

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Detailed Analysis of Access to Justice and Legal Remedies in South Africa
Interviews with Justice Actors

Last updated 3/8/2021

This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Global Partnership to End Violence against Children does not constitute endorsement.

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Introduction

Disrupting Harm: evidence to understand online child sexual exploitation and abuse (OCSEA), is a unique and collaborative research partnership between ECPAT International, INTERPOL, and UNICEF Office of Research – Innocenti. Leveraging their specific expertise, each partner sheds light on separate but interconnected areas: context, threats and children’s perspectives on online child sexual exploitation.

- Context by ECPAT International through portraying laws & policies in action;
- Threat by INTERPOL through the collection of crime and other data;
- Children’s voices by UNICEF Office of Research - Innocenti through surveys with children and their caregivers.

The countries of focus in Southern and Eastern Africa region are: Ethiopia, Kenya, Mozambique, Namibia, South Africa, Tanzania, and Uganda. The countries of focus in the Southeast Asian region are: Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Vietnam.

Research took place between 2019 and 2021. Up to nine separate research activities were undertaken in each country by the three project partners. Preliminary analysis for each activity was first conducted before the results across all the nine activities were consolidated into each national country report.

This report is the preliminary analysis conducted by ECPAT International. It is based on a interview sample of ten individuals, from three provinces (Gauteng, the Western Cape and KwaZuluNatal). They included professionals from the criminal justice community (police, and prosecutors), legal aid, NGOs, and private practitioners. The first three interviews were conducted in-person with the remainder conducted online due to restrictions put in place in response to the COVID-19 pandemic.

ID Number	Organisation	Position
RA4-J-SA-01-A	Private Practice	Forensic Psychologist
RA4-J -SA-02-A	FCS, South African Police Service	Station commander
RA4-J -SA-03-A	Cause for Justice	
RA4-J -SA-04-A	FCS, South African Police Service	Captain
RA4-J -SA-05-A	Legal Aid SA	Legal representative
RA4-J -SA-06-A	Legal Aid SA	Legal representative
RA4-J -SA-07-A	National Prosecution Authority	Senior Public Prosecutor

RA4-J-SA-08- A	National Prosecution Authority	Senior Public Prosecutor
RA4-J-SA-09- A	The Guardian	Managing Director
RA4-J-SA-10- A	National Prosecution Authority	Prosecutor

Access to the Justice System

Services provided to victims of OCSEA during the criminal justice process

It must be noted that all services available to OCSEA victims are available to child sexual abuse victims generally. *“With any sexual exploitation, there are 24 hour services to deal with victims”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority). There were no known services available exclusively for OCSEA victims (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

“Counselling is offered to victims and there are protocols in place at the Thuthuzela Care Centers (TCCs), so there is psychosocial care, medical services and later witness support and preparation” (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

Referrals to NGOs such as Open Door, Bobby Bear and Childline to provide counselling (RA4-J-SA-09-A, Managing Director, The Guardian) were also mentioned. It was specifically noted that the *“TCCs provide therapy for children BEFORE the trial”* (RA4-J-SA-03-A, Cause for Justice). This is important as many mistakenly believe that children should only receive therapy after the trial is concluded. The best interests of the child require pre-trial therapy and, when conducted by a therapist knowledgeable about the need to keep counselling and forensic interviewing very separate, will have little to impact on their ability to give credible testimony.

Court preparation and forensic interviewing were remarked upon by another respondent. *“Normally they [children] would not testify, but if they do, they are prepared and have forensic interviews”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

In-court protective measures included testifying *“via an intermediary or in-camera or in-camera with an intermediary”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority). Screens were noted as having been replaced by better options. *“We have intermediaries and intermediary rooms. No screens anymore”* (RA4-J-SA-09-A, Managing Director, The Guardian).

Another participant highlighted the critical nature of a child-friendly environment. *“A courtroom is a scary place”* (RA4-J-SA-03-A, Cause for Justice).

“Children’s evidence is not led in the open court. It is led by intermediaries. Social workers are readily available, the intermediaries are used as a conduit between the child and the court room. One must remember the child has already been violated. It has to be a child-friendly space” (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority). Participants in the criminal justice system wearing normal clothes was also mentioned as something that was done that is helpful to the child (RA4-J-SA-03-A, Cause for Justice).

The quality of court preparation was seen to vary depending on location, with one person saying *“you have to be lucky where you go”* (RA4-SA-01-A, Forensic Psychologist, Private Practice).

How OCSEA cases come to the attention of criminal justice actors

Children come to attention of the police in many ways. Referrals come from schools to the Family Violence, Child Protection and Sexual Offences Units (the FCS). The FCS *“goes to schools and interviews the children when sexting is reported but usually fail to open cases and therefore there is no assessment by probation services, as schools are protective of their reputations”* (RA4-SA-01-A, Forensic Psychologist, Private Practice).

Another participant from law enforcement repeated this dynamic: *“Referrals come from parents. Prevention talks are given at schools and so referrals come from schools”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service).

Parents, caregivers and medical doctors were also noted, as was the mandated legal requirement to report for some professionals, as found in the Sexual Offences Act, which criminalises anyone who knew that a sexual offence has been committed against a child and does not report it immediately to a police official¹ or the similar reporting obligation that exists under the Films and Publications Act.² (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority).

A frightening scenario emerged as present within the professional groups mandated to report child abuse. *“Disclosure is sometimes discouraged by psychologists because of the obligation to report. Sometimes it is the fear of having to be cross-examined in court. So, the need to protect the child becomes secondary. Therapists do not want to go to court. We need to kick over this wall. Teachers are also in the same boat”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). Mandatory reporting has always been a two-edged sword, balancing the child’s need to be safe against the reporter’s ability to build trust and genuinely provide indispensable services to a child. Not only the desire to avoid court appearances but also a fear of reprisals might concern those who are mandated to report. However, discouraging reporting out of a desire to avoid mandated reporting obligations would be a breach of ethics, and potentially could be seen as obstruction of justice and therefore a criminal offense.

Reports coming in through children themselves were mentioned but were an acute minority. *“Children are taught to keep quiet and not speak out in the house, so they normally approach a school psychologist or a teacher at school”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service).

¹ Republic of South Africa. (2007). [Criminal Law Amendment \(Sexual Offences and Related Matters\) Act No. 32 of 2007](#), Section 54(1).

² Republic of South Africa. (1996). [The Film and Publication Act No. 65 of 1996 \(as amended by Amendment Act No. 11 of 2019\)](#), Section 24B(2).

The norm appears to be that children report to family and friends, who then report it on to police (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

This scenario was echoed by others. *“Usually, a disclosure is made to an adult who reaches out to law enforcement”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority) and *“child reports to mother, or the images are discovered. Sometimes it is a matter of identifying a child on a cellphone or computers”* (RA4-J-SA-09-A, Managing Director, The Guardian).

This highlights an interesting dynamic in OCSEA cases, brought up by two participants. One stated that police need to be more proactive in identifying victims, rather than reactive (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). Another stated: *“We sometimes trace victims. We have had training. We are a specialised unit. We never get referrals from [Internet] service providers and this is a serious concern as they are supposed to report”* (RA4-J-SA-05-A, Legal representative, Legal Aid SA). The lack of Internet Service Providers reporting is very concerning, as it is all but impossible to believe that they have absolutely no knowledge of any OCSEA cases.

The participant went on to note another interesting point, *“We also get referrals from other countries, especially the Homeland Security Department of the US”* The participant continued *“Facebook referred a case to us. We followed up the case and found that it was a father who was taking photos of his daughter. This was a much easier case to deal with as the information did not go through a complex bureaucracy. This came from Facebook in the UK and the referral came through the British commission”* (RA4-J-SA-05-A, Legal representative, Legal Aid SA).

It must also be mentioned that when children are traced, the parents are informed of the child having been victimised (RA4-J-SA-05-A, Legal representative, Legal Aid SA). Another stated that OCSEA cases can also come in *“through tipoffs or they [the police] will have a case and other emails are discovered”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA). The discovery of (additional) OCSEA cases and digital evidence in the midst of investigating another case underscores the cascade effect, investigating one crime leading to the discovery of others.

However, one participant stated that *“We are sitting with massive gaps with reporting. There is a lot of fear and also people are jaded about reporting”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). The fear of the consequences of reporting, for both the child and the family (and possibly the community) must be addressed if reporting of more OCSEA (and other child abuse) cases is to increase. The issue of the media’s coverage of cases as a potential setback to reporting was also commented upon. *“In South Africa we are very jaded on reporting. The media focus on the negative and don’t give enough attention to the positive”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

The varying quality of services provided to child victims of OCSEA, as well as the massive gaps in reporting noted above, leave OCSEA victims without optimal access to the justice system in South Africa.

Participation in the Justice Process

Description of how children participate in the criminal justice process

Answering the question of how children participate in the criminal justice process was more difficult than might be expected, due to the small number of cases the respondents had with OCSEA victims, and the more general dynamic of OCSEA being fairly new on the radar of many jurisdictions. It must first be noted that currently only a very small number of criminal prosecutions involve OCSEA in South Africa. When asked about the number of OCSEA cases in their docket, multiple respondents gave an acute minority of their workload being OCSEA.

“A very small percentage...about one percent of overall cases. I really think that if the South African Police Service used their resources well, they would catch more people and there would be more cases on the roll” (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

Another had a slightly higher estimate, stating *“Very few, not even five percent. If it is getting reported, it is not coming to court”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority).

Finally, another participant noted *“I am not sure but it is increasing. Sometimes the online sexual exploitation emerges only after the case is being dealt with in court”* (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

One participant from law enforcement put their caseload at about 24 cases, with new reports at roughly 40 cases a month (RA4-J-SA-05-A, Legal representative, Legal Aid SA).

However, the fact that OCSEA will be on the rise was emphasised. *“It is growing and growing, with technology being part of the future. [child] pornography is on the rise. So, the increase in the number of cases is a big challenge”* (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

The presence of a caseload manager, to assist with the management of these cases, was also noted (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority) and should be seen as an acknowledgement of the imminent rise in the number of these cases.

Unlike other types of child abuse, OCSEA often leaves definitive, potentially permanent evidence of the crime that was committed – images of the children being abused or exploited. Ironically, this means that the importance and necessity of the child’s testimony may be either lessened or entirely eradicated.

As one respondent observed, *“Normally they [children] would not testify, but if they do, they are prepared and have forensic interviews”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

Another stated that *“They [children] meet court preparation officers and are interviewed by the prosecutor and then meet again with the court prep office”* (RA4-J-SA-09-A, Managing Director, The Guardian).

But it was also noted that *“In ninety-nine percent of the cases the images speak for themselves”* (RA4-J-SA-09-A, Managing Director, The Guardian), making the trauma of the child testifying potentially avoidable. The participant also highlighted an ethical issue, stating *“It is traumatic to expose children to the images”* (RA4-J-SA-09-A, Managing Director, The Guardian). This should, obviously, be avoided as not only is it traumatic, but it is also potentially illegal to show children images of child sexual abuse, as stated in the Sexual Offences Act,³³ even their own abuse. If getting the child to identify themselves as being the person in the image is the issue, this can be achieved by cropping the image to only show the child’s face, while minimising secondary victimisation through exposing the child to disturbing images.

Description of what the criminal justice professionals see as the hardest part for children taking part in criminal cases against their abusers

The hardest part for children taking part in criminal cases against their abusers comes from many directions.

Interacting with prosecutors and front-line police was noted as traumatising. *“Prosecutors seem irritated by kids and their families”* (RA4-SA-01-A, Forensic Psychologist, Private Practice).

Generally, *“the inability of the police to deal with these cases”* was noted as a substantial block to effective access to justice for children (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

Threatening the children with going to jail and refusing to let the child amend/expand on their statement in subsequent interviews was also mentioned. Police were reported to make comments to a child such as *“You can’t say that – it is not in your original statement”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). *“There are some officers that do not seem to want to work. South African Police Service often have no cellphones and no phone at their desk. Prosecutors are often rushed and brusque”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). The respondent also noted *“facing the accused or their families in court is difficult, as is simply seeing the accused in the corridors”* (RA4-SA-01-A, Forensic Psychologist, Private Practice).

Children did not understand the bail processes and bail conditions were rarely discussed with victims (RA4-SA-01-A, Forensic Psychologist, Private Practice).

Finally, repeated interviews of the child were noted as a problem. Being interviewed multiple times *“at the police station, then at FCS for the first time, then sometimes a second time, plus the medical exam,*

³³ Republic of South Africa. (2007). [Criminal Law Amendment \(Sexual Offences and Related Matters\) Act No. 32 of 2007](#), Sections 10 and 19.

etc.” was seen as harmful. *“Seven interviews is almost usual”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). This is clearly traumatising to the child and hopefully a better understanding of the difference between initial reporting to a friend/family member, preliminary statement given to the police, a full forensic interview or interviews by trained professionals, the statement given before a medical exam, etc. will allow for the repetition of interviews to be decreased, as it is the entire point of a multi-disciplinary team employing forensic interviewing protocols. Not only is it bad for the child, but it is also bad for the criminal case, as multiple interviewing may result in “contamination” of the child’s evidence (RA4-SA-01-A, Forensic Psychologist, Private Practice).

The length of time the cases take was noted as a hardship on children. One participant stated the length of time *“can be long and could be years... it is hard to wait for something to happen”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority). Another participant stated *“Every time the child is sitting there, nervous, only to find that the case is postponed again. Magistrates must put their foot down”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service).

The length of time it takes for evidence to be processed (review and decryption of digital materials) was also noted as increasing the time taken to deal with the case. *“Sometimes we wait up to a year. The Films and Publications Board also has to help us from time to time [with forensic examinations]”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA). The technical side of OCSEA cases may increase the already disheartening wait time for a case to be investigated and brought to trial.

If and when the case does go to trial, if the child’s testimony is necessary, the extreme difficulty for the children was remarked. *“Children testifying in a criminal matter is hell, and I’ve seen breakdowns after court”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service). Another person remarked upon the fact that *“most fear for their lives as the perpetrators threaten to hurt them or their families”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

The related issue of self-blame was noted. *“The hardest part is their own complicity in the abuse, where they have taken the pictures,”* referring to self-generated sexual content or ‘nude selfies.’ The same participant summed up the associated problem of teens not knowing or understanding the ramifications of self-generated sexual images as *“teenage girls find it difficult to understand exploitation”* (RA4-J-SA-09-A, Managing Director, The Guardian).

Stigma after reporting was also seen as a huge barrier to participating in the criminal justice system. The belief that children who have been abused or exploited are damaged needs to be addressed. *“Society needs to stop telling children they are broken”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

The myth that children who have been abused are an inherent threat to others also urgently needs to be addressed. Psychological recovery was cited as the hardest part for children. *“I am of the opinion that the*

psychological scar is deeper than the physical impact" (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

Description of what is done by different criminal justice professionals (police, judges, prosecutors, lawyers, or other relevant staff) to make the process easier for children

Making the process easier for children was effectuated through a number of means. It included *"Changes to make the process more child-friendly, and the professionals within the system more sensitive"* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority).

The use of intermediaries was seen as one means to improve the child's experience, but turnover in these positions delays cases. In South Africa, an intermediary system is attempting to reduce the trauma and secondary victimisation often experienced by child witnesses in court cases involving [sexual] abuse. By separating the child from the formal courtroom and allowing an intermediary to relay questions and answers to the child via closed circuit television, it is hoped that the stress of the experience for these children would be reduced while retaining the rights of the accused to cross-examine witnesses and to a fair trial. Protecting the rights of children is a universally accepted principle that influences the development of policy and practice. Where these rights have been violated - such as in sexual abuse, it is imperative that the response from societal institutions (such as justice and social support) not only seek to protect children from further abuse of their rights but also seek to actively redress some of the violations that have taken place. It is thus essential that, when possible, children giving evidence in criminal cases of sexual abuse be protected from further harm. The intermediary system for child witnesses is one such effort.⁴

"Teenagers always want to see the intermediary system. Not using this system sometimes inhibits child telling their story" (RA4-SA-01-A, Forensic Psychologist, Private Practice). It must be remembered that the child-friendly option of intermediaries must be requested by the prosecutor and is still at the discretion of the magistrate or judge.⁵ This application is seldom, if ever, refused for young children, and if a child of 14 or younger is refused the application, reasons for such refusal must immediately be put on the record.⁶ However, for older children alternatives, such as testifying by CCTV without an intermediary, may be put forward by the magistrate. This reflects the mistaken belief that by the time a child enters adolescence they are "mini-adults." Unfortunately, they are still not fully developed emotionally or psychologically and would be better served by having the intermediary system readily available to them. It would seem that making this process equally available to all minors would greatly improve the criminal justice process and afford equal protection to all children under 18.

⁴ Coughlan & R. Jarman, "Can the intermediary system work for child victims of sexual abuse?", *Families in Society*, vol.83, issue 5/6, New York, Alliance for Children & Family, Sep-Dec 2002, p. 541.

⁵ Republic of South Africa. (1977). [Criminal Procedure Act No. 51 of 1977 \(as amended in 2013\)](#), Section 158.

⁶ Republic of South Africa. (1977). [Criminal Procedure Act No. 51 of 1977 \(as amended in 2013\)](#), Section 170A(7).

The expertise and professionalism of many key stakeholders were noted as helping children. *“Some prosecutors are passionate about their work, such as the prosecutors in the special sexual offences courts. There are judges and social workers who really care and know how to build a relationship with the child”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service).

Court preparation was also noted. *“We have very good court prep officers who will support the child in court and try to make it as child friendly as possible”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

“Magistrates have their own way of preparing questions that must be asked. Police and prosecutors are specialised, to deal with these cases” (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

Training to ensure all professionals are equipped to provide child-sensitive interactions with the children was remarked upon, although it still not sufficiently implemented. *“The training mentioned in the Sexual Offences Act has not been rolled out. If it was it would be better. There needs to be a focus on empathy and understanding”* (RA4-J-SA-09-A, Managing Director, The Guardian).

The ways in which magistrates try to help children was also commented on. *“If the children are in court, they [magistrates] try to do their best, they talk in an easier language. They will even try in the language of the child to explain. Most of the times they try to explain things in a manner that the child will understand and make things calm for the child or easier for the child”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service).

Law enforcement’s role in providing sufficient evidence to make the child’s testimony unnecessary was noted. *“We follow the rule of law. We follow all procedures, following the law of evidence. And then when we go to court the accused has no option but to plead guilty”* (RA4-J-SA-05-A, Legal representative, Legal Aid SA). The unique availability of law enforcement in OCSEA cases to provide physical documentation of the crime, the images themselves, can result in defendants entering a guilty plea, thus sparing the child the need to testify. This distinguishes OCSEA from other forms of child abuse, where the testimony of the child is often critical to the case being successful. Here, the images speak for the children.

Description of what is done by different criminal justice professionals (police, judges, prosecutors, lawyers, or other relevant staff) to make the process harder for children

The process can be made harder for children in many ways. The lack of uniformity of expertise by professionals in the system was noted. Within policing it was stated *“there are pockets of passion within the Family Violence, Child Protection and Sexual Offences (FCS) units,”* implying that this is not always the case (RA4-SA-01-A, Forensic Psychologist, Private Practice).

“You need people equipped to deal with children, you can’t just send anyone in. We have brilliant people, but then again, we have people who do not have a clue how to take a child’s statement and or how to deal with the child” (RA4-J-SA-04-A, Captain, FCS, South African Police Service).

Lack of uniformly knowledgeable and trained personnel was stressed. *“You get magistrates rotating out of the court who know how to deal with these matters to [be replaced by] someone who does not know what they are doing”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service). Finally, this respondent raised the issue of availability, or lack thereof, of key support persons for the child, such as therapists. *“When it comes to therapy you will have to go to the Department of Social Development and the Thuthuzelas (TCCs) and rely on them for [providing] therapy, but availability is an issue”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service).

Lastly, the issue of how the defence attorney will treat the child was noted as being in need of improvement (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority). In an adversarial system, such as those in common law countries, the role of the defence attorney is specifically to undermine the credibility of the State’s witnesses – to plant reasonable doubt in the mind of the finder of fact. With children, this is much easier to accomplish than with adults and defence attorneys, to advance their client’s interest, will use any and all techniques at their disposal to attempt to destroy the child being seen as a reliable witness. It is not in the interest of the defendant to treat the child in a sensitive manner, and the magistrate must ensure the child’s rights and capacities are respected. The issue was neatly summed up as *“It comes down to a level of competence. It’s difficult for certain people to interact with children”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service).

Compensation

In terms of provisions related to compensation for child victims of sexual exploitation, including OCSEA, these are specifically dealt with solely in relation to victims of trafficking, and provided for in the Prevention and Combating of Trafficking in Persons Act. The Act provides that victims of trafficking are entitled to appropriate compensation from a convicted trafficker at the discretion of a court or at the request of the complainant or a prosecutor.⁷ The compensation may be paid for a number of reasons according to the Act including for loss of property; physical, psychological or another injury; being infected with a life-threatening disease; loss of income or support and any expenses incurred.⁸ The Act also provides that a civil action may be instituted by the victim to recover any amounts not covered by the order for compensation.⁹

⁷ Republic of South Africa. (2013). [Prevention and Combating of Trafficking in Persons Act No. 7 of 2013](#), Section 29(1)(a).

⁸ Republic of South Africa. (2013). [Prevention and Combating of Trafficking in Persons Act No. 7 of 2013](#), Section 29(1)(a).

⁹ Republic of South Africa. (2013). [Prevention and Combating of Trafficking in Persons Act No. 7 of 2013](#), Section 29(2).

Except for victims of trafficking, there are no country managed funds from which other child abuse victims can seek compensation. The creation of a statutory compensation fund for victims of crime has been suggested as one way to streamline the process of ensuring victims get compensation.¹⁰

For sexual abuse, whether online or offline, a civil action by the survivor may be instituted, and will be decided on the balance of probability. Damages/compensation could include the costs of medical attention, loss of earnings,¹¹ immediate and long-term emotional damages, psychiatric and or psychological intervention and care. Civil damages will usually be entitled mainly to general damages, which are paid as compensation for shock, pain and suffering, disfigurement, disability and loss of enjoyment of life. General damages are granted on a case-by-case basis and are at the discretion of the judge.

Some participants had no experience with compensation claims and nothing to offer on this question (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service) or stated that, while they had no experience with compensation, they were supportive of the concept. *“We have never had any incidents where there is compensation for victims. There should be compensation as this crime affects children for the rest of their lives”* (RA4-J-SA-05-A, Legal representative, Legal Aid SA).

One pointed out there *“should be compensation for medical costs and trauma counselling, although the quantum of damages is more difficult to prove”* (RA4-J-SA-03-A, Cause for Justice).

Other participants stated that their office did not work with compensation issues, nor did they provide referrals ((RA4-J-SA-06-A, Legal representative, Legal Aid SA & RA4-J-SA-09-A, Managing Director, The Guardian). Another echoed this assessment, stating that the criminal justice system was not involved in compensation claims, but that this would rather be a private (or civil law) matter. *“It falls to the private sector”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority).

A concerning point was raised by the statement of one participant who stated that although her work might allow for involvement with compensation claims *“I avoid those things. I don’t deal with that. How do you compensate someone for their emotional trauma, I can’t deal with that”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service). The fact that a professional who could assist in these matters doesn’t, due to the emotional stress it puts on them, is exceptionally concerning. If those charged with performing a service fail to do so, even for understandable reasons, it nonetheless deprives the child of one avenue of redress. (The issue of self-care for professionals will be addressed *infra*).

¹⁰ Wessels, A.B. (2018). [Developing the South African Law of Delict: The Creation of a Statutory Compensation Fund for Crime Victims. Thesis \(LL.D.\), Stellenbosch University](#), Chapter 4, P. 189.

¹¹ This would usually be on the victims’ family’s behalf, due to taking time off for medical and other critical appointments, etc.

The respondent went on to say, *“Normally you find that the perpetrators don’t have money, I would rather go for the conviction.”* This seems to imply there is confusion about compensation being available in addition to criminal charges. However, it also underscores the fact that action against the perpetrator for damages may be futile, in cases where they are indigent. The participant went on to state that even if compensation was theoretically available in a given case *“They [the victim/victim’s family] need to have a very good case in order to claim something like that”* rather echoing the statement above about damages being difficult to prove. She concluded by noting that in terms of victims receiving compensation *“I’ve never heard of it, it’s never been an option, but it is something that they [victims and their families] can look into”* (RA4-J-SA-04-A, Captain, FCS, South African Police Service).

Others knowledgeable of the topic stated that while in theory compensation is possible, in reality *“there is no compensation for victims, or restorative justice or mediation”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). However, one other participant did have knowledge of a compensation claim that was resolved through mediation and felt the process worked well (RA4-J-SA-09-A, Managing Director, The Guardian).

Another stated *“Compensation orders have been successfully motivated for. It is usually for victims’ expenses”* (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority). The respondent continued *“There are cases where we [prosecutors] try and obtain compensation for victims for medical bills as part of sentencing. This would be part of the sentencing processes but is not used enough. If offenders go to prison there is no compensation order.”* This probably reflects the cases dealt with by this individual – that these cases involved indigent defendants.

Barriers to compensation included *“[the] money is there but the justice system must make sure it is provided. Offenders should contribute”* (RA4-J-SA-05-A, Legal representative, Legal Aid SA).

Concerns about compensation were raised by one participant. *“I would be very guarded about their being compensation for a child who has been abused. We would need clarity on the rules. This could be exploited. There should be compensation for therapy costs”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). This concern, though, may be raised about compensation for any type of damages in any case. You cannot fail to offer a legitimate service simply because the process might be abused.

Successes

Possibility to highlight one or more cases where (some) things were done well and where the child got proper access to justice.

People in the criminal justice system were hesitant to disclose particulars of any case, even those that might be viewed as successful. One simply stated *“I cannot share case histories”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority). Another said, *“I don’t discuss my cases with anyone”*

(RA4-J-SA-10-A, Prosecutor, National Prosecution Authority). This hesitancy to discuss facts may be due to the desire of police and prosecutors wishing to protect the identity and privacy of victims. It is possible that even without naming individual names, the facts of a case alone (such as geographic location, type of OCSEA and sentencing) may be enough to put a child's safety, either physical or from a mental health perspective, in jeopardy. Additionally, one respondent said she would forward a case as an example of a success, but did not, despite follow-up requests.

One person stated that the greatest success so far had been the working relationship that South Africa had with INTERPOL in addressing OCSEA cases (RA4-J-SA-06-A, Legal representative, Legal Aid SA). It was noted by more than one person that many of these cases are international (RA4-J-SA-06-A, Legal representative, Legal Aid SA & RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). While OCSEA cases may often have an international dimension to them, and multi-jurisdictional cooperation and positive relations between departments is excellent, it is important to remember that domestic perpetrators will require domestic resources to respond to OCSEA at a national level.

Another success is that there is an optional course encompassing OCSEA on offer at Justice College. However, the content of the course was critiqued as being too elevated, resulting in some participants being "left behind," as there were some on the course who had never dealt with an OCSEA case in their docket (RA4-J-SA-09-A, Managing Director, The Guardian). This underscores the need for course content to be tailored to the participants' experience and knowledge level. A bifurcated course at introductory and advanced levels might be better suited. The same respondent noted "*the development of the specialised teams and cooperation across provinces and international borders*" as a success (RA4-J-SA-09-A, Managing Director, The Guardian).

Challenges / Changes Needed

In law enforcement, it was noted that a lack of relevant hardware (computers, cell phones and airtime specifically) as well as having to pay for their own wi-fi, led to much frustration (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). These resources generally, but also specifically money, were noted as lacking, as was the political will to address OCSEA and child abuse generally (RA4-J-SA-03-A, Cause for Justice). However, one participant noted a bright spot in that "*there has been the acquisition of special equipment, where it has been properly motivated*"¹² (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

Many prosecutors were seen as often not being child-friendly. "*They do not see the child as fragile*" (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). "*Dedicated SAPS, prosecutors, and*

¹² "Motivated" here means the formal documents submitted with explanation of why something is necessary, a very concrete description of why and how a piece of equipment is critical to doing a job.

magistrates to reach a conclusion as quickly as possible. De-sensitisation is a problem” (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority).

Another noted a similar dynamic within policing. *“The police are very... militarised. Our blood is blue, no one must mess with us. This does not prepare us for child protection. It creates an arrogance in one’s head. No one must tell us what to do - this is our culture”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

A shortage of Xhosa speaking forensic social workers was specifically referenced (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). It is probable that this can be expanded to cover all of the 9 local languages in South Africa, and reflects the difficulties that children who are not fluent in either English or Afrikaans encounter when entering the criminal justice system. (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). Additionally, having to take children long distances for assessments by social workers was seen as unhelpful. *“This [the distance] impacts on the child’s cooperation”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service).

Cybercrime units were reported as not doing their analysis promptly. The length of time needed to perform an analysis can be prodigious. Delays of a year were referenced by one respondent (RA4-J-SA-06-A, Legal representative, Legal Aid SA). Other offences being committed while the offender is still “out” (RA4-J-SA-09-A, Managing Director, The Guardian) was raised as a collateral concern. Additionally, there is reliance on private sector offers of analysis. An offer from Price Waterhouse was noted (RA4-J-SA-09-A, Managing Director, The Guardian). This, of course, raises myriad concerns regarding equal treatment of all cases in terms of expertise of the analysis, potential bias of the analyst, data protection concerns, privacy rights of the victims and simply farming out of criminal justice tasks to the private sector. One participant offered an idea regarding time limits or goals for analysis. *“Maybe a time line should be set for cybercrime to do the analysis, like within six weeks. The quality of reports is poor as we have lost many of our good analysts. Sometimes we even have secretaries writing the reports. They don’t have the capacity to do the analysis properly. Training of the analysts is essential”* (RA4-J-SA-09-A, Managing Director, The Guardian).

“Social workers get annoyed with the police and there is no working together. The police are distrustful within the system as they feel they are always on a backfoot” (RA4-SA-01-A, Forensic Psychologist, Private Practice).

The relationship between government and NGOs was noted as positive, particularly on the side of the NGO contribution. *“NGOs are extremely keen on cooperation. In government there is a withholding culture that seems to be linked to promotions and kudos. In the NGOs there is a heart of collaboration. Government lacks this heart”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

Parental avoidance of discussing OCSEA with their children was raised as a concern. *“Parents don’t want to talk to their children (about OCSEA) and don’t want to talk about pornography. There is avoidance and*

denialism is common, until it happens” (RA4-SA-01-A, Forensic Psychologist, Private Practice). *“Parents don’t believe their kids go online to find images”* using the logic of *“kids don’t do that because we didn’t do that”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). For better or worse, the Internet has expedited change in what is an average child’s experience and access to the Internet is becoming more and more common globally. A parent’s experience of twenty to forty years ago is no longer applicable to an average child’s reality and potential exposure to disturbing or inappropriate images is a real concern. Education and public awareness initiatives need to target this reality.

Challenges of understanding the real-world dynamics of OCSEA, to be more prepared to intercede, were raised. *“Child-on-child Internet abuse is more common than we believed, and the children are closer in age and using their device as a power tool. The age gap has disappeared. There are far more girls exposing younger girls to online porn and girls are teased if they don’t want to watch. ‘Boys will be boys’ is often a response to boys “playing” [viewing online sexual content]in this way – but when girls are involved this creates a panic”* (RA4-SA-01-A, Forensic Psychologist, Private Practice).

Another participant noted the role of aging young offenders and the role they play in OCSEA. *“In the exploitation space, there are places to develop online relationships. As the more IT literate youth become adults, the fight in the cyber world will become active. Online grooming in my opinion is bigger than offline grooming. Younger perpetrators are becoming older and they have more advanced cyber skills... The biggest threat is that the cyberworld is a massive grooming opportunity. Gone are the days when the child met the offender in the park”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

The related issue of relevant data collection to inform professionals on the real world of child and OCSEA was noted. *“There is no accurate data – we need more data collection and monitoring”* (RA4-J-SA-03-A, Cause for Justice).

Legislative shortfalls and how to address them while new laws are being drafted were raised. *“We need to start implementing the programs and laws that exist. It falls apart at implementation”* (RA4-J-SA-03-A, Cause for Justice). The laws are sufficient, but they are not always used (RA4-J-SA-06-A, Legal representative, Legal Aid SA). Another stated that *“The law has to keep up to date with changes in society, so if online grooming begins, the law is responsive”* (RA4-J-SA-09-A, Managing Director, The Guardian).

The lack of sufficient resources, both in terms of personnel/staff and hardware/resources was noted. (RA4-J-SA-06-A, Legal representative, Legal Aid SA, RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority, RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

One example was the need for *“transportation and fuel, as sometimes it is necessary to drive through the night to get to a victim”* (RA4-J-SA-03-A, Cause for Justice). The lack of adequate staff was noted as resulting in *“Friday night crime [reporting] gets dealt with Monday morning”* (RA4-J-SA-03-A, Cause for Justice).

Additionally, the need for staff/personnel to have training not only on OCSEA subject matter, but on “self-care” was emphasised (RA4-J-SA-03-A, Cause for Justice). The stress these cases have on the professionals who work them cannot be underestimated (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service , RA4-J-SA-03-A, Cause for Justice).

Main changes suggested to make it easier/better for children to participate

Vertical investigation and prosecution were posited as way to improve the situation for child victims and for the case itself. As one person put it *“People involved from the beginning to the end of the experience. Continuity. The same South African Police Service officer and continuity of information – which is even more important”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). The need for continuity of personnel was repeated by others too. *“There is the need for a consistent person who takes the children through the whole process”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). Turnover of key personnel was noted as impacting on this. The turnover was believed to be due to stress (RA4-J-SA-03-A, Cause for Justice), but wages also play a part in turnover/burnout.

Many of the difficulties mentioned above can be addressed, to lessen the trauma to children who participate in the criminal justice system. Lessening the time that a case takes to be completed and having more sensitive and knowledgeable personnel, as noted *infra*, can also be suggested as changes to make the child’s participation easier. Better court preparation of the child victim is also a needed change. *“We could have more help with court preparation”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). Currently, *“there are organisations that prepare children for court, and prosecutors also prepare children”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority). One person noted the positive impact that new court support initiatives, such as having dogs accompany the child while giving evidence, would have on the child witness. (RA4-J-SA-06-A, Legal representative, Legal Aid SA). *“Fear of the unknown”* (RA4-J-SA-07-A, Senior Public Prosecutor, National Prosecution Authority) was seen as a major stressor for children, and good court preparation may mitigate this. With good preparation, the court process becomes less frightening by becoming a known quantity. Knowledge is power and with court preparation, familiarity with the system will take some of the worst fears away from the child and decrease secondary trauma.

Recommendations

Training - There is a need for ongoing training. *“Training must be quality stuff and training in a multi-disciplinary setting would be amazing”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). The need for more and better training was mentioned by others as well (RA4-J-SA-03-A, Cause for Justice), at the same time noting the difficulty in finding time for active police officers/detectives to receive training, due to their heavy case load (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). This also brings up the issue of the need for increased numbers of police (including forensic social workers working specifically at SAPS), particularly those dealing with OCSEA, as it combines the need to be able to work

with child victims while simultaneously understanding the technological side of OCSEA. The need for magistrates to receive training was also mentioned (RA4-J-SA-06-A, Legal representative, Legal Aid SA). A properly equipped and trained cybercrime unit was a major source of concern (RA4-J-SA-09-A, Managing Director, The Guardian).

Resources and support in place for OCSEA investigation and prosecution. For online abuse our technical unit must *“step up”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service). The critical need for *“a properly equipped and trained cybercrime unit”* was noted by another participant (RA4-J-SA-09-A, Managing Director, The Guardian). The South African Police Service (SAPS) Serial and Electronic FCS Investigation (SECI) was specifically singled out as being in need of resources. SECI is only at the provincial level and this was also stated to be *“inadequate”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA). Additional SECI units dispersed at a more local level was felt to be necessary to best address OCSEA cases. The lack of adequate staff and resources to address OCSEA’s potential technical complexity, international jurisdictional issues, and the unique needs of OCSEA victims to address the harm they’ve suffered, needs to be addressed. One of the main challenges in handling OCSEA cases was seen as *“the police had to have hard drives donated to them and only had 1 gig of data per month.”* The same respondent stated *“The procurement section of the police must come on board to assist with the provision of resources”* (RA4-J-SA-06-A, Legal representative, Legal Aid SA).

Legislation – One participant believed that *“the Sexual Offences Act¹³ regulates very well. There are a range of charges that can be made. It is an Act in progress and is still being updated. The Cybercrimes Bill, once it is in operation, is important”* (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority). Another echoed the concern with laws needing continuous review and amending (RA4-SA-01-A, Forensic Psychologist, Private Practice). The lack of a definition of grooming in legislation was specifically noted as desperately in need of change (RA4-J-SA-09-A, Managing Director, The Guardian). Passage of the Cybercrime Bill, which according to one participant is close to its final stages, was mentioned as a key move forward. On the topic of legal reform/new legislation and the time it takes, one participant stated *“it can’t be a rush job, but it can’t take forever either. You need to consult with the people, especially the people in rural areas. You need experts, but also people with real world experience. It must be thorough but can’t take 10 years!”* (RA4-J-SA-03-A, Cause for Justice). However, *“the movement of the bill depends on political will, and the complexity of a totally new bill will take more time. But [by South African standards] it is moving quickly”* (RA4-J-SA-03-A, Cause for Justice). Additionally, the role of Covid in taking over as the most important political and health issue currently cannot be overlooked in evaluating why the Bill has yet to become law.

Prevention and Public Awareness. On the topic of government led public awareness around OCSEA, one participant stated *“there is nothing that I am aware of”* (RA4-SA-01-A, Forensic Psychologist, Private Practice). Another stated *“the Department of Social Development and Department of Justice have posters*

¹³ Republic of South Africa. (2007). [Criminal Law Amendment \(Sexual Offences and Related Matters\) Act No. 32 of 2007](#).

in their offices and courts. Their marketing strategy must be terrible. They're not using YouTube, celebrity support, or brand ambassadors" (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). The inclusion and use of twenty-first century and digital awareness raising forums into any strategy that is expected to address OCSEA is of the utmost importance. One participant emphasised the need for public awareness/education of parents as critical. *"The biggest challenge is the lack of understanding of the defense that is needed by the parents of children. They [parents] are not aware that the children in their house are being groomed, with the house alarm on and the guard dog outside. There is a need for massive education"* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

It was stated that an excellent place for OCSEA education is in the school curriculum. However, it was noted there is pushback from conservative psychologists and social workers on the new Department of Basic Education's sexuality life skills curriculum. (RA4-SA-01-A) It was also noted that the Department of Social Development is in the process of developing frameworks for addressing child sexual abuse material, child sexual exploitation, child labour and child trafficking, called a "Framework for Programmes for Exploited Children" (RA4-J-SA-03-A, Cause for Justice). Children, parents and others have had workshops on programme content and *"there has been a focus on prevention and early intervention"* (RA4-J-SA-03-A, Cause for Justice). Providing education and awareness of OCSEA to children at a pre-school age was also put forward. *"I just believe that it should now be targeted at pre-primary [age six]"* (RA4-J-SA-04-A, Captain, FCS, South African Police Service). Public awareness and education were noted as critical by another respondent, who also noted *"the need for all government departments to contribute"* to this initiative, thereby improving their own knowledge (RA4-J-SA-05-A, Legal representative, Legal Aid SA). One participant summed this issue up succinctly. *"I am very much an advocate of education. We need to educate on the cyberworld"* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). Another echoed this sentiment stating the need to *"alert everyone to what is happening and make the means available to educate all, make people aware"* (RA4-J-SA-10-A, Prosecutor, National Prosecution Authority).

Policy. *"There is no strategy"* (RA4-J-SA-03-A, Cause for Justice). Having a policy in place to address OCSEA and also ensuring that the policy is implemented. The role of the South African Law Reform Commission was not noted by any participants, but their current work could potentially provide the opportunity for the government to put forward a (better) strategy.

Involvement of South Africa police in prevention and awareness raising campaigns was posited, as a way of going "pro-active." When asked about prevention/awareness raising campaigns and if the police were involved in such activities one respondent said *"I am not aware of this. I have not seen much done. Here in South Africa we are reactive. More of this [awareness raising] should be done. This is necessary. This is how we find other perpetrators"* (RA4-J-SA-05-A, Legal representative, Legal Aid SA). Another stated that *"legislation is reactive. We need to be more proactive"* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

Vertical investigation and prosecution should also be implemented, wherever possible. *“There is the need for a consistent person who takes the children through the whole process”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service).

(Improved) Cooperation. First, between tech/business and police. One participant stated that interagency [international] assistance has been there but not at the business level, for example *“getting Snapchat to open up”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

Within government departments interagency cooperation was raised as a concern. *“One of things that has frustrated me is that there are silos, and as much as we sit around the table people just go back to their offices and do their own thing”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

However, one example of good cooperation was offered. *“SAPS and the NPA are good, as we have a team dedicated to online exploitation. There is a similar project in Gauteng”* (RA4-J-SA-09-A, Managing Director, The Guardian).

This same team in KwaZuluNatal *“has a good relationship with some of the NGOs in the area, especially when it comes to counselling,”* giving Open Door Crisis Centre and Childline as examples (RA4-J-SA-09-A, Managing Director, The Guardian).

Specialisation of key personnel. *“We need more sexual offences courts with properly trained specialised prosecutors and magistrates”* (RA4-J-SA-02-A, Station Commander, FCS, South African Police Service).

Court preparation officers would also fit within this personnel group. All child sexual abuse victims would profit from this, as *“specialised courts [are] for child abuse, but not for online exploitation [specifically]”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

Replication of the specialist units in Gauteng and KZN throughout the country was pointed out as needed (RA4-J-SA-09-A, Managing Director, The Guardian).

The need for specialist police was also noted. *“Persons with a talent should be identified in police college and a career path mapped out for them. This does not happen. Law enforcement is too generalist and the perpetrators are too specialist”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority). The respondent continued *“one needs a person who is identified early and has the interest. In the NGOs you have far greater specialisation than in the SAPS. If SAPS wants to address organised crime, e.g. child pornography there has to be specialisation”* (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).

The role of social workers was also noted. *“We need to upgrade the skill of therapists 100 percent. As with all other role-players. We need to take control of those who are responsible for safeguarding. We need to*

ensure the child becomes functional" (RA4-J-SA-08-A, Senior Public Prosecutor, National Prosecution Authority).