

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 suggest 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

¹ *The Financial Coalition Against Child Pornography Adds Four Financial Services Leaders to its Roster*, INT'L CTR. FOR MISSING & EXPLOITED CHILDREN (Nov. 1, 2006), http://www.icmec.org/missingkids/servlet/NewsEventServlet?LanguageCountry=en_X1&PageId=2853.

² Robert J. Edelmann, *Exposure to Child Abuse Images as Part of One's Work: Possible Psychological Implications*, 21 J. FORENSIC PSYCHIATRY & PSYCHOL. 481, 481 (2010) (discussing

billion dollars annually.³ 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 device and replicated and distributed across the globe within seconds.⁴ 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.⁵ Child pornography is even being produced remotely over the Internet with the recording of live sexual abuse and exploitation of children in foreign countries.⁶ The widespread distribution of child sex abuse images has a profound and often debilitating impact on victims psychologically,⁷ 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.⁸ 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 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

Internet growth, and the potential for child abuse image distribution and its negative effect on investigators of child abuse images).

³ Najat M'jid Malla (Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography), Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, ¶¶ 44, 80, Human Rights Council, U.N. Doc. A/HRC12/23 (July 13, 2009).

⁴ ECPAT Int'l, The Use of Information and Communication Technologies In Connection With Cases Of Child-Sex Tourism In East And Southeast Asia, 25 n.35 (2010), http://www.ecpat.net/sites/default/files/ecpat_journal_mar2010_final_0.pdf.

⁵ Warren Binford et al., Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad, 35 CHILD. LEGAL RTS. J. 117 (2015).

⁶ Terre des Hommes Netherlands, Fullscreen on View: An Exploratory Study on the Background and Psychosocial Consequences of Webcam Child Sex Tourism in the Philippines (2013), https://www.terredeshommes.nl/sites/tdh/files/visual_select_file/nl_2013_10_30_rapport_fullscreen_on_view_terre_des_hommes_2013.pdf.

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).

⁸ See, e.g., *Paroline v. United States*, 134 S. Ct. 1710 (2014).

exploitation.”⁹ 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.”¹⁰

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.¹¹ 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 in 1989.¹² The Convention is the most widely ratified human rights treaty in the world.¹³ 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”¹⁴ 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...”¹⁵ 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 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,

⁹ *Geneva Declaration of the Rights of the Child*, League of Nations O.J. Spec. Supp. 21, 43 (1924) For a more detailed overview of the development of an international legal framework regarding child pornography victims, see Binford et al., *supra* note 5, at sec. II.

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 . . .”).

¹² Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹³ Convention on the Rights of the Child Ratification Status, U.N. Treaty Collection Database, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Feb. 1, 2015); LUISA BLANCHFIELD, CONG. RESEARCH SERV., THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND AND POLICY ISSUES 1 (2010), <http://fpc.state.gov/documents/organization/153279.pdf>.

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.

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.”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,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).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,¹⁹ the adoption of appropriate measures to protect the rights and interests of child pornography victims throughout the criminal justice process,²⁰ including “[a]voiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.”²¹

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

¹⁶ *Id.* at art. 39.

¹⁷ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *opened for signature* May 25, 2000, T.I.A.S. No. 13,095, 2171 U.N.T.S. 227 (entered into force Jan. 18, 2002) [hereinafter *Optional Protocol*].

¹⁸ Status of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, United Nations Treaty Collection Database, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Feb. 1, 2015). The countries that have only signed the Optional Protocol are Cameroon, Fiji, Ghana, Ireland, Kenya, Liberia, Nauru, Solomon Islands, and Zambia. *See also id.*

¹⁹ *Optional Protocol*, *supra* note 17, at art. 7.

²⁰ *Id.* at art. 8. For example, the special needs of child victims and witnesses must be recognized. *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. *Id.* at art. 8(1)(b). Children’s participation rights must be respected. *Id.* at art. 8(1)(c). Appropriate support services must be provided to child pornography victims throughout the proceedings. *Id.* at Art. 8.1(d). The privacy rights of the victim must be honored. *Id.* at art. 8(1)(e). The safety of victims and their families must be ensured when appropriate. *Id.* at art. 8(1)(f).

²¹ *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.

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 discrimination²⁴ 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

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).

²⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Israel, at 42, U.N. Doc. CRC/C/OPSC/ISR/1 (Nov. 21, 2013) [hereinafter Israel Country Report].

²⁷ THE CODE OF HAMMURABI § 23 (Robert Francis Harper trans. 1904) [Israel Country Report]. See Leonard McGee, *Crime Victim Compensation*, 5 J. CONTEMP. L. 67 (1978).

²⁸ Stephen Schafer, *Victim Compensation and Responsibility*, 43 S. CAL. L. REV. 55 (1970).

²⁹ See, e.g., 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Jordan, at 23, U.N. Doc. CRC/C/OPSC/JOR/1 (Feb. 27, 2013) [hereinafter Jordan Country Report].

International Criminal Court.³⁰ 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.³¹

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.³² In the report, the state party is to provide “comprehensive information on the measures it has taken to implement the provisions of the protocol.”³³ 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.³⁴ In the case of states parties that are not also party to the Convention, the state party must submit a report every five years.³⁵ Additionally, the Committee on the Rights of the Child may, and often does, request additional information on the implementation of the protocol.³⁶ 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

³⁰ Paul R. Dubinsky, *Human Rights Law Meets Private Law Harmonization: The Coming Conflict*, 30 *YALE J. INT’L L.* 211, 314–15 (2005).

³¹ *See, e.g.*, Jennifer A.L. Sheldon-Sherman, *Rethinking Restitution in Cases of Child Pornography Possession*, 17 *LEWIS & CLARK L. REV.* 215, 282–83 (2013); Jennifer Rothman, Note, *Getting What They Are Owed: Restitution Fees for Victims of Child Pornography*, 17 *CARDOZO J.L. & GENDER* 333 (2011); *but see* Cortney E. Lollar, *Child Pornography and the Restitution Revolution*, 103 *J. CRIM. L. & CRIMINOLOGY* 343 (2013).

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).

compliance with Article 9(4), which is the treaty provision that requires states 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

available in English.³⁹ 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 Andorra⁴⁰ and Costa Rica⁴¹ 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,⁴² El Salvador,⁴³ Japan,⁴⁴ Jordan,⁴⁵ Kuwait,⁴⁶ Lithuania,⁴⁷ the

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 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.

⁴⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Andorra, at 13, U.N. Doc. CRC/C/OPSA/AND/1 (July 14, 2005).

⁴¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Costa Rica, at 44, U.N. Doc. CRC/C/OPSC/CRI/1 (Dec. 23, 2005).

⁴² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Ecuador, at 8, U.N. Doc. CRC/C/OPSC/ECU/1 (July 8, 2009) [hereinafter Ecuador Country Report].

⁴³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, El Salvador, at 12, U.N. Doc. CRC/C/OPSC/SLV/1 (July 23, 2009).

⁴⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Japan, at 21, U.N. Doc. CRC/C/OPSC/JPN/1 (Oct. 21, 2009).

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

⁴⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Kuwait, at 24, U.N. Doc. CRC/C/OPSC/KWT/1 (Apr. 20, 2007).

⁴⁷ 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

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

Child on the Sale of Children, Child Prostitution and Child Pornography, Lithuania, at 34–35, U.N. Doc. CRC/C/OPSC/LTU/1 (Apr. 21, 2008).

⁴⁸ *Id.*

⁴⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Mongolia, at 21, U.N. Doc. CRC/C/OPSC/MNG/1 (May 28, 2009).

⁵⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Morocco, at 12, U.N. Doc. CRC/C/OPSA/MAR/1 (July 15, 2005).

⁵¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Nepal, at 72, U.N. Doc. CRC/C/OPSC/NPL/1 (May 4, 2011).

⁵² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Nicaragua, at 15, U.N. Doc. CRC/C/OPSC/NIC/1 (Mar. 12, 2010).

⁵³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Oman, at 8, U.N. Doc. CRC/C/OPSC/OMN/1 (Jan. 20, 2009).

⁵⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Qatar, at 20, U.N. Doc. CRC/C/OPSC/QAT/1 (Oct. 31, 2005) [hereinafter Qatar Country Report].

⁵⁵ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Syrian Arab Republic, at 72, U.N. Doc. CRC/C/OPSC/SYR/1 (Feb. 7, 2006).

⁵⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Turkmenistan, at 14, U.N. Doc. CRC/C/OPSC/TKM/1 (Oct. 25, 2013).

⁵⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Uzbekistan, at 39, U.N. Doc. CRC/C/OPSC/UZB/1 (Feb. 17, 2011).

⁵⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Viet Nam, at 37, U.N. Doc. CRC/C/OPSC/VNM/1 (Dec. 12, 2005).

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.⁵⁹ The same appears to be true based on the country reports filed by Austria,⁶⁰ Burkina Faso,⁶¹ Estonia,⁶² Guatemala,⁶³ Slovakia,⁶⁴ the United Kingdom of Great Britain and Northern Ireland,⁶⁵ and Yemen.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,⁶⁷ Bulgaria,⁶⁸ Ecuador,⁶⁹

⁵⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Armenia, at 26, U.N. Doc. CRC/C/OPSC/ARM/1 (Aug. 13, 2012).

⁶⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Austria, at 12, U.N. Doc. CRC/C/OPSC/AUT/1 (Sept. 12, 2007).

⁶¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Burkina Faso, at 27, U.N. Doc. CRC/C/OPSC/BFA/1 (Apr. 24, 2012).

⁶² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Estonia, at 3, 28, 29, U.N. Doc. CRC/C/OPSC/EST/1 (July 20, 2009) [hereinafter Estonia Country Report].

⁶³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Guatemala, at 36–37, U.N. Doc. CRC/C/OPSC/GTM/1 (May 17, 2006) [hereinafter Guatemala Country Report].

⁶⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Slovakia, at 20, U.N. Doc. CRC/C/OPSC/SVK/1 (Jan. 30, 2012) [hereinafter Slovakia Country Report].

⁶⁵ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, United Kingdom, at 34, U.N. Doc. CRC/C/OPSC/UK/1 (Nov. 14, 2012) [hereinafter United Kingdom Country Report].

⁶⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Yemen, at 42, U.N. Doc. CRC/C/OPSC/YEM/1 (Feb. 19, 2009).

⁶⁷ 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

Madagascar,⁷⁰ the Philippines,⁷¹ Switzerland,⁷² Togo,⁷³ the United States of America,⁷⁴ and the Bolivarian Republic of Venezuela.⁷⁵ 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,⁷⁶

Child on the Sale of Children, Child Prostitution and Child Pornography, Belgium, at 63, U.N. Doc. CRC/C/OPSC/BEL/1 (Nov. 16, 2009) [hereinafter Belgium Country Report].

⁶⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Bulgaria, at 13, U.N. Doc. CRC/C/OPSC/BGR/1 (May 7, 2007).

⁶⁹ Ecuador Country Report, *supra* note 42, at 8.

⁷⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Madagascar, at 11–12, U.N. Doc. CRC/C/OPSC/MDG/1 (Nov. 5, 2014).

⁷¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Philippines, at 60, U.N. Doc. CRC/C/OPSC/PHL/1 (Dec. 13, 2011) [hereinafter Philippines Country Report].

⁷² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Switzerland, at 13, U.N. Doc. CRC/C/OPSC/CHE/1 (Nov. 5, 2013) [hereinafter Switzerland Country Report]. For example, Switzerland’s Victim Support Act now allows child victims of “certain serious sexual acts” to register a complaint and seek compensation “up to the age of 25.” *Id.*

⁷³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Togo, at 6, U.N. Doc. CRC/C/OPSC/TGO/1 (Apr. 18, 2011) [Togo Country Report].

⁷⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, United States of America, at 93, U.N. Doc. CRC/C/OPSC/USA/2 (Nov. 16, 2011).

⁷⁵ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Bolivarian Republic of Venezuela, at 15, U.N. Doc. CRC/C/OPSC/VEN/1 (Sept. 3, 2013) [hereinafter Venezuela Country Report].

⁷⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Argentina, at ¶ 35, U.N. Doc. CRC/C/OPSC/ARG/CO/1 (June 18, 2010). In Argentina, the legislation primarily focuses on victims of child trafficking.

Bosnia and Herzegovina,⁷⁷ Burkina Faso,⁷⁸ Canada,⁷⁹ Colombia,⁸⁰ Greece,⁸¹ and Turkmenistan.⁸²

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.⁸³ 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.⁸⁴ At least one province, Saskatchewan, has amended legislation

⁷⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Bosnia and Herzegovina, at 7, U.N. Doc. CRC/C/OPSC/BIH/CO/1 (Oct. 25, 2010) [hereinafter Bosnia and Herzegovina Country Report].

⁷⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Burkina Faso, at 8, U.N. Doc. CRC/C/OPSC/BFA/CO/1 (July 10, 2013) [hereinafter Burkina Faso Concluding Observations].

⁷⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Canada, at 8, U.N. Doc. CRC/C/OPSC/CAN/CO/1 (Dec. 7, 2012) [hereinafter Canada Concluding Observations].

⁸⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Colombia, at ¶ 23(c), U.N. Doc. CRC/C/OPSC/COL/CO/1 (June 17, 2010) [hereinafter Colombia Concluding Observations].

⁸¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Greece, at 8, U.N. Doc. CRC/C/OPSC/GRC/CO/1 (July 20, 2012) [hereinafter Greece Concluding Observations].

⁸² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Turkmenistan, at 7–8, U.N. Doc. CRC/C/OPSC/TKM/CO/1 (Mar. 11, 2015) [hereinafter Turkmenistan Concluding Observations].

⁸³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Canada, at 50, U.N. Doc. CRC/C/OPSC/CAN/1 (June 14, 2011) [hereinafter Canada Country Report].

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 Estonia⁹² 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.* 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.

⁸⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, The Former Yugoslav Republic of Macedonia, at 26, U.N. Doc. CRC/C/OPSC/MKD/1 (June 8, 2009).

⁸⁹ Bosnia and Herzegovina Country Report, *supra* note 76, at 92–93.

⁹⁰ *Id.*

⁹¹ Optional Protocol, *supra* note 17, at art. 9(4).

⁹² Estonia Country Report, *supra* note 62, at 28.

⁹³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Kyrgyzstan, at 8–9, U.N. Doc. CRC/C/OPSC/KGZ/1 (May 31, 2006) [hereinafter Kyrgyzstan Country Report].

recovery to civil proceedings, which raises another issue.⁹⁴ Venezuela similarly recognizes child victims' right to damages but the recovery takes place after criminal conviction in criminal courts.⁹⁵

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."⁹⁶ 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.⁹⁷ However, recovery through the criminal system does not prevent victims in Israel from seeking recovery of damages under civil law if they so choose.⁹⁸ Denmark also describes civil proceedings as part of a victim compensation system,⁹⁹ as does the Philippines.¹⁰⁰ In the Philippines, the victim's civil claim is consolidated with the criminal case.¹⁰¹ China¹⁰² and Switzerland¹⁰³ 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.¹⁰⁴ The value embodied by this trend was reinforced in the

⁹⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Germany, at 13, U.N. Doc. CRC/C/OPSC/DEU/1 (Nov. 21, 2013) [hereinafter Germany Country Report].

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.*

⁹⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Denmark, at 12, U.N. Doc. CRC/C/OPSC/DNK/1 (Nov. 30, 2005) [hereinafter Denmark Country Report].

¹⁰⁰ Philippines Country Report, *supra* note 71, at 60.

¹⁰¹ *Id.*

¹⁰² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, China, at 27, U.N. Doc. CRC/C/OPSA/CHN/1 (Sept. 1, 2005) [hereinafter China Country Report].

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*

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.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."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,¹⁰⁷ Denmark,¹⁰⁸ France,¹⁰⁹ Germany,¹¹⁰ Greece,¹¹¹ Iceland,¹¹² Latvia,¹¹³ China,¹¹⁴ Guatemala,¹¹⁵ and the

civile process (and the related adhesion process in Germany) joins victims as parties in criminal proceedings and allows them to bring civil claims and seek compensation during the criminal proceedings. Stefaan Voet, *Cultural Dimensions of Group Litigation: The Belgian Case*, 41 GA. J. INT'L & COMP. L. 433, 446–47 (2013). By contrast, in most common law systems, the victim is only a witness to the criminal prosecution, and must file a separate civil case to recover damages. *Id.*

¹⁰⁵ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Nicaragua, at ¶ 37, U.N. Doc. CRC/C/OPSC/NIC/CO/1 (Oct. 21, 2010) [hereinafter Nicaragua Concluding Observations].

¹⁰⁶ Optional Protocol, *supra* note 17, at art. 8(1)(g).

¹⁰⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Colombia, at 81, U.N. Doc. CRC/C/OPSC/COL/1 (Dec. 3, 2009) [hereinafter Colombia Country Report].

¹⁰⁸ Denmark Country Report, *supra* note 99, at 12.

¹⁰⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, France, at 29, U.N. Doc. CRC/C/OPSC/FRA/1 (Nov. 6, 2006) [hereinafter France Country Report].

¹¹⁰ Germany Country Report, *supra* note 94, at 13. Germany limits appointment of legal aid to aid indigent child victims. *Id.*

¹¹¹ Greece Concluding Observations, *supra* note 81, at 42.

¹¹² 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

Netherlands.¹¹⁶ 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,¹¹⁷ a conflict of interest,¹¹⁸ a lack of will,¹¹⁹ or where the child is unaccompanied.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.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.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*.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,¹²⁴ Burkina Faso,¹²⁵

Child on the Sale of Children, Child Prostitution and Child Pornography, Iceland, at 18, U.N. Doc. CRC/C/OPSC/ISL/1 (July 15, 2005) [hereinafter Iceland Country Report].

¹¹³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Latvia, at 51, U.N. Doc. CRC/C/OPSC/LVA/1 (Nov. 27, 2014) [hereinafter Latvia Country Report].

¹¹⁴ China Country Report, *supra* note 102, at 26.

¹¹⁵ Guatemala Country Report, *supra* note 63, at 36–37.

¹¹⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, The Netherlands, at 16, U.N. Doc. CRC/C/OPSC/NLD/1 (Jan. 8, 2008) [hereinafter Netherlands Country Report].

¹¹⁷ Germany Country Report, *supra* note 94, at 13.

¹¹⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Greece, at 42, U.N. Doc. CRC/C/OPSC/GRC/1 (January 26, 2012) [hereinafter Greece Country Report].

¹¹⁹ Colombia Country Report, *supra* note 107, at 81.

¹²⁰ Greece Country Report, *supra* note 118, at 42.

¹²¹ *See, e.g.*, Togo Country Report, *supra* note 73, at 6.

¹²² Colombia Country Report, *supra* note 107, at 81.

¹²³ *Id.*

¹²⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Bosnia and Herzegovina, at 7–8 U.N. Doc. CRC/C/OPSC/BIH/CO/1 (Oct. 25, 2010) [hereinafter Bosnia and Herzegovina Concluding Observations].

Canada,¹²⁶ Colombia,¹²⁷ Greece,¹²⁸ Guatemala,¹²⁹ Jordan,¹³⁰ Mongolia,¹³¹ Nepal,¹³² Oman,¹³³ the Philippines,¹³⁴ Togo,¹³⁵ United Kingdom of Great Britain and Northern Ireland,¹³⁶ and the United States.¹³⁷ The Committee's criticisms were

¹²⁵ Burkina Faso Concluding Observations, *supra* note 78, at 7.

¹²⁶ Canada Concluding Observations, *supra* note 79, at 7.

¹²⁷ Colombia Concluding Observations, *supra* note 79, at ¶ 27(c).

¹²⁸ Greece Concluding Observations, *supra* note 81, at 8–9.

¹²⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Guatemala, at 5–6, U.N. Doc. CRC/C/OPSC/GTM/CO/1 (July 6, 2007) [hereinafter Guatemala Concluding Observations].

¹³⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Jordan, at 7, U.N. Doc. CRC/C/OPSC/JOR/CO/1 (July 7, 2014) [hereinafter Jordan Concluding Observations].

¹³¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Mongolia, at ¶ 27(b), U.N. Doc. CRC/C/OPSC/MNG/CO/1 (Mar. 3, 2010) [hereinafter Mongolia Concluding Observations].

¹³² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Nepal, at 11–12, U.N. Doc. CRC/C/OPSC/NPL/CO/1 (July 18, 2012) [hereinafter Nepal Concluding Observations].

¹³³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Oman, at sec. 5–6, U.N. Doc. CRC/C/OPSC/OMN/CO/1 (June 24, 2009) [hereinafter Oman Concluding Observations].

¹³⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Philippines, at 9–10, U.N. Doc. CRC/C/OPSC/PHL/CO/1 (June 26, 2013) [hereinafter Philippines Concluding Observations].

¹³⁵ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Togo, at ¶ 33(b), U.N. Doc. CRC/C/OPSC/TGO/1 (Mar. 8, 2012) [hereinafter Togo Concluding Observations].

¹³⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, United Kingdom, at 10, U.N. Doc. CRC/C/OPSC/UK/CO/1 (July 8, 2014) [hereinafter United Kingdom Concluding Observations].

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 Greece,¹⁴¹ 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

¹³⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, 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.

¹⁴⁵ Latvia Country Report, *supra* note 113, at 51.

¹⁴⁶ The Netherlands Country Report, *supra* note 116, at 16.

¹⁴⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Norway, at 10, U.N. Doc. CRC/C/OPSC/NOR/1 (Dec. 16, 2004) [hereinafter Norway Country Report].

¹⁴⁸ Qatar Country Report, *supra* note 54, at 20.

Northern Ireland,¹⁵¹ and Uruguay.¹⁵² 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.¹⁵³ 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.”¹⁵⁴

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,¹⁵⁵ Mexico,¹⁵⁶ Slovakia,¹⁵⁷ Sweden,¹⁵⁸ Turkmenistan,¹⁵⁹ and

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 Child on the Sale of Children, Child Prostitution and Child Pornography, Slovenia, at 19, U.N. Doc. CRC/C/OPSC/SVN/1 (Nov. 10, 2008).

¹⁵⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Sweden, at 22, U.N. Doc. CRC/C/OPSC/SWE/1 (May 17, 2011) [hereinafter Sweden Country Report].

¹⁵¹ United Kingdom Country Report, *supra* note 65, at 34.

¹⁵² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Uruguay, at 24, U.N. Doc. CRC/C/OPSC/URY/1 (Oct. 31, 2013).

¹⁵³ Greece Country Report, *supra* note 118, at 41–42; Norway Country Report, *supra* note 147, at 10; The Netherlands Country Report, *supra* note 116, at 16.

¹⁵⁴ Qatar Country Report, *supra* note 54, at 20.

¹⁵⁵ Greece Concluding Observations, *supra* note 81, at 8.

¹⁵⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, United Mexican States, at ¶ 46, U.N. Doc. CRC/C/OPSC/MEX/CO/1 (Apr. 7, 2011).

¹⁵⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Slovakia, at ¶ 43(b), U.N. Doc. CRC/C/OPSC/SVK/CO/1 (July 3, 2013).

¹⁵⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Sweden, at ¶ 37(b), U.N. Doc. CRC/C/OPSC/SWE/CO/1 (Jan. 23, 2012) [hereinafter Sweden Concluding Observations].

¹⁵⁹ Turkmenistan Concluding Observations, *supra* note 82, at 8.

Uruguay.¹⁶⁰ In the case of Togo, the Committee acknowledged that there was a fund for victim recovery, but criticized the fact that the compensation “is rarely ensured.”¹⁶¹ 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.”¹⁶²

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.¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵ 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

¹⁶⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Uruguay, at 7, U.N. Doc. CRC/C/OPSC/URY/CO/1 (Mar. 6, 2015).

¹⁶¹ Togo Concluding Observations, *supra* note 135, at ¶ 32(c).

¹⁶² *Id.* at ¶ 33(c).

¹⁶³ Iceland Country Report, *supra* note 112, at 18.

¹⁶⁴ *Id.*

¹⁶⁵ Sweden Country Report, *supra* note 150, at 22.

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 obligated to extend victim recovery to children who are not nationals or residents.¹⁶⁶ 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.¹⁶⁷ 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,¹⁶⁸ Armenia,¹⁶⁹ Belgium,¹⁷⁰ China,¹⁷¹ Denmark,¹⁷²

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).

¹⁶⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Andorra, U.N. Doc. CRC/C/OPSC/AND/CO/1 (Mar. 17, 2006) [hereinafter *Andorra Concluding Observations*].

¹⁶⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Armenia, U.N. Doc. CRC/C/OPSC/ARM/CO/1 (July 8, 2013).

¹⁷⁰ 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

Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Belgium, U.N. Doc. CRC/C/OPSC/BEL/CO/1 (June 18, 2010).

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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, China, U.N. Doc. CRC/C/OPSC/CHN/CO/1 (Nov. 24, 2005).

¹⁷² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Denmark, U.N. Doc. CRC/C/OPSC/DNK/CO/1 (Oct. 17, 2006).

¹⁷³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Iceland, U.N. Doc. CRC/C/OPSC/ISL/CO/1 (June 21, 2006).

¹⁷⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Japan, U.N. Doc. CRC/C/OPSC/JPN/CO/1 (June 22, 2010).

¹⁷⁵ Jordan Concluding Observations, *supra* note 130.

¹⁷⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Morocco, U.N. Doc. CRC/C/OPSC/MAR/CO/1 (Mar. 17, 2006).

¹⁷⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Netherlands, U.N. Doc. CRC/C/OPSC/NLD/CO/1 (May 6, 2009).

¹⁷⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Norway, U.N. Doc. CRC/C/OPSC/NOR/CO/1 (Oct. 20, 2005).

¹⁷⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Qatar, U.N. Doc. CRC/C/OPSC/QAT/CO/1 (June 2, 2006).

¹⁸⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Switzerland, U.N. Doc. CRC/C/OPSC/CHE/CO/1 (Feb. 26, 2015).

¹⁸¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Syrian Arab Republic, U.N. Doc. CRC/C/OPSC/SYR/CO/1 (Oct. 31, 2006).

¹⁸² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations,

Bolivarian Republic of Venezuela,¹⁸³ and Viet Nam.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.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.”¹⁸⁶), including Argentina,¹⁸⁷ Australia,¹⁸⁸ Austria,¹⁸⁹ Bosnia and

The Former Yugoslav Republic of Macedonia, U.N. Doc. CRC/C/OPSC/MKD/1 (Dec. 4, 2012). The Committee simply states that it is “concerned about the absence of child-specific services for recovery and reintegration.” *Id.* at 7.

¹⁸³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Bolivarian Republic of Venezuela, U.N. Doc. CRC/C/OPSC/VEN/CO/1 (Nov. 3, 2014).

¹⁸⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Viet Nam, U.N. Doc. CRC/C/OPSC/VNM/CO/1 (Oct. 17, 2006).

¹⁸⁵ See, e.g., Andorra Concluding Observations, *supra* note 166, at ¶ 20, U.N. Doc. CRC/C/OPSC/AND/CO/117 (Mar. 2006); 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, France, at sec. 5, U.N. Doc. CRC/C/OPSC/FRA/CO/1 (Oct. 15, 2007) [hereinafter France Concluding Observations]; 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Germany, at ¶ 35, U.N. Doc. CRC/C/OPSC/DEU/CO/1 (Feb. 24, 2014).

¹⁸⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Estonia, at ¶ 45, U.N. Doc. CRC/C/OPSC/EST/CO/1 (Mar. 5, 2010) [hereinafter Estonia Concluding Observations].

¹⁸⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Argentina, at ¶ 40(c), U.N. Doc. CRC/C/OPSC/ARG/CO/1 (June 18, 2010).

¹⁸⁸ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Australia, U.N. Doc. CRC/C/OPSC/AUS/CO/1 (Sep. 24, 2012).

Herzegovina,¹⁹⁰ Bulgaria,¹⁹¹ Canada,¹⁹² Colombia,¹⁹³ Costa Rica,¹⁹⁴ Ecuador,¹⁹⁵ El Salvador,¹⁹⁶ Estonia,¹⁹⁷ France,¹⁹⁸ Germany,¹⁹⁹ Greece,²⁰⁰ Guatemala,²⁰¹ Kyrgyzstan,²⁰² Mexico,²⁰³ Mongolia,²⁰⁴ Nepal,²⁰⁵ Nicaragua,²⁰⁶ Oman,²⁰⁷ the

¹⁸⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Austria, U.N. Doc. CRC/C/OPSC/AUT/CO/1 (Oct. 22, 2008).

¹⁹⁰ Bosnia and Herzegovina Concluding Observations, *supra* note 124, at 8.

¹⁹¹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Bulgaria, at ¶ 28(f), U.N. Doc. CRC/C/OPSC/BGR/CO/1 (Jan. 21, 2008).

¹⁹² Canada Concluding Observations, *supra* note 79, at 4.

¹⁹³ Colombia Concluding Observations, *supra* note 80, at ¶ 30(b).

¹⁹⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Costa Rica, at ¶ 4, U.N. Doc. CRC/C/OPSC/CRI/CO/1 (May 2, 2007).

¹⁹⁵ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Ecuador, at ¶ 38, U.N. Doc. CRC/C/OPSC/ECU/CO/1 (Apr. 1, 2010).

¹⁹⁶ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, El Salvador, at ¶ 38(b), U.N. Doc. CRC/C/OPSC/SLV/CO/1 (Feb. 12, 2010).

¹⁹⁷ Estonia Concluding Observations, *supra* note 186, at 45.

¹⁹⁸ France Concluding Observations, *supra* note 185, at sec. VI.

¹⁹⁹ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Germany, at ¶ 36, U.N. Doc. CRC/C/OPSC/DEU/CO/1 (Feb. 24, 2014).

²⁰⁰ Greece Concluding Observations, *supra* note 81, at 8.

²⁰¹ Guatemala Concluding Observations, *supra* note 127, at 5–6.

²⁰² 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Kyrgyzstan, at ¶ 20, U.N. Doc. CRC/C/OPSC/KGZ/CO/1 (May 4, 2007).

²⁰³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, United Mexican States, at ¶ 46, U.N. Doc. CRC/C/OPSC/MEX/CO/1 (Apr. 7, 2011).

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.

Philippines,²⁰⁸ Slovakia,²⁰⁹ Slovenia,²¹⁰ Sweden,²¹¹ Turkmenistan,²¹² Uruguay,²¹³ and Yemen.²¹⁴ 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."²¹⁵ With regard to the United States, the Committee recommended that "[a]dequate remedy and reparation should be sought legally and through other means."²¹⁶ 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."²¹⁷ Thus, it appears that even the Committee's customized feedback on the implementation of Article (4) conveys to states parties

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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, at ¶ 43(b), U.N. Doc. CRC/C/OPSC/SVK/CO/1 (July 3, 2013).

²¹⁰ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Slovenia, at ¶ 25(e), U.N. Doc. CRC/C/OPSC/SVN/CO/1 (July 23, 2009).

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

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

²¹³ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Uruguay, at 7, U.N. Doc. CRC/C/OPSC/URY/CO/1 (Mar. 6, 2015).

²¹⁴ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Yemen, at ¶ 50(d), U.N. Doc. CRC/C/OPSC/YEM/CO/1 (Oct. 13, 2009).

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

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

²¹⁷ 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 Child on the Sale of Children, Child Prostitution and Child Pornography, Concluding Observations, Kuwait, at sec. VI, U.N. Doc. CRC/C/OPSC/KWT/CO/1 (Feb. 18, 2008).

and victims alike that this is a treaty provision that is not of high importance to the Committee.

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 Canada²²⁸ and Germany²²⁹

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. *Id.*

²¹⁹ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, China, U.N. Doc. CRC/C/CHN/3-4 (June 6, 2012) [hereinafter China Art. 44 Report].

²²⁰ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Colombia, U.N. Doc. CRC/C/COL/4-5 (Oct. 25, 2013) [hereinafter Colombia Art. 44 Report].

²²¹ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Estonia, U.N. Doc. CRC/C/EST/2-4 (Dec. 22, 2014) [hereinafter Estonia Art. 44 Report].

²²² U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Lithuania, U.N. Doc. CRC/C/LTU/3-4 (Mar. 1, 2012) [hereinafter Lithuania Art. 44 Report].

²²³ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Morocco, U.N. Doc. CRC/C/MAR/3-4 (Aug. 5, 2013) [hereinafter Morocco Art. 44 Report].

²²⁴ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, The Netherlands, U.N. Doc. CRC/C/NLD/4 (Sept. 19, 2014) [hereinafter Netherlands Art. 44 Report].

²²⁵ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Norway, U.N. Doc. CRC/C/NOR/4 (May 11, 2009) [hereinafter Norway Art. 44 Report].

²²⁶ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Slovenia, U.N. Doc. CRC/C/SVN/3-4 (Apr. 17, 2012) [hereinafter Slovenia Art. 44 Report].

²²⁷ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Sweden, U.N. Doc. CRC/C/SWE/5 (May 5, 2014) [hereinafter Sweden Art. 44 Report].

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 2008²³⁰ and 2015²³¹; 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.²³² 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.²³³ 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.²³⁴ Slovenia also took the opportunity to reiterate that it is providing state-sponsored compensation to victims as well.²³⁵

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.²³⁶ Estonia, too, reiterated its efforts vis-à-vis victim compensation, emphasizing its state funding of victim compensation,²³⁷ 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

²²⁸ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Canada, U.N. Doc. CRC/C/CAN/3-4 (Jan. 4, 2012).

²²⁹ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Germany, U.N. Doc. CRC/C/DEU/3-4 (Sept. 11, 2012).

²³⁰ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, France, U.N. Doc. CRC/C/FRA/4 (Feb. 21, 2008).

²³¹ U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, France, U.N. Doc. CRC/C/FRA/5 (Jan. 28, 2015).

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.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.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.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.²⁴¹ These rights extend to child victims.²⁴² Finally, Sweden's 2014 Article 44 highlighted that state party's efforts to raise awareness about the availability of compensation to crime victims.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.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.²⁴⁵ Moreover, Norway acknowledges that these victims currently are being supported through routine services and support, which may not meet their unique needs.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 Article 12 of the

²³⁸ *Id.*

²³⁹ Morocco Art. 44 Report, *supra* note 223.

²⁴⁰ *Id.*

²⁴¹ Netherlands Art. 44 Report, *supra* note 224.

²⁴² *Id.*

²⁴³ Sweden Art. 44 Report, *supra* note 227.

²⁴⁴ Norway Art. 44 Report, *supra* note 225.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

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.

