



ECPAT'S SUBMISSION

Call for input for the Special Rapporteur's thematic report on reparation for child victims and survivors of sale and sexual exploitation

15 December 2022

Introduction

This submission by [ECPAT International](#)¹ is in response to the call for input issued by the Office of the Special Rapporteur on the Sale and Sexual Exploitation of Children to inform the thematic report on *reparation for child victims and survivors of sale and sexual exploitation*.

This submission incorporates contributions made by 20 members of the ECPAT Network for the purpose of this call.²

From laws to practice

Sexual exploitation of children, in all its forms, constitutes a violation of a child's human rights under international law. The duty to provide children with effective remedy and reparations for human rights violations is a well-established obligation under international law, enshrined in the core international human rights treaties, international standards as well as regional human rights mechanisms.

ECPAT has been advocating since its origin for States to ensure that children who have experienced sexual exploitation and abuse have the right to engage effectively with the criminal justice system in order to secure remedies for their exploitation or abuse, including compensation and services they are entitled to in order to recover and return to healthy lives.

Increasing acceptance that access to justice matters to children experiencing crimes of sexual exploitation have also resulted in international laws and guidelines. Such instruments contain a variety of child-friendly elements in order to make criminal justice systems more accessible to children who seek remedies and accountability. States have begun to incorporate these procedures into their laws and policies.

Indeed, ECPAT has been assessing the existence and comprehensiveness of national legal provisions on access to reparation through a number of projects and initiatives in recent years. The country analysis conducted using the 24-points [legal checklist](#) on key legal interventions to protect children from sexual exploitation in travel and tourism, developed based on the recommendations of the first [Global Study](#) on the topic, indicates that in 42 out of the 44 countries analysed the national legislation allows child victims to seek compensation in national courts from convicted offenders and/or through

¹ ECPAT International is a global network of civil society organisations, working to eradicate all forms of sexual exploitation of children. Over the past 30 years, ECPAT has become the forefront international network of non-governmental organisations dedicated to end this severe form of violence against children, advocating for State accountability and more robust measures across sectors to enhance the protection of victims. ECPAT currently has 122 member organizations operating in 104 countries around the world.

² Association Contre l'Exploitation Sexuelle des Enfants au Mali (ACESEM), [Centro Integrado de Apoyo Familiar \(CIAF\)](#), [Child in Need Institute \(CINI\)](#), [ECPAT Colombia/Fundacion Renacer](#), [ECPAT Norway](#), [ECPAT Philippines](#), [ECPAT/STOP Japan](#), [ECPAT South Korea \(Tacteen Naeil\)](#), [ECPAT Sweden](#), [ECPAT Turkey](#), [Fundación PANIAMOR](#), [Hintalovon Child Rights Foundation](#), [Hope and Help](#), [Jiyon Foundation for Human Rights](#), [National Network for Children \(NNC\)](#), [PEaCE/ECPAT Sri Lanka](#), [Sana Sezim](#), [Save the Children Finland \(SCF\)](#), [SAWA All Together](#), [Tanzania Wote Equality Alliance \(TAWEA\)](#).



state-managed funds.³ In 37 out of the 44 countries national legislation provides – to different extent - the right for child victims to receive support in their recovery including accessing re-integration services.⁴

While these legal reforms are an important step forward, implementation is slow and uneven. Research conducted by ECPAT in recent year shows that few sexually exploited children enter criminal justice systems and fewer still participate in proceedings until their conclusion or are given the option to seek and obtain compensation or monetary relief.⁵ For effective implementation of access to justice for children, standard-setting is not enough. It is also unclear in some countries to what extent children are actually benefiting from the child-friendly procedures that are on the books.

Similarly, workshops on access to justice currently being conducted by ECPAT in 9 countries across Latin America, Eastern Europe, Asia and Africa,⁶ have indicated so far that the high impunity rates make the award of compensation almost an unknown scenario for frontline professionals. According to justice professionals involved in these consultations, this is mostly due to lengthy judicial processes which make almost impossible for victims to remain invested in the case. In the rare cases where the offender is convicted, many victims and their families do not have the patience and resources to pursue the additional process for a compensation that might never be received as linked to the offenders' financial status.

Main barriers to seeking compensation and current needs of child victims and survivors to redress and reparation

ECPAT's research as well as insights from ECPAT member organisations shared for the purpose of this call for input, identify a number of barriers for seeking and obtaining compensation as well as specific needs for child victims of sexual exploitation.

The first set of barriers naturally refers to the **difficulties in accessing the justice system** itself which, consequently, hinders any possibility for child victims to obtain reparation in any form.

A general distrust in the justice system and the possibility to be awarded compensation, prevents children and families to even initiate the justice process by reporting the crimes. In many instances, the protection of the victim and reparation for the crimes suffered is not considered a priority within the legal system. Reluctance to report, law enforcement inaction, criminalisation of victims and gaps in communications are just some of the barriers that continue to impact children who have been subjected to sexual exploitation.

The [Disrupting Harm project](#) demonstrated how most cases of online child sexual exploitation and abuse are not reported to police. Indeed, out of the 1,059 surveyed children who had been subjected to online sexual exploitation and abuse, only 2.9% had contacted the police.⁷ Children who did not

³ See: ECPAT International. (2022). [Regional Overviews on key legal interventions to protect children from sexual exploitation in travel and tourism](#).

⁴ *Ibid.*

⁵ For a complete analysis on the different barriers to access to justice for children see: ECPAT International (2017). [Through the Eyes of a Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation](#); and ECPAT International (2017). [Barriers to compensation of child victims of sexual exploitation](#).

⁶ The Access to Justice Initiative (a project funded by Bread for the World and implemented by ECPAT International) aims at assessing and addressing gaps and opportunities in the access to justice of child victims and survivors of sexual exploitation in Bolivia, Peru, Uganda, Kenya, South Africa, Moldova, Pakistan, Nepal and Cambodia.

⁷ ECPAT International and UNICEF Office of Research – Innocenti (2022). [Children's Disclosures of Online Sexual Exploitation and Abuse. Disrupting Harm Data Insight 2](#). Global Partnership to End Violence Against Children.



disclose at all (to police or anyone else informally) said that they did not disclose nor report because they did not know where to go or whom to tell. Frontline workers surveyed as part of Disrupting Harm identified that poor public awareness of the formal reporting channels was commonly a barrier.⁸

Moreover, in countries where homosexuality is criminalised and all-encompassing bans on pornography exist, fears of self-incrimination might stop children from reporting.⁹ In particular, when it comes to boys victims of sexual exploitation, ECPAT research and insights indicate that boys are often not considered in the development of specific safe identification and referral pathways for. This, along with fear of stigma, discrimination of being associated with homosexuality, affects both disclosures, the extent of case management services as well as available reparation pathways.

Similarly, some ECPAT member organisations noted how harmful traditional attitudes toward sex and sexuality and towards survivors of sexual violence and exploitation, as well as acceptance of physical abuse as a way to “keep order” within the family, makes difficult for survivors to disclose and report their abuse and potentially receive reparation and redress. Often times, in such contexts, child victims (and their families) must weigh risk of coming forward to access justice with possible backlash they could face in their communities. This is also linked to challenges related to confidentiality standards for the process not being guaranteed by law enforcement and the overall justice system.

Once child victims do access justice, additional barriers exist when training to obtain reparation. In particular, the ECPAT networks’ research and insights identify the following main areas of concern:

Lack of information on the possibility to receive compensation

A main problem identified in many countries is the lack of information for child victims regarding the existence and availability of compensation as well as the process to obtain it.

In the framework of the [Disrupting Harm project](#), ECPAT conducted interviews with 61 children (and their caregivers) who had been subjected to online sexual exploitation and abuse and had accessed justice as well as 101 justice professionals. Although legal analysis indicated that compensation may be sought and awarded to victims of online child sexual exploitation and abuse crimes (although to different extents and with different limitations) in all countries where Disrupting Harm was conducted between 2019-2022, **not one single instance of children receiving compensation via the formal justice system were identified** through the Disrupting Harm interviews in the 13 countries. Seeking and obtaining compensation is not a well-established practice in the Disrupting Harm focus countries and many children and caregivers were not informed about their right to compensation or about the process as to how to obtain it.¹⁰

The children and their families should be informed at all steps of the investigation not only regarding the process itself, but also of the options available to them

Insufficient legal support

ECPAT notes that often child victims lack legal assistance and support services to navigate the justice system and assert their rights as well as the financial means and knowledge to obtain the necessary advice and representation. Free legal aid is not always available and when it is, often children do not qualify for it. In many countries strict eligibility criteria exist, such for example being a national of the country. This adds to the fact that most countries’ legislation allows for a lawyer or legal counsellor

⁸ ECPAT International (2022). [Access to Justice and Legal Remedies for Children Subjected to Online Sexual Exploitation and Abuse. Disrupting Harm Data Insight 3](#). Global Partnership to End Violence Against Children.

⁹ *Ibid.*

¹⁰ *Ibid.*



for victims, but according to the insights of professionals there are not enough trained or available attorneys to take-up this role.

Transnational cases

The right to access compensation should be applicable indiscriminately to any child no matter their or their offenders' nationality and residency. However, even in countries where a compensation framework exists and is efficient, challenges arise in ensuring the payment of reparations judgements is received by the child victims. For example, in Norway, the District Court had indicated in one case that the State fund does not pay compensation to victims abroad.¹¹ Similarly, in Sweden, although, if the offender is unable to pay the compensation, the victim may in some cases be entitled to claim the compensation from the state instead, foreign children would not be entitled to have access to the fund if the crime has been committed outside the European Union.

Out-of-court settlements

Disrupting Harm evidence also indicates that informal settlements between children/families and the offender appear to be more common in cases where the offender is someone within the family or community. According to ECPAT's research and insights, this might also be due to judgemental social attitudes towards the concept of monetary relief for crime victims.

I do not want to ask about money. It would be shameful to do that. I do not want anything to do with money – people may think I only want to profit money. I just want help, especially to find a psychiatrist for my younger child.

Caregiver of Girl Survivor Philippines, Disrupting Harm project

Informal settlements are sometimes even brokered by formal justice system professionals, for example by the police or judges. Negotiating informal payments between children and the offender should be very carefully considered taking into considerations the rights of the child and their best interests as the offender is not held accountable before the law and may go on to abuse other children.¹²

Statutes of limitations

Time limitations may be imposed for filing a claim for damages, either through a state-managed compensation fund or by the offenders through a court of law. When sexually exploited children do disclose their abuse, their disclosure is often delayed, potentially thwarting their access to justice and legal remedies.¹³ Child victims seeking compensation can be negatively affected by short statutes of limitation or state-managed compensation funds requirements to apply within a certain period. The country analysis conducted using the 24-points [legal checklist](#) indicates that only in 19 out of the 44 countries analysed statutory limitations have been abolished for all sexual offences against children.¹⁴

¹¹ Victims' Compensation Act (Voldsoffererstatningsloven), section 2 and regulation section 3.

¹² ECPAT International (2022). [Access to Justice and Legal Remedies for Children Subjected to Online Sexual Exploitation and Abuse. Disrupting Harm Data Insight 3](#). Global Partnership to End Violence Against Children.

¹³ ECPAT International. (2017) "[Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation ECPAT International](#)". (2017), 58.

¹⁴ See: ECPAT International. (2022). [Regional Overviews on key legal interventions to protect children from sexual exploitation in travel and tourism](#).



Limited availability and eligibility for State-managed compensation funds

Additional barriers identified include difficulties in securing compensation from **State-managed compensation funds**. In many countries such funds exist for specific crimes only (e.g. trafficking) and it is unclear whether any form of child sexual exploitation would fit the required criteria. In practice as most funds are funded through court-ordered payments from offenders, limited enforcement of these orders, might result in a shortage of available money for victims. Moreover, as reported by many ECPAT member organisations, often times no information is available on how many victims have been awarded compensation through such funds, questioning their effectiveness in practice. Governments should provide transparent information on availability of funds as well as data on victims who receive compensation through such funds.

Lack of State-enforced protection mechanisms for disbursement of funds

In some cases, ensuring that compensation is actually received by child victims and used in their best interests is not possible. In particular, ECPAT member organisations report difficulties in accessing payment after the compensation is awarded in cases where the **parents/guardians of the child were involved in the abuse themselves** (especially for cases of live-streaming of child sexual abuse with the involvement of offenders in other countries) as in some countries there is no specific system for the children to receive compensation without the involvement of their guardians.

Child victims' and survivors' views and perceptions of meaningful reparation

ECPAT member organisations report that current reparation frameworks are limited when it comes to the inclusion of feedback and perception by child victims and survivors. Care should be taken to ensure that the views and rights of the victims are considered when determining the forms of redress that are meaningful and effective. In particular, victim impact statements should be taken into consideration when determining compensation amounts and forms of redress. Indeed, the impact of new forms of criminality or complex cases, especially those involving digital technologies, may not yet be fully understood by authorities and judges working in determining redress for victims. Statements from the victims and their families should therefore form the basis of this determination.

Conversations with survivors conducted by ECPAT and its network members in recent years,¹⁵ have indicated visibility of services and information regarding reparation as problematic, as well as difficulty in trusting institutions, support systems, and justice professionals based on previous negative experiences. The perspectives of survivors should be amplified through continuous engagement, taking their opinion and experience into consideration in the development of procedures aimed at effective reparation. Government duty-bearers must engage in an ongoing assessment of the stated needs of survivors. In addition, ECPAT member organisations note that a useful way to understand child survivors' perspectives on meaningful reparation is to look at what survivors are already asking for in terms of support services, through helplines and frontline workers. Civil society organisations and support service workers would therefore be the strongest allies for such information to be collected.

Reparation beyond monetary compensation

Though reparation for victims of crimes especially refers to monetary compensation, ECPAT members advocate for a number of other areas of reparation. These include access to a number of other access

¹⁵ See e.g. ECPAT International and WeProtect Global Alliance. (2022). [Child Sexual Abuse and Exploitation Online: Survivors Perspectives](#). WeProtect Global Alliance.



to support services (medical, psychological, education, legal, etc.), support for rehabilitation and reintegration, and in the specific case of conflict settings, memorialisation, genocide recognition and exclusion of age restrictions (e.g. in relation to specific school years) in order to go back to study.¹⁶

Of particular relevance is also the situation of child victims of online sexual exploitation and abuse. In these cases, reparation and redress should include timely removal of sexual abuse material circulating online as well as provision of tailored and long-term care and support taking into account the specific rights of these children. ECPAT members note how often times these children find out the true extent of their abuse/exploitation only when talking with the police and during the court case when details on the materials produced/disseminated are shared.

RECOMMENDATIONS: How can States and other stakeholders deliver more effectively with respect to amplifying the effective implementation of meaningful reparation to child victims and survivors?

- In order to **build the trust of the community and increase reporting in the long run**, the justice system should ensure that crimes of sexual exploitation of children are consistently followed through by the legal system, that offenders are brought to justice and given corresponding penalties. Moreover, sensitisation and awareness-campaigns should focus on the **de-stigmatisation of child sexual abuse and exploitation** within the communities themselves. A basic component for ensuring proper redress is community sensitisation and education on the realities of abuse and exploitation, their effects on survivors, and the need to accept and support survivors, rather than engage in victim-blaming behaviours or outright denial;
- Ensure that victim compensation schemes and other legal remedies are not only part of the legislative response, but that **these services are known, accessible and used** by children subjected to sexual exploitation and abuse;
- Support children and caregivers throughout the process of reporting, investigating and prosecuting offenders with **child-sensitive justice practices**. Good examples exist, but require ongoing maintenance through training, resourcing and advocacy;
- Create, sustain and promote **accessible pathways for children** (and the trusted adults around them) to feel sufficiently safe and confident to formally report online child sexual exploitation and abuse;

Implementing the first three recommendations also includes providing training to justice professionals and implementing a trauma-informed approach for professionals involved on all levels of the investigative procedure, as well as establishing **Child Advocacy Centres**. Such centres – also known as Barnahus - primarily aim to reduce the re-traumatisation of children by limiting how many times they have to speak about their traumatic experience by coordinating the professionals who may need to have contact with the child – rather than the child having to go through multiple processes, and all using consistent approaches that meet evidentiary requirements. Following this approach has proven to deliver more consistent and accurate statements and information from children that are useful in the criminal justice process. A key element of the model is to coordinate parallel judicial proceedings and child welfare investigations while ensuring support for the victim lasting throughout the process.

¹⁶ As included in 2021, in the [Yazidi Women Survivors Law](#) adopted by the Iraqi Parliament to provide reparation to survivors of ISIL atrocities committed on its territory.



- Law enforcement should improve the **approach to conducting investigations** related to reports of sexual abuse and exploitation, in order to ensure offenders are brought to justice but also that children are able to access compensation and other legal remedies. This would also encourage new victims to report cases of sexual abuse and exploitation. Protecting anonymity and being child-focused in approaches is an evident barrier that discourages reporting and simply must be addressed. And while rhetorical support is often strong for such recommendations, governments must commit financial resources in order to enable this work;
- Ensure that all offences of child sexual exploitation fall under the scope of the **State-managed compensation fund** and review eligibility requirements to ensure that children who are not nationals or lawful residents have access to the fund. Further, allocate budget to such fund beyond amounts withdrawn from offenders;
- Develop specific legislation, policies and procedures to ensure **cross-border payment of compensation** for child victims of sexual exploitation;
- Relevant national entities should continually **assess their own and one another's specific capacities and areas of expertise** in terms of providing different types of reparations and redress, and identify ways to complement one another's work by building strong relationships to share information and best practices and developing shared protocols;
- In many countries, non-governmental organisation provide support to victims who are trying to achieve compensation and appeal decisions. It is important that these organisations receive the **funding** they require to make their work possible;
- Practices, policies and programmes facilitating access to compensation and reparation for boy survivors of sexual abuse and exploitation are few and not documented. There is a clear need to conduct more research on these practices and start building guidance and tools on what can work in this sense. The [Global Boys Initiative](#) is currently focusing its efforts in these aspects and aims at collecting promising approaches that could support service providers in addressing these challenges.