A Global Survey of Country Efforts to Ensure Compensation for Child Pornography Victims

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ABSTRACT
This article summarizes the results of a survey conducted of the country reports of states parties to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Children Prostitution and Child Pornography to determine compliance with Article 9(4), which requires that all states parties ensure victims of child pornography have access to adequate procedures to seek damages from those legally responsible. The survey showed that almost half of the parties to the Optional Protocol have not filed country reports. Of those 89 nations who filed a country report, almost all describe only general jurisprudential systems of compensation available to all crime victims in the country, with few unique compensation systems tailored specifically to the offenses identified in the Optional Protocol. This is concerning because of the unique nature of the crimes covered under the Optional Protocol, such as distribution and possession of child pornography, where an increasing body of research shows the enduring mental harm to victims, but it often is difficult for victims to prove causation and damages. The survey also suggests that there may be several emerging trends, including (1) the integration of victim compensation with the criminal process, which may help to avoid re-traumatizing victims through a separate civil process; (2) the appointment of legal advocates to assist victims; and (3) the creation of state-sponsored compensation systems to provide victims access to compensation, especially where damages cannot be recovered from the offender. Finally, the article identifies gaps in child pornography compensation systems and opportunities for greater compliance both by states parties and the global community.

I. BACKGROUND

Child pornography is one of the fastest growing markets on the Internet,¹ and is projected to continue to grow exponentially² with a current value of up to twenty

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billion dollars annually. The nature of child pornography in the 21st century is especially pernicious. Sex abuse images of children can easily be made using any smartphone or other handheld devices and replicated and distributed across the globe within seconds. The perpetrators of child pornography distribution and possession often exist across national borders thousands of miles away from the victims, making victim recovery of damages difficult, if not impossible. Child pornography is even being produced remotely over the Internet with the recording of live sexual abuse and exploitation of children in foreign countries. The widespread distribution of child sex abuse images has a profound and often debilitating impact on victims psychologically, and their restoration needs to be supported. However, the ability of victims of child pornography possession and distribution to recover legal compensation is hindered due to the challenges inherent both in determining harm to the victim as a result of these crimes, as well as determining causation and liability for aggregate harm when more than one offender is involved. These challenges exist even before the jurisdictional and practical issues are raised in light of the increasingly cross-border nature of this crime.

The international community has been striving to develop a framework to support the restoration of exploited children since 1924 when the League of Nations adopted the Geneva Declaration of the Rights of the Child, which

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7 Id.; see also Julia von Weiler et al., Care and Treatment of Child Victims of Child Pornographic Exploitation (CPE) in Germany, 16 J. SEXUAL AGGRESSION 211, 218–19 (2010) (discussing the effects of abusive images on victims and their caretakers).

provided that “[t]he child must be given the means requisite for its normal development, both materially and spiritually” and “[t]he child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.”

Both principles look beyond the need for protection of children from exploitation, and emphasize the need to allocate the resources necessary for the child’s “normal development.”

Twenty-five years later, the international community reiterated its commitment to ensure that children were protected from exploitation and entitled to “enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable [them] to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity” when the United Nations adopted the 1959 Declaration of the Rights of the Child. But what are the “opportunities and facilities” victims of child pornography need to “develop . . . in a healthy and normal manner”? In 1989, the international community once again committed to protect children from exploitation and abuse, and to support the restoration of children to normalcy when victimization does occur. That year, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child. The Convention is the most widely ratified human rights treaty in the world. It expressly obligates states parties to “protect the child from all forms of sexual exploitation and sexual abuse,” and commits them to “take all appropriate national, bilateral and multilateral measures to prevent . . . [t]he exploitative use of children in pornographic performances and materials” and to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, include sexual abuse….”

The Convention on the Rights of the Child did not stop with prevention, however. Article 39 requires states parties to “take all appropriate measures to promote

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10 Id.

11 G.A. Res. 1386 (XIV), United Nations Declaration of the Rights of the Child, (Nov. 20, 1959) [hereinafter “Declaration of the Rights of the Child”] (asserting that “mankind owes to the child the best it has to give” and “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection . . . ”).


14 Convention on the Rights of the Child, supra note 12, at art. 34.

15 Id. at art. 19. article 36 of the Convention on the Rights of the Child also may be implicated: “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.” Id. at art. 36.
physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.\textsuperscript{16}

Those provisions were expanded into far more detail in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,\textsuperscript{17} which opened for signature in 2000 and entered into force in 2002. Today, 169 countries have ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Children Prostitution and Child Pornography (including the United States, which has signed, but not ratified, the Convention on the Rights of the Child).\textsuperscript{18} In addition to bolstering the prevention of child pornography (and other crimes related to the sexual abuse and trafficking of children) and prosecution of offenders, the Optional Protocol mandates that states parties support the recovery of child pornography victims. The recovery of victims is accomplished through a variety of provisions under the Optional Protocol, which include, for example, the seizure of assets derived from child pornography,\textsuperscript{19} the adoption of appropriate measures to protect the rights and interests of child pornography victims throughout the criminal justice process,\textsuperscript{20} including “[a]voiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.”\textsuperscript{21}

\textsuperscript{16} Id. at art. 39.


\textsuperscript{19} Id. at art. 8. For example, the special needs of child victims and witnesses must be recognized. \textit{Id.} at art. 8(1)(a). Child pornography victims must be informed of their rights and must be kept informed of the progress and disposition of proceedings. \textit{Id.} at art. 8(1)(b). Children’s participation rights must be respected. \textit{Id.} at art. 8(1)(c). Appropriate support services must be provided to child pornography victims throughout the proceedings. \textit{Id.} at Art. 8(1)(d). The privacy rights of the victim must be honored. \textit{Id.} at art. 8(1)(e). The safety of victims and their families must be ensured when appropriate. \textit{Id.} at art. 8(1)(f).

\textsuperscript{20} Id. at art. 8(1)(g). In addition, the Optional Protocol focuses on the prevention of and criminal prosecution for child pornography through a variety of provisions focused on criminalizing child pornography (Art. 3), establishing jurisdiction over the child pornography offenses and offenders (Art. 4), classifying child pornography as an offense subject to extradition (Art. 5), and assisting other countries with child pornography investigations, prosecutions, and extraditions (Art. 6), for example.
Specifically, with regard to compensation for victims, Article 9(4) of the Optional Protocol provides that “States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible."\(^{22}\) The obligation for states parties to ensure victim access to compensation for damages is in addition to the obligation of states parties to “take all feasible measures with the aim of ensuring appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery."\(^{23}\) Read together, the Optional Protocol does not relieve states parties from providing access to adequate procedures to allow victims to seek compensation from perpetrators for the damages suffered, even if the state party has other victim recovery programs in place. The right of access to adequate procedures to seek compensation is a separate, stand-alone right. Moreover, when compensation is granted, it must be granted without discrimination\(^{24}\) or unnecessary delay.\(^{25}\)

Compensation is a critical component of restoration of child pornography victims. As explained in the country report filed by the State of Israel, “While financial compensation alone is not sufficient to heal all the physical, psychological and emotional damage endured by child victims of an offense, it remains nonetheless a key component of restorative justice.”\(^{26}\) Victim compensation dates back at least four thousand years to Mesopotamia’s Code of Hammurabi, which states, “[t]he man who has been robbed shall, in the presence of God, make an itemized statement of his loss, and the city and governor, in whose province and jurisdiction the robbery was committed, shall compensate him for whatever was lost.”\(^{27}\) Similar values can be found in the legal systems of ancient Greece, Hinduism, the law of Moses,\(^{28}\) and Sharia law.\(^{29}\) Today, the principle of victim compensation can be found in regional human rights treaties in Islamic countries, Africa, Inter-America, and Europe, as well as more globally in the Universal Declaration of Human Rights and the Rome Statute of the

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\(^{22}\) Id. at art. 9(4).

\(^{23}\) Id. at art. 9(3).

\(^{24}\) Id. at art. 9(4).

\(^{25}\) Id. at art. 8(1)(g).


International Criminal Court. The practice of providing compensation specifically to child pornography victims, including victims of distribution and possession, is becoming increasingly prevalent as the crime grows more and more widespread and in light of the significant detrimental psychological and financial impact these crimes have on victims.

Article 12 of the Optional Protocol obligates each state party to submit a report to the United Nations Committee on the Rights of the Child (“Committee”) within two years of when the treaty entered into force for that country. In the report, the state party is to provide “comprehensive information on the measures it has taken to implement the provisions of the protocol.” Once the state party’s comprehensive country report is filed, the country is to include “any further information with respect to implementation of the [Optional] Protocol” in the state party’s reports filed with the Committee on the Rights of the Child in accordance with Article 44 of the Convention on the Rights of the Child. In the case of states parties that are not also party to the Convention, the state party must submit a report every five years. Additionally, the Committee on the Rights of the Child may, and often does, request additional information on the implementation of the protocol. These reports constitute a potentially significant source of data describing support systems for child pornography victims across the globe. A survey of the Optional Protocol country reports was compelled in light of the rapid proliferation of child pornography, and the increasing number of countries struggling to identify how to support the restoration of victims.

II. Survey

A. Survey Scope

With this potential wealth of data identified, a survey was conducted that included a review of every comprehensive country report filed by states parties to the Optional Protocol. The survey focused specifically on each country’s compliance with Article 9(4), which is the treaty provision that requires states


32 Optional Protocol supra note 17, at art. 12(1).

33 Id.

34 Id. at art. 12(2).

35 Id. Every state party to the Optional Protocol is also a party to the Convention, except the United States. Optional Protocol, supra note 18.

36 Optional Protocol, supra note 18, at art. 12(3).
parties to “ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.” Article 9(4) was identified as a priority following a decision of the United States Supreme Court, *Paroline v. U.S.*, 37 which highlighted the challenges of crafting legislation that provided victims of child pornography possession and distribution access to compensation systems that allowed them to seek damages from offenders. The hope was that the United States could learn from what other countries are doing to fulfill their Article 9(4) treaty obligations.

B. Many States Parties Failed to File Country Reports and Most Provided No Meaningful Data on Article 9(4) Compliance

The results were disappointing. The survey found that eighty states parties failed to file country reports entirely despite the states parties’ treaty obligations under Article 12 of the Optional Protocol. 38 Another four country reports were not

37 *Paroline v. United States, 134 S. Ct. 1710 (2014).*

38 These include: Afghanistan, Algeria, Angola, Antigua and Barbuda, Bahrain, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalem, Burundi, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Cote d’Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of Congo, Djibouti, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Ethiopia, Finland, Gabon, Gambia, Georgia, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Indonesia, Iran, Jamaica, Lao People’s Democratic Republic; Lebanon, Lesotho, Libya, Lichtenstein, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Micronesia, Monaco, Mozambique, Myanmar, Namibia, Niger, Nigeria, Panama, Pakistan, Romania, Russian Federation, Saint Lucia, Saint Vincent and Grenadines, San Marino, Saudi Arabia, Senegal, Seychelles, South Africa, Sri Lanka, Suriname, Swaziland, Tajikistan, Thailand, Tunisia, Vanuatu, and Zimbabwe.

Of course, many countries fail to file states party reports required under other human rights treaties as well. See, e.g., John Cerone, *Reviewing the U.N. Human Rights Council: Looking Back and Moving Forward*, 17 NEW ENG. J. INT’L & COMP. L. 193, 224 (2011) (“A state under the Covenant on Civil and Political Rights is required to periodically present a report on its compliance. Of the one hundred and sixty-five states parties, of the one hundred and ninety-two member states of the United Nations, twenty-one states of those states parties to the Covenant have not yet presented their initial report to the committee, and twenty-nine states are overdue from five to twenty-four years. So we have fifty states out of one hundred sixty-five that are not living up to their obligations.”). See also Michael J. Dennis & David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 AM. J. INT’L L. 462, 509–510 n.315 (2004) (“All of the treaty bodies have experienced substantial difficulties in reviewing implementation reports on a timely basis, but the ESCR Committee’s record is especially poor. It has been estimated that in 1999, of all the bodies reviewing reports of states parties, the Committee had the highest average interval between the submission and consideration of reports—2.6 years. Bayefsky, supra note 306, at 223–29. As of March 15, 2002, approximately 1,300 state party reports (under the various treaties) were overdue, and of those, more than 500 had been overdue for more than five years. To put this backlog in context, the six treaty bodies collectively examine about 100 reports per year. Methods of Work Relating to the State Reporting Process, ¶ 23, UN Doc. HRI/ICM/2002/2 (background document prepared by the Secretariat). The secretary-general earlier noted that “the most extreme case” concerned the ICESCR, where “over 40 per cent of the States parties ... have failed to submit even
available in English. That left only 85 country reports to review. Of those, thirty states parties filed country reports, but failed to explain any measures they are taking to implement Article 9(4) of the Optional Protocol, including Albania, Azerbaijan, Bangladesh, Belarus, Cambodia, Chile, Egypt, Holy See, India, Iraq, Italy, Kazakhstan, Maldives, Montenegro, New Zealand, Paraguay, Poland, Portugal, Republic of Korea, Republic of Moldova, Rwanda, Serbia, Sierra Leone, Spain, Sudan, Timor Leste, Turkey, Uganda, Ukraine, and the United Republic of Tanzania.

Some countries, such as Andorra and Costa Rica expressly recognized that they were lacking the necessary legislation to protect child victims required by the Optional Protocol and assured that they are striving to develop such legal frameworks. Others only briefly or vaguely refer to victim compensation, including Ecuador, El Salvador, Japan, Jordan, Kuwait, Lithuania, the their initial reports.” Effective Functioning of Human Rights Mechanisms: Treaty Bodies, ¶ 60, UN Doc. E/CN.4/2000/98. (“As of June 6, 2004, 92 of 149 states parties to the ICESCR had one or more overdue reports.”

39 The countries whose reports were not available in English were Honduras, Hungary, Luxembourg, and Peru.


45 Jordan Country Report, supra note 29, at 23.


United Mexican States,\textsuperscript{48} Mongolia,\textsuperscript{49} Morocco,\textsuperscript{50} Nepal,\textsuperscript{51} Nicaragua,\textsuperscript{52} Oman,\textsuperscript{53} Qatar,\textsuperscript{54} Syrian Arab Republic,\textsuperscript{55} Turkmenistan,\textsuperscript{56} Uzbekistan,\textsuperscript{57} and Viet Nam.\textsuperscript{58}

These systems are often described as the same systems of victim compensation available to all crime victims in the country with no special provisions for child victims of the offenses covered by the Optional Protocol.

\textsuperscript{48} \textit{Id.}


Indeed, almost all of the country reports indicated deference to general jurisprudential systems of compensation available to all crime victims with respect to offender liability. For example, in Armenia, everyone has the right to compensation for the harm caused as a result of a crime, and there is no special provision with respect to victims of child pornography or other child sex crimes.\(^\text{59}\) The same appears to be true based on the country reports filed by Austria,\(^\text{60}\) Burkina Faso,\(^\text{61}\) Estonia,\(^\text{62}\) Guatemala,\(^\text{63}\) Slovakia,\(^\text{64}\) the United Kingdom of Great Britain and Northern Ireland,\(^\text{65}\) and Yemen.\(^\text{66}\)

C. Countries that Have Passed Child-Focused Legislation Convey Limitations

A minority of reporting countries indicate that they have passed legislation specifically focused on child victims including Belgium,\(^\text{67}\) Bulgaria,\(^\text{68}\) Ecuador,\(^\text{69}\)


Madagascar,

the Philippines, Switzerland, Togo, the United States of America, and the Bolivarian Republic of Venezuela. However, many of these have substantial shortcomings. In fact, in the Concluding Observations issued in response to the country reports, the Committee on the Rights of the Child expressed concern that new child-focused legislation does not address victims of child pornography and distribution in a number of countries including Argentina.


Ecuador Country Report, supra note 42, at 8.


Bosnia and Herzegovina, Burkina Faso, Canada, Colombia, Greece, and Turkmenistan. Consider the case of Canada, for example. Canada’s country report cites to federal legislation, section 738 of the Criminal Code, in support of its fulfillment of its treaty obligations under Article 9(4). However, a close reading of that section of the code shows that restitution can only be ordered where property damage, bodily harm, or relocation expenses result from a crime. This leaves most victims of child pornography distribution and possession without financial recourse against the perpetrator through the criminal justice system. Although civil redress for victims may be sought under provincial or territorial legislation, the disadvantages of a bifurcated process are discussed below and are discouraged by the Committee. At least one province, Saskatchewan, has amended legislation


84 Id.
specifically to ensure that child victims of sex trade crimes have access to compensation, and the Head of Prosecutions has expressly directed all prosecutors to seek “larger than usual victim surcharges in all child abuse cases, and in cases involving commercial sexual exploitation in particular,” but the amendments and that directive are limited to that province.\(^{85}\)

Additionally, other countries, including Belgium,\(^{86}\) Slovakia,\(^{87}\) and the former Yugoslav Republic of Macedonia,\(^{88}\) also functionally exclude most victims of child pornography distribution and possession because the relevant legislation restricts eligibility for compensation to child victims of violent crimes. This is a significant gap that needs to be addressed to bring the states parties into compliance with their treaty obligations under Article 9(4). Nothing in the treaty limits compensation obligations only to child victims of violent crimes.

A small number of countries expressly report that they include access to compensation for victims claiming damages not based on physical harm. For example, Bosnia and Herzegovina recognizes a victim’s right to compensation for “non-material damage” such as mental pain, reduced living activity, and injury of honor or reputation.\(^{89}\) Unfortunately, the legal process for bringing the damages claim appears to be inadequate. The right to claims for non-material damage in Bosnia and Herzegovina is much narrower than the more general right of the victim to indemnification for material damage,\(^{90}\) which creates a system of discrimination among victims, in violation of Article 9(4) of the Optional Protocol.\(^{91}\) A few other countries, such as Estonia\(^{92}\) and Kyrgyzstan,\(^{93}\) also expressly recognize victims’ right to compensation for restoration of mental health or emotional distress caused by the crime. Germany’s country report also refers to the compensation rights of victims of non-violent crimes, but appears to limit their

\(^{85}\) Id. at 46. Similarly, Venezuela’s Organic Act on Child Protection establishes that committing a crime against a child or adolescent is a “generic aggravating circumstance” with increased proportionality in penalties. Venezuela Country Report, supra note 75, at 15.

\(^{86}\) Belgium Country Report, supra note 66, at 64.

\(^{87}\) Slovakia Country Report, supra note 63, at 20.


\(^{89}\) Bosnia and Herzegovina Country Report, supra note 76, at 92–93.

\(^{90}\) Id.

\(^{91}\) Optional Protocol, supra note 17, at art. 9(4).


recovery to civil proceedings, which raises another issue. Venezuela similarly recognizes child victims’ right to damages but the recovery takes place after criminal conviction in criminal courts.

D. Avoiding Re-Traumatization Through Civil Recovery

The problem with bifurcating victim compensation from the criminal prosecution of offenders is that, as Bosnia and Herzegovina points out in its country report, requiring a crime victim to seek damages through a separate civil proceeding exposes the victim to a “new victimization.” For this reason, some countries, such as Israel, emphasize that victim compensation through the criminal proceedings is sought expressly to relieve the victim from having to initiate a separate civil proceeding. However, recovery through the criminal system does not prevent victims in Israel from seeking recovery of damages under civil law if they so choose. Denmark also describes civil proceedings as part of a victim compensation system, as does the Philippines. In the Philippines, the victim’s civil claim is consolidated with the criminal case. China and Switzerland follow similar models.

Based on the country reports reviewed, there appears to be a practice among some reporting states parties that favors victim compensation processes that are integrated with criminal proceedings, which increases efficiencies and avoids re-traumatizing victims. The value embodied by this trend was reinforced in the

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95 Venezuela Country Report, supra note 75, at 15.
96 Bosnia and Herzegovina Country Report, supra note 77, at 93.
97 Israel Country Report, supra note 26, at 43.
98 Id.
100 Philippines Country Report, supra note 71, at 60.
101 Id.
103 Switzerland Country Report, supra note 72, at 14.
104 Presumably, this model is based on the partie civile mechanism derived from Roman law, which is still prominent in many European countries. Vivian Grosswald Curran & David Sloss, Reviving Human Rights Litigation After Kiobel, 107 AM. J. INT’L L. 858, 859 (2013). The partie civile process (and the related adhesion process in Germany) joins victims as parties in criminal
Committee’s Concluding Observations of Nicaragua, when it criticized that state party for requiring victims to initiate a separate civil process to recover compensation from offenders.\textsuperscript{105} Certainly, where a victim is identified and suffers damages, but there is no criminal prosecution for whatever reason, a separate compensation procedure, such as application to a victims’ fund, should be made available. Additionally, as in Israel, if the victim wants to pursue additional damages due to caps on damages in the criminal prosecution, a different evidentiary burden, or to rely on civil theories not available in the criminal proceedings, civil recourse should be available to victims. However, states parties should be encouraged to develop and support victims compensation systems that “[avoid] unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.”\textsuperscript{106}

E. A Number of Countries Report Making Legal Counsel Available to Child Victims

Another emerging trend that appears in the country reports is the appointment of a legal representative to assist child victims seeking compensation. Countries who report providing this service include Colombia,\textsuperscript{107} Denmark,\textsuperscript{108} France,\textsuperscript{109} Germany,\textsuperscript{110} Greece,\textsuperscript{111} Iceland,\textsuperscript{112} Latvia,\textsuperscript{113} China,\textsuperscript{114} Guatemala,\textsuperscript{115} and the


\textsuperscript{106} Optional Protocol, supra note 17, at art. 8(1)(g).


\textsuperscript{108} Denmark Country Report, supra note 99, at 12.


\textsuperscript{110} Germany Country Report, supra note 94, at 13. Germany limits appointment of legal aid to indigent child victims. \textit{Id.}

\textsuperscript{111} Greece Concluding Observations, supra note 81, at 42.

It is important to note that many of these countries limited the appointment of legal representatives for children to instances where the parents were unable or unwilling to seek damages for their child due to limited financial resources,\textsuperscript{117} a conflict of interest,\textsuperscript{118} a lack of will,\textsuperscript{119} or where the child is unaccompanied.\textsuperscript{120} Other countries recognized the child victim’s right to be represented by counsel, but did not specify if the state would appoint a legal representative.\textsuperscript{121} For example, in Colombia, an attorney will be appointed to assist a child in seeking full compensation for damages resulting from a crime, even if the parents do not grant consent.\textsuperscript{122} Furthermore, if the parents, legal representative, or family ombudsman has not filed a motion for full compensation for a child victim within thirty (30) days of the final decision in a criminal proceeding, a motion for compensation will be initiated ex officio.\textsuperscript{123}

Like the consolidation of victim compensation with criminal proceedings to avoid re-traumatization of the victim, the appointment of legal counsel appears to be an increasingly common expectation of the Committee on the Rights of the Child. In its Concluding Observations, the Committee criticized over a dozen states parties for not providing free or adequate legal counsel or appointing a guardian for child victims, including Bosnia and Herzegovina,\textsuperscript{124} Burkina Faso,\textsuperscript{125} and Colombia.\textsuperscript{126}


\textsuperscript{114} China Country Report, supra note 102, at 26.

\textsuperscript{115} Guatemala Country Report, supra note 63, at 36–37.


\textsuperscript{117} Germany Country Report, supra note 94, at 13.


\textsuperscript{119} Colombia Country Report, supra note 107, at 81.

\textsuperscript{120} Greece Country Report, supra note 118, at 42.

\textsuperscript{121} See, e.g., Togo Country Report, supra note 73, at 6.

\textsuperscript{122} Colombia Country Report, supra note 107, at 81.

\textsuperscript{123} Id.


\textsuperscript{125} Burkina Faso Concluding Observations, supra note 78, at 7.
Canada, Colombia, Greece, Guatemala, Jordan, Mongolia, Nepal, Oman, the Philippines, Togo, United Kingdom of Great Britain and Northern Ireland, and the United States. The Committee’s criticisms were

126 Canada Concluding Observations, supra note 80, at 7.
127 Colombia Concluding Observations, supra note 79, at ¶ 27(c).
128 Greece Concluding Observations, supra note 81, at 8–9.
especially surprising because the Optional Protocol does not expressly require the appointment of legal representatives for victims. Rather, the states parties’ appointment of legal counsel for child victims and the Committee’s expectation that legal counsel will be provided appears to be based on an interpretation of Article 8, which requires states parties to provide “appropriate support services to child victims throughout the legal process.”138 Thus, states parties to the Optional Protocol that are committed to implement Article 9(4) of the Optional Protocol and to comply with the Committee’s interpretation of Article 8, are encouraged to develop a victim compensation system that ensures that legal representatives are available to assist child victims “throughout the legal process,” including when seeking compensation for damages.

F. Countries Are Also Reporting the Creation of State-Sponsored Compensation Systems

A third emerging trend revealed in the survey of country reports filed in compliance with Article 12 of the Optional Protocol was the significant number of states parties that report providing government funding to compensate victims, especially when compensation is not recovered from the offender. Countries that report state funding for victim compensation include Denmark,139 France,140 Greece141 Iceland,142 Israel,143 Kyrgyzstan,144 Latvia,145 The Netherlands,146 Norway,147 Qatar,148 Slovenia,149 Sweden,150 United Kingdom of Great Britain and United States of America, at 13, U.N. Doc. CRC/C/OPSC/USA/CO/2 (July 2, 2013) [hereinafter United States Concluding Observations].

138 Optional Protocol, supra note 17, art. 8(1)(d).
139 Denmark Country Report, supra note 99, at 12–13. Denmark’s country report indicates that Treasury funding of compensation and damages is only available to victims who suffered “personal injury” and it is unclear whether this includes the kind of mental suffering experienced by victims of child pornography distribution and possession.
140 France Country Report, supra note 109, at 29.
141 Greece Country Report, supra note 118, at 41–42.
142 Iceland Country Report, supra note 112, at 18–19.
143 Israel Country Report, supra note 26, at 69–70.
144 Kyrgyzstan Country Report, supra note 93, at 8–9.
149 U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 12, Paragraph 1, of the Optional Protocol to the Convention of the Rights of the
Northern Ireland, and Uruguay. Unfortunately, some of these countries limit state funding of compensation to victims of violent crimes, again discriminating against most victims of child pornography distribution and possession. It should be noted that some states parties that follow Sharia law expressly identified Islamic law as mandating the state to provide compensation to victims “where compensation cannot be obtained from the offender or the offender’s identity is not known.”

This trend was also surprising because state-sponsored funding of compensation for victims is not expressly mandated by the Optional Protocol. Nonetheless, in its Concluding Observation, the CRC criticized some countries for not making available state-sponsored funding for compensation of child pornography victims, where they cannot obtain compensation from offenders, including Greece, Mexico, Slovakia, Sweden, Turkmenistan, and Uruguay. In the case of Togo, the Committee acknowledged that there was a

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150 United Kingdom Country Report, supra note 65, at 34.


152 Qatar Country Report, supra note 54, at 20.

153 Greece Concluding Observations, supra note 81, at 8.


158 Turkmenistan Concluding Observations, supra note 81, at 8.

fund for victim recovery, but criticized the fact that the compensation “is rarely ensured.” Thus, the Committee advised Togo to “replenish the national compensation fund and ensure that child victims who have not obtained compensation from the perpetrators can obtain full compensation from this fund.”

G. No Countries Report Compensation Systems that Provide Access to Remote Victims to Seek Compensation

Even for countries that have fairly robust support systems for recovery of damages by child victims, including the appointment of legal advisors and state-sponsored compensation systems for victims, there are limitations to those compensation systems that may prejudice some victims. For example, in Iceland, state-sponsored compensation normally can only be claimed if the offense occurred within Icelandic jurisdiction. In exceptional cases, state-sponsored compensation may be paid for an offense committed outside Icelandic jurisdiction if the victim is an Icelandic citizen or lives in Iceland. However, the Iceland country report describes no provision for compensation to victims committed by Icelandic citizens against child victims while abroad or where the jurisdictional boundaries are ill-defined, such as remote sex exploitation of children via the Internet. For example, if an Icelandic citizen is in Iceland and has a Filipino child in the Philippines perform sex acts via a webcam, is that child entitled to victim compensation from Iceland? Apparently not.

Sweden similarly limits state-sponsored victim compensation to instances where the offense was committed in Sweden, regardless of the nationality of the perpetrator and victim, or when an offense is committed abroad, but only if the victim is a resident of Sweden. The lacunae evident in Iceland and Sweden highlight one of the greatest challenges facing victim compensation systems in the 21st century: how will the global community ensure compensation for victims when neither the perpetrator nor victim leaves their home countries during the commission of an Internet sex crime? Even relatively progressive countries vis-à-vis victim compensation such as Iceland and Sweden appear to fail to have non-discriminatory systems of victim compensation that provide adequately for the increasingly borderless nature of child pornography and remote sexual exploitation of children. Thus, it is not surprising to note the Committee emphasizing in Concluding Observations to countries like Turkmenistan, that the state party is

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161 Togo Concluding Observations, supra note 135, at ¶ 32(c).
162 Id. at ¶ 33(c).
164 Id.
165 Sweden Country Report, supra note 150, at 22.
obligated to extend victim recovery to children who are not nationals or residents. However, even that is not far enough.

H. Scope of Survey Expanded to Include Concluding Observations to Article 12 Reports

With so many countries not reporting meaningfully on their implementation of Article 9(4), or describing victim compensation systems that address the unique needs of child pornography victims, the scope of research was expanded to include a review of the Concluding Observations issued by the Committee on the Rights of the Child for each country that filed an Article 12 report. The Concluding Observations that discussed the emerging trends identified above (consolidation of victim compensation with the criminal process, appointment of counsel for child victims, and state sponsorship of victim compensation systems) appear to be an exception to the Committee’s feedback to states parties with regard to implementation of Article 9(4).

The survey of Concluding Observations revealed that the Committee was largely silent as to recovery of compensation for victims in a large number of countries, including Andorra, Armenia, Belgium, China, Denmark,

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166 Turkmenistan Concluding Observations, supra note 82, at 8.
167 Concluding Observations were available for all of the countries reporting except Israel, Latvia, and Madagascar. The Lists of Issues issued by the Committee were compiled for those three countries; however, the List of Issues for Madagascar was only available in French, and so was not included in the review. The List of Issues for both Israel and Latvia simply asked for “statistical data (disaggregated by sex, age, nationality, socioeconomic background and urban and rural residence) for the past three years on the number of . . . [c]hild victims who have . . . received compensation.” U.N. Comm. on the Rights of the Child, List of Issues Submitted by Israel under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, at ¶ 1, U.N. Doc. CRC/C/OPSC/ISR/Q/1 (Mar. 10, 2015); U.N. Comm. on the Rights of the Child, List of Issues Submitted by Latvia Under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, at ¶ 1, U.N. Doc. CRC/C/OPSC/LVA/Q/1 (Mar. 10, 2015).
171 U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 12, Paragraph 1, of the Optional Protocol to the Convention of the Rights of the
Iceland, \(^{173}\) Japan, \(^{174}\) Jordan, \(^{175}\) Morocco, \(^{176}\) Netherlands, \(^{177}\) Norway, \(^{178}\) Qatar, \(^{179}\) Switzerland, \(^{180}\) Syrian Arab Republic, \(^{181}\) the Yugoslav Republic of Macedonia, \(^{182}\)


\(^{175}\) Jordan Concluding Observations, supra note 130.


Bolivarian Republic of Venezuela,\textsuperscript{183} and Viet Nam.\textsuperscript{184} Even when it did express concern in its Concluding Observations for other states parties, the Committee usually complained about the limited amount of information submitted regarding the specific amount of support being provided to victims vis-à-vis compensation systems.\textsuperscript{185}

Nonetheless, for most countries, the Committee was light-handed in response to the failure of so many countries to effectively report on, yet alone implement Article 9(4). In fact, the Committee inserted almost identical language in the Concluding Observations of over two dozen states parties (e.g., “The Committee further recommends that the State party ensure that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible in accordance with article 9, paragraph 4, of the Optional Protocol.”\textsuperscript{186}), including Argentina,\textsuperscript{187} Australia,\textsuperscript{188} Austria,\textsuperscript{189} Bosnia and


Herzegovina, Bulgaria, Canada, Colombia, Costa Rica, Ecuador, El Salvador, Estonia, France, Germany, Greece, Guatemala, Kyrgyzstan, Mexico, Mongolia, Nepal, Nicaragua, Oman, the Philippines, Slovakia, Slovenia, Sweden, Turkmenistan, Uruguay

190 Bosnia and Herzegovina Concluding Observations, supra note 124, at 8.
192 Canada Concluding Observations, supra note 79, at 4.
193 Colombia Concluding Observations, supra note 80, at ¶ 30(b).
197 Estonia Concluding Observations, supra note 186, at 45.
198 France Concluding Observations, supra note 185, at sec. VI.
200 Greece Concluding Observations, supra note 81, at 8.
201 Guatemala Concluding Observations, supra note 127, at 5–6.
204 Mongolia Concluding Observations, supra note 131, at ¶ 31.
205 Nepal Concluding Observations, supra note 132, at 12.
206 Nicaragua Concluding Observations, supra note 105, at ¶ 37.
207 Oman Concluding Observations, supra note 133, at sec. VI.
208 Philippines Concluding Observations, supra note 134, at 10–11.
209 U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 12, Paragraph 1, of the Optional Protocol to the Convention of the Rights of the
This formulaic response suggests that the Committee did not study closely and may not value the implementation of compensation systems for victims highly, or at least, as highly as it does other provisions in the Optional Protocol that generated more customized responses.

The Committee’s Concluding Observations were not entirely devoid of customized responses regarding states parties’ implementation of Article 4. For example, the Committee’s Concluding Observations regarding the country report submitted by the United Kingdom recommended that the country “[e]nsure that all jurisdictions, including Northern Ireland and Scotland, facilitate and guarantee access to compensation to child victims for violations of their rights, including through the provision of systematic information on their right to receive compensation.” With regard to the United States, the Committee recommended that “[a]dequate remedy and reparation should be sought legally and through other means.” The Committee’s Concluding Observations regarding the country report submitted by Kuwait simply noted “with interest that the Kuwaiti Civil Code provides for compensation for damages, including ‘moral damages,’ to victims of wrongdoings.” Thus, it appears that even the Committee’s customized feedback on the implementation of Article (4) conveys to states parties and victims alike that this is a treaty provision that is not of high importance to the Committee.

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211 Sweden Concluding Observations, supra note 158, at ¶ 37(b).

212 Turkmenistan Concluding Observations, supra note 82, at 7.


215 United Kingdom Concluding Observations, supra note 136, at 10.

216 United States Concluding Observations, supra note 137, at 12.

I. Scope of Survey Expanded to Include Art. 44 Country Reports under the Convention on the Rights of the Child

Since there was such a dearth of information on victim compensation in most of the initial reports filed by states parties to the Optional Protocol, as well as the Concluding Observations issued in response, and because a decade had passed since some country reports were submitted, the research scope was further expanded to include a review of supplemental information on States Parties’ implementation of the Optional Protocol as described in the country reports of States Parties filed in accordance with Article 44 of the Convention on the Rights of the Child.\(^{218}\) Supplemental information was provided in Article 44 country reports by China,\(^{219}\) Colombia,\(^{220}\) Estonia,\(^{221}\) Lithuania,\(^{222}\) Morocco,\(^{223}\) Netherlands,\(^{224}\) Norway,\(^{225}\) Slovenia,\(^{226}\) and Sweden.\(^{227}\) Canada\(^{228}\) and Germany\(^{229}\)

\(^{218}\) Convention on the Rights of the Child, supra note 12, at Art. 44. The Convention requires states parties to file an initial country report within two years of ratification and, subsequently, periodic country reports every five years. \textit{Id.}


both submitted Article 44 country reports in 2012 but neither provided an update on victim compensation to the initial reports under the Optional Protocol. France also submitted Article 44 country reports in 2008 and 2015; however, the report submitted in 2008 included no updated information on the implementation of the Optional Protocol with regard to victim compensation, and France’s 2015 report is not yet available in English.

Of the Article 44 reports reviewed, none conveyed that a comprehensive and robust framework had been developed to support widespread compensation for child pornography victims. However, most reported progress in specific areas, especially along the lines of the trends identified above. For example, China’s Article 44 report supported the perception that there is an emerging trend towards providing legal representatives to victims. The 2012 report reiterated that children have a right to legal aid, and highlighted that twelve provinces had incorporated regulations that expand legal aid to instances of “domestic violence, abuse and abandonment” involving children. Lithuania’s Article 44 report made clear both that child victims have a right to legal aid and to receive compensation from the Crime Victims Fund, in addition to the victim’s right to claim damages from the offender. Slovenia’s Article 44 Report, which was filed in 2012, similarly makes clear that child victims are entitled to an attorney if they do not have one. Slovenia also took the opportunity to reiterate that it is providing state-sponsored compensation to victims as well.

Several other states parties utilized their Article 44 reports to remind the Committee on the Rights of the Child that they are providing state sponsorship of victim compensation systems. For example, Colombia’s Article 44 report reiterated what it had reported vis-à-vis victim compensation in its initial 2008 country report under the Optional Protocol. Estonia, too, reiterated its efforts vis-à-vis victim compensation, emphasizing its state funding of victim compensation, but also added that, after submitting its 2008 initial country report under the Optional Protocol, it amended its Victim Support Act in 2013 to conform

232 China Art. 44 Report, supra note 219.
233 Lithuania Art. 44 Report, supra note 222.
234 Slovenia Art. 44 Report, supra note 226.
235 Id.
236 Colombia Art. 44 Report, supra note 220.
237 Estonia Art. 44 Report, supra note 221.
it to Directives 2011/36/EU and 2011/93/EU of the European Parliament and Council, extending access to compensation to child victims of sexual offenses.\textsuperscript{238}

Other states parties reported the progress they are making as well. For example, Morocco advised the Committee in its 2013 Article 44 report that child victims can claim compensation in civil courts if the prosecutor determines that criminal prosecution of the offender would not be in the child’s best interest.\textsuperscript{239} The intention in such cases is to avoid re-traumatizing the child with criminal proceedings, which addresses one of the concerns identified in the original survey above.\textsuperscript{240} The Netherlands similarly reported in its 2014 Article 44 report that it had amended its Code of Criminal Procedure and its Criminal Injuries Compensation Fund Act to improve the position of victims, including the right of victims to recovery of damage or loss.\textsuperscript{241} These rights extend to child victims.\textsuperscript{242} Finally, Sweden’s 2014 Article 44 highlighted that state party’s efforts to raise awareness about the availability of compensation to crime victims.\textsuperscript{243}

But challenges remain evident even with states parties that are reporting and appear to be working to implement the Optional Protocol. For example, Norway’s 2009 Article 44 report advises that victim compensation has been extended to include children who witness violence (and not just those who experience it directly), but it is silent as to compensation for victims of child pornography distribution and possession, highlighting that one of the critical gaps identified above persists.\textsuperscript{244} The omission is especially concerning because Norway acknowledges in the report that victims of child pornography and distribution need extensive and specialized treatment beyond that required after the initial production.\textsuperscript{245} Moreover, Norway acknowledges that these victims currently are being supported through routine services and support, which may not meet their unique needs.\textsuperscript{246} Nonetheless, the report is silent as to how the country is fulfilling those victims’ rights as supported by Article 9(4) of the Optional Protocol, which is, of course, a core component of victim restoration.

III. CONCLUSION

Despite the widespread support for the Optional Protocol by the global community, a survey of states parties’ country reports filed in compliance with

\textsuperscript{238} Id.
\textsuperscript{239} Morocco Art. 44 Report, supra note 223.
\textsuperscript{240} Id.
\textsuperscript{241} Netherlands Art. 44 Report, supra note 224.
\textsuperscript{242} Id.
\textsuperscript{243} Sweden Art. 44 Report, supra note 227.
\textsuperscript{244} Norway Art. 44 Report, supra note 225.
\textsuperscript{245} Id.
\textsuperscript{246} Id.
Article 12 of the treaty reveals that there is a widespread disregard of states’ parties reporting obligations both in practice and in substance. However, among those states parties that provided substantive reporting of their efforts to implement Article 9(4), several trends were evident. First, there appears to be a conscious effort to integrate victim compensation systems with criminal prosecutions, which may minimize additional traumatization to victims. Second, a number of states parties report that they are appointing legal counsel to represent child victims. Third, there appears to be an increase of countries that are providing state sponsorship of victim compensation systems. The Committee on the Rights of the Child appears to be expressly encouraging all three of these practices based upon interpretations of more general treaty provisions.

Although this progress among a small handful of countries should be applauded, much more needs to be done. All states parties need to fulfill their treaty reporting obligations both in practice and substance so that the global community, under the leadership of the Committee on the Rights of the Child, can gauge the progress being made to support the restoration of child victims and identify gaps in the system. Along those same lines, the Committee must hold states parties accountable in their reporting and not use formulaic responses that convey disinterest in the substance of the reports. Where gaps in the system exist, such as with legislative language that effectively excludes child pornography victims from seeking compensation for their harm, the Committee should take a much more active role in assisting states parties in amending such legislation. Finally, both the Committee and states parties to the Optional Protocol should work together to craft a comprehensive legal framework that anticipates the increasingly remote nature of child pornography distribution and possession, and allows victims to recover compensation for the harm they suffer, even when their exploitation crosses jurisdictions and perpetrators fail to be prosecuted.