedies

Ms Finch detailed the model of Barnehus type remedies which arise within the UK and Philippines and the wrap around care this provides to victims. The EU Victims' rights strategy acknowledges the value of Barnehus. It plays an important role in the identification and investigation of child trafficking. A strength occurs through adapting the forensic interviews which have a dual function, firstly to assist children to provide evidence and facilitate offenders being brought to justice and secondly, form part of the therapeutic process. This means that prosecutors can see a child in a protective setting in which there is wrap around care. The standard Barnehus model does not provide residential care. Reports from Barnehus have detailed the increasing referrals of online sexual abuse and rise in child sexual abuse materials. It is hard to divorce online and offline environments, especially as online is the process through which traffickers stay in business.

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- a) engages in sexual activity with a child under 14 years of age,
 - b) makes a child under 14 years of age perform acts corresponding to sexual activity on himself/herself, or
 - c) performs an aggravated sexual act with a child under 14 years of age.

Section 300. Minimum penalty for sexual assault involving intercourse on a child under 14 years of age
The penalty is imprisonment for a term of between three and 15 years if the sexual assault as specified in section 299 involved:

- a) insertion of the penis into the vagina or anus,
- b) insertion of the penis into the aggrieved person's mouth,
- c) insertion of objects into the vagina or anus, or
- d) insertion of the penis into and between the labia majora and labia minora.

²⁰ The Norwegian Electronic Communications Act was updated in 2021 and IP addresses shall be stored for 12 months. <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Beslutninger/Lovvedtak/2020-2021/vedtak-202021-165/>



The NGO Love 146 provides a Barnehus type process in the UK.²¹ Their services provide wrap around care and support children who have been placed into foster care. The staff work with the children in different forms of creative therapies, such as art or drama. They hope to become a foster agency in the future. The Philippines Love 146 Branch is a residential home for children who have been trafficked. Their procedures are built around trauma informed practice. They create a supportive and therapeutic environment which can include the children taking part in a variety of activities such as Art and Music, Growing Vegetables and Raising animals. The organisation has a good record in launching children in vibrant lives. There are different models in trauma response.

Ms Sylwander explained how the Barnehus in Norway provides child victims with support from specially trained staff and police. All professionals in contact with children have received child-sensitive training.²² This is a one stop shop, supporting children during the trial processes and ensuring victims can access long term support. The Norwegian Barnehus are promoted worldwide as good practice and are seen as a good model to improve access to justice for child victims. There are however a number of limitations in practice within Norway that stem from the aim to provide equal access for all children throughout Norway. One issue is the geographical location as many Barnehus are based in populated areas such as Oslo or Bergen. However, these are difficult to access for children who live far away from the cities. Additionally, children between the ages of 16 and 18 do not appear to have the same rights to equal access. In many cases they go to court to provide evidence rather than taking part in a forensic interview in the Barnehus.

Ms Vervik explained the effects OCSEA crimes have on child victims, such as PTSD, guilt and shame which can be long term and have very damaging impacts upon the child's life even into adulthood. For some children it is only when the police contact them that they realise they are a victim. In principle all child victims can receive compensation for injuries from the offender or from the state compensation scheme. However, very few victims want to disclose what happened to them and the reality for victims abroad is even more complex. The victims face greater hurdles to receive compensation. In one case a 3-year-old

²¹ <https://www.love146.org.uk/>

²² <https://www.statensbarnehus.no/>



victim in the Philippines was awarded 200,000 NOK (around \$20,000USD) while the young brother who was six months was not awarded anything, due to his young age and that there were no signs of harm. However, this was overruled and compensation for possible future harm was finally awarded to the boy.

One area of concern is that new legislation on compensation may make it more difficult for victims abroad to receive compensation. The Ministry of Justice has expressed concern that by awarding amounts of compensation that are 14 times the standard salary in the Philippines then more children may be placed at risk of exploitation. A full child rights (including the best interest of the child) impact assessment should be carried out on the new legislation before it is finalised.

B. Reparations

Ms Newman detailed that an important tool for preventing reuploading of images is the sharing of hash values. In addition to NCMEC's list, Internet Watch Foundation and other organizations have hash value lists for CSAM videos and images. Currently, NCMEC's NGO list has over 9 million to offer to industry partners. Known CSAM exists with an industry hash-list and this can be effective in preventing some images being uploaded or reuploaded. Actors in the industry can share these amongst themselves. Standardization of this would be more effective.

Mr Andersson detailed the work within Project Arachnid focused on reducing revictimization. He explained that 50% of images have previously been posted and using the same service provider.²³ In their work they discover the same CSAM over and over again. Greater work needs to be done in preventing the same images from being reuploaded. Additionally, there are longer removal times for older children in comparison with images of prepubescent children. If victims are not identified and the age is uncertain it can take longer for the images to be removed. More work needs to be done with service providers so they will remove images faster. At all times it is important to remember the global reality of CSAM and the need to work across borders.

²³ [C3P ProjectArachnidReport_en.pdf \(protectchildren.ca\)](#)



4. Non-Repetition – Prevention and Deterrence strategies for young people

Ms Vaaranen-Valkonen detailed the preventative focus of the ReDirection project for Protect Children Finland.²⁴ In this a survey was conducted on the dark web to get a better understanding of the types of people looking for CSAM materials. The results of this demonstrated that many children under 18 have been seeking CSAM materials and that also there is a large number of children under 13 years old who had been looking at CSAM images. The findings of this survey have been used to develop a self-help programme targeting potential offenders and offenders, helping them to stop using CSAM. Another important prevention tool is effective age verification mechanisms online. This can prevent children accidentally accessing online content that is age inappropriate and harmful for their development.

²⁴ <https://suojellaanlapsia.fi/2021/09/23/redirection-survey-report/>



Conclusions and Way Forward

The panel noted the need for a coordinated effort to address the dramatic increase of OCSEA. This should include mandatory reporting and stronger cooperation between all actors – Government, Law Enforcement, Technology Companies and NGOs. There are effective detection tools that flag potential images of videos that contain CSAM and can detect online grooming. Increased education for younger children is necessary to ensure they have the requisite skills to keep them safe online. Prevention is a vital component in limiting the numbers who are affected by this crime. Effective non-punitive deterrence measures should be taken for children who access porn and CSAM. Governments should strengthen efforts to remove CSAM online and ensure that all child victims and survivors are protected from revictimization.

In considering access to justice for child victims it is key that their voice is heard in the midst of every justice process. A victim and survivor centred approach should inform decisions and shape the design of procedures from initial stages. This would provide them with ownership over the systems developed to help and support them. It would also reduce the risk of secondary victimisation arising through the justice process and would provide a greater opportunity that child victims can experience justice.

The rights of victims should be strengthened throughout Europe and globally. This should include their rights to child- and gender sensitive access to justice, including effective remedies and support for their recovery and social reintegration. These will include One-Stop centres or children's houses that all child victims can access equally – including child victims abroad.

