

2021

# Online Child Sexual Exploitation and Abuse:

a Review of Norwegian Case Law



ECPAT Norway

18.03.2021

ECPAT International is the leading global network of civil society organizations working for the eradication of sexual exploitation of children. For the past 30 years, ECPAT has monitored States' prevention and response to sexual exploitation of children and advocated for robust international measures to protect children from sexual exploitation. ECPAT Norway was established in 2015, the year of the 25th anniversary of the establishment of ECPAT International. Together with our 122 sister organizations in 104 countries worldwide, ECPAT Norway is working to end all forms of sexual exploitation of children.

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Suggested citation:

Sylwander, K.R., Vervik, A-K. & Greijer, S. (2021). *Online child sexual exploitation and abuse: A review of Norwegian case law*. Oslo: ECPAT Norway.

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## A note on terminology

The current report adopts the terminology recommended by the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Abuse (Luxembourg Guidelines), developed by the Interagency Working Group on Sexual Exploitation of Children.<sup>1</sup> Taking into consideration the different terms used within the international legal framework and by the international child rights community, the Luxembourg Guidelines establish a vocabulary list that aims to, in a child rights oriented manner, synthesize a comprehensive vocabulary to be used when addressing the sexual exploitation of children. The list therefore discourages the use of certain terms that may be harmful or may re-affirm harmful ways of referring to victims and surrounding aspects of child sexual exploitation in various settings.

To refer to the issue broadly, as an umbrella term, the notion of ‘online child sexual exploitation and abuse’ (OCSEA) is used throughout the report. Within this broader notion, we refer to different manifestations of OCSEA in accordance with the abovementioned Luxembourg Guidelines and with how such acts are criminalized and categorized as sexual offences by the Norwegian legal and justice systems. Hence, we frequently refer to ‘live online child sexual exploitation and abuse’ and ‘child sexual abuse material’ (CSAM) as these, often overlapping, crimes are usually dealt with separately by the Norwegian courts. The first refers to instances in which children have been directly exploited and abused online, for instance via chats, webcam, social media or other apps or services. The second refers more specifically to the material that can result from online sexual exploitation and abuse and which, following its production, can be further ‘consumed’ by a large number of other offenders (i.e. accessed, downloaded, distributed, disseminated, imported, exported, offered or sold). We also refer to ‘in-person abuse’ when referring to abuse which has taken place offline, where the offender has been in physical contact with the victim. As this and other reports demonstrate, there is significant overlap between offline and online offending, and many instances of ‘in-person abuse’ have been facilitated or enabled through online technologies.

This report refers consistently to ‘child sex offenders’ or ‘offenders’ for persons who are convicted of OCSEA crimes. For persons tried but not convicted, we refer to the ‘accused’.

Lastly, we use the terms ‘victims’, ‘OCSEA victims’ or ‘child victims’ to refer to persons who were subjected to one or several OCSEA crimes as children. We do this while bearing in mind that some of those persons would prefer to be called survivors or by another term. Nevertheless, since the Norwegian criminal justice system uses the term ‘victim of crime,’ we choose to use this term consistently in the present report.

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<sup>1</sup> Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, Adopted by the Interagency Working Group in Luxembourg, January 28, 2016 (henceforth referred to as the ‘Luxembourg Guidelines’), <http://luxembourgguidelines.org/english-version/>

## Acronyms

CSAM	Child Sexual Abuse Material
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual purposes
ICSE	International Child Sexual Exploitation database
Kripos	Norway's National Criminal Investigation Service
NCMEC	The National Center for Missing & Exploited Children (USA)
OPSC	Optional Protocol to the CRC on the Sale of Children, Child Prostitution Child Pornography
OCSEA	Online Child Sexual Exploitation and Abuse
SECTT	Sexual Exploitation of Children in the Context of Travel and Tourism

## Executive summary

In recent years, matters related to the sexual exploitation and abuse of children online by Norwegian offenders have been brought to the attention of the public through an intense media coverage. Never before has it been so easy for offenders to come into contact with children over the internet. At the same time, police, policy makers and legal practitioners are struggling to keep up with technological developments within this area. The past few years have seen a dramatic increase in the number of reported cases of various forms of online child sexual exploitation and abuse (OCSEA) related offences perpetrated within Norway. This increase seems to be due to many factors such as increased access and use of the internet by both offenders and victims; increased public awareness and therefore increased willingness to report suspected cases of abuse; changes in legislation; police operations around the country that are able to uncover large numbers of cases of abuse. Due to the recognition of OCSEA as a growing social problem, significant efforts made by legislators, police and academia have shed much needed light on these issues.

This report aims to address the need to work across borders to identify good examples of progressive legislation on OCSEA, innovative legal practice and jurisprudence within this area. This report therefore aims to shed light on adjudication and legal practices that may be of interest to partners in other countries.

The authors have reviewed 223 cases of online child sexual exploitation and abuse (OCSEA), including child sexual abuse material and live online child sexual exploitation of child victims abroad. OCSEA encompasses all forms of sexual exploitation and abuse of a child carried out directly online or facilitated, in whole or in part, by the digital environment.<sup>2</sup> In Norway the commonly used term is 'online abuse'.<sup>3</sup> Three main forms of OCSEA were identified:

**1. Live online child sexual exploitation and abuse;** committed exclusively online, without an offline component, including when it is committed internationally, i.e. the victims are in another country than the offender. This may cover livestreaming, online grooming and extortion of children for sexual purposes where no offline meeting has taken place.

Live online child sexual abuse is disaggregated into two parts: one where the victims are in Norway and the other where the victims are abroad.

**2. Child sexual abuse material (CSAM).** There is often a considerable overlap between live online sexual abuse and CSAM, since the former tends to serve the latter, i.e. live online sexual abuse is often recorded and thereafter disseminated as CSAM.

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<sup>2</sup> The Luxembourg Guidelines (2016) op.cit., p.27. The Guidelines further explain that online child sexual exploitation includes 'any use of ICT that results in sexual exploitation or causes a child to be sexually exploited or that results in or causes images or other material documenting such sexual exploitation to be produced, bought, sold, possessed, distributed, or transmitted'.

<sup>3</sup> In Norwegian 'nettovergrep'.

CSAM is also broken down into two parts: One in which the material depicts real existing children, and the other where the material is fictive, representing non-existent children, in order to highlight how Norwegian courts have adjudicated in these two distinct matters.

**3. Online and offline child sexual abuse**, which is partly committed online or facilitated online, with an offline component. This may include grooming of children for sexual purposes where an offline meeting has taken place, situations where offline offending is facilitated by media technologies, and situations where offline sexual abuse of a child is filmed and shared with others, or used to extort the child.

The findings of this study indicate that offenders are using the internet and media technology in many different ways to access, abuse and exploit children. Some exclusively consume and engage with pre-existing material online, some engage in sexualized chatting depicting child sexual abuse, others use media technology and the internet to entice and extort children and youth to produce sexualized material. Some of this material is then used to extort other children online, or is shared with other OCSEA offenders online. Yet others use the internet to gain access to children to commit rape and other extremely serious and violent sexual acts against them, either live online (i.e. by forcing the child victims to commit the acts on themselves or others) or by setting up in-person meetings with their victims.

## Victimization

- The authors note the absence of child victims in convictions concerning exclusively CSAM related offences, such as downloading, consuming, and disseminating CSAM, where no contact occurs between victims and offenders. In these cases, no child victims were identified, leaving them deprived of the rights to receive support, protection, assistance and access to justice.
- We note a tendency that more serious and aggravated forms of abuse depicted in CSAM (where victims are not identified) are against very young children, reflecting international findings by Interpol and ECPAT International.
- All children are vulnerable to these kinds of crimes. OCSEA cases indicate that offenders often target children who are particularly vulnerable. However, findings also indicate that any child can be made vulnerable through offenders' manipulation and threatening behaviour.
- These gross child rights violations are among the worst forms of violence against children. Child victims of OCSEA often feel shame and guilt for their involvement with offenders and for sending sexualized material. This is a significant hindrance in reporting abuse and asking for help.
- Victims of OCSEA suffer greatly as a result of the abuse. They often experience fear and severe anxiety that their images or videos will be spread online and that someone they know will see them. Some also suffer from PTSD, depression, debilitating anxiety,

sleeping disorder, develop substance abuse, become reclusive and isolated, and engage in self-harm. Many have had problems fulfilling their school obligations, and of those who have managed to remain in school, their performance has often been significantly impacted. Many face problems with social relations later in life. They report feeling they are unable to trust others (particularly men), they have trouble establishing close romantic and sexual relationships. Others experience physical suffering, such as hair loss, vomiting and stomach aches.

## Offending

- The report found that out of the 1336 identified child victims of online child sexual exploitation and abuse (OCSEA), 1313 had been in contact with their offender directly or through a handler.
- In the cases in which the offender had accessed child sexual abuse material (CSAM) online, (without any prior contact with the children) there were no identified victims. In one case, the offender was in possession of 'several million' child sexual abuse images.
- To solicit and entice children into sending sexualized material offenders often pretend to be children or teenagers and abuse children's interest in exploring their sexuality and identity online.
- 10 of the reviewed cases involved convictions of offenders for fictitious depictions of child sexual abuse, including in written form (chats), fictitious images of child sexual abuse (for example drawings or cartoons), and the possession of child sex dolls.

## Offenders

- There was a total of 224 male and 10 female offenders in the reviewed cases. All of the females, except one, committed the offences together with one or more males. Female offenders were typically the secondary offender and/or were under the coercion of a male offender. In one case, a female seemed to operate alone and was convicted for fictitious chatting about abusing her own daughter.<sup>4</sup>
- Offenders can be anyone. Some come from trusted positions in society, including law enforcement, politicians and judges, who may use their workspace and computers when committing these crimes. In one case, a 67-year-old judge downloaded and stored 3600 images and 1300 videos depicting serious sexual abuse of children in his office in the District Court.
- Some offenders abuse their positions and specialized knowledge as teachers, pre-school staff, health care professionals, social workers, sport coaches and youth leaders to access and manipulate their victims. In these cases, offenders often use internet and smartphone technology to maintain their power over the victims.
- However, many convicted offenders are men in precarious life situations who suffer from various physical, psychological or social disorders, unemployment and have a hard

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<sup>4</sup> The female offenders do not include the female handlers that are mentioned in the cases of OCSEA of child victims abroad, as the female handlers were not prosecuted under Norwegian law. See chapter 2.



time establishing lasting social relationships. These factors may increase the risk of re-offending and complicate rehabilitation of offenders.

- Our findings suggest that the identification of CSAM related offending will also uncover in-person child abuse.
- Many offenders show little to no remorse for their actions, and many are repeat offenders.

## The legislation

- The New Penal Code entered into force in October 2015 and strengthens the legal protection of children against sexual abuse by, for instance, introducing separate sexual offences against children.
- The law is technology neutral and recognizes that sexual offences do not have to be perpetrated physically by the offender. If the offender gets a victim to perform a sexual act on him- or herself, this is also a sexual offence.
- OCSEA offences are defined as sexual offences under Norwegian law, including offences that involve the fictitious depiction of child sexual abuse or that sexualize children. In accordance with the jurisprudence, this includes depiction in texts, animation and sex dolls that are made to resemble children.
- In Norwegian jurisprudence, sections 300 and 299 of the Penal Code 2005 are interpreted in such a way that the definition of rape (otherwise referencing a physical encounter) is considered applicable also if the victim has been pressured, threatened or misled to perform the sexual act on him or herself over the internet or using media technology. For instance, in one of the cases an offender was found guilty of 135 counts of rape over the internet.
- Offenders can be convicted of attempting to commit a sexual offence online. If all the requirements of the criminal act have been committed by the offender, he or she can be convicted as if the intended act had come to fruition.
- The legislation lacks a requirement for social media- and technology companies to protect their users and prevent and respond to child sexual exploitation and abuse.

## Worrying trends

- In several of the reviewed cases, offenders of OCSEA exploited victims by offering them cigarettes and alcohol, asking for in-person sexual favours such as kissing, masturbation, and other sexual acts, in exchange for these desired items. Offenders have also solicited sexualized content such as images or videos from children in exchange for gaming tokens, alcohol, cigarettes and money.
- A worrying trend identified by police investigators is that the most serious and aggravated forms of abuse depicted in CSAM and live streaming, seemed to be committed against very young children.<sup>5</sup>

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<sup>5</sup> E.g. LB-2017-13042; this also echoes international findings.

- Among the cases reviewed, we saw that offenders use children's own gaming platforms to access and exploit victims. This includes gaming platforms geared toward very young users.

## Introduction

Norway is one of the most well-connected countries in the world and internet use is a ubiquitous feature in the lives of adults, as well as children and youth. In Norway, 97 percent of 9-18 year-old children have their own mobile phone.<sup>6</sup> A survey conducted by the Norwegian Media Authority shows that more than half of children aged 9 use social media, and from the age 13-17, 99 percent are on social media, including 'Snapchat, Instagram, TikTok, Twitter, Discord, Facebook, WhatsApp, Viber, Yubo, Tumblr, Tellonym'.<sup>7</sup> Social media and the internet are central to children and youth in maintaining social relations with friends, meet new people, stay in touch with relatives, but also to explore things like love, sexuality and identity.<sup>8</sup>

Media and internet usage among youth is also closely interrelated with their human rights, including the right to be heard, to participate, to freedom of speech, among others.<sup>9</sup> However, there are many risks associated with media communication, such as the risk of grooming and other forms of sexual exploitation. Self-reporting surveys conducted in Norway among children and youth, as well as reported cases of online child sexual abuse (OCSE) and child sexual abuse material (CSAM) in Norway,<sup>10</sup> indicate that offenders are increasingly using the internet to find and abuse child victims. 18 percent of children and youth aged 13-18 years old have, in the past year, received unwanted sexual comments online that they have experienced as hurtful, uncomfortable and threatening. Girls receive these types of comments more frequently (26 percent) than boys (10 percent).

It is also becoming more common for children and youth to send sexualized and nude images of themselves to others. Of those who have sent nudes, 18-20 percent of the girls have sent images to someone they only know online, while 11-14 percent of the boys have done so. Of the children and youth who have sent nude images, 37 percent of the girls have felt pressured or threatened into sending the images, while only 11 percent of the boys have felt such pressure or threat. Nevertheless, a majority of both girls and boys still send nudes without receiving threats or feeling pressured.<sup>11</sup>

The Police 'Nettpatrolje' (Net patrol), also called the 'police presence online'<sup>12</sup> has identified a worrying trend concerning teenage girls who sell nudes on Snapchat. In June 2020, the police found pricelists for the girls' sale images and videos of a sexual character.<sup>13</sup> A report by the NGO 'Barnevakten' estimated that 4500 children in Norway have received money for sharing nudes online.<sup>14</sup>

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<sup>6</sup> Medietilsynet [Norwegian Media Authority] (2020). *Barn og Medier 2020, En kartlegging av 9–18-åringers digitale medievaner, October 2020*. Oslo: Medietilsynet. The survey included the answers from 3400 children aged 9-18 years.

<sup>7</sup> Ibid., p. 24. Furthermore, 96 percent of boys and 76 percent of girls spend considerable amounts of time on gaming, see also p. 92

<sup>8</sup> See also: Medietilsynet [Norwegian Media Authority] (2018). *Barn og medier undersøkelsen 2018: 9-18-åringers om medievaner og opplevelser*; Tangen Aanerød, L.M. & Mossige, S. (2019). *Nettovergrep mot barn i Norge 2015-2017: Rapport basert på erfaring fra Kripos, politiet, tjenesteleverandører og internasjonal forskning* (Rapport nr 10/18). Oslo: Velferdsforskningsinstituttet NOVA, <http://www.hioa.no/Om-OsloMet/Senter-for-velferds-og-arbeidslivsforskning/NOVA/Publikasjoner/Rapporter/2018/Nettovergrep-mot-barn-i-Norge-2015-2017>

<sup>9</sup> United Nations Convention on the Rights of the Child (UNCRC), November, 20, 1989,

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>10</sup> See: Tangen Aanerød & Mossige (2019), op.cit. ; Kripos (2019). *Seksuell utnyttelse av barn og unge over internett*. Oslo: Kripos. at:

<https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/seksuelle-overgrep-mot-barn/seksuell-utnyttelse-av-barn-over-internett.pdf>

<sup>11</sup> Ibid.

<sup>12</sup> The internet patrol was first established in September 2018. Children can send a direct message to the police to report a crime or ask for help. The Internet Patrol pays visits to schools, and have an online presence on Instagram, Facebook and Snapchat, amongst others.

<sup>13</sup> See <https://www.facebook.com/politisorvest/photos/a.1787649544846020/2678429652434667/?type=3&theater>

<sup>14</sup> Sjur Jansen, *Tenåringers selger nakenbilder på Snapchat*, 18.06.2020, <https://www.barnevakten.no/barn-selger-nakenbilder/>

Sexualized images that have been sold or shared, either willingly or under pressure or threat, can be recirculated and come to be disseminated as CSAM. ECPAT International, as well as the National Criminal Investigation Service Kripos, have noted that self-produced images are increasing among CSAM being circulated online. Offenders also use extortion and other types of threats to obtain such 'self-generated abuse material, both within and outside of Norway.

Highly mediatized cases within Norway also point to the reach of offenders, both in terms of the number of victims they are able to access, as well as their geographical reach. Norwegian offenders have been found to abuse children in other countries by means of social media platforms, chat-based applications and also through live-streamed video services. Moreover, offenders have increasingly penetrated children's own social arenas to engage in grooming, sexualized chatting, sexual solicitation, and sexual extortion. An increasing number of reports link IP-addresses in Norway to CSAM, indicating that there is a significant number of users consuming, downloading, sharing and engaging in child sexual abuse networks.

Online child sexual exploitation and abuse have recently been recognized as an important social problem<sup>15</sup> and have received increased attention by the media. In the last few years, the police have invested greatly in investigating and uncovering internet related offences against children, but also in informing and raising awareness among the public. As a result, the number of reports of sexual abuse has doubled in the past ten years, and the police note that the drastic increase in reporting mainly concerns digital offences. These types of offences are now being uncovered to a much greater extent than before.<sup>16</sup>

Most reported cases of OCSEA have been uncovered as a result of police operations specifically targeting this type of crime. Many cases also lead to the police uncovering a multitude of new interconnected cases, within as well as outside of Norway. Some cases are uncovered by police in other countries when they are investigating similar cases abroad. A significant number of cases, however, are reported to the Norwegian police by the National Centre for Missing and Exploited Children (NCMEC), which is a private, non-profit organization in the USA.<sup>17</sup> In 2014, the police received 50 reports from NCMEC and in 2018, the number had increased to 10445 reports. In 2019 the number was 6816.<sup>18</sup>

In 2016, the Norwegian Social Research Institute at Oslo Metropolitan University (NOVA) found that two thirds of the (OCSEA) reports concerned illegal images and videos, while one third concerned illegal sexualized communication between adults and children.<sup>19</sup> The police have identified that the abuse depicted in the material is becoming increasingly more violent/extreme.<sup>20</sup>

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<sup>15</sup> STRASAK (2018). *STRASAK-rapporten: Anmeldt kriminalitet og politiets straffesaksbehandling 2018*. Oslo: Politiet.

<https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/strasak/2018/strasak-2018.pdf>

<sup>16</sup> Sætre M. Hofseth, C. Bjørnar, L.K. (2018). *Trender i kriminalitet 2018-2011: Digitale og lokale utfordringer*. Oslo: Oslo politidistrikt.

<sup>17</sup> The National Center for Missing & Exploited Children (NCMEC) operate the CyberTipline, a centralized national reporting system for suspected child sexual exploitation. Internet service providers, such as social media platforms and texting applications, are legally required to report suspected cases of online child sexual abuse in all its forms, and therefore NCMEC receive millions of reports each year, including cases where offenders are placed abroad. NCMEC sends the reports concerning Norwegian IP addresses to the Norwegian police to investigate further. In Norway ISPs are not required by law to report suspected cases of child sexual abuse in the same manner.

<sup>18</sup> Ministry of Local Government and Modernisation, Høringsnotat, *Høring – Endringer i ekomloven (lagring av IP-adresser mv.)* [Consultation note, Consultation - Changes in the Electronic Communications Act (storage of IP addresses, etc.)], 9 October 2020, p. 21

<sup>19</sup> Tangen Aanerød & Mossige (2019) op.cit.

<sup>20</sup> See also: the Tangen Aanerød & Mossige (2019); Kripos (2019) op.cit.

Overall, Norway has seen a drastic increase in the number of reports of rape in the past few years.<sup>21</sup> The total number of reports of sexual exploitation and abuse of children under the age of 14 has increased by 80.7 percent in the same time period.<sup>22</sup> After the entry into force of the new Penal Code in 2015, the police has increased its efforts in combatting the sexual exploitation and abuse of children, including the dissemination of CSAM and other forms of OCSEA crimes.<sup>23</sup> The number of reports regarding CSAM and breaches of the pornography law increased by 350 percent between 2014 and 2018. From 2017 to 2018 the increase was 15.6 percent. The steep increase during this period was due in part to the reach of offenders, as well as the multitude of ways in which offenders are able to abuse victims by way of media technology. Therefore, the increase does not necessarily reflect an equally significant increase in the number of offenders,<sup>24</sup> but rather the number of offences that one offender is able to commit.

However, the trend of increased reports seems to have turned in 2019, when the number of reports of rape over the internet dropped from 173 reports in 2018 to 64 reports.<sup>25</sup> In August 2020 a total of 1386 sexual offences against children under 16 years were reported, which is a reduction by 10.2 percent from the same period in 2019. Several reasons may explain the reduction in number of reports from 2019 to 2020; such as normal variations, but also reduced disclosure opportunities and reduced investigative activities as a result of the work situation with, among other things, home office during the Covid-19 pandemic.<sup>26</sup> The real numbers are believed to be significantly higher than what is reflected in the current statistics.

The increase in reported cases overall in the past few years has also led – along with new legislation – to an increase in court cases addressing OCSEA offences. The specific aim of this report is to review the emerging case law on OCSEA in Norway, in order to identify patterns, gaps and good practice, and to draw some conclusions with regard to the implementation of the international and national legal frameworks for protecting children from sexual exploitation and abuse.

## Statement of purpose

In recent years ECPAT Norway<sup>27</sup> along with other civil society organizations<sup>28</sup> and actors such as academia,<sup>29</sup> the media<sup>30</sup> and the police<sup>31</sup> have started to shed light on the issue of children's exposure to online child sexual exploitation and abuse (OCSEA), as well as the scope of sexual offending targeting

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<sup>21</sup> The total number of breaches of the sexual offences law increased by 75.2 percent between 2014 and 2018. The police point out that the drastic increase in the number of reported cases of rape are due to efforts in informing the public and therefore more willingness to report.

<sup>22</sup> STRASAK-rapporten (2018), op.cit. p. 22.

<sup>23</sup> Sætre, Hofseth, & Bjørnar (2018) op.cit.

<sup>24</sup> The police note that many cases are reported several times within the same district or the same case may be reported in several police districts by different people. In 2017, 280 reports of distribution of CSAM concerned one single offender.

<sup>25</sup> Politiet/Kripos (2019). *Voldtektssituasjonen i Norge 2019*, Oslo: Politiet, p. 18. <https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/voldtekt-og-seksuallovbrudd/voldtektssituasjonen-i-norge-2019.pdf> The majority of the victims in this type of case were 12–13 years old at the time of the crime, but this form of abuse also affects younger children. They found victims all the way down to the age of 7-8 who had been contacted on online games or social media and persuaded to perform acts on themselves that correspond to sexual intercourse.

<sup>26</sup> Politiet (2020). *STRASAK-rapporten: Anmeldt kriminalitet og politiets straffesaksbehandling. Første og andre tertial 2020*. Oslo: Politiet. <https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/strasak/2020/anmeldt-kriminalitet-strasak-andre-terial-2020.pdf>

<sup>27</sup> Sylwander, K. and Vervik, A-K. (2018). *Global Study on Sexual Exploitation of Children in Travel and Tourism: Country Specific Report Norway 2018*. Oslo: ECPAT Norway.

<sup>28</sup> Sutter, J. (2020). *Shedding Light on the Dark Sides of the Internet: Report on sexual exploitation through digital platforms*. Oslo: Lightup Norway.

<sup>29</sup> Tangen Aanerød, & Mossige (2019), op.cit.

<sup>30</sup> In 2020 NRK, a Norwegian state-owned broadcasting company offering media content on radio, TV, streaming and on the internet, reviewed 1890 judgments. The cases from 2015 to 2019, deal with the sexualization of children and sexual abuse of children under 16 years of age. One of the objectives was to map how many that have been convicted, the types of sexual assaults are in question and how many that have offended, see 'Slik har vi jobbet' at <https://www.nrk.no/viten/flere-personer-med-seksuell-interesse-for-barn-kontaktet-det-finner-hjelp-etter-nrk-sak-1.15283950>

<sup>31</sup> Kripos (2019). *Seksuell utnyttelse av barn og unge over internett*. Oslo: Kripos/Politiet.

children online within Norway. As a result, we have begun to get an idea of the scope of the problem and the manner in which perpetrators access victims both in Norway and abroad. However, no study has thus far systematically reviewed the case law pertaining to OCSEA. In addition, Norwegian jurisprudence pertaining to sexual crimes against children committed over or facilitated by the internet has been brought to the attention of international organizations and has been discussed at international committees and events. As such, this report aims to review the available Norwegian jurisprudence, both to identify gaps and make recommendations to strengthen the protection of children from sexual exploitation in all its forms. This report has also been developed in order to present the international community with indications concerning good practices and possible ways of implementing international treaties and conventions on matters related to various forms of online child sexual exploitation and abuse.

This study therefore reviews the available Norwegian case law between January 2015 and November 2020, identifying cases which have led to convictions concerning online and media facilitated sexual exploitation and abuse of children, in order to synthesize what we know about the victims, the impact of the offences on their lives; the perpetration of the offences; the offenders; as well as the material that the offenders produce, download and disseminate. An attempt is made to answer questions such as: How are offenders using the internet and media technology to facilitate the sexual exploitation of children? What gaps and challenges can we identify in the cases that have led to conviction? What penalties did offenders receive? What gaps can we identify in the adjudication of these cases? What are the promising and/or good practice? What can we learn for the future?

## Method

Primary data collection was conducted through the platform [lovdata.no](https://lovdata.no) (Lovdata Pro).<sup>32</sup> Through this platform, we identified cases involving internet and media facilitated sexual offences against children that have led to a **conviction** between **January 2015 and November 2020**.

The case review is limited to cases that:

- have led to the conviction of offenders
- for sexual offences against children committed online or facilitated by use of online media technology,
- and which have been made publicly available via Lovdata.<sup>33</sup>

As cases are not filed in accordance with the broad and complex set of offences that fall under this type of offending,<sup>34</sup> a wide search was undertaken to identify the relevant cases by searching for the relevant legal provisions among adjudicated cases. In addition, a word search was conducted to identify

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<sup>32</sup> For the purpose of this report, we have used the online platform Lovdata Pro, geared towards professionals within the field of law. Lovdata is a foundation established for the purpose of creating, maintaining and operating a legal information system for Norwegian law and jurisprudence. The foundation was established by the Norwegian Ministry of Justice, and the Faculty of Law at Oslo University in 1981.

<sup>33</sup> This included conviction under the Penal Code 1902 as well as the new Penal Code 2005, including: Seksuell handling uten samtykke; Seksuelt krenkende atferd offentlig eller uten samtykke; Voldtekt av barn under 14 år; Grov voldtekt av barn under 14 år; Seksuell omgang med barn mellom 14 og 16 år; Grov seksuell omgang mv. med barn mellom 14 og 16 år; Seksuell handling med barn under 16 år; Seksuelt krenkende atferd mv. overfor barn under 16 år; Avtale om møte for å begå seksuelt overgrep; Krav til aktsomhet om barnets alder; Kjøp av seksuelle tjenester fra mindreårige; Fremvisning av seksuelle overgrep mot barn eller fremvisning som seksualiserer barn; Fremstilling av seksuelle overgrep mot barn eller fremstilling som seksualiserer barn, and other related offences. . See: Dr. Wager, Nadia et al. (2018), 'Rapid Evidence Assessment: Quantifying the extent of online-facilitated child sexual abuse: Report for the Independent Inquiry into Child Sexual Abuse', January 2018, accessed 27 February 2018.

<sup>34</sup> See also Kripos (2019) op.cit.

additional related cases of interest.<sup>35</sup> All cases identified on Lovdata of child sexual exploitation and abuse which included internet or media facilitation of any kind were extracted and analysed, after which those that did not fall within the scope of this study were excluded from the final material. Thus, cases of child sexual abuse which did not include some form of internet or media facilitation, or where offenders had been acquitted of the relevant charges, were excluded. Further, additional and complementary cases, for example those identified as precedent setting cases, but that did not fall within the time frame of our study, have nonetheless been reviewed and, where relevant cited, but have not been included in the case overview.

A desk review of available and relevant literature was also conducted. This included national reports and research, relevant preparatory work, international reports and guidelines, media coverage, and reports by ECPAT International.

Number of reviewed cases	Number of victims
223	1336

## Limitations

The findings of this report are limited to the information provided in Norwegian jurisprudence through lovdata.no. Lovdata publishes all cases adjudicated by the Supreme Court, most of the cases of the Court of Appeals and many of the cases of the District Courts. Therefore, this does not represent the full scope of offending in Norway, nor the extent to which child victims are affected by offenders within Norway.<sup>36</sup> In addition, the cases available via lovdata.no have been edited in order to present only the most pertinent facts in regards to the legal provisions tried in the case. We note that the available documents therefore only provide part of what actually came to light in the cases.<sup>37</sup> Nevertheless, these cases allow us to shed much needed light on how the relevant types of offences are handled by the justice system, how the law is applied, and how child sex offenders acting online are brought to justice.

It should be noted that these cases do not reflect the vast numbers of offenders who go undetected, victims who never access justice, or cases that did not lead to a conviction.<sup>38</sup> Nonetheless, we wish to illuminate the information that is available in the identified case law and point to the significant number of cases reviewed as an indicator of the knowledge basis for the findings herein. While the study mainly reflects established legal practice, it also points to certain emerging trends within recent case law.

<sup>35</sup> These included, but were not limited to words such as: ‘nettovergrep’ (internet abuse); ‘overgrepssbilder’, ‘overgrepsmaterial’\*(abuse material); ‘fremstilling som seksualiserer barn’ (material sexualizing children); ‘sosialemedier’; ‘Facebook’; ‘Snapchat’; ‘chatt’; ‘internet’.

<sup>36</sup> See also Kripos (2019), op.cit.

<sup>37</sup> See also Skilbrei and Stefansen (2018), op.cit.

<sup>38</sup> ECPAT International (2018). *Trends in online child sexual abuse material*. Bangkok: ECPAT International.

## The Norwegian Court system

The Norwegian criminal law is overseen by three levels of courts. These are the District Courts,<sup>39</sup> the Courts of Appeal, and the Supreme Court.<sup>40</sup> The cases reviewed in this study include cases prosecuted through these three courts, but will reference the most recent conviction in the highest court that has prosecuted the case.<sup>41</sup> It is important to note that Supreme Court rulings are of the highest importance and set important precedent.

Court	Number of cases
Supreme Court	14
Court of Appeals	168
District Court	41
<b>Total</b>	223

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<sup>39</sup> There are 64 District Courts in Norway. All criminal cases are adjudicated through this court after which the case can be appealed to the Court of Appeals.

<sup>40</sup> The Supreme Court does not consider the facts of the case. The court reviews how the due process of law has been applied correctly, and whether the right legal provisions and penalties have been applied.

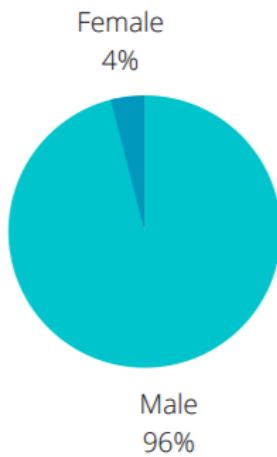
<sup>41</sup> Cases that have been adjudicated through multiple courts have been counted as one case.



**1336**  
IDENTIFIED  
CHILD VICTIMS



**223**  
CASES



**234**  
OFFENDERS

**224 male**  
**10 female**

**0**  
IDENTIFIED CSAM VICTIMS

**VICTIMS OF CSAM  
REMAIN UNIDENTIFIED**

Identified victims had all been in contact with the perpetrator. Therefore victims depicted in CSAM accessed by perpetrators online remain unidentified.

## Chapter 1. International and national law to protect children from online child sexual exploitation and abuse

The following chapter presents the international and national legal frameworks regarding the protection of children from OCSEA and explains the various forms of OCSEA offences that have been identified among the reviewed court cases.

### International law and the protection of children from OCSEA

Online child sexual exploitation and abuse (OCSEA) is a phenomenon of growing concern to law enforcement and child protection professionals all over the world. Millions of children are victims of the different criminal acts falling under the notion of OCSEA. To define this notion, it is necessary to address its different components as well as to distinguish it from child sexual exploitation and abuse (CSEA) committed exclusively offline.

Firstly, it is clear from the term ‘child’ that OCSEA refers to acts committed against children, defined by the UN CRC as all person under the age of 18.

Secondly, the notion ‘sexual exploitation and abuse’ encompasses all acts that constitute sexual exploitation and sexual abuse against a child, including the production of images or videos of such abuse. For a more detailed overview of the many different forms and manifestations of sexual exploitation and abuse, we refer to the comprehensive work of the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (the Luxembourg Guidelines).

Thirdly, OCSEA implies that an online component is present in the acts that have been committed. It is important to note that this does not necessarily mean that all acts involved in a certain crime have occurred online, but that there is, as a minimum, an online component enabling and/or facilitating the commission of the crime. Hence, OCSEA encompasses a variety of crimes such as online grooming and sexual extortion, the production, dissemination and consumption of child sexual abuse material (CSAM), as well as live online sexual abuse (e.g. via streaming). OCSEA is constantly evolving, closely following developments in technology and mobile connectivity. Moreover, the proliferation of peer-to-peer networks and pay-as-you-go streaming services ensure offenders a high degree of anonymity, making OCSEA offences particularly challenging.

By now, a solid international legal framework is in place with regard to the protection of children OCSEA. The starting point for any discussion on legal approaches to address OCSEA must be the UN CRC. This instrument includes international provisions to protect children from all forms of sexual exploitation and sexual abuse, as well as from the sale of or traffic in children for any purpose or in any form.<sup>42</sup>

Moreover, both the ILO 1999 Convention on the Worst forms of child labour (ILO C182) and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (the Palermo Protocol) from 2000 include provisions that explicitly request States parties to take all necessary measures to tackle the sexual exploitation and trafficking of children, including through penal sanctions. Importantly, the Optional Protocol to the UN CRC on the Sale of children, child prostitution and child pornography (OPSC)

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<sup>42</sup> UN CRC, articles 19, 34, 35.

of 2000 establishes the international legal framework specifically for the protection of children from sexual exploitation and abuse. While these provisions were adopted at a time when much of the recent and incredibly rapid development of information and communication technologies (ICTs) had not yet occurred, and tend to be of a rather general nature, it is important to recall that they establish the basic framework for tackling also online forms of sexual exploitation and abuse.

The abovementioned instruments have been complemented by more recent legal provisions adopted at the European and EU levels, such as through the Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse (Lanzarote Convention) of 2007<sup>43</sup>, or through the EU Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography of 2011.

## OCSEA in Norway

In this report, in order to facilitate the analysis of the Norwegian case law on the matter, a distinction will be made between the following three forms of OCSEA offences:

- **Live online child sexual exploitation and abuse** committed exclusively online, without an offline component, including when it is committed internationally, i.e. the victims are in another country than the offender. This may cover grooming and extortion of children for sexual purposes where no offline meeting has taken place.
- **Child sexual abuse material** there is often a considerable overlap between live online sexual abuse and CSAM, since the former tends to serve the latter, i.e. live online sexual abuse is often registered and thereafter disseminated as CSAM. Nevertheless, within Norwegian penal law and case law there is a distinction between instances where the sexual abuse of children has been ordered and carried out online, via web cams and/or streaming services, and CSAM, in which texts, images (including fictive material) and videos are downloaded, accessed, and/or shared.
- **Online and offline child sexual abuse** partly committed online or facilitated online, with an offline component. This may include grooming of children for sexual purposes where an offline meeting has taken place.

Furthermore, two of these categories have been disaggregated further:

- Live online child sexual abuse is disaggregated into two parts: one where the victims are in Norway and the other where the victims are abroad, in order to reflect specific challenges regarding jurisdiction and rights of the victims, including right to compensation.
- CSAM is also broken down into two parts: one in which the material depicts real existing children, and the other where the material is fictive, representing non-existent children, in order to highlight how Norwegian courts have adjudicated in these two distinct matters.

Images and other materials that children have produced by their own free will can be manipulated and exploited in all forms of OCSEA.

Lastly, there are some instances in which the Norwegian courts have addressed charges related to the (online) trafficking of children for sexual purposes. Therefore, a specific section also addresses the two

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<sup>43</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, October 10, 2007, <https://rm.coe.int/1680084822>

– distinct but overlapping – offences of sale and trafficking of children for sexual purposes, and looks at how the Norwegian justice system has dealt with such cases.

The international legal framework clearly covers all the above-mentioned forms of OCSEA.

Firstly, with regard to **live online child sexual abuse**, the following legal provisions are particularly relevant:

- ◆ the UN CRC refers, in its Article 34, to ‘the exploitative use of children in pornographic performances’, without specifying whether such performances are carried out online or offline.
- ◆ The ILO Convention C182 contains, in Article 3(b), a prohibition of ‘the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.’
- ◆ The Lanzarote Convention details different types of ‘use’ of a child and requires State Parties to criminalise a series of offences concerning the participation of a child in pornographic performances, such as recruiting a child into participating in pornographic performances or causing a child to participate in such performances; coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes; and knowingly attending pornographic performances involving the participation of children.
- ◆ EU Directive 2011/93, in its definition of ‘pornographic performance’ (Article 2(e)) includes explicitly the *‘live exhibition aimed at an audience, including by means of information and communication technology, of (i) a child engaged in real or simulated sexually explicit conduct; or (ii) the sexual organs of a child for primarily sexual purposes.’*

More specifically, regarding **online grooming of children** (solicitation of children for sexual purposes):

- ◆ The Lanzarote Convention is the first international legal instrument to define grooming, and the Convention refers to this act as ‘solicitation of children for sexual purposes’. In its article 23, the Lanzarote Convention requires states parties to criminalize *‘the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.’*
- ◆ EU Directive 2011/93 follows the Lanzarote Convention and also includes, in its article 6, a definition of solicitation of children for sexual purposes: *‘1. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable: the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting [...]. 2. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.’*

While no international legal instruments on the rights of the child refers to online **sexual extortion of children** explicitly, it is clear that this type of act must be criminalised. In the OPSC Guidelines, the UN CRC Committee sets forth that ‘sexual extortion, sometimes referred to as “sextortion”, of children is a practice whereby a child is forced into agreeing to give sexual favours, money or other benefits under the threat of sexual material depicting the child being shared on, for example, social media. This practice

is often linked to grooming and sexting, and the Committee is concerned by the increase in more extreme, violent, sadistic and degrading demands by offenders, which expose children to severe risks.’<sup>44</sup>

Sexual extortion could indeed be considered an aggravated form of online grooming, due to the use of threats involved in making the child perform sexual acts.

‘Modern slavery’, or ‘contemporary forms of slavery’, is an umbrella term that covers forced labour, forced marriage and human trafficking. ‘The common thread is that a person is being exploited, and cannot refuse or leave due to threats, violence, coercion, deception, manipulation and/or the abuse of power’. (Alliance 8.7, The Challenge, <https://www.alliance87.org/the-challenge/>, accessed 18.12.2020). In many cases, OCSEA incidents will also be covered by this definition.

In her latest report to the Human Rights Council, 25 July 2019, the Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences, assessed today’s features of slavery and how expected future changes may shape slavery in the years to come. Amongst emerging trends, the Special Rapporteur emphasised that ‘new technologies are leading to new forms of exploitation, such as forcing children to participate in online sexual exploitation.’<sup>45</sup>

Secondly, with regard to **CSAM**, a number of relevant provisions can also be found (often referring to the term ‘child pornography’):

- ◆ Article 34(c) of the UN CRC refers to protection from ‘the exploitative use of children in pornographic performances and material’ in Article 34(c).
- ◆ Article 3(b) of ILO C182 forbids ‘the use, procuring or offering a child [...] for the production of pornography or pornographic performances.’
- ◆ Article 2 of the OPSC prohibits ‘child pornography’ and defines it as ‘*any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes.*’ In addition, as set forth by Article 3(c), States are required to criminalise the following constituent parts of the offence of child pornography: ‘*[p]roducing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes child pornography.*’ The reference to ‘any representation, by any means’ arguably covers also so-called ‘fictive’ or ‘virtual’ CSAM, in which no real, existing children are depicted but in which children are artificially depicted.
- ◆ Article 20.2 of the Lanzarote Convention defines ‘child pornography’ as ‘*any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.*’ The Convention prohibits, through Article 20(1) ‘*producing child pornography; offering or making available child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; possessing child pornography, and knowingly obtaining access to child pornography.*’ Moreover, article 20(3) allows states parties to opt out from criminalising the production and possession of ‘*pornographic material consisting exclusively of simulated representations or realistic images of a non-existent child.*’ The way the relevant provision is formulated indicates that the Lanzarote Convention considers such ‘fictive’ or ‘virtual’ material to be prohibited unless states choose explicitly to exclude them from their national criminal law.

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<sup>44</sup> Committee on the Rights of the Child, Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, September 10, 2019, CRC/C/156, para. 69, <https://ohchr.org/Documents/HRBodies/CRC/CRC.C.156.OPSC%20Guidelines.pdf>

<sup>45</sup> Human Rights Council, Forty-second session, 9-27 September, 2019, Current and emerging forms of slavery: Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, July 25, 2019, A/HRC/42/44, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/226/64/PDF/G1922664.pdf?OpenElement>

- ◆ Article 2 of EU Directive 2011/93 takes a step further by defining ‘child pornography’ as ‘(i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes.’ By this definition, in particular paragraph iv, ‘fictive’ or ‘virtual’ CSAM is clearly included.

Thirdly, with regard to **online and offline child sexual abuse**, all of the abovementioned provisions apply.

Lastly, the **sale and trafficking** of children are both prohibited by article 35 of the UN CRC and by article 3 of ILO C182. Moreover:

- ◆ the OPSC specifically defines the ‘**sale of children**’ as ‘any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration’ (article 2). Moreover, article 3.a of the OPSC obliges States parties to criminalise the following acts: ‘(a) In the context of sale of children as defined in article 2: (i) Offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child.’
- ◆ The Palermo Protocol refers to ‘**trafficking in persons, particularly women and children**’ and defines it as follows: ‘[t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’ (Article 3.a). Furthermore, article 3(c) sets forth that ‘[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.’

As recalled by the Luxembourg Guidelines, trafficking of children for sexual purposes is sometimes conflated with the notion of child sexual exploitation.<sup>46</sup> Nevertheless, the definitions of these crimes under international law are not identical. Moreover, trafficking and sale of children are often treated as the same thing, and many countries, including Norway, lack a clear legal prohibition of the sale of children under national law. Despite a certain overlap, ‘sale of children’ is not identical to ‘trafficking’, and some fundamental distinctions can be made. For instance, ‘sale of children’ requires the transfer of a child from person to person and a transaction, consisting of some form of remuneration. This is not necessarily the case for trafficking. Perhaps even more importantly, sale must not necessarily include the **purpose** of exploiting a child, which is a constitutive element of trafficking.<sup>47</sup>

In addition to the international legal treaties, there are a number of relevant soft law- and policy-instruments at the international level which also address the protection of children from OCSEA. Among them are the instruments of the UN Committee on the Rights of the Child, in particular General Comment 13 on the Right of the child to freedom from all forms of violence (2011)<sup>48</sup> and the Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC Guidelines) of 2019.<sup>49</sup> The latter

<sup>46</sup> Luxembourg Guidelines (2016), op.cit., p. 61.

<sup>47</sup> Ibid., page 58.

<sup>48</sup> United Nations Committee on the Rights of the Child, General Comment no. 13, April 18, 2011, CRC/C/GC/13, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en)

<sup>49</sup> Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, op.cit.

addresses OCSEA specifically at length, with the aim to guide states parties in implementing the OPSC also in the technological era, and demonstrating that it remains a highly relevant and fully applicable legal instrument.

In paragraph 19 of the OPSC Guidelines, the Committee specifically recommends that *'States parties, in establishing their legal frameworks, take into account technological advancements to ensure that their applicability is not eroded by future developments and to avoid loopholes associated with emerging concerns, including new forms of online sale and sexual exploitation. In light of the evolving nature of the issue, States parties should regularly assess and, when necessary, revise legislation and policies to guarantee that their legal and policy frameworks are adapted to rapidly changing realities.'*

It is also noteworthy that the OPSC Guidelines, in paragraph 49, reminds States that *'while the sale of children and trafficking in children may overlap, their international legal definitions differ. The Committee underlines that, in accordance with the Optional Protocol, States parties are under an obligation to explicitly criminalize the sale of children for all of the above-mentioned purposes.'*

## National law and the protection of children from OCSEA

It is noteworthy that the Norwegian law is **technology neutral** and does not specify that a criminal act must occur by way of physical contact. In other words, the law does not specify or delimit sexual exploitation and abuse between acts that occur offline or online, nor does the law specify or delimit the understanding of sexual abuse to any specific form or technology. This is an important element in combating OCSEA offences, and many studies indicate, and international experts have argued, that online offences should be considered just as serious as in-person sexual abuse.

Moreover, in October 2015 the new Penal Code 2005 entered into force.<sup>50</sup> It included significant changes to the sexual offences law,<sup>51</sup> and strengthens children's protection from sexual offences. The new Penal Code differentiates more clearly between sexual offences committed against adults and children and addresses aggravated forms of offences in separate provisions.<sup>52</sup>

The **age of sexual consent** in Norway is 16. Thus, a person under 16 cannot legally consent to sexual relations with an adult,<sup>53</sup> and 'sexual activity with a minor' includes all children under the age of 16. Conversely, with regard to CSAM and purchasing sexual favours from a minor,<sup>54</sup> 'minor' in these instances is understood as anyone under the age of 18, in accordance with the legal definition of a 'child' under Norwegian law.<sup>55</sup> There is also a distinction between sexual acts committed against a child under 14 and a child under 16, indicating that sexual acts against younger victims are more serious.<sup>56</sup> Indeed, sexual intercourse with a child under 16 but above 14 engenders a term of imprisonment of up to 3 years, whereas the term of imprisonment for the same act against a child under 14 years of age is up to 9 years. With the adoption of the Penal Code 2005, the law now defines sexual activity with children under the age of 14 as rape.<sup>57</sup> Importantly, this includes when the victim performs a sexual act on him-

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<sup>50</sup> Penal Code (Straffeloven) 2005.

<sup>51</sup> Penal Code (Straffeloven) 2005, Chapter on sexual offences (Seksuallovbrudd), sections 291-320. The cases covered in this report include offences committed before the new Penal Code entered into force in 2015 and are therefore adjudicated under the old Penal Code 1902.

<sup>52</sup> Skrilbrei & Stefansen (2018), op.cit.

<sup>53</sup> Penal Code (Straffeloven) 2005, section 302; Skrilbrei & Stefansen, op.cit.

<sup>54</sup> Penal Code (Straffeloven) 2005, sections 309; 310; 311.

<sup>55</sup> See Skrilbrei, M.L., & Stefansen, K. (2018). op.cit. p. 84.

<sup>56</sup> Ibid. p. 91.

<sup>57</sup> Penal Code (Straffeloven) 2005, section 299: Sexual assault of a child under the age of 14 years old. A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who a) engages in sexual activity with a child under 14 years of age, b) makes a child under 14 years of age perform acts corresponding to sexual activity on himself/herself, or c) performs an aggravated sexual act with a child under 14 years of age.

or herself, such as in some forms of OCSEA. Consequently, there is no requirement for the use of force or threat for a sexual act against a child under 14 to be qualified as rape.

In addition, the law states that sexual activities with children below 16 years of age constitute an offence if the offender has threatened, coerced or in another way made the child perform a sexual act on him- or herself.<sup>58</sup> Thus, also **sexual acts where there has not been any physical contact between the perpetrator and the victim qualify as sexual abuse and can qualify as rape.**<sup>59</sup>

The legal provisions covering OCSEA offences in Norway are strong and provide a solid basis to tackle these crimes, in particular when the victims are under the age of 16. For children between 16 and 18 years of age, who have reached the age of sexual consent but not yet the age of majority, the protection is somewhat weaker. ECPAT Norway recalls that the UN Convention on the Rights of the Child defines the child as any person under the age of 18, and sets forth that all children have the right to protection from sexual exploitation and sexual abuse. Having reached the age of sexual consent does not mean that a child can consent to his/her exploitation or abuse.

It is also noteworthy that, in Norway, sections 310 and 311 of the Penal Code 2005 define CSAM-related offences as sexual offences under the sexual offences chapter.<sup>60</sup> This is not the case in many other countries, where CSAM-related offending, often legally referred to as ‘child pornography’, is often defined as something other (less serious) than a sexual offence.<sup>61</sup> This is an important definition as it fully recognizes offenders of CSAM-related offences as sexual offenders under the law.

With regard to child sexual exploitation, section 309 of the Penal Code 2005 criminalises ‘purchasing sexual services from a minor’. Even though many of the OCSEA cases reviewed for this study included aspects of payment for sexual services from children, very few applied this provision.<sup>62</sup> As set forth by the OPSC, each State party shall make offences related to the sale and sexual exploitation of children punishable by appropriate penalties that take into account their grave nature.<sup>63</sup>

Under the new Penal Code 2005, sections 257 and 258, human trafficking of children under the age of 18 is defined as “any person who exploits or deceives a person into/for a) prostitution or other sexual services. If severe violence or force was used, or if the act generated significant proceeds, the trafficking may be considered aggravated (section 258). As will be shown further down, several offenders in the cases reviewed for this study were charged with online human trafficking. However, so far, the interpretations of the different courts have varied.

It is noteworthy that the Norwegian courts as well as the media often mention the notion ‘nettovergrep’ (‘online abuse’). However, the term ‘nettovergrep’ never appears in Norwegian law, nor in the international legal framework. ECPAT Norway is concerned that the general term ‘online abuse’ could inadvertently diminish the understanding of how serious some forms of OCSEA are. While it is important to understand the role that the online dimension plays in committing and facilitating sexual offences against children, it is equally important to remember that the impact of such offences on child victims is as serious as that of offline offences.

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<sup>58</sup> Penal Code (Straffeloven), sections 299 c; 302.

<sup>59</sup> See Tangen Aanerød & Mossige (2019) op.cit.

<sup>60</sup> Penal Code (Straffeloven), Chapter on sexual offences (Seksuallovbrudd), sections 291-320.

<sup>61</sup> In Sweden for instance the crime of child pornography (barnpornografibrott) is defined as a crime against public order in the Penal Code (Brottsbalken) chapter 16 §10a, instead of as a sexual offence under chapter 6. For a discussion on this see ECPAT Sweden’s research report: Kaldal, A and Andersson, M. (2017). *Barnpornografibrottet: Det straffrättsliga skyddet mot dokumenterade sexuella övergrep mot barn*. Stockholm: ECPAT Sweden. Accessed at: [https://www.ecpat.se/uploads/2\\_PDF/Rapporter/ECPAT\\_Barnpornografibrottet\\_2017.pdf](https://www.ecpat.se/uploads/2_PDF/Rapporter/ECPAT_Barnpornografibrottet_2017.pdf)

<sup>62</sup> The following cases tried offenders under section 309: TNERO-2018-130781; LA-2018-121574; LE-2019-88964; TGJOV-2017-86572.

<sup>63</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, January 18, 2002, A/RES/54/263, article 3.3, <https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx>



The table below shows the full legal framework for sexual offences in Norway:

Sections of the Penal Code 2005 <sup>64</sup>	Term of imprisonment
§299: Rape of a child under 14 years of age	Up to 10 years
§300: Minimum penalty for sexual assault involving intercourse with a child under 14 years of age	From 3 years to 15 years
§301: Aggravated assault/rape of a child under 14 years of age	Up to 21 years
§302: Sexual activity with a child between 14 and 16 years of age	Up to 6 years
§303: Aggravated sexual activity etc. with a child between 14 and 16 years of age	Up to 15 years
§304: Sexual act with a child under 16 years of age	Up to 3 years
§305: Sexually offensive conduct, etc. directed at a child under 16 years of age	Up to 1 year
§306: Arranging a meeting to commit sexual abuse against a child under 16 years of age ('grooming')	Up to 1 year
§309: Purchase of sexual services from minors (under 18 years of age)	Up to 2 years, up to 3 years if aggravated
§310 Showing of sexual abuse of a child or attending 'shows' that sexualize children under 18	Up to 3 years
§311: Depiction of sexual abuse of children or depiction which sexualizes children (under 18 years of age- including, producing, publishing, acquiring, showing such depictions)	Up to 3 years
§312: Incest (engaging in such activity, make a person perform acts corresponding to sexual activity on themselves)	Up to 6 years
§314: Sexual activity between other closely connected persons (such as abuse of a stepchild or foster child)	Up to 6 years
§257: Human trafficking (including for prostitution or other sexual services)	Up to 6 years
§258: Aggravated human trafficking (victimizing persons under the age of 18 is considered an aggravating factor)	Up to 10 years

These provisions lie as the basis for the present report, in which the Norwegian case law is analysed against the backdrop of the national and international legal frameworks.

While recognising the importance of a technology neutral law regarding the sexual exploitation and abuse of children, our analysis of the Norwegian case law showed that certain specific investigative and procedural considerations are necessary to prosecute crimes committed and/or facilitated online. One important factor is the possibility to conserve online user data to trace IP addresses used for criminal acts. The current Norwegian legislation foresees a maximum of 21 days.

In 2017, the Parliament asked the Government to investigate the matter, and on 9. October 2020, a new proposed draft, the 'Ecom law', was presented in a consultative process that lasted until 11. January 2021. The new draft suggests that storing of IP addresses should be extended to six, nine or twelve months. Through balancing different needs, it argues that 'storage time of six or nine months will better protect the communication protection and privacy of all users of the internet'. But at the same time, a storage of twelve months will to a greater extent meet the needs of the police's investigations of these serious crimes.<sup>65</sup>

In light of the case law on OCSEA which was analysed for the present report, six months appears too short to enable the successful collection of determinant evidence in OCSEA cases. ECPAT Norway therefore recommends that the legislation concerning digital evidence be carefully assessed also from

<sup>64</sup> Penal Code (Straffeloven) 2005, Chapter 26.

<sup>65</sup> Ministry of Local Government and Modernisation, *Høring – Endringer i Ekomloven (lagring av IP-adresser mv.)*, 9. October 2020, <https://www.regjeringen.no/contentassets/155568386f9644b4b147d8245303bf1f/horingsnotat---endringer-i-ekomloven-lagring-av-ip--11274418.pdf>

a child rights perspective (i.e. through a child rights impact assessment) in order to find the appropriate balance between different rights and interests.

The Norwegian Penal Code from 2005, section 27,<sup>66</sup> provides the legal basis for holding a corporation liable when a criminal offense has been committed by someone who has acted on behalf of an enterprise. The penalty is a fine. Additionally, the company may also be denied the right to exercise the business or be prohibited from exercising it in certain forms.<sup>67</sup> Moreover, the Norwegian Law on Damages (Tort Liability Act) section 2-1. 1 (Employer's responsibility for employee), an employer shall be liable for damage which has been committed intentionally or negligently during the employee's performance of work or employment. The responsibility does not cover damage caused by the employee going beyond what is reasonable with regard to the nature of the business or the business area and the nature of the work or duties.<sup>68 69</sup> To ECPAT Norway's knowledge, these provisions have never been applied in OCSEA cases.

In its new General Comment No. 25, the Committee on the Rights of the Child recalls States' obligations to ensure that businesses 'respect children's rights and prevent and remedy abuse of their rights in the digital environment.'<sup>70</sup> All States Parties to the Convention have a responsibility to 'take appropriate steps to prevent, monitor, investigate and punish child rights abuses by businesses.'<sup>71</sup>

Through appropriate legislation, policies and regulations, the Norwegian Government should ensure that businesses, such as technology companies, internet providers, bank and finance companies comply with their duty to prevent that their networks and services are used to interfere with children's privacy and abuse and exploit them online. The business sector should provide 'prompt and effective remedies' to children and caregivers, and undertake child rights due diligence, 'in particular to carry out child rights impact assessments and disclose them to the public' (...).<sup>72</sup>

In order to meet these requirements, the Norwegian Government should consider the development of new legislation that addresses the prevention and response of OCSEA and other serious forms of violence against children online.

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<sup>66</sup> [https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL\\_1-4#KAPITTEL\\_1-4](https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_1-4#KAPITTEL_1-4)

<sup>67</sup> ECPAT Norway, *Global Study on sexual exploitation of children in travel and tourism: Country specific report*, 2018, p. 27

<sup>68</sup> Ibid. page 28

<sup>69</sup> Unofficial translation from Norwegian to English

<sup>70</sup> Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, 2 March 2021, para. 35

<sup>71</sup> Ibid. Para. 38.2

<sup>72</sup> Ibid. Para. 36 and 38.1

### **Online Harms Legislation in the United Kingdom**

With the Online Harms White Paper, the UK became the first country to begin developing legislation to tackle illegal activity taking place online and to prevent children from being exposed to inappropriate material which can cause harm. This is designed to create a duty of care consisting of 2 parts. The first part is the legally binding duty on companies to take responsibility for the safety of their users. Companies will be required to put in place appropriate systems and processes to improve user safety and monitor their effectiveness. The primary responsibility for each company in scope will be to take action to prevent user-generated content or activity on their services causing significant physical or psychological harm to individuals. While not mandating specific forms of redress it is foreseen that redress offered by companies could include: content removal; sanctions against offending users; reversal of wrongful content removal or sanctions; mediation; or changes to company processes and policies.

The second part is the regulator's duties and functions. The regulator has the power to issue directions and notices of non-compliance. The regulator can issue fines of up to £18m or 10% of annual global turnover, whichever is higher. As a last resort the regulator will have the power to take measures to disrupt the business of a non-compliant company. The legislation will set out the expectations of the regulator to establish codes of practice covering guidance on how long companies should retain data and the circumstances in which the content should be reported to law enforcement and other agencies. Additionally, the Law Commission is currently consulting on proposals for the reform of the criminal law targeting serious harm online, which may form part of the Online Safety Bill.

## Chapter 2. Forms of online child sexual exploitation and abuse

As mentioned in chapter one, this report addresses three forms of OCSEA specifically, including some sub-categories of those three. This chapter presents the way these different OCSEA offences are committed and prosecuted in Norway, as illustrated by the relevant case law.

### Live online child sexual exploitation and abuse

Live online child sexual exploitation and abuse<sup>73</sup> can occur in many ways. The cases analyzed in the present study encompass the rape of a child over the internet, including through various means getting a child to perform sexual acts on themselves online;<sup>74</sup> live streaming sexualized content or sexual acts performed on themselves (equated to intercourse);<sup>75</sup> grooming children for sexual purposes, including through misleading children to believe that they are chatting with another teenager or child and this way getting them to send sexualized images or texts; the promise of monetary compensation to children in exchange for sending sexualized content<sup>76</sup> and enticing children to send sexualized images or other content by offering to pay them through gaming money on online gaming platforms; sexual extortion; sending crude and offensive sexualized content to child victims; and soliciting another person ('contact' or 'handler') to abuse a child and to live stream the assault.<sup>77</sup>

### Rape committed over the internet

As mentioned in chapter 1, the Norwegian Penal Code is technology neutral, meaning it does not differentiate nor exclude sexual acts that are committed online from offline offences. Rather, the provisions protecting children from sexual abuse also include making a child perform acts corresponding to sexual activity on himself/herself.<sup>78</sup> In Norwegian jurisprudence the law has been interpreted in such a way that the definition of rape is considered applicable also if the offender has pressured, threatened or misled the child victim to perform the sexual act on him or herself online.<sup>79</sup> There has to be a causal link between the threatening behaviour and the sexual act.<sup>80</sup> This interpretation was established by the parliamentary committee of justice<sup>81</sup> in a special decision,<sup>82</sup> wherein the committee recognized that such acts were deemed to be considered equitable to the same act had it been committed in person. The committee further recognized that the act itself, when carried out online, can be considered

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<sup>73</sup> See the Luxembourg Guidelines, op.cit. p. 22-27.

<sup>74</sup> Penal Code (Straffeloven) 1902, section 192 (translated by authors) 'c) through the use of violence or threatening behaviour, someone who has sexual intercourse with another, or to perform similar acts with himself, is punished for rape with imprisonment 2 up to 10 years. In assessing whether violence or threatening behavior has been perpetrated or whether the aggrieved party was unable to oppose the act, emphasis shall be placed on whether the aggrieved party was under 14 years of age'; Penal Code 2005, section 299 b) (anyone who) causes a child under 14 years of age to perform acts corresponding to sexual intercourse with him or herself'. Section 302 'Anyone who has sexual intercourse with a child between the ages of 14 and 16 is punishable by imprisonment for up to 6 years, unless the relationship is also affected by other provisions. In the same way, anyone who causes a child between the ages of 14 and 16 to perform acts corresponding to sexual intercourse with themselves is punished.'

<sup>75</sup> Ibid.

<sup>76</sup> LF-2016-147383.

<sup>77</sup> For example LE-2018-86561, where both offenders were situated in Norway and where the solicitation did not involve a monetary exchange but rather was an offence the two offenders planned and committed together.

<sup>78</sup> Penal Code (Straffeloven) 2005, sections 299; 300, 302; Penal Code (Straffeloven) 1902, section 192.

<sup>79</sup> See: HR-2017-1282-A.

<sup>80</sup> Fransson, E., Martinsen, T. and Staksrud, E. (2019). Rape in the age of the Internet. In Ed. Bruvik Heinskou, M. Skilbrei, M-L., and Stefansen, K., *Rape in the Nordic Countries*. London: Routledge. p. 196.

<sup>81</sup> Norwegian: 'Stortingets justiskomiteé'.

<sup>82</sup> Innst. O.nr.92 (1999-2000), p. 10, section 4.3.3.

particularly humiliating and should therefore be equally punishable.<sup>83</sup> This was also incorporated into the preparatory works of the new Penal Code 2005.<sup>84</sup>

**Jurisprudence indicates that, when qualifying acts of child sexual abuse committed over the internet and setting penalties, the use of threat by the offender is considered an element to qualify the offence as rape, despite the intention expressed in the preparatory works to lowering the threshold and removing the requirement of the use of force to qualify a sexual act against a child under the age of 14 as rape.**

This element is taken into account when adjudicating on whether or not an online act is equal to intercourse, for instance when victims, under threat or coercion, insert objects or fingers into their genitalia.<sup>85</sup> However, under the new Penal Code 2005 (section 300), sexual relations with a child under 14 is always considered rape, even without the use of force, coercion or manipulation.<sup>86</sup> Furthermore, the law sets the age of sexual consent at 16, which means that children under 16 cannot consent to sexual intercourse with an adult. Hence, the element 'use of threat or coercion' should not be applied to instances of rape over the internet either.<sup>87</sup> Nevertheless, in cases of online child sexual abuse the proof of abuse is usually based on chatlogs and text messages, rather than physical evidence or witness accounts, which are the most common forms of proof in offline (in-person) abuse. Therefore, in most cases, the courts have used these logs to argue that it is proven beyond a reasonable doubt that a victim was raped or sexually abused in other ways. However, there are instances when the threats and coercion have been made over the phone or via webcam link and not in text form. In these cases, no written proof is available. In determining if a sexual offence committed online amounts to rape of a child (in particular a child under 16 or 14 years of age respectively), the main focus should be on the sexual acts that the child has been made to perform, and not on whether or not threats and coercion were used.

The Supreme Court adjudicated over a precedent setting case in 2017,<sup>88</sup> in which the definition of rape online was discussed at great length. This included the rape of children under the age of 14. Through manipulation and threats, the adult male offender had made child victims perform sexual acts on themselves and on each other. The footage was then sent to the offender. In this case, the Supreme Court discussed whether abuse that takes place over the internet, and where there is no physical contact between the offender and victim, can be equated to rape. The Court argued that these acts were just as harmful as physical abuse based on two aspects. Firstly, the offender exerted extreme pressure and threatening behaviour on his victims via their social media accounts and by texting them. Thereby the threat from the offender was constant and victims felt scared and threatened even in their own homes. Secondly, the experience of abuse was further exacerbated by the fear that the material would be spread to others online.

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<sup>83</sup> (Translated by authors) 'The committee cannot see that such matters are less punishable than if the rapist himself had committed the abuses. On the contrary, such an approach may appear particularly humiliating to the victim.'

<sup>84</sup> Ot. Prp.nr.22 (2008-2009) p 216.

<sup>85</sup> LE-2017-122181; Penal Code (Straffeloven) 1902, section 192 annet led bokstav a jf. Første led bokstav c.

<sup>86</sup> Penal Code (Straffeloven) 2005, section 301.

<sup>87</sup> For a discussion on the Penal Code's application of the use of threat or coercion instead of consent see: Skribrei & Stefansen (2018), op.cit.

<sup>88</sup> HR-2017-1282-A.

The Supreme Court argued as follows: ‘These acts lack some of the characteristics that are usually present in sexual abuse. Firstly, there has been no physical contact between the offender and the victim. A key question is what significance this has for the assessment of the actions as a basis for sentencing.<sup>89</sup> There is no doubt that rape, which involves forcing victims to commit acts with themselves, should in principle be punished as severely as other forms of rape. This was clearly stated by the Parliament's Standing Committee on Justice, when the special provision on such violations was introduced in 2000: <sup>90</sup>“The committee cannot see that such matters are less punishable than if the rapist himself had committed the abuses. On the contrary, such an approach may appear particularly humiliating to the victim.”<sup>91</sup>

The Supreme Court recognized that victims feel shame and guilt associated to internet related sexual abuse, which is closely linked to their own involvement in the acts, as well as their own role in their contact with their abuser. Furthermore, victims express feeling insecure and fearful that the sexualized material could be further disseminated online, closely tied to a sense of not being able to prevent the spread of the material.<sup>92</sup> The Supreme Court therefore recognized that internet related child sexual abuse can have the same kind of impact on the lives of victims as in-person abuse.<sup>93</sup> ECPAT Norway welcomes this interpretation, but also draws attention to the fact that some child victims of online exploitation and abuse may suffer even greater from the fact that the acts are committed online, since this means that the images and/or videos remain and can be spread further, causing the child to be revictimized over and over again.

## Online grooming for sexual purposes

Section 306 of the Penal Code 2005<sup>94</sup> prohibits grooming and defines it, in line with international law,<sup>95</sup> as intentionally ‘arranging a meeting to commit sexual abuse’ against a child under 16 years of age. Such arrangements could be made either online or offline, or both. The requirements of the offence are considered fulfilled if the offender arrives at the designated meeting place or where the meeting place may be observed from a distance. The offender has to have the intention to abuse a child and intend to physically go to the meeting place. This means that even in cases where the offender is being duped by an adult pretending to be a child, the offender can still be found guilty if he or she turns up at the designated meeting place.<sup>96</sup>

However, online grooming is not only about grooming victims to meet up in person. The overall findings of this report indicate that few victims seem to actually meet up with the offenders they meet online. On the contrary, in-person abuse seems to mainly be initiated through contact established offline. So even though there is a significant overlap between offline and online offending, offline offending in these cases was seldom the result of online-initiated contact. Rather, these types of offending seem to be occurring parallel to one another. In cases where offenders groom and solicit sexual material from

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<sup>89</sup> Para. 16.

<sup>90</sup> see Inst.O.nr.92 (1999–2000) page 10 item 4.3.3.

<sup>91</sup> Para. 17. Translated from original.

<sup>92</sup> Premiss 21, HR-2017-1282.

<sup>93</sup> The Supreme Court judge argued that ‘There is no doubt that abuse over the internet can be experienced as very serious and have serious harmful effects. There is reason to emphasize that even if the offender is not physically in the same place, he or she may have a strong controlling and invasive role towards the victim. Many people today, not least young people, use the internet, including social media, to a very large extent, and this is an important and necessary part of their everyday life. This means that a perpetrator at almost any time, no matter where the victim is, will easily be able to get in touch with the victim and be responsible for a continuous exercise of threats and pressure’ (translated by authors), HR-2017-1282.

<sup>94</sup> In the previous Penal Code 1902 this corresponds to section 201a.

<sup>95</sup> Lanzarote Convention and EU Directive 93/2011.

<sup>96</sup> See LF-2016-106879.

children online, there are instances where offenders also attempt to and manage to set up in-person meetings with child victims.<sup>97</sup> Nevertheless, most offences take place over the internet, through sexualized forms of online communication such as chatting, exchanging sexualized images and sharing sexualized content such as pornography with child victims, and manipulating children into sending sexualized material or live streaming sexual acts. **The findings of this report indicate that online grooming seems to be geared towards, and result in, mostly online forms of abuse.**<sup>98</sup> This may, in part, be the result of offenders' sense that offline meetings present greater risks of getting caught. It may also suggest that children recognize offline meetings as risky and suspicious.

To initiate conversations with victims online sexual offenders often pretend to be children or young people. Therefore, victims are mostly not aware that they are communicating with an adult. Some victims only find out that they are communicating with an adult when they are contacted by the police as part of a criminal investigation. Several cases include the unlawful use of another's identity or acting through another's identity to get in touch with and manipulate victims who then believe they are communicating with another child.<sup>99</sup> By using another person's name, image or other details, victims are misled into believing that the offender was a boy or girl either of the same age or much closer in age.<sup>100</sup> Offenders often establish a relationship of trust with victims and then move over to communicating in a sexual way. When the communication takes on a sexual character, the offenders use various tactics of manipulation to mislead victims into sending them sexualized images or videos.

## Sexual extortion

At times, grooming of children for sexual purposes is accompanied by use of manipulation, threats and force, in particular to get children to provide the offender with images or videos in which they act in a sexualised manner and/or perform sexual acts. This material can then be used by the offender to pressure or threaten victims into sending additional material. This type of tactic is referred to as **sexual extortion**. Offenders in the reviewed cases were able to sexually extort and sexually abuse large numbers of child victims at once. One case included over 100 victims.<sup>101</sup>

As soon as sexual offenders obtain the first pictures or videos from their victims, they are able to use this material to threaten and extort victims into sending more. The change in attitude can be instant from the first time the victim sends sexualized material to the offender. For child victims this change can be shocking, as the offender changes from being caring and friendly to being threatening, degrading and aggressive.

Offenders in these cases use various types of threats, of which the most common was threatening to publish the nude and/or sexualized images of the victim online, or to send the images to their friends and family. In some cases, the offenders actualized these threats by for example publishing the images on various social media platforms or by sharing them within the victims' social network.<sup>102</sup> The court

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<sup>97</sup> See for example LE-2016-99126; LB-2017-82747. Cases concerning the offence of grooming (Penal Code (Straffeloven) 2005, section 306-organizing a meeting with a victim with the intention to sexually abuse the child: see LE-2017-122181; and cases where this was unsuccessful- LF-2016-106879; TBERG-2018-149494; TSUMO-2019-63379.

<sup>98</sup> This is based on the findings of this report.

<sup>99</sup> Penal Code (Straffeloven) (1902), section 190a.

<sup>100</sup> E.g. LF-2018-66311.

<sup>101</sup> LE-2016-99126.

<sup>102</sup> Only cases where the victim and offender knew each other offline and were exclusively young offenders. See for example: LF-2016-110795.

describes that offenders have no limits in terms of the lengths to which they are willing to go and the methods they employ to obtain sexualized and humiliating material from their victims.

In many of the cases, the victims believed that they were in a romantic relationship with the offender. Once a relationship of trust has been established with the victim the offender typically progresses towards increasingly sexualized communication and requests for exchanging sexualized content. In certain cases, the offenders threatened to end the relationship prompting victims to continue to send sexualized content. Victims expressed feeling shame and guilt for having engaged in contact with the offenders in the first place. They blame themselves for having sent the images or followed the offenders' instructions. This represents an important obstacle for victims to report the abuse or to seek help.<sup>103</sup> Victims described how shame and guilt were central to their unwillingness to speak out.<sup>104</sup>

In one case, the evidence showed that the offender used especially cruel methods to threaten and extort his victims. The victims described how the offender at first was friendly, kind and appeared trustworthy. The court described him as boundless in his quest to obtain what he called 'porn'. The evidence indicated that humiliating the victims was part of the satisfaction he was seeking. The chatlogs showed how he enjoyed the power and control that he exercised over his victims. He was aware that the girls were suffering and he could see that they were disgusted to do the things he coerced them to do. The first time he asked for sexualized content he used the 'russebuss' method. Through this method he told the victims, that he had a russebuss that they could go on if they completed a 'test', which was to send sexualized content as per his instructions.<sup>105</sup>

Many sexual offenders targeted vulnerable children specifically, drawing on their experiences of, for instance, abuse to sexually exploit them. One of the victims had divulged that she was the victim of rape. The offender used this to start communicating about abuse and described in detail scenes of sexual abuse and rape of children to the victim.<sup>106</sup> The offender also fabricated stories about being the victim of extreme abuse in order to prompt victims to divulge their own stories of abuse. Another victim had told the offender that she was self-harming and suffered from social anxiety and the offender used this in his communication to manipulate and psychologically manipulate her, by sending further suggestions and encouragement to use drugs and images of self-harm that he had downloaded from the internet. The offender also sent pictures of a ring that he claimed he was going to give to her.

The court also described how, in another case, exchanges became increasingly more 'bizarre and grotesque' in character. In chats with victims, the offender described vivid scenes of sexual abuse of children and adults; including descriptions of the rape of pre-school aged children; rape of children who are inebriated; incestuous rape of children; sexual acts with animals; urination and defecation in sexual scenes.<sup>107</sup> He sent CSAM (images and videos) depicting serious acts of violence to the victims; he described paedophilia as something beautiful between an adult and a child; and described fantasies of sexually abusing his own future children. The court noted that the offender consciously wanted the victims to start to build acceptance for sexual abuse and to perform these acts, and that they would in this way come to normalize and accept such abuse. The offender had contact with the children online

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<sup>103</sup> Professor Mossige, expert in case LB-2017-176279.

<sup>104</sup> THALD-2017-149595.

<sup>105</sup> LB-2017-176279; Russebuss is a popular tradition surrounding graduation, where graduates rent or buy a bus for and travel around their towns, while partying on the bus. This is often in combination with the consumption of alcohol and drugs. The offender was found guilty of 74 instances of sexual abuse and threatening behaviour against girls aged between 12 and 18 years old. 44 of the victims were under the age of 16 at the time of the offence, and 30 were between 12 and 15 at the time of the offence.

<sup>106</sup> LF-2018-66311; The Luxembourg Guidelines, op.cit., refers to this as the 'sexual corruption of a child', see p. 44.

<sup>107</sup> TBERG-2018-51923.



via chat platforms, skype and also direct contact via their phones. In this way the offender was able to get in touch with victims, at all times, pressuring them to send him material and to answer his texts also during school hours. One victim described how she felt that he destroyed her life after he got access to her telephone number and her home address.

Victims are often unaware that they are in contact with an adult, and rather think that they are in contact with another young person.

In one case, the offender targeted boys by using fake profiles on various social media platforms and pretending to be a young teenage girl.<sup>108</sup> Using images that he found online, he then misled the boys into believing that they were communicating with a girl their own age. The offender described that it 'was easy' to get the boys to send him nude images by promising that they would receive images in return. Some victims sent only a few images, whereas others sent as many as 100. He then used the threat of publishing or sharing the images online to force the boys to send more images or to film themselves while performing sexual acts on themselves. The offender also baited the victims by saying that they would get thousands of more followers, which the offender knew 'would appeal to that age group'. Many victims expressed in their communication with the offender that they did not want to continue sending material, and that they experienced pain from the things that he asked them to do to themselves. The offender also established fake Instagram accounts where he published nude images of some of the victims to let them know that his threats were serious. The offender was found guilty of different sexual offences of children under the old Penal Code 1902 including at least 135 instances of rape and several instances of attempted rape (Penal Code 1902, section 192 (c)). He was sentenced to 9 years in prison, the sentenced was reduced from 12 years partly based on his young age.<sup>109</sup>

## Purchasing sexual services from children online

Various forms of exploitation emerged in the cases reviewed. In several cases, offenders of media facilitated in-person abuse exploited young teens by offering them cigarettes and alcohol.<sup>110</sup> The reviewed cases of online sexual solicitation of children (grooming) often involved offering victims money/online gaming money or tokens,<sup>111</sup> or the promise of alcohol or sexualized content in return for sexual favours and content.<sup>112</sup> Forms of payment applicable under the provision are not limited to money, they include things or objects such as alcohol, cigarettes, drugs<sup>113</sup> or gifts such as computer games or chocolate,<sup>114</sup> but also favours such as paying for transportation, or promising to send sexualized content in return.<sup>115</sup> The requirements of the legal provision are met even if the exchange has not taken place, as long as there was an agreement about an exchange of a sexual service for payment.<sup>116</sup> The provision also provides for the applicability of the offence in cases where the victim has performed the sexual act on themselves and is therefore applicable in OCSEA cases where there has

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<sup>108</sup> LE-2016-38512.

<sup>109</sup> The offender was 21 years old at the time he was convicted. His victims were all between 12 and 16 years old.

<sup>110</sup> E.g. LA-2015-199744; LA- 2018-121574 in this case the offender had offered one of his victims snuff, cigarettes, drugs and alcohol in exchange for sexual intercourse.

<sup>111</sup> E.g. TOVRO-2016-491.

<sup>112</sup> See e.g. LF-2016-147383; TDRAM-2015-63401; LG-2018-185680

<sup>113</sup> See LA-2018-121574.

<sup>114</sup> TNERO-2018-130781.

<sup>115</sup> These types of exchanges usually occurred as a part of offenders' manipulation whilst impersonating a young woman or girl, for instance.

<sup>116</sup> See TNERO-2018-130781 (8.3).

been no physical contact between the victim and offender.<sup>117</sup> The wording of this provision is potentially problematic as the expression ‘purchasing sexual services’ risks equating this offence with the purchasing of sexual services from adults.

Nevertheless, **only five of these cases reviewed tried offenders according to section 309 of the Penal Code regarding ‘purchasing sexual services from a minor’**,<sup>118</sup> which entered into force the 1<sup>st</sup> of October 2015. The lack of application of section 309 of the Penal Code in OCSEA cases risks obfuscating the commercial aspects present in sexual offences against children in the case law. International law obliges States to protect children from all forms of sexual exploitation and sexual abuse, including the ‘exploitative use of children in prostitution or other unlawful sexual practices.’<sup>119,120</sup> **Considering the monetary and other exchanges for sexual favours, these types of offences should be tried *also* (but not exclusively) under section 309, in order to highlight the commercial<sup>121</sup> aspects of the sexual exploitation that the child victims are subjected to.** Combined with other charges for related offences, this should have an accumulative impact on the sentences pronounced against offenders of OCSEA.

### Children are victimized in their own personal spaces

The findings of this report indicate that offenders directly target children in their own online spaces, such as social media and online games. Offenders also seem to exploit children’s interest in exploring their sexuality in online spaces on regular social media sites, but also through online dating sites, sex chats and content platforms for adults, where many are actively exploring their sexuality. Popular and widely used platforms were used by offenders to establish contact with child victims. This included social media platforms such as Facebook, Snapchat, Instagram, and Musical.ly (now Tiktok) as well as platforms geared toward getting in touch with strangers, such as Chatroulette, Omegle, Habbo, chat.no, moeteplassen.no, among others.

Among the cases reviewed we note a worrying trend, whereby **offenders use children’s own gaming platforms to access and exploit victims**. A few cases included offenders seeking out children on gaming platforms geared toward very young children (aged about 5-10). By promising children monetary compensation, such as gaming money, offenders have manipulated children into sending them sexualized images.<sup>122</sup> Gaming platforms included Jippi, Spill 123 and MovieStarPlanet. Once contact was established, the communication would switch over to more one-on-one forms of online communication such as texting and video apps like Kik, Skype, MSN, Facebook, Facetime, and Snapchat.

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<sup>117</sup> Section 309 (c): ‘in the manner described in a) or b) makes a person under 18 years of age perform acts corresponding to sexual activity on himself/herself.’

<sup>118</sup> The following cases tried offenders under section 309 of the Penal Code (Straffeloven) 2005: TNERO-2018-130781; LA-2018-121574; LE-2019-88964; TGJOV-2017-86572.

<sup>119</sup> UN CRC, article 34(b).

<sup>120</sup> The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (entered into force 2002), article 1 calls for all State Parties to prohibit the sale of children, child prostitution and child pornography.

<sup>121</sup> See Luxembourg Guidelines 2016, op.cit., D.4.i.

<sup>122</sup> See for e.g. TOVRO-2016-491; and LE-2016-99126.



**Facebook, Skype, Snapchat, WhatsApp, MSN,  
Musical.ly, Grindr, Nakenprat.no, Omegle,  
ChatRoulette, Habbo, MyPornSnap, Momio, BearShare,  
Nettby.no, Eroschat, Gaysir, MovieStarPlanet, Jippi,  
Spill123, Motesplassen.no, Kik, Line,**

### Illustrative case

In one case an offender was found guilty of sexually abusing 108 children online and offline.<sup>123</sup> He established fake profiles using both girls' and boys' names of a passable age for the website that he was using. This way he contacted victims, mostly girls, on different game sites for children such as Jippi and Spill123. He used the chat feature of the website to initiate communication and then transitioned to communication via MSN or Skype, where he was able to video chat with the victims via webcam. In order to keep his real identity hidden he installed software enabling him to use previously shot footage of other victims' webcam material, so that the victims would believe that they were video chatting with another child. The police found that material depicting 21 of the victims had been shared with other users. Some of the victims were in touch with the offender for up to 2-3 years, others were in contact with him for a much shorter period. He was able to mislead the victims into sharing sexualized content, to undress in front of the camera and to perform sexual acts in front of the camera, whilst he recorded the acts. Some acts also included sexual acts with animals.

Another offender's modus operandi was to create fake profiles on MovieStarPlanet, frequented by a lot of young girls. He would quickly start to talk about girls' and boys' physical development and thereby caught their interest. The communication then developed in such a way that the victims would send nude or other sexualized images to the offender and live stream via skype, showing themselves naked or in their underwear. The offender pretended that he was a young girl by sending victims images of other young girls he had found online. Several times, the offender misled the victims into sending images by promising to give them gaming money. The games were such that players had to pay for points, VIP status or other features to continue to advance in the game. The offender would pay more for nude images than for images of victims in their underwear.<sup>124</sup>

As offenders access children on their own social media and gaming platforms, this means the abuse is largely taking place in the victims' homes and in their own bedrooms, where they are supposed to feel safe. This can work to exacerbate the negative impact of the abuse as it may leave victims feeling that they are constantly under threat of abuse, and that there is no safe haven from the abuse. Experts called on by the courts discussed the controlling and invasive role a child sex offender can have in the lives of the victims. They pointed out the importance of social media and media technology in young people's lives. The ubiquitous access to smartphone and internet technologies and the intimate relationships children have to their media devices mean that victims can be accessed by the offender at all times, no

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<sup>123</sup> LE-2016-99126.

<sup>124</sup> TOVRO-2016-491.

matter where they are physically.<sup>125</sup> Victims expressed that the fear and anxiety of knowing that they can be reached at any time, and that they have no control over the spread of their images, is omnipresent. For many victims this had serious long-term health implications.

### Digital intrusion

As demonstrated in previous cases there are OCSEA offenders who steal girls' or boys' online content such as profile images and video content, in order to groom other victims. However, there are other forms of identity theft and digital intrusion that offenders of OCSEA engage in as well. For instance, in one case a 23-year-old man was sentenced in the district court to 2 years and 10 months in prison for the possession of CSAM as well as for the intrusion into victims' computers (Penal Code 2005, section 204) and the violation of the right to private communication (Penal Code 2005, section 205).<sup>126</sup> He gained unauthorized access to 18 girls and 5 boys' PCs by using Remote Access Tool software and retrieved personal usernames and passwords that gave him access to their various user accounts on the Internet and to the PC's webcam. He then used the webcams to photograph the child victims naked, changing or and in other compromising situations (Penal Code 2005, section 305). The District court found that the offender's actions had a clearly sexual character.

## Live online child sexual exploitation and abuse of children abroad

### The Philippines as a country of destination for live online child sexual exploitation

As the Philippines is a former American colony, English is a widely spoken language, and is taught as a second language in most schools. This facilitates communication between offenders and handlers/families or other persons who procure the child. A regular income in the Philippines is about 6500Php per month (ca €110).

Based on images and films from the evidence in various cases, it is clear that the contacts and victims live in very poor conditions. The homes are very simple and attest to poor living conditions. The District Court has pointed out that this indicates that there are victims living in even more extreme poverty than those who have been documented (TBERG-2018-51923).

There is a significant illegal sex industry targeting children in the Philippines, which entails both online and offline forms of abuse. Technological developments have allowed families to procure their children for sexual exploitation in their homes and to a low cost. Some are part of traditional prostitution environments as well.

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<sup>125</sup> HR-2017-1282-A.

<sup>126</sup> LG-2020-34958. For full provisions see annex 2.

Five cases of live online child sexual exploitation and abuse of children abroad were identified in the reviewed material.<sup>127</sup> Among these five cases, the countries of destination included the Philippines, Thailand, Romania and Madagascar. The Philippines represented a country of destination in all five cases.<sup>128</sup>

## Accessing child victims abroad

In order to gain access to child victims abroad, offenders typically establish contact with a third party abroad (hereinafter referred as the ‘contact’ or the ‘handler’) through various online platforms, such as social media, legal dating applications for adults or platforms for buying sex from adults. This initial contact may occur on a legal dating site or sex chat site, for example. Usually, the offender will establish contact with an adult who is offering to sell sex (‘the contact’). In the cases reviewed, most contacts are females situated in the Philippines. The contacts often signal that they have access to children by way of code words, which often allude to motherhood such as ‘sexymama’. When contact has been established the communication continues on other one-to-one communications platforms, such as Messenger or Skype. The communication is then turned towards sexualized discussions concerning children. The offender usually expresses a sexual interest in children and the contact informs the offender that he/she has access to children and can cater to the wishes of the offender in terms of the children’s ages and what they will do.<sup>129</sup> These interactions are often highly sexualized and centre around the abuse of children, and they often qualify in and of themselves as sexual offences.<sup>130</sup> The offender often describes fantasizing about very extreme sexual scenarios, involving very young children.

Offenders make little effort to conceal their identity to the contact abroad, often providing or using their full names and communicating their country of origin and even address to the contact.<sup>131</sup> This demonstrates that offenders do not believe that they will get caught. Eventually the contact continues through direct livestreaming via webcam. In these interactions it is often clear that the contacts are looking to get paid and they are therefore looking to advance the contact with the buyer/offender. Once the offenders and the contact have negotiated a price and what type of abuse that will be performed, the offender would send proof of payment.<sup>132</sup> However, the contact didn’t always receive any payment.<sup>133</sup>

One offender had established various accounts and email addresses on Yahoo Messenger and Facebook, through which he established contact with handlers abroad. Based on his contact lists and his user patterns, the police found that most of the contacts had specified that they were mothers and in their profiles they had specified the age and sex the children they had access to.<sup>134</sup> Based on hundreds of chats that the police analysed, the offender had systematically approached contacts abroad, often in poor countries, inquiring about their children and soliciting sexual material involving children, until coming across contacts that expressed being in desperate need of money and were thus willing to

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<sup>127</sup> TBERG-2016-61974; HR-2020-2136-A; LF-2018-129538; HR-2020-2137-A; TBERG-2019-31526-2.

Penal Code (Straffeloven) 1902, sections 195, 196, 197, 200, 201, 204a, 205, 206, 224. Penal Code (Straffeloven) 2005, sections 257, 258, 299a, 300, 301, 304, 305, 311, 312; 299; 300; 309; 301; 302; 303; 311; 312. See also table in annex 1.

<sup>128</sup> All offenders were male and they were aged between 25 and 63 years of age at the time of offending.

<sup>129</sup> E.g. TBERG-2018-51923.

<sup>130</sup> As this qualifies as illegal ‘depictions’ of the sexual abuse of children (fremstilling).

<sup>131</sup> E.g. TBERG-2018-51923.

<sup>132</sup> For example an MTCN number.

<sup>133</sup> E.g. HR-2020-2136-A.

<sup>134</sup> TBERG-2019-31526-2.

oblige. The offender also had various accounts on so called campsites, where sex is sold by adults but where, although forbidden by the site, the sale of child abuse is also readily available. The police found that one of the offenders' recurring contacts online was another Norwegian child sex offender who had been convicted to 16 years in prison for the same offences.

Prior to, as well as during, the actual abuse the offenders usually give the handlers direct instructions concerning what the children should be doing in the 'show'. For example, to perform sexual acts on one another, such as oral sex, vaginal and anal penetration, digital penetration or penetration using objects or sex toys. Offenders often use offensive and highly sexualized language. Offenders in these situations often underscore that the acts must be 'real' and not 'fake'. In several instances, the offenders asked contacts to perform very extreme sexual acts. Often the most extreme demands were not met, because the children or the handler did not want to or were not able to go through with the requests. In these situations, offenders expressed irritation over a 'breach' of their agreement using words like 'cheated', 'fooled', or 'fucking cheaters'.<sup>135</sup>

In one of the cases, a 49-year-old former local politician<sup>136</sup> was found guilty of having abused close to 200 children in the Philippines.<sup>137</sup> From his home, the offender ordered and paid for live streamed abuse of child victims. The court estimated that these payments reached up to 142'000 NOK between 2011 and 2016. The police found over 190'000 chats and thousands of instances of contact made via Skype, Yahoo and Messenger. The offender was first convicted to 16 years in prison by the District Court, his sentence was then increased to 19 years in the Court of Appeals and 21 years by the Supreme Court. The most important evidence in these kinds of cases are the chatlogs and the proof of online payments made by the offender.

Only one of the cases identified under this category of offences had applied section 309 of the Penal Code 2005 on purchasing sexual services from a minor. The case concerned an offender who, between 2012 and 2016, ordered and paid for live streamed sexual abuse of girls under the age of 14 from the Philippines. In 2015 the FBI contacted the National Criminal Investigation Service Kripas to inform them that live streamed child sexual abuse material had been connected to the offender's email address. Kripas was also informed that they had identified payments made from the man's PayPal account that were connected to live streamed abuse. The police got a warrant to search his home in February 2016. On the offender's computer the police found a significant amount of Skype chatlogs with a contact in the Philippines concerning the purchase of live streamed child sexual abuse. The police believe that the offender paid for 'live shows' from 8 girls aged between about 7-14 years of age, all residing in the Philippines. The live streams would last between 15-20 minutes. The offender himself said that he ordered 'live-shows' about once a month, depending on what his finances would allow. As the abuse included vaginal and anal penetration through the insertion of objects, these acts were equated with rape.<sup>138</sup> He also once ordered and paid for an adult male to have intercourse with a child and to live stream the abuse. However, he was sent a pre-existing film. When these acts are performed as a result

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<sup>135</sup> See: TBERG-2016-61974, TBERG-2018-51923

<sup>136</sup> See TBERG-2018-51923; The offender was an active local government politician up until his arrest in 2016.

<sup>137</sup> HR-2020-2136-A

<sup>138</sup> The preparatory works to the new Penal Code have recognized that particularly acts that include the insertion of objects or body parts like fingers are considered more harmful than acts that occur outside of the body (Ot.prp.nr.22 (2008-2009) pkt. 7.4.4.4). International criminal law considers these kinds of acts as deliberate forms of rape, rather than simply more harmful than acts that occur outside the body. The trial chamber at the ICTR defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive." See Case No. ICTR-96-4-T, Trial Judgment, ¶¶ 685-696 (Sept. 2, 1998), <http://www.unictr.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf>.

of someone ordering and paying for them, they are included under the Penal Code 1902, section 203 c, as well as under the Penal Code 2005, section 309.

## Two offenders for one crime

In cases involving live streamed sexual exploitation and abuse of children abroad, there are two offenders: Firstly, the Norwegian offender who orders the sexual abuse and often sends detailed instructions concerning how the abuse should be depicted and what acts should be performed. Secondly, the 'contact' or 'handler' who makes the child available, provides the technological equipment and orchestrates the scenarios and acts that the 'buyer' (first offender) has requested. The Norwegian courts have deemed the Norwegian 'buyers' as the **primary offenders**, arguing that there is an asymmetry between the 'buyer' on one end and the 'handler' and victims on the other, as the latter are financially reliant on the exchanges with the 'buyer'. The court has compared this to how an offender who organizes the smuggling of narcotics can be convicted as the primary offender despite never directly handling the narcotics in question.

The Norwegian courts have no jurisdiction over the 'contacts' or 'handlers, i.e. over the secondary offenders and the potential criminal liability of those offenders lies outside the scope of this study.

The live streaming of sexual abuse can feel, to the victim, like there are several offenders committing the abuse, especially when the child is aware of or can see the 'buyer'. If the sexual abuse is filmed and then shared to unknown others online, who are, in turn, also offenders since they consume CSAM, this represents repeated abuse of the same victim by several different offenders committing different sexual offences. This repeated victimisation of the abused child can entail a re-traumatization which harms the child even further.<sup>139</sup> The live streaming of sexual abuse can thus entail a prolonged and repeated sense of abuse, accompanied by the constant fear of the child victim that the material depicting her/him could resurface online or elsewhere.

Some offenders did not seem to understand that their actions were sexual abuse. They described that their online activities were 'fantasies' rather than reality.<sup>140</sup> In other words, they did not recognize the children in the live streams (situated abroad) as being victims of sexual abuse perpetrated by them. Instead, they described how they wanted to 'help' their contacts in countries like the Philippines, who had expressed increasingly desperate financial situations, hence allowing the offenders to ask for increasingly more extreme acts. Such a cognitive restructuring of their own guilt also meant that the offenders felt justified in asking for extreme acts, and that they felt 'cheated' when the victims did not perform as they desired.

## Payment methods

Offenders in the reviewed cases had mostly used global payment services such as Western Union, Worldremit, Pay Pal, Segpay etc. to pay for the sexual abuse they had requested. In the above-mentioned case involving a Norwegian politician, the offender had his accounts on various payment platforms shut down due to 'unusual activity' (Western Union, Worldremit).<sup>141</sup> The payment services had noted that the accounts on the receiving end were receiving smaller amounts of money from accounts in many different countries. During a five-year period, the offender had sent a significant

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<sup>139</sup> TBERG-2019-31526-2.

<sup>140</sup> TBERG-2018-51923.

<sup>141</sup> Ibid.

amount of money, approximately NOK720'000. A common amount is about 4000 or 5000 Php, or higher, i.e. about 640 NOK per live-stream.<sup>142</sup> For comparison, a regular income in the Philippines is about 6500 Php per month.

## Child sexual abuse material

Child sexual abuse material (CSAM) is widely available on the open and the dark/deep web, and the amount of material available is rapidly growing. In the cases reviewed for this study, most of the CSAM was available on the open web and downloaded via filesharing services. However, a lot of material consisted of self-generated images and videos by the victims themselves, which were subsequently circulated as CSAM by offenders.<sup>143</sup> Some of this material was the result of manipulation and extortion by offenders. There was also material that offenders had produced during in-person abuse. There were offenders who were found guilty of both in-person child sexual abuse and CSAM related offences, but there were also a significant number of offenders who were found guilty of consuming, downloading, storing, and disseminating CSAM.

We found that offenders of CSAM-related offences collectively had in their possession **millions of images and tens of thousands of films**. Most offenders had intentionally searched for the material and some had been consuming CSAM for long periods of time (some as long as 15-20 years). The amount of material accounted for in the court documents is the amount used as the basis for determining the seriousness of the offence committed by the offender and for which he is being prosecuted. This does not reflect how much material the offenders had actually come into contact with in the long periods of time during which most had been engaging with CSAM.

The offenders who could be seen sexually abusing the children in the material were mostly men, there were only very few mentions of women being depicted in the material.<sup>144</sup> It should be noted that ECPAT Sweden and other Hotline operators have, in recent years, noted a dramatic increase in the number of female offenders depicted in child sexual abuse material online.<sup>145</sup> As will be discussed later on in this study, all the cases of live streamed abuse of child victims situated abroad included female handlers (i.e. secondary offenders) who procured children for sexual exploitation and abuse. In these cases, the female offenders were also actively engaging in the acts of abuse by giving instructions to the children and by engaging directly in sexual acts with them.<sup>146</sup>

As mentioned in chapter 1, in Norway, sections 310 and 311 of the Penal Code 2005 define CSAM-related offences as sexual offences under the sexual offences chapter.<sup>147</sup> This is not the case in many other countries, where CSAM-related offending, often legally referred to as 'child pornography', is often

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<sup>142</sup> Ibid.

<sup>143</sup> This includes nude images, performing sexual acts on themselves as well as sexualized images of children.

<sup>144</sup> See ECPAT International (2018). *Trends in online sexual abuse material*. Bangkok: ECPAT International. Accessed at: <https://www.humandignity.foundation/wp-content/uploads/2018/11/ECPAT-International-Report-Trends-in-Online-Child-Sexual-Abuse-Material-2018.pdf>

<sup>145</sup> ECPAT Sweden (2018). *Sexuell exploatering av barn på internet: En rapport från ECPAT Hotline 2018*. Stockholm: ECPAT Sweden. P. 32. Accessed at: [https://www.ecpat.se/uploads/161-1814\\_Hotline\\_Report\\_2018\\_06.pdf](https://www.ecpat.se/uploads/161-1814_Hotline_Report_2018_06.pdf)

<sup>146</sup> None of the female handlers were prosecuted in Norway, thus they are not counted as prosecuted offenders for the purpose of this report.

<sup>147</sup> Penal Code (Straffeloven) 2005, Chapter on sexual offences (Seksuallovbrudd), sections 291-320.



defined as something other than a sexual offence.<sup>148</sup> This is important as it recognizes offenders of CSAM-related offences as sexual offenders.

## Fictive CSAM

There are an increasing number of cases involving the fictive depiction of child sexual abuse, as well as fictive depictions that sexualize children. We found six cases in which offenders were convicted for engaging with, producing, possessing or distributing (exclusively) fictive CSAM.<sup>149</sup> These types of offences primarily involve 1) the **written depiction of fictitious sexual abuse of children through online chatting**, 2) the possession and distribution of fictitious images of child sex abuse, for example **drawings or cartoons depicting child sexual abuse**, and 3) the **purchasing of child sex dolls**.

The committee of justice argued that the spreading of such material could increase the demand for CSAM online,<sup>150</sup> thereby increasing the risk for actual children to be victimized and contributes to the normalization and potentially the increase of sexual abuse of children. **The law against child sexual abuse material is meant to protect children from sexual abuse individually and as a group.**<sup>151</sup> Therefore, the term 'depiction' of child sexual abuse, or material that sexualizes children, includes material that sexualizes children in all its forms. 'Depiction' thus includes all forms of depictions, including text, animated images, or fictive depictions of child sexual abuse or the fictive sexualization of children.<sup>152</sup> The purpose of including all forms of depictions within the criminal acts related to CSAM offending is to prevent the normalization of child sexual abuse and is thus a preventive measure aimed at limiting the addiction/practice/consumption of CSAM. The court therefore considered how the fictitious abuse is written and the potential it has to trigger others to consume CSAM and to sexually abuse children.<sup>153</sup> In other Nordic countries such as Sweden, written depictions of child sexual abuse do not qualify as CSAM.<sup>154</sup>

The CRC Committee has, in its Guidelines on the OPSC, expressed deep concern about 'the large amount of online and offline material, including drawings and virtual representations, depicting non-existing children or persons appearing to be children involved in sexually explicit conduct, and about the serious effect that such material can have on children's right to dignity and protection. The Committee encourages States parties to include in their legal provisions regarding child sexual abuse material (child

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<sup>148</sup> In Sweden for instance the crime of child pornography (barnpornografibrott) is defined as a crime against public order in the Penal Code (Brottsbalken) chapter 16 §10a, instead of as a sexual offence under chapter 6. For a discussion on this see ECPAT Sweden's research report: Kaldal and Andersson (2017), op.cit.

<sup>149</sup> LG-2019-14496; TSTRO-2015-137298 (also convicted for killing a cat); LB-2016-41804; TOSLO-2017-152271; TOSFI-2017-189162; HR-2018-2315-A.

<sup>150</sup> Innst.O.nr.66 (2004-2005): 'The Committee would like to emphasize that the word 'manufacture' includes any presentation of any medium, including text. Images that are animated, manipulated or otherwise artificially depictions of child sexual abuse or that sexualize children. The Committee would further clarify that the proposed legislative text should not only frame depictions where sexual abuse is documented, but also where children are portrayed as a sexual object. Sexualization of children can be depictions where children are forced to pose in sexually challenging positions.' (translated from original)

<sup>151</sup> General preventive and individual preventive reasons.

<sup>152</sup> Innst.O.nr.66 (2004-2005)

<sup>153</sup> HR-2018-2315-A; LA-2018-179475 describing HR-2018-2315-A: 'Following the District Court's ruling, the Supreme Court, in its judgment of December 12, 2018 in HR-2018-2315, has commented on the level of punishment in cases concerning sexualised texts, such as chatting. Descriptions that appear to be depictions taken directly from the imagination should normally be punished more mildly than representations with documentary features, for example because they deal with real people or can be understood as such. There is, however, a risk that portrayals that appear to be real may be more intrusive to ('trigger') potential perpetrators or reduce the threshold for committing or contributing to abuse. Furthermore, it should be noted that such depictions can help to generalize sexual abuse of children, see in particular section 29.' (translated from original)

<sup>154</sup> See: Barnpornografibrottet, Brottsbalken Chapter 16 §10a; and <https://polisen.se/lagar-och-regler/lagar-och-fakta-om-brott/brott-mot-barn/barnpornografibrott/>

pornography) representations of non-existing children or of persons appearing to be children, in particular when such representations are used as part of a process to sexually exploit children.<sup>155</sup>

In the six cases where offenders were convicted of exclusively fictive forms of CSAM engagement, the investigations did not yield any evidence that actual existing children had been harmed, even though some of the textual depictions of child sex abuse were written in such a manner as to appear that they had actually occurred. Nevertheless, given the spread that the texts get and the manner in which offenders produce, disseminate and engage in online networks with other users interested in CSAM, the court has found that these texts serve to normalize child sexual abuse, and risk triggering users who consume CSAM online to engage in other forms of child sexual abuse, such as live online child sexual abuse or in-person abuse.

To set the penalty in these types of offences the preparatory work and jurisprudence requires that the court take into consideration the amount of material, the severity of the depictions, the children's age, the amount of time that the offender has had the material in their possession and whether the material has been shared.<sup>156</sup>

Offenders who have purchased sex dolls that resemble children have been convicted for engaging with and being in possession of CSAM.<sup>157</sup> As mentioned above, the preparatory works to the Penal Code 2005 state that the notion of 'depiction' includes all kinds of depictions regardless of form, and text and animated images are to be considered as depictions. Moreover, the notion includes not only depictions of child sexual abuse, but also such depictions where children appear as sexual objects.<sup>158</sup> Thus, **buying a sex doll that depicts a child is considered a sexual offence.**<sup>159</sup>

In a case where an offender was found guilty of owning a child sex doll the Supreme Court argued for the inclusion of sex dolls depicting children to fall within the scope of acts prohibited under section 311.<sup>160</sup>

**'These statements (made by the justice committee) show that the legislators' intention was to formulate a provision that would have a broad impact. There is no evidence that the term "depiction" was intended to be limited to the examples that are explicitly mentioned in the preparatory work. The fact that the preparatory work does not specifically mention sex dolls can therefore not be decisive. As pointed out by the Court of Appeals, it would be virtually impossible for the legislator to specifically state all current or future types of presentation that would fall within the provision. The legislator's goal was that dealing with any representation that sexualises children should be punishable, and the final wording that was adopted to ensure this, took place after special consideration.'**<sup>161</sup>

**Overall, it is therefore my view that the preparatory work provides support for a doll to fall under the penalty provision in section 311.'**<sup>162</sup>

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<sup>155</sup> Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, op.cit. paragraph 63.

<sup>156</sup> Rt-2007-422 chapter 12, 'in particular the amount of material, the seriousness of the descriptions, the age of the children, the duration of the possession and any dissemination' (translated from original); see also: TOSFI-189162.

<sup>157</sup> Penal Code (Straffeloven) 2005, section 311; 'depiction that sexualized children' (translated from original).

<sup>158</sup> Inst. O. Nr. 66 (2004-2005): '[...]any representation regardless of medium, including text and animated images – 'and' not only representations of abuse but also where children are portrayed as sexual objects' (translated from original).

<sup>159</sup> In accordance with the Penal Code (Straffeloven) 2005, section 311; see TOSFI-2017-189162 and HR-2019-1715-A.

<sup>160</sup> HR-2019-1715-A.

<sup>161</sup> HR-2019-1715-A, para. 24.

<sup>162</sup> HR-2019-1715-A, para. 25.

ECPAT Norway considers this interpretation by the Supreme Court to represent an important step towards a better protection of children from sexual exploitation and abuse, and to prevent the risk of normalising the sexual depiction of children in all its forms.

### **Extreme acts of violence and cruel and degrading treatment<sup>163</sup>**

The live streamed abuse in the reviewed cases often contained aspects of extreme humiliation, degrading treatment, aggravated forms of abuse, and caused the victims a lot of physical pain. Some instances were so extreme that they arguably amount to torture<sup>164</sup> and inhumane treatment. Examples are forcing children to incestuous sexual acts with siblings or parents, to perform painful acts on themselves or other children, and to urinate or defecate in front of the camera. The court has found that offenders intentionally want to inflict pain and humiliation and that they are triggered by seeing the victims' fear, pain and disgust.<sup>165</sup> Acts also included hitting the victims' genitals; asking them to insert dildos or other objects in the anus or vagina despite extreme pain; and posing in humiliating and painful ways. The offender usually instructed the 'handler' during the livestream how the victim(s) should pose or what they should do, often using berating and derogatory language.

In one case the offender instructed the 'handler', who was the mother of two male victims aged 4 and 6, to wake her sleeping children in order to sexually abuse them via live stream. The mother did as the offender asked, and masturbated the boys, performed oral sex on them and got them to 'play' with each other. After the sexual abuse was committed, the mother said that she hoped that the offender could 'help them'. However, the court didn't find that any transaction had been made.<sup>166</sup> It was clear from the chatlogs that the offender appeared in a two-way webcam feed and that the contact and child victims could see the offender as he masturbated in front of the camera, confirming that they had all seen him ejaculate. The District Court found it especially offensive/aggravating that the children had been abused together,<sup>167</sup> and that they had had to witness the offender masturbate and ejaculate.<sup>168</sup>

One offender had also specifically asked the handler to continue with the abuse even after the handler had communicated that the children were in pain and also when the handler expressed that they did not want to perform a certain act because they were afraid of hurting the child. The offender asked repeatedly that young girls be penetrated until they bled, 'breaking' their virginity, and asked that the children be penetrated until they 'scream'. He also wanted the contacts to penetrate the children orally until their mouths bled or until they 'gagged'. The court found therefore that the offender's actions had sadistic characteristics. He showed no regard for whether a child was sleeping, sick, or on the way to school.

One case, which was part of Operation Dark Room, concerned an offender who was an academic at a Norwegian university, who lived with a partner and had two children.<sup>169</sup> The offender was found guilty of ordering live streamed abuse from the Philippines, Romania and Madagascar. He established contact with handlers online and ordered live streamed abuse and especially produced abuse material. The acts that he ordered were considered especially aggravating as they entailed aspects such as incestuous

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<sup>163</sup> WARNING to sensitive readers: Some of the information in this section may cause distress, as it describes aggravated forms of OCSEA.

<sup>164</sup> In Norwegian law 'torture' is an act that can only be committed by representatives of the state or municipality, i.e. a public servant. Therefore, even if acts could be equated to torture, if they are committed by a civilian these are not defined as such. See Penal Code (Straffeloven) 2005, section 174 on torture (tortur).

<sup>165</sup> E.g. TBERG-2016-61974.

<sup>166</sup> TBERG-2018-51923.

<sup>167</sup> This corresponds to section 313 of the Penal Code- Sibling Incest.

<sup>168</sup> Penal Code (Straffeloven) 1902, section 195 b and c, first and second points.

<sup>169</sup> HR-2020-2137-A.

sexual intercourse between primarily mothers and their children, incestuous relations between siblings, extreme sexual acts and the fact that several victims were very young. The youngest victim is believed to have been 10 months old at the time of the offence. The offender was caught after his partner reported him to the police in 2015, after the offender's child had discovered a chat on their home PC about the sexual abuse of children.

In CSAM more generally, the reviewed cases told of **children as young as infants** being depicted in the material that offenders engaged with. The material included depictions of **rape, aggravated assault and cruel and degrading treatment**. Much of the material in these cases contained acts that could amount to torture, for instance by using extreme forms of physical violence while carrying out sexual abuse, such as tying and/or hanging the child by the arms, depicting the children expressing pain by crying or screaming, or depicting the physical harm that the abuse causes, such as bleeding. Furthermore, much of the material depicts the pain and fear that children experience in these situations. A worrying trend identified by police investigators is that **the most serious and aggravated forms of abuse depicted were often committed against very young children**.<sup>170</sup>

Special investigators note that the images are often of very high quality and deem that they are produced in professional studios.<sup>171</sup> In many of the images the children's faces are clearly visible, whereas the adult offenders' faces are not visible.<sup>172</sup> This means that victims risk being recognized and identified. The risk of exposure and the knowledge that images or video depicting their sexual abuse continue to circulate online can cause a constant fear and a sense of protracted and repeated abuse over time in the victims.<sup>173</sup>

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<sup>170</sup> E.g. LB-2017-13042; this also echoes international findings, see Interpol and ECPAT International, [TOWARDS-A-GLOBAL-INDICATOR-ON-UNIDENTIFIED-VICTIMS-IN-CHILD-SEXUAL-EXPLOITATION-MATERIAL-Summary-Report.pdf \(ecpat.org\)](#)

<sup>171</sup> E.g. Leif Petter Nergård, in TOSFI-2015-69092.

<sup>172</sup> E.g. TOSFI-2015-69092.

<sup>173</sup> Europol (2017). *Online sexual coercion and extortion as a form of crime affecting children: Law enforcement perspective*. Europol Cybercrime Centre:  
[file:///C:/Users/kiro8153/Downloads/online\\_sexual\\_coercion\\_and\\_extortion\\_as\\_a\\_form\\_of\\_crime\\_affecting\\_children.pdf](#)

## Chapter 3. Child victims of OCSEA

The impact of OCSEA on child victims is often severe and long-lasting. Victims of OCSEA offences may suffer from both immediate harm and life-long consequences caused by their experiences of exploitation and abuse, including severe post-traumatic stress disorder (PTSD) and other psychological and affective disorders as well as physical problems.

Children come into contact with offenders online through their own social media platforms and online games, meaning that they can come into contact with offenders whilst at home, at school, at their sports clubs and other places where they are supposed to be safe. The cases reviewed for this study indicate that child victims of online sexual exploitation and abuse are often especially vulnerable and experience multiple forms of abuse and neglect in their various life venues.

### Victim identification

In the cases reviewed for this study, a total of 1336 child victims were identified.<sup>174</sup> However, this number does not reflect the vast number of children depicted in the child sexual abuse material for which offenders were prosecuted. Further, not all of the discernible victims were able to access justice, particularly in cases of OCSEA involving children abroad. The reviewed cases also suggest that offenders had been in contact with much larger volumes of CSAM, over long periods of time, and had been in contact with many more victims than there were plaintiffs in the cases reviewed. Considering this, the actual number of victims of the offenders in these 223 cases may be in the hundreds of thousands or even the millions.

It is noteworthy that, in cases where offenders have been found guilty of CSAM-related offences, such as the possession and dissemination of CSAM,<sup>175</sup> **no child victims were identified**. This means that the children who are depicted in CSAM remain unidentified and therefore are unable to access any form of justice, even in cases where the offenders have been prosecuted and convicted. Among these cases, the court documents indicate that they had in their possession **millions of images** and **tens of thousands of videos** showing thousands of **hours of child sexual abuse material**, depicting sexual abuse of children as well as sexualized depictions of children.<sup>176</sup> Although these numbers do not reflect the full extent of the reach of the offenders covered in this study, it nonetheless points to the vast numbers of child victims of CSAM who do not access justice and whose images continue to be circulated online.<sup>177</sup>

International findings confirm that the identification of child victims of CSAM is an extremely challenging task.<sup>178</sup> Even when victims are identified, they are seldom plaintiffs to the cases, especially if the child victims are situated in a country different from the one where the offender is prosecuted. In Norway, the legal provisions on child sexual abuse material<sup>179</sup> have a dual purpose, namely to protect children

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<sup>174</sup> However, not all these children were plaintiffs in the cases, for instance the cases involving children situated abroad, only a few victims were plaintiffs in the cases.

<sup>175</sup> In other words where there was no direct or in-person abuse of victims

<sup>176</sup> These are based on estimations specified in the court documents reviewed, this number is likely much higher. For instance, in LB-2020-8380 the police estimate that the offender had in his possession several million images, too many to count. In LF-2019-147603 investigators found an estimated 1,8 million images and 2696 videos.

<sup>177</sup> It is difficult to draw definitive conclusions concerning the exact content of the seized CSAM in these cases. As we are limited to the descriptions provided in the court documents. Therefore, we cannot provide exact data as to the number of victims portrayed in the images, their presumed age, gender and the level of abuse depicted. However, we are able to draw on the trends that we see throughout the documents as to these matters.

<sup>178</sup> To intensify the work and tackle the challenge of victim identification jointly, Europol has launched a Victim Identification Taskforce, which has so far met eight times. The most recent taskforce meeting was held in November 2020:

<https://www.europol.europa.eu/newsroom/news/experts-meet-to-identify-victims-of-child-sexual-abuse>

<sup>179</sup> Penal Code (Straffeloven) 2005, sections 310 and 311.

individually and as a group. Moreover, CSAM offences are defined as sexual offences. Considering these aspects, it is crucial to recognize that the children appearing in the images and videos are victims, and that the offenders' criminal actions are harmful to these child victims. As long as these victims are not identified, they cannot become plaintiffs to the case. Achieving plaintiff status concerns the right to be heard, to receive information on matters that concern the child, the right to access justice, and finally the right to access psychological and physical support, recovery and reintegration. It also concerns the right, as victims of crime, to partake in criminal cases that concern them as well as accessing compensation for the harm caused. Last but not least, identifying victims is also central to ensuring that child victims can be taken out of their abusive circumstances and do not continue to be victimized.

## Victims depicted in child sexual abuse material

The findings of this study in many ways echo international findings concerning the content and the victims depicted in CSAM disseminated online.<sup>180</sup> Firstly, there seems to be more material that depicts girls than boys. Yet, much of the material described in the reviewed cases depicted children of both sexes. Secondly, most of the material seems to depict pre-pubescent children.<sup>181</sup> This reflects international findings that suggest that most CSAM depicts pre-pubescent girls.<sup>182</sup> Thirdly, with regard to the ethnicity of the victims, the majority of the material depicts white children and the second most common group seemed to be of Asian descent.<sup>183</sup>

Other reports within Norway have pointed to the general risks that face all children online. However, the findings of this study point to **a particular risk faced by already vulnerable children**. Many of the child victims in the reviewed cases reported being particularly vulnerable, including having problems at home; being victims of other forms of physical, psychological and sexual abuse; being victims of bullying and cyberbullying; suffering from neuropsychiatric conditions such as ADHD; having developmental delays; suffering from physical disabilities or debilitating conditions such as fibromyalgia. As a result of these circumstances many victims reported that they were suffering in various ways before coming into contact with their abuser online. Victims also reported that they were suffering from psychosocial issues such as low self-esteem; shyness; feelings of loneliness; depression; having very few friends; self-harming and thus needing to talk to someone, trust someone, and wanting to connect with someone who would listen. These victims often described feeling that the person they believed they were talking to was an important friend, someone they could confide in and someone they appreciated. Among the cases reviewed there were also victims who were not in particularly vulnerable situations before the situations of abuse, but were nonetheless vulnerable due to their young age.

OCSEA offenders have been found to specifically identify and target victims who express having problems at home and with their families, thereafter creating a relationship of trust where the victims express that they felt they could confide in the offender better than in friends and family. This relationship of trust increases the victims' vulnerability. The relationship of trust that the offender builds

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<sup>180</sup> See ECPAT International and INTERPOL (2018). *Toward a Global Indicator: on Unidentified Victims in Child Sexual Exploitation Material*. Summary Report. Bangkok: ECPAT International and INTERPOL.; ECPAT International (2018), op.cit.

<sup>181</sup> When reviewing the CSAM evidence investigators must qualify images, as such images and material depicting pre-pubescent children are more easily qualified as CSAM and images depicting post-pubescent children and youth are more difficult to qualify as CSAM.

<sup>182</sup> ECPAT International (2018) op.cit.; ECPAT International and INTERPOL (2018) op.cit.: *ECPAT and INTERPOL study found that 56.2 percent of unidentified victims were believed to be prepubescent children, 25.4 percent were pubescent children, and 4.3 percent were infants or toddlers.*

<sup>183</sup> In the ECPAT International and INTERPOL (2018) report victim ethnicity could be determined in 93.9 percent of the analyzed series. The report found that '76.6 percent of analysed series featured white children, 10.1 percent were Hispanic or Latino children, 9.9 percent Asian children, and 2.1 percent depicted black victims. A small proportion of the categorised series (1.3 percent) depicted children of multiple ethnicities'.

with the victims means that they divulge secrets and hardships that they have gone through, including previous experiences of physical and sexual abuse, as well as other forms of violence at home and in school. Some victims describe that the offender, at the time the offences were occurring, was the only person they had to confide in, due to social difficulties and problems at home. These victims were especially susceptible to the suggestions and prompts made by abusers. Some victims expressed being sad when they realized they were one of many victims, having thought they were 'special' to their abuser. Using the relationship of trust, offenders are able to convince or pressure the children into sending them sexualized content, such as sexualized images and videos.

## The impact of OCSEA on child victims

The findings of this study indicate that online child sexual exploitation and abuse has a severe and long-term impact in the lives of victims, thus echoing international findings.<sup>184</sup> Not only can the exploitation and abuse impact their mental health but it can also drastically impact the victims' life trajectories, impacting relationships and life possibilities for years after the crimes were committed. Experts within the field, both within Norway and internationally, have found that OCSEA can have the same kind of impact on victims as in-person abuse. It is therefore particularly important to underscore that Norwegian jurisprudence has developed in such a way as to liken sexual acts conducted over the internet with those occurring offline (see chapter 1).

The reviewed cases show the psychosocial, emotional and physical toll that online child sexual exploitation and abuse has on victims. Some victims experience immediate or delayed emotional distress. Some experience such extreme emotional distress that they are hospitalized. Victims express suffering from anxiety, depression, developing sleeping disorders and having difficulties concentrating. Many develop social problems such as trouble trusting others; behavioural issues such as mood swings; depleted self-esteem; feelings of shame; guilt; general feelings of worry; and some report that they engaged in self-harm as a result of their abuse. Many have problems fulfilling their school obligations, and of those who manage school, their performance in school is often significantly impacted. Some also suffer from PTSD.<sup>185</sup> Others experience physical suffering such as loss of hair, vomiting and stomach aches.<sup>186</sup> Many describe developing a problematic relationship to their own bodies and sexuality. Some develop difficulties being intimate with their partners, and express feeling bodily shame. Victims are also more likely to develop problems with drugs and alcohol when they get older.<sup>187</sup>

The victims who had shared sexualized images with offenders expressed fear that their images would be disseminated online and a fear to be recognized on the street or online. This fear and sense of a loss of control means that the sense victims have of being victimized may continue emotionally over many years, also well into adulthood.

## Impact of live online sexual exploitation and abuse

Victims of live online child sexual abuse often suffer greatly during the actual abuse, but the consequences of the abuse may endure throughout their lives and affect key aspects of their physical

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<sup>184</sup> Europol report (2017). Op.cit.; Thorn and Crimes Against Children Report (2016). *Sextortion: Findings from an online survey about threats to expose sexual images*. Accessed at: <https://www.thorn.org/wp-content/uploads/2016/06/Sextortion-Report-1.pdf>

<sup>185</sup> See also: Jonsson, Warfvinge & Bancke (2009) op.cit.

<sup>186</sup> See for example: LE-2016-99126.

<sup>187</sup> See HR-2017-1282-A and Europol (2016). *Internet Organised Crime Threat Assessment (IOCTA) Report*. The Hague: Europol. Accessed at: <https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2016#:~:text=The%202016%20Internet%20Organised%20Crime,exploitation%20online%20and%20payment%20fraud>.

and mental development and well-being. Children who are victims of live online sexual abuse feel more shame and guilt than other children. They suffer from psychological damage as well as physical harm suffered as a result of the abuse. Also, these children are often the victims of other forms of abuse as well. Many suffer from the symptoms brought on by sexually transmitted disease.

Child victims of online sexual exploitation and abuse who are brought into the abusive situation by their parents or other adults suffer at the hands of multiple abusers: the 'buyer(s)', i.e. the offender(s) who requests and pays for the sexual abuse, and the 'contact'/'handler' who arranges the abuse and forces the child to perform the sexual acts. Often, that contact or handler is a parent or caregiver of the child, which makes the situation all the more complex because the child is being abused by a person in his/her closest circle of trust.<sup>188</sup> Children who are brought into the abusive situation by their own parents often develop difficult and conflict filled relationships with their parents. Some will eventually procure their own children for sexual exploitation later on in life.<sup>189</sup>

ECPAT Norway is conscious of the extremely difficult situation of families living in poverty, who may see no other option to get money to feed their children. This vulnerability is also exploited by the primary offenders and should be taken into account in addressing accountability.

**The Supreme Court expressed the following in regard to the exploitation of children abroad and living in poverty: 'The Court of Appeals has established that A "purchases...sexual satisfaction by exploiting both adults and children who are poor and in need' and that he was aware of this. Further the court points out that the adults that are performing the actual physical sexual abuse "do not share the defendants' interests in any way", but that they are in a situation of "financial coercion". Under these circumstances participation is just as criminal an act as the direct physical abuse.'**<sup>190</sup>

The evidence presented in the reviewed cases indicates that many very young children endure painful and humiliating abuse.<sup>191</sup> In the communication with the offender, contacts (also referred to above as 'handlers') often say that the children are in pain, crying or tired. Many of the instances of abuse have included incestuous sexual intercourse, upon the demands of the offender. Brothers and sisters have been forced to perform extreme sexual acts with each other and on each other. Parents were asked to perform sexual assault on their children, and the offender often asks to include other adults to rape the child victims. The sexual abuse is especially aggravated as the abuse includes the sexual interaction between very young siblings and their parents. In the court proceedings there is never mention of using any kind of contraceptives such as condoms. In one case the offender specifically requested that the contact not use a condom. This should be seen as especially aggravating as it increases the risk of sexually transmitted diseases.<sup>192</sup>

Moreover, with the use of a two-way webcam feed, the child victims are often forced to see the primary offender (i.e. the 'buyer') on the screen, and watch the offender masturbate, ejaculate and sometimes

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<sup>188</sup> Article 28.d) of the Lanzarote Convention requires States to consider as aggravating circumstances when the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority, and article 28.e) adds as an aggravating circumstance when the offence was committed by several people acting together.

<sup>189</sup> Terre des Hommes (2013) op.cit.

<sup>190</sup> HR-2020-2136-A, para. 57 translated from original.

<sup>191</sup> WARNING sensitive readers some of the following information may cause distress: This abuse included genital, oral and anal penetration by other children or adults; penetration by use of sex toys or household objects such as hairbrushes

<sup>192</sup> Terre des Hommes (2013) op.cit.



say or scream insults or orders. This can also be particularly threatening and frightening to the victims, and has been considered by Norwegian courts as an aggravating circumstance.<sup>193</sup>

Several factors can significantly increase the harm that sexual abuse may cause. The younger a child is when the abuse starts the greater the risk for long term harm, and the closer the relationship between the victim and the offender, the greater the harm. This includes close familial relations and a relationship of dependence between the victim and the offender.

Young children who are victims of aggravated abuse, such as vaginal, anal or oral penetration, usually show signs of great psychological harm, even if they are too young to remember the actual instances of abuse later on in life. The basis of their development can thus be irrevocably damaged. Penetration is thus deemed as worse than other forms of sexual acts as it increases the feeling of powerlessness and often inflicts great physical pain. Penetration by use of objects is considered to inflict just as much harm as phallic penetration. In one case, the psychiatric evaluation of the victim identified the following resulting diagnosis: posttraumatic stress disorder; specific isolated phobias; serious depressive episodes without psychotic symptoms; and agoraphobia.

## Access to justice, recovery and social reintegration

In this section we address issues related to victims' access to justice, based on what the reviewed cases brought to light in relation to international norms and standards and other sources.

The right to access to justice is an integrated part of the basic rights expressed by the UN CRC. It entails rights to obtain a just and timely remedy for violations of rights<sup>194</sup>, to child-sensitive information- and procedures, and to be heard in all matters affecting them, as well as the explicit right to be heard in any judicial and administrative proceeding affecting the child.<sup>195</sup> The right to access support for and rehabilitation of the harms caused by sexual exploitation and abuse can also be found in the right to enjoyment of the highest attainable standard of health.<sup>196</sup> This right also befalls States as part of their responsibility to protect children from all forms of sexual exploitation and sexual abuse<sup>197</sup> and to thus take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of exploitation and abuse.<sup>198</sup> The UN CRC further states that such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

In addition, the OPSC sets forth that States parties shall adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process, in particular by recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, and providing appropriate support services to child victims throughout the legal process.<sup>199</sup> States parties must also ensure appropriate assistance to victims, including their full social reintegration and their full physical and psychological recovery.<sup>200</sup>

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<sup>193</sup> See chapter 2.

<sup>194</sup> United Nations High Commissioner for Human Rights, Access to justice for children, December 16, 2013, A/HRC/25/35.

<sup>195</sup> UN CRC article 12.

<sup>196</sup> UN CRC article 24.

<sup>197</sup> UN CRC article 34.

<sup>198</sup> UN CRC article 39.

<sup>199</sup> OPSC article 8.1.

<sup>200</sup> OPSC article 9.

## Psychological support and treatment

Many of the reviewed cases document that victims suffer from significant psychological damages impacting their overall mental health and well-being. Furthermore, the courts argue that when children are exposed to adult sexuality it can disturb their own sexual development and increase the risk of future victimization. It can also become a burden in future sexual relationships. Children who receive support after having for example sent nude images online are usually better equipped to deal with the psychological ramifications of these acts than those who receive no help and who may try to repress the feelings that this has caused. However, it must also be noted that the child's involvement in the investigation and court proceedings can trigger strong feelings and reactions, especially in cases where the child victims were not aware that they had been in contact with an adult offender.<sup>201</sup>

One victim of especially humiliating and aggravated forms of OCSEA was unaware that she was communicating with an adult and that the material was being recorded. Being contacted by the police and made aware that she had been communicating with an adult male, meant a great burden in her life, particularly since she already had previous experience of sexual victimization, had problems with her family, and was living in foster care. She was living with suicidal thoughts, engaging in self-harm and experiencing extreme emotional suffering.

## Barnehus - Children's Houses

Child victims of sexual exploitation and abuse should receive concerted legal support, psychological support and other rehabilitation through a Barnehus (Children's House). The idea of the Barnehus is that children who are victims of crimes can be heard and receive support in a child-sensitive environment by specially trained police and other personnel. It is a model of cross-disciplinary cooperation to deal with reported cases of violence and sexual abuse against children. The model is based on the 'one door in' (also called 'one-stop shop' or 'under one roof') principle, which means that the child should be able to access all the relevant professionals in one place, such as the police, doctors, legal counsel, and the responsible Barnehus coordinator.

As of 2017, there are 11 Barnehus in various locations all over Norway. They accept police reported cases of sexual abuse against children up to 16 years of age. The Barnehus coordinator sets up an evaluation on whether the victim needs psychosocial support and can organize the necessary services through local service providers. Their work thus concerns the three stages of the criminal proceedings, the preparatory stage, the investigative stage where the child is interviewed, and the follow up stage.

The Barnehus and similar one-stop centres have been promoted as a good practice for enabling children to access justice.<sup>202</sup> Under the UN CRC, all child victims and witnesses under 18 have a right to access child-sensitive counselling, reporting and complaints mechanisms and proceedings. While some children between 16 to 18 years of age may wish to meet in court, it is important that access to a Barnehus is also an available option for this age group.

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<sup>201</sup> E.g. TOVRO-2016-491.

<sup>202</sup> See: the Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, op.cit. para 95.b, and: United Nations High Commissioner for Human Rights, Access to justice for children, December 16, 2013, A/HRC/25/35.

## Compensation to child victims of OCSEA

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime emphasize that 'Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery.'<sup>203</sup> The Guidelines encourage to combine criminal and reparations proceedings, as long as they are 'child sensitive and respect the guidelines'.<sup>204</sup>

When a suspect is charged and prosecuted for offences under penal law, defendants may also raise a civil suit against the accused to seek compensation for the harm that the offence has caused the victim. These charges are then prosecuted simultaneously and if the offender is convicted the court will decide on what compensation should be paid to the victim. This is in line with the OPSC, which sets forth that child victims must also have access to adequate procedures to seek compensation.<sup>205</sup>

For victims who cannot access compensation in criminal cases, the Damages Act<sup>206</sup> enables them to apply for civil compensation. This includes compensation (redress) for damage of a non-economic nature. This provision requires one who deliberately, or by gross negligence, causes injury to another to compensate the victim for the injury caused. This includes psychological suffering. The aggrieved party must then claim civil redress/restitution, which can be sought together with the charges under the penal law.

The Damages Act also includes standardised compensation for (future) loss of income for children and young people under the age of 19.<sup>207</sup>

In practice, the general lack of child-sensitive information and sufficient support may be particularly challenging for children's access to a civil lawsuit.

## Compensation for child victims abroad

The situation for child victims living outside of Norway has proven even more complex. For instance, in TBERG-2016-61974, the District Court indicated that the State fund does not pay compensation to victims abroad.<sup>208</sup> Nonetheless, Norwegian criminal case law supports the principle that victims abroad should receive compensation from the convicted offender for the harm that the offence has caused. There is also established principle that victims abroad should receive the same amount of redress (non-economic loss for pain and suffering) as victims within Norway.<sup>209</sup> In the cases reviewed for this study, two of the convictions included compensation for four victims situated abroad.<sup>210</sup> In case HR-2020-2136-A,<sup>211</sup> the Court of Appeals confirmed the District Court's ruling that the victim would receive a

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<sup>203</sup> The UN Economic and Social Council (ECOSOC) Resolution 2005/20: Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, E/RES/2005/20, paragraph 35, <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

<sup>204</sup> Ibid. paragraph 36.

<sup>205</sup> OPSC article 9.4.

<sup>206</sup> Act on Compensation for damage (Skadeerstatningsloven), sections 3-5 (første led bokstav a).

<sup>207</sup> Act on Compensation for damage (Skadeerstatningsloven), section 3-2 a.

<sup>208</sup> Victims' Compensation Act (Voldsoffererstatningsloven), section 2 and regulation section 3.

<sup>209</sup> See also: LB-2006-17713 where a young Gambian victim of SECTT by a Norwegian offender, was awarded compensation. See also: TOSLO-2016-40125 a Norwegian offender was found guilty of sexually exploiting a 13-year-old girl in Thailand. The police were able to prove that the offence had taken place because the victim had given birth to a child which was proven by DNA to be the biological child of the offender. The Offender was charged to pay NOK 150'000 in restitution to the victim.

<sup>210</sup> HR-2020-2136-A; HR-2020-2137-A.

<sup>211</sup> In Rt-2011-247, the court stated that: 'An individual assessment shall be made of the individual victim's claims for redres.' According to 'established case law, the Norwegian level and monetary value shall be applied to the amount to be manifested in the case', cf. Rt-2014-892. The court also held that attempted actions form a basis for redress claims'

compensation of NOK 200'000, concluding that established compensation for the rape in Norway would be around NOK 150'000-175'000.<sup>212</sup> The rape of a child can also engender higher compensation.<sup>213</sup>

In a case involving a Norwegian politician,<sup>214</sup> the court ruled that the offender should pay one of the victims situated in the Philippines NOK 200'000 for repeated instances of live-streaming sexual abuse, equated to the rape of a child, over the period of one year. The offender was also found complicit to incest. The victim was 2-3 years old at the time of the offences. During this live streamed abuse, the victim was forced to engage in sexual acts qualified as intercourse with an adult male, with her own mother and with her infant brother. Although the court had been informed that the child suffered no physical damage and seemed to be thriving at the orphanage where she lived at the time, she was compensated for the future psychological suffering caused by the abuse. Her younger brother was only a few months old at the time of the offences, but the court freed the offender from paying compensation to this victim. The court argued that they had not found that the child suffered from any form of physical or psychological damage as a result of the offences in which the offender was involved. This decision was overruled in the Court of Appeals, which awarded the boy compensation of 170'000 NOK. The institution where the two victims were placed was also seeking compensation for 'financial loss' to cover future costs of the children's accommodation, food and medicine. But the court found that the regular costs for the children in the institution could not be considered as financial loss suffered by the victims and, as such, freed the offender from paying compensation to the institution.

ECPAT Norway welcomes these court decisions that seek to ensure that victims situated abroad can access compensation and encourages relevant authorities to establish a specific procedure, and the necessary legal infrastructure, to ensure that any monetary compensation awarded to child victims comes to benefit the children. Such a procedure should ensure that funds do not fall in the wrong hands and come to benefit the child's abusers or anyone else. Although monetary compensation is an important remedy, which can potentially make a big difference in the lives of the victims, such a procedure must also be geared towards ensuring that children are taken out of harmful and abusive situations and protected from those who have procured them for sexual exploitation and abuse. It is also important that these children can access other forms of support and rehabilitation, similar to the services that child victims within Norway would be able to access in such cases.

## **New legislation concerning compensation for victims of violent crime**

At the time of drafting this report, the consultation concerning the State compensation scheme for victims of violent crime was reaching a new stage. In 2016, the Criminal Injuries Compensation Committee, which was appointed by the Government to examine the current scheme and propose improvements, presented the draft act 'Fair and Predictable – Compensation for Victims of Violent Crime'.<sup>215</sup>

The draft act introduced important suggestions for strengthening children's access to compensation, particularly for children who are non-citizens and living abroad. Recalling the right of children to special protection, the Committee proposed that children who are exposed to serious criminal offences<sup>216</sup> committed by Norwegian citizens or persons residing in Norway at the time the offence is committed,

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<sup>212</sup> New consideration of the claims for damages in the criminal case were rejected by the Supreme Court, HR-2020-1252-U.

<sup>213</sup> For example, LB-2018-9616 where the compensation was set at NOK 300'000.

<sup>214</sup> TBERG-2018-51923/LG -2019-43211/ HR-2020-2136-A.

<sup>215</sup> See [NOU 2016: 9 - regjeringen.no](https://www.regjeringen.no), 2.2 English summary.

<sup>216</sup> For the purpose of the new legislation 'serious criminal offences' were defined as offences with more than a four-year penalty.

should be able to receive criminal injuries compensation independently of their citizenship and place of residence. One pre-requisite is that the case is tried in a Norwegian court.

The Norwegian Bar Association, and several other actors, supported the committee's proposal. The Norwegian Bar Association emphasized that:

'There are examples of unreasonable decisions under the current scheme where foreign children have been abused by Norwegians abroad. Despite a final judgment on compensation in a Norwegian court, the child has not received this compensation because the compensation scheme for victims of violence prevents it. In the Norwegian Bar Association's view, it is unfortunate that the current victim compensation scheme does not harmonize with the victim's right to compensation following a final judgment. The Norwegian authorities may have spent large sums on taking evidence abroad and / or testifying in these cases.'

Moreover, 'Children will often be without resources and vulnerable. It is then reasonable that the Norwegian state in these cases contributes to the right to compensation becoming real. The costs of this proposal will probably not be large, as it is limited how many such cases are pending before Norwegian courts. It is therefore very positive that the committee proposes to strengthen these children's procedural rights. Consistency and harmony in the judicial system also indicate this, as well as considerations of reasonableness.'<sup>217</sup>

In September 2020, the Ministry of Justice and Public Security presented a second draft proposal to the compensation scheme. The draft expressed concern for the high amount of compensation given (for non-economic pain and suffering) to children abroad. The Ministry argued that the amount of 200,000 NOK afforded to a child victim in the Philippines is equivalent to 14,5 annual salaries of a Filipino worker. The Ministry was worried that such high amounts could be a motivation to accept OCSEA and that such payments by the state would indirectly become complicit in an increase of OCSEA in developing countries.<sup>218</sup>

As a result, compensation for pain and suffering to non-citizen children abroad is removed from the new draft and the only option for child victims abroad is to seek compensation for economic loss and loss of future income.<sup>219</sup>

The aim of non-economic redress to victims, is to provide compensation for their pain and suffering. It is also meant to have a preventive and penal effect towards the offender.<sup>220</sup> ECPAT Norway is concerned that the proposed differential treatment between child victims in Norway and children abroad, is contrary to the aims of the UN CRC. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography article 9.4, calls upon Member States 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.' In other words, in cases where Norway has assumed jurisdiction, all children, regardless of nationality or residence, should benefit from the same forms of compensation.<sup>221</sup>

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<sup>217</sup> Letter from the Norwegian Bar Association to the Ministry of Justice and Public Security, 28. February 2017.

<sup>218</sup> Justis- og beredskapsdepartementet, Høring – Forslag til ny lov om erstatning fra staten til voldsutsatte, 4. september, 2020, p- 95-96

<sup>219</sup> Act on Compensation for damage (Skadeerstatningsloven), sections 3-1 and 3-2a, see Justis- og beredskapsdepartementet, Høring – Forslag til ny lov om erstatning fra staten til voldsutsatte, 4. september, 2020, p. 132

<sup>220</sup> Justis- og beredskapsdepartementet, Høring – Forslag til ny lov om erstatning fra staten til voldsutsatte, 4. september, 2020, p. 57

<sup>221</sup> See Warren Binford, Janna Giesbrecht-McKee, Joshua L. Savey & Rachel Schwartz-Gilbert (2015). Beyond Paroline: Ensuring meaningful remedies for child pornography victims at home and abroad. *Child. Legal Rts. J.*, 35, p. 160. Available at: <http://lawecommons.luc.edu/clrj/vol35/iss2/3>

The OPSC also calls on Member States to assist child victims in their physical and psychological recovery, social reintegration and repatriation through international cooperation.<sup>222</sup> Far too many child victims are never rescued and remain without any support. In countries with high prevalence of trafficking and sexual exploitation of children, assistance to victims and survivors is often provided by civil society organizations that struggle to make ends meet.

A research study conducted by ECPAT International in the Philippines, Thailand and Nepal showed the urgent need for financial support to cover the immediate and long-term needs of victims, including specialised care, education, health services, accommodation, safety and security. Consultations with survivors and service providers in the three countries revealed that, due to limited funding, ‘many live under the disturbing uncertainty of whether, or not, the programmes, shelters, or service providers, will still be there tomorrow’.<sup>223</sup> The present Covid-19 pandemic, followed by economic crisis, has not only increased the risk of sexual exploitation of children<sup>224</sup>, but also led to cuts in funding that could have a devastating impact on children.

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<sup>222</sup> OPSC article 10.2.

<sup>223</sup> ECPAT International (2017). *CASTING LIGHT ON THE CARE, RECOVERY AND (RE)INTEGRATION NEEDS OF COMMERCIALY SEXUALLY EXPLOITED CHILDREN: FROM THE VOICES OF CHILDREN, ADULT SURVIVORS AND THEIR SERVICE PROVIDERS IN NEPAL, THE PHILIPPINES AND THAILAND*. Bangkok: ECPAT International. p. 271.

<sup>224</sup> EUROPOL, Covid-19: Child sexual exploitation: What has the Covid-19 pandemic changed? Available at: <https://www.europol.europa.eu/covid-19/covid-19-child-sexual-exploitation>

## Chapter 4. OCSEA offenders

Outlining a profile of OCSEA offenders is an extremely complex task, which goes beyond the scope of this study. Nevertheless, the reviewed cases make it possible to analyze OCSEA offending in Norway at least partially, and to identify some relevant elements and patterns.

Firstly, the cases reviewed for this study show that online offending does not necessarily lead to, or is linked to, offline offending, even though there is a significant overlap between online and offline offending. Secondly, there is a clear tendency for child sexual offenders who commit what has been referred to in this study as live online child sexual exploitation and abuse to also commit CSAM-related offences online.

It is noteworthy that many OCSEA offenders in Norway did not express feelings of guilt. As has been mentioned previously (see chapter 1), the distance between an offender and a victim who interact exclusively online tends to decrease the offender's sense of responsibility.

Research on computer mediated communication has attempted to establish the difference between online and offline interactions. A 'reduction in social-context information and shared norms of how to communicate' can lead to a form of cognitive disengagement with regard to a person's online behaviour.<sup>225</sup> The distance between persons who interact only in the digital environment can reduce the social cues available, which can decrease the sense of social responsibility for one's actions or a decreased sense that the actions one is engaging with can have a serious negative impact. Other aspects that work to exacerbate online disinhibition and moral disengagement are the possibility of almost complete anonymity, asynchrony, lack of physical presence such as facial expressions, tone of voice, or other physical reactions.<sup>226</sup>

Some offenders in the reviewed cases argued that the victims were responsible for what happened as they initially wanted to engage in the contact with the offender. Many offenders described thinking that they had helped the victims (for instance financially) and felt little or no remorse for their actions. One offender who was found guilty of more than one hundred counts of rape did not feel that he had acted in a manner that would amount to the legal definition of rape.<sup>227</sup> He described feeling that what he had done was not as serious as it was made out to be.

Some offenders expressed how they felt addicted to what they were doing and that they wanted to be caught in order for it to end. Many had been engaging with CSAM or abusing children online over long periods and felt that there was a small risk of getting caught. Some of the offenders had previously been convicted of the same offences, but their previous convictions did not seem to deter them from further offences.

The way in which communication can occur online, the facility with which offenders can access victims, and the possibility of contacting hundreds of victims at once, as well as the sense of distance that online communication creates, seem to instill in offenders the sense that they will not be caught, a sense of lawlessness, and that their actions are not as serious, for instance, as in-person abuse.

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<sup>225</sup> Fransson et al. (2019), op.cit. p. 191.

<sup>226</sup> See Staksrud, E. Ólafsson, K., and Livingstone, S. (2013). Does the use of social networking sites increase children's risk of harm? *Computers in Human Behaviour*, 29 (1), pp. 40-50. and: Bussey, K., Fitzpatrick, S. And Raman, A. (2015). The Role of Moral Disengagement and Self-Efficacy in Cyberbullying. *Journal of School Violence*, 14(1); Suler, J. (2005). The Online Disinhibition Effect. *International Journal of Applied Psychoanalytic Studies*, 2(2), pp. 184-188.

<sup>227</sup> Fransson et al. (2019), op.cit.

## Offenders of both live online sexual exploitation and abuse and CSAM

Most of the offenders who were found guilty of live online child sexual exploitation and abuse were also found guilty of either the possession, distribution and/or production of CSAM, both as a result of their direct online abuse of victims and of engaging with already existing CSAM available online. **In this category of cases, offenders were in possession of over hundreds of thousands of images of CSAM and thousands of films with a playing time of several thousand hours.**

The reviewed cases include offences where offenders have managed to abuse large numbers of victims, in one of these cases the offender had abused over 270 victims, most were aged between 14-15 years but the youngest was only a few years old.<sup>228</sup> In another such case, the offender was in possession of 89 649 CSAM images which depicted his 256 victims. He was found guilty of both possession and production of CSAM, as well as live streamed sexual abuse, rape of a child under the age of 14 and sexually offensive behaviour.<sup>229</sup> The police found 750 000 instances of sexualized online communication with children, as well as 8858 Skype calls. Offenders often threaten or manipulate victims into performing sexual acts on themselves which can be equated to intercourse, and thereby rape, as well as attempting to get victims to produce CSAM. In one of the largest cases to date the offender had manipulated his victims into sending him sexualized images and to engage in livestreamed sexual abuse, by pretending to be an older girl when communicating with boys and pretending to be a boy when communicating with girls.<sup>230</sup>

**OCSEA cases reveal that perpetrators can reach large numbers of victims through the internet. In one of the biggest cases 1 offender was found guilty of offences against 270 child victims.**



**270**  
VICTIMS  
**1**  
PERPETRATOR

## Offenders of in-person and online abuse

Offenders who were convicted of both in-person child sexual abuse and CSAM-related offences mostly established the relationships with their victims offline.<sup>231</sup> In such cases, the offenders were mostly individuals with whom the children had a relationship of 1) dependency – such as a parent, a step-parent, a grandparent, other family member or a guardian 2) authority or trust – such as a sports coach, teacher, pre-school teacher, extra-curricular leader, or congregation youth leader. The case law review

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<sup>228</sup> TNERO-2018-130781.

<sup>229</sup> TNERO-2018-182729.

<sup>230</sup> TNERO-2018-182729.

<sup>231</sup> The average offender was a 35.8-year-old male. However, the offences perpetrated by several offenders, were often perpetrated by young offenders.



included a number of offenders who established relationships of trust and dependence with their victims by abusing their position as teachers, school counsellors or sports coaches.<sup>232</sup>

## Convicted offenders

Other Norwegian studies indicate that OCSEA offenders can be anybody,<sup>233</sup> that offenders are found in all walks of life, have any jobs, have families and prominent positions in society. There are cases in which the offenders were persons in trusted positions, such as teachers, sports coaches, social workers, health care professionals such as psychiatrists and counsellors, politicians, a district court judge, family fathers, and men holding well-paid jobs. However, most of the cases reviewed for this study concerned offenders who come from or who were in situations of hardship at the time of committing the offence. This being said, these findings reflect those offenders who have been caught and successfully prosecuted. Other studies have noted that there is a bias as to which offenders are caught, and which offenders can more easily be prosecuted. Hence, although most offenders in the cases reviewed for this study were disadvantaged men, this does not necessarily reflect the general population of OCSEA offenders more broadly.

The overwhelming majority of Norwegian offenders in the reviewed cases were male, while only ten were female. Among the reviewed cases the offenders were mostly men who had grown up in difficult circumstances, were themselves victims of violence, had some type of previously diagnosed neuropsychiatric condition or were diagnosed as having some kind of psychosocial or developmental problem during the case proceedings. Furthermore, many of the offenders were unemployed, or suffered from long term illnesses that rendered them unable to work. Some suffered from debilitating mental illness or were physically disabled.<sup>234</sup> Among the reviewed cases, many offenders were described as having had difficult childhoods. Some had grown up in foster care, had grown up with parents struggling with addiction, and/or had been victims of physical and sexual abuse as children. Correctional services therefore found that some offenders suffered from trauma-related symptoms and were described as having problems forming social connections.<sup>235</sup> Some offenders were found to have neuropsychiatric diagnoses such as ADHD, Asperger's, various developmental disabilities or personality disorders such as paedophilia. Many of the offenders of OCSEA and in-person child sexual abuse are described as having personality disorders and as being manipulative, lacking empathy and as highly controlling.<sup>236</sup>

One offender, like many others, was described as having an anti-social personality disorder and as displaying a cold indifference towards his victims in favour of satisfying his own sexual needs. Through his actions, he 'exhibited an irresponsible attitude and ignored social norms, rules and responsibilities'; 'exhibited the inability to maintain lasting relationships, but without difficulty relationships of a purely sexual nature'. According to the court, 'he exhibited impulsive behaviour focused on his own instantaneous satisfaction without any thought of the negative consequences'.<sup>237</sup>

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<sup>232</sup> E.g. THALL-2018-47750.

<sup>233</sup> Tangen Aanerød & Mossige (2019) and Kripos (2019) op.cit.

<sup>234</sup> Such as being wheelchair bound or having to use an ostomy pouch.

<sup>235</sup> E.g. LG-2017-193495.

<sup>236</sup> E.g. LF-2018-66311.

<sup>237</sup> See: LB-2015-106198.

## Female offenders

Among the reviewed cases, there were ten female offenders. Nine out of ten of the offences by female offenders were committed together with one or more male offenders, or under the influence or guidance of a male offender. Five of the female offenders were convicted together with male offenders who were considered the primary offenders of the crime. These female offenders were in precarious situations of vulnerability and abuse in relation to the male co-offenders, and were found to have acted under manipulation, desperation or various forms of threat. This being said, it is important to note that these vulnerable female offenders were all mothers of the children they abused, which is a particularly aggravating circumstance. Abuse by primary caretakers often has a deeper impact on the child and will likely affect the children for the rest of their lives.

**10**  
**FEMALE**  
**OFFENDERS**

**Five of these female offenders had offended together with one or more male offenders and the women were considered vulnerable.**

## Offenders abuse their positions and specialized knowledge to access victims

Some offenders used specialized knowledge to mislead and groom children online. In one case the offender was studying to become a social worker at the time of the abuse.<sup>238</sup> He gained knowledge on how to talk to children through his academic studies. The court found that the offender used this knowledge to manipulate vulnerable young girls and found this particularly aggravating.

Another offender established a support page online for victims of bullying, claiming he had worked for child protection services<sup>239</sup> and that he had worked with child and youth victims of bullying.<sup>240</sup> He was thereby able to establish contact with young vulnerable victims who were seeking support. This way he was able to abuse the victims' vulnerability and establish a relationship of trust that then became sexualized.

## The normalization of child sexual abuse

The reviewed cases show how the offenders worked to normalize sexualized content and communication by for example sending nude images of themselves or images that they found online.<sup>241</sup> One offender described himself as a caring person who was encouraging girls to explore their own sexuality.<sup>242</sup> Therefore, he saw the girls as active and willing participants and did not understand his own role as an adult in the communication, and what pressure he put on the victims. The offender was

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<sup>238</sup> LF-2018-66311.

<sup>239</sup> Norwegian: 'Barnevernet'.

<sup>240</sup> LB-2017-82747.

<sup>241</sup> E.g. THALD-2017-149595.

<sup>242</sup> Ibid.

described as downplaying and externalizing his own behaviour and as having an egocentric way of thinking, making it difficult for him to differ between others' and his own needs.

## Re-offending and treatment

Some of the offenders involved in the cases reviewed for this study were clinically diagnosed as paedophiles by the forensic psychiatric evaluation. Experts indicate that the rate of recidivism for diagnosed paedophiles who offend is between 20 and 25%.<sup>243</sup> Experts also point out that while other psychosocial disorders and conditions can be effectively treated, this is considered uncertain in cases concerning diagnosed paedophiles,<sup>244</sup> whose sexual interest is directed toward children.<sup>245</sup>

Both psychological and medicine-based therapy for persons with a sexual interest in children are available in Norway. [Detfinneshjelp.no](http://Detfinneshjelp.no) 'there is help' is a national low threshold service for persons over 18 years, who have a sexual interest in children. It is run by the Directorate of Health and includes a website with various resources, a chat service and clinics that offer treatment based on research and experiences from both national and international levels. The therapy aims to 'help to strengthen (the person's) skills in achieving good and healthy life goals, while tackling risk factors in a way that prevents abuse from happening.'

However, experts point out that results are inconclusive as to the effectiveness in treating diagnosed paedophiles and preventing their re-offending.<sup>246</sup> In one case the offender sought treatment on his own initiative in the form of group therapy at the Institute for Clinical Sexology<sup>247</sup> in Oslo.<sup>248</sup> He also saw a psychiatrist. The therapists cited in the case pointed to the importance of the offender's own motivation to continue treatment, showing regret and reflecting about his actions. They also pointed to the fact that he was not trying to trivialize his offence, as many child sex offenders tend to do, and which is may represent a significant risk of re-offending.<sup>249</sup>

Experts describe how offenders who suffer from multiple psychosocial disorders may end up in cycles of poverty, lacking close and/or romantic social relationships, and may feel lonely and bored as a result, and may self-soothe through the over consumption of, for instance, drugs. This combination of factors increases the risk of offending as it dampens the offenders' impulse control. Therefore, positive factors in the lives of offenders, such as improved mental health, work and other social activities, are believed to reduce the stress that may lead offenders to re-offend. Building meaningful and close relationships with other adults is thus believed to have an inhibiting effect on offenders' attraction to consuming CSAM, engaging in chats online about child sexual abuse, as well as engaging in other forms of OCSEA.

Some offenders showed remorse and admitted a sense of relief when being arrested, as they would have continued to offend had they not been arrested. Others, however, did not seem to express guilt

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<sup>243</sup> See: LE-2017-183790.

<sup>244</sup> It should be noted that not all persons who present symptoms of paedophilic disorder are perpetrators of child sexual exploitation or abuse. See for instance: Luxembourg Guidelines (2016) op.cit., p 86.

<sup>245</sup> See: LE-2017-183790.

<sup>246</sup> Grønnerød, C., Soilevuo Grønnerød, J., and Grøndahl, P. (2014), Psychological treatment of sexual offenders against children: A Meta-analytic review of treatment outcome studies. *Trauma, Violence & Abuse*, 16(3), 280—290.

[https://journals.sagepub.com/doi/full/10.1177/1524838014526043?casa\\_token=pP\\_olEowXM0AAAAA%3A6-u6pTJSDnffw6cJsFgaOjIFB9VIBhdWaFjqf4G\\_CNFiuxY\\_LsShS3Zkq-yOZAYLkjA98HWHcw](https://journals.sagepub.com/doi/full/10.1177/1524838014526043?casa_token=pP_olEowXM0AAAAA%3A6-u6pTJSDnffw6cJsFgaOjIFB9VIBhdWaFjqf4G_CNFiuxY_LsShS3Zkq-yOZAYLkjA98HWHcw)

<sup>247</sup> Norwegian: 'Institutt for klinisk sexologi (IKS)'.

<sup>248</sup> LA-2018-179475.

<sup>249</sup> See e.g. THALD-2017-149595.

or remorse, and did not seem to understand their actions as serious or criminal. Expert psychiatrists expressed, in various cases, that both these types of offenders are at great risk of reoffending.<sup>250</sup>

## Young offenders

The Penal Code<sup>251</sup> states that offenders who were under the age of 18 at the time of the offence can only be sentenced to prison when this is 'especially required'. The preparatory work<sup>252</sup> describes the treatment and monitoring of young offenders as a threefold programme implemented through a conflict mediation council. Youth monitoring and treatment should thus be an individually developed programme for each offender, based on their specific needs, and should be aimed at preventing recidivism. The time set for the treatment and monitoring of young offenders is also to be based on an individual assessment and should take into consideration the individual needs of the offender.<sup>253</sup>

Of the cases reviewed 18 involved young offenders aged 15-19 years of age at the time of the offence. In the cases concerning such young offenders, the acts were often committed by two or more offenders together. Most cases concerned the sending of sexualized images of girls who had not consented, or videos and/or images depicting a girl engaging in consensual sexual activities. Images and films were usually shared to peers via social media such as Snapchat and then spread to a broader audience, causing much distress and pain for the victim, and often significantly impacting the victims' health and life situation.

Two cases concerned situations where teenage boys filmed victims in a consensual sexual situation. The cases both concerned female victims engaging in consensual sexual situations, which were photographed and filmed. The material was then spread to others via social media and texting applications. The boys who spread this material were convicted of harassment<sup>254</sup> as well as production and dissemination of material sexualizing a child.<sup>255</sup> The incidents had a dramatic impact on the victims. One victim described that, following the circulation of these images among her school peers, she was called a whore and a slut, which deeply impacted her self-confidence and sense of worth. She began to consume alcohol and heavy drugs. She finally moved to get away from the pressure and bullying she was under as a result of the spreading of the images. She also sought psychological treatment and was temporarily institutionalized by child welfare services.

Other offenders abused and filmed victims who were heavily inebriated, semi-conscious and unable to defend themselves.<sup>256</sup> In one case, a girl was abused at a party by two boys when she was heavily inebriated. In this condition, the two boys abused her by filming her lying naked on the floor, and by attempting to insert objects into her vagina while she slept. The boys filmed the abuse and the material was shared among school peers. One of the boys also edited the material, including humiliating text about the victim in the film. Eventually, the material was brought to the attention of the victim. The consequences of the incident have been severe for the victim. She was forced to move, she became

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<sup>250</sup> Ibid.

<sup>251</sup> Penal Code (Straffeloven) 2005, section 18.

<sup>252</sup> Prop. 57L (2013-2014) p 98.

<sup>253</sup> Ibid., p 62.

<sup>254</sup> Known as the offence of 'violating a person's peace'/'fredskrenkelse'. Penal Code (Straffeloven) 2005, **Section 266. Harassing conduct** Any person who by frightening or bothersome behaviour or other harassing conduct stalks a person or otherwise violates another person's peace shall be subject to a fine or imprisonment for a term not exceeding two years.

<sup>255</sup> Penal Code (Straffeloven) 2005, section 311; see cases: LE-2017-144472; LB-2017-197003.

<sup>256</sup> LA-2015-198584; LE-2017-144472; LB-2017-197003.

socially isolated and increasingly lonely. The impact the abuse had on her health meant that she was set back one year in school.<sup>257</sup>

As shown in these cases many young offenders had filmed or photographed victims in situations where they were vulnerable, such as when they were engaging in consensual sex, or when they were inebriated to the point of being unconscious. In one case, a 16-year-old boy photographed an inebriated class mate while she was unconscious, specifically focusing on her buttocks and exposed genitals.

**The supreme court found that these depictions, in and of themselves, had a sexual character and therefore that the intention behind the act does not have to be sexual in itself, in order to qualify as a sexual offence.<sup>258</sup>**

The reviewed cases also concerned young offenders downloading CSAM, sending sexually offensive content to children, as well as in-person abuse.<sup>259</sup> In connection to this, offenders were often found guilty of producing and disseminating CSAM.

The non-custodial measures provided by the Norwegian Mediation Service<sup>260</sup> and councils across the country are based on restorative justice. They serve to uphold the obligations on UN CRC Article 37 (b), which states that ‘no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’.

#### Illustrative case of non-custodial measures when the offender is a child under the age of 18:

Young offenders in Norway are entitled to an individually developed programme based on their needs and which is aimed at preventing recidivism. In one case the offender, who was 16 at the time that the offending started, had his personal situation assessed and it was recommended that the sentencing be administered in such a way that the positive and preventive resources in his life be maintained. This included continuous monitoring and follow-up with the offender’s parents, school, therapists and others during his probationary sentence, focusing on strengthening established social networks and positive activities in a number of life settings. The offender was sentenced to youth follow-up through a mediation council, for a period of 1 year and a trial period of 3 years. Monitoring and follow-up through the follow-up team was then to be a complement to the treatment he was receiving with the Institute for Clinical Sexology and Therapy (IKST).<sup>261</sup>

The UN Global Study on Children Deprived of Liberty, recalled that ‘deprivation of liberty shall be applied only as a measure of last resort in exceptional cases, and that the views of children shall be heard and taken duly into account.’ It recommends that States ‘prioritize restorative justice, diversion from judicial proceedings and non-custodial solutions.’<sup>262</sup>

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<sup>257</sup> LA-2015-198584.

<sup>258</sup> HR-2017-1245-A.

<sup>259</sup> E.g. LA-2018-27786.

<sup>260</sup> See <https://konfliktraadet.no/unge-lovbrytere.313365.no.html>

<sup>261</sup> TDRAM-2015-63401: ‘The main focus in the execution of the sentence should be to maintain the positive aspects and resources present in the defendant’s life. Specifically, this will mean close follow-up from parents, school, therapist, etc. with a focus on networks, leisure, education, etc. In addition, it will be very important to work with raising awareness and change towards the actions he is accused of. The treatment the accused has started at IKST is central in this context. The independent health care provider is of the opinion that the accused will benefit from close follow-up and clear routines over time, in many areas of life. He will be able to get this through the content and the support that the Follow-up Team under the auspices of the Conflict Council can offer together with measures that have already been initiated.’ (translated from original).

<sup>262</sup> Nowak. M. (2019). *The United Nations Global Study on Children Deprived of Liberty*. Geneva: United Nations.

Since children are in their formative years, when deprivation of liberty may have highly detrimental effects on their physical and mental health, their further development and their life, States are required to apply non-custodial solutions when dealing with children. Even with respect to children who have committed crimes, article 40 (4) of the Convention on the Rights of the Child provides that a 'variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available...'<sup>263</sup>

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<sup>263</sup> Ibid. para. 20. See also the Committee on the Rights of the Child's draft General Comment No. 25 'Children's rights in relation to the digital environment', 13 August 2020, para. the States should pursue preventive, safeguarding and restorative justice approaches whenever possible

## Chapter 5. Investigation and prosecution of OCSEA offenders

### Investigation

The cases reviewed for this study were uncovered or reported in different ways. In some cases, the victims had sought psychological support or treatment and the offences were uncovered this way. In other cases, the victims told a parent who then reported the case to the child protection services or to the police directly. Some cases were detected via tips or reports that the police had received from the public, including tips concerning other, unrelated types of offences. In some instances, the case was discovered by the police as a result of police work to uncover OSCEA.

Among the reviewed OCSEA cases concerning Norwegian child victims, the most common way they were uncovered was that a parent of one of the victims reported the matter to the police upon having discovered online communication between their child and the offender.<sup>264</sup> In certain cases, the offenders had been reported several times before the police were able to identify their IP address,<sup>265</sup> meaning that the first report pertaining to the case may have been registered well before the offender was identified and apprehended, during which time the offender has continued to offend. Many offenders in the cases reviewed for this study continued to offend up until they were apprehended by the police, and some continued to offend even after they had become aware that they were suspected by the police.

### Evidence provocation

Due to the constantly changing nature of OCSEA, the police have had to develop novel methods of uncovering and catching offenders in action. In recent years the National Criminal Investigation Service Kripos has established a significant number of task forces or operations to target OCSEA offences,<sup>266</sup> resulting in new techniques of researching and gathering evidence. These novelties include techniques such as evidence provocation and infiltration, which have been highly criticised and against which some defendants have raised objections.<sup>267</sup>

The burden of proof in cases concerning sexual offences should be such that the offence has been proven beyond any reasonable doubt. This is also in line with the European Convention on Human Rights. One of the great difficulties with OCSEA is that evidence concerning for instance live streamed abuse is usually never stored by offenders but is ephemeral. However, the prosecution uses the surrounding chats and payments as proof that a live stream has taken place.<sup>268</sup> As such, it is the collected evidence that will, in its accumulated form, constitute a burden of proof that satisfies the required 'beyond any reasonable doubt'.

In one case,<sup>269</sup> the police used 'extraordinary investigation methods' such as evidence provocation and infiltration. Evidence collected in this manner invariably impacted the available proof of guilt in this case, and thus the outcome of prosecution. The police went undercover online to chat with the offender by assuming the identity of one of the offender's contacts. This contact resulted in the offender asking for sexual services in the form of sexual activities with children. The chatlogs were then used as evidence

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<sup>264</sup> As most cases that have been uncovered by police operations targeting OSCEA and CSAM in recent years, are under prosecution, these are largely not represented here.

<sup>265</sup> TOVRO-2016-491.

<sup>266</sup> Including the Europol Taskforce on Victim identification.

<sup>267</sup> TBERG-2019-31526-2.

<sup>268</sup> Ibid., and Rt-2005-1353 section 14.

<sup>269</sup> TBERG-2019-31526-2.

in the case. These forms of provocation entail asking open-ended questions to establish what kind of contact the offender had previously had with the victim. It was deemed necessary since the offender had erased his previous chatlogs with the contact. Thus, the provocation worked to corroborate that the offender had previously ordered live streamed child sexual abuse from the contact.

In Norway, provocation and infiltration are not regulated by the law.<sup>270</sup> Yet there is judicial precedent to support such practice. The attorney general has argued that as long as the provocation does not change the course of the criminal events under investigation it is permissible.<sup>271</sup> The District Court has held that evidence resulting from provocation is not admissible if the offender is provoked into a criminal act that he or she would otherwise not have engaged in or would not want to engage in. Such methods can only be used in investigations where there is suspicion of serious criminal activity.<sup>272</sup> The police commissioner or the deputy police commissioner has to make a formal request to the District Attorney who has the authority to approve such extraordinary methods. Provocation and infiltration are only permitted if traditional methods of investigation prove insufficient and as long as these methods do not impinge on any other criminal justice procedures or principles, such as the right of suspects not to incriminate themselves.

### Online vigilantes

In Norway, there are a few private civilians and civil society activists that take matters into their own hands, creating fake profiles to catch child predators online. The organization Barnas Trygghet,<sup>273</sup> for example, has created fake profiles on chat sites to expose 'paedophiles online'.<sup>274</sup> In one case the offender chatted with 'Lillemy18' whom he believed to be a 13-year-old girl for a couple of weeks, after which he made plans to meet her. Their chats included sexualized content. Two of the organization's members met up with him at the rendez-vous point and filmed their interaction with the offender. Once the offender's identity had been confirmed they called the police who could arrest him. He was later convicted of attempting to have sexualized communication with a child under the age of 13.<sup>275</sup> The film was later uploaded to YouTube and Barnas Trygghet's Facebook page. Even though the court found that the organization had engaged in a form of private law enforcement, this did not exclude or exempt the offender's guilt in the matter.<sup>276</sup>

In another case, before the Court of Appeals,<sup>277</sup> the mother of a 15-year-old girl who had been contacted online by a 58-year-old man took over the contact, pretending to be the girl. The mother agreed to meet with the man. In this case, the Court of Appeals referred to the European Court of Human Rights (ECHR) conviction from 6 April 2004<sup>278</sup> in the case of Shannon vs the United Kingdom (private entrapment). When considering the outcome of Shannon vs the United Kingdom, the ECHR pointed out that the offender had not been entrapped but had acted willingly: 'the applicant had not been entrapped into committing an offence but had volunteered, offered and agreed to supply drugs without being subjected to pressure...'

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<sup>270</sup> Rt-2018-2.

<sup>271</sup> Rt-1994-319.

<sup>272</sup> Rt-1984-1076; Rt-1993-473.

<sup>273</sup> See more about the preventive work of Barnas Trygghet here; <https://www.barnastrygghet.no/vart-arbeid/>

<sup>274</sup> LB-2018-34648.

<sup>275</sup> Penal Code (Straffeloven) 2005, section 305 letter a (a person who) «by words or conduct exhibits sexually offensive or other indecent conduct in the presence of or directed at a child under 16 years of age».

<sup>276</sup> see also cases: LF-2016-106879; LF-2016-106879.

<sup>277</sup> HR-2011-2105-A.

<sup>278</sup> EMD\_2001-67537.



## Investigation, evidence and identification of child victims abroad

Investigating OCSEA offences committed by Norwegian offenders but where the victims are in another country can be particularly challenging. In one of the reviewed cases, the police were able to investigate parts of the offences in the Philippines, where the child victims were located.<sup>279</sup> Nevertheless, such investigations have proven difficult and have not necessarily led to conclusive evidence. To facilitate OCSEA investigations abroad, the Government decided to place a Norwegian police officer in the Philippines. In March 2020, an experienced officer from the National Criminal Investigation Service Kripos was recruited to be a liaison officer placed in Manila. Her mission, on behalf of the Ministry of Foreign Affairs is to cooperate with Filipino law enforcement in preventing and responding to child exploitation and abuse cases concerning Norwegian offenders.<sup>280</sup>

In the case involving an academic, the police identified the handler and the victims in Romania and travelled there to conduct interviews with the handler (the mother) and one of the victims (daughter). The family was poor and living in the countryside. The child victim described having done what the man in the computer asked them to do because their mother had told them they needed the money. The interviewed victim described that she had been part of 15 to 20 live 'shows'.<sup>281</sup> The mother was taken into police custody and charged for sexual abuse of her two daughters.

As mentioned in chapter 3, child victims abroad are seldom identified and/or heard during the investigation. Moreover, their age is often presumed but not verified. This means that the court must ascertain whether the offender has shown care in finding out the child's age (Penal Code 2005, section 307). Often the presumed age of a victim is based on the communication between the offenders and the contacts/handlers. In some cases, evidence included recorded versions of the actual assault, in other cases this was not available, therefore the bulk of the evidence is in the form of chatlogs detailing the instructions that the offenders have given to a third party abroad during the live streamed instances of abuse.

The case review thus indicates that there is need to develop standard operating procedures and routines surrounding the identification of child victims of live online sexual abuse, as well as the investigation of such cases in the countries of destination.

## The importance of storing user information

At present, Internet Service Providers (ISPs) are only allowed to store IP addresses for 21 days after which they must be deleted. The short storage time of IP addresses by ISPs means that the police have a very limited amount of time to trace an IP address from the time the actual offence has taken place. If the police had access to user information, they could be able to identify Norwegian child sex offenders and stop ongoing abuse. This is particularly important in cases where the offender has direct access to children. Increasing the storage time of IP addresses is therefore a key factor in ensuring the effective investigation of OCSEA cases.

**In August 2018, the National Criminal Investigation Service Kripos, received information from the British police regarding a case they had uncovered concerning a user with a Norwegian IP-address on a popular**

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<sup>279</sup> TBERG-2018-51923. See also case LB-2016-173338 concerning a the in-person sexual abuse of a 13-year-old girl in Thailand. In 2013 the Norwegian authorities issued a request to the Thai police to hear the mother and the victim on the matter. They were interviewed in 2014 by the Thai police and then later during the investigation they were interviewed by video link for the Oslo District Court in 2015.

<sup>280</sup> See: <https://www.tv2.no/a/11197759/>

<sup>281</sup> HR-2020-2137-A.

chat platform. The user described sexual interest in children 3 years of age and above. The user said he did not have children himself but that he had access to a 4-year-old child. He also asked for sexualized images of children. Even though the IP address was from 2018 it was too old to track. This meant the police was unable to identify the offender.<sup>282</sup>

## Prosecution

In this section we discuss how the courts have applied and interpreted the law in OCSEA cases, as well as what legal practices have been developed through the jurisprudence. We identify strengths, good practices and gaps in how the law is interpreted and applied.

### Child sexual abuse material

The Penal Code prohibits the ‘showing of sexual abuse of a child or shows which sexualize children’ and the ‘depiction of sexual abuse of children or depiction which sexualizes children’ and by children the Code defines this as anyone under the age of 18 years old.<sup>283</sup> The Code states that these offences, depending on their severity, may engender a penalty of a fine or imprisonment ‘for a term not exceeding three years’ for attending a show that depicts sexual abuse, or that sexualized children.<sup>284</sup> A penalty of a fine or imprisonment not exceeding three years may be applied for producing, publishing, offering, selling, supplying to another person, making available or otherwise seek to disseminate, acquire, import or possess, publicly exhibit, or induce a person into being depicted in CSAM.<sup>285</sup> This includes offenders who negligently commit such an act, or who fail to prevent such an act may be fined or imprisoned for a term not exceeding six months.

In the reviewed case law, **aggravating factors** included: the possession of a significant amount of material;<sup>286</sup> a long period of possession of the material; if the offenders worked with children professionally or as a volunteer;<sup>287</sup> aggravated contents; the depiction of very young children; previous CSAM conviction/s; distributing the material to others, either directly or via filesharing networks or programs;<sup>288</sup> if combined with sexualized fictive chatting about sexual abuse against children; if the offender acted as a moderator for a CSAM filesharing network<sup>289</sup>; if combined with other types of offending, such as the possession of narcotics.

In one case an offender found guilty of possession of a large amount of CSAM was a professional psychiatrist specializing in cases related to children, as well as the single father of two children.<sup>290</sup> The court considered the fact that his profession gave him special insight into the harm that such offending causes children and identified this to be an aggravating circumstance. The fact that he was the sole carer for two children was not considered an aggravating circumstance. The court’s reasoning did not reflect concern that the offender might harm his own children, but rather considered the best interest of the child (UN CRC article 3) in relation to their right to be cared for, weighed against the interest of

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<sup>282</sup> <https://www.vg.no/nyheter/innenriks/i/9vp9wl/slitter-med-aa-identifisere-mistenkte-i-hundrevis-av-overgreps-tips-kripos-fortvilert>

<sup>283</sup> Penal Code (Straffeloven) 2005, sections 310, 311.

<sup>284</sup> Ibid., section 310.

<sup>285</sup> Ibid., section 311.

<sup>286</sup> ‘A significant amount of child sexual abuse material’.

<sup>287</sup> Examples include as a child psychologist, as a teacher, a volunteer in children’s extra-curricular activities, youth group leader, or church leader. E.g. As a psychologist in case LB-2018-98818.

<sup>288</sup> such as eDonkey, fileDonkey.

<sup>289</sup> E.g. TBERG-2015-183101.

<sup>290</sup> LB-2018-98818.

society to prevent further offending. The court nonetheless concluded based on the serious nature of the offence, that prison sentence was appropriate and this outweighed the children's interests.

In the reviewed case law, **mitigating factors** included: having been in contact with CSAM online but not downloading the material; finding but not intentionally searching for CSAM; fictive material (e.g. animated images or novels); a limited amount of CSAM; and removing CSAM upon discovering it. This means that consideration is taken as to the intentionality behind the act that resulted in accessing the illegal material.

The Supreme Court has ruled in several cases where offenders had searched for and attempted to download legal pornography, but have ended up downloading CSAM.<sup>291</sup> This indicates that CSAM is readily available online, also for those who do not explicitly search for it.

The established practice is a penalty of 120 days in prison when the CSAM offence concerns a significant amount of material and considering the contents of the material.<sup>292</sup> A user who 'unintentionally' downloads CSAM together with legal pornography but does not remove the material upon realizing that it includes CSAM, is also punishable for a CSAM offence. The court considers the intention behind accessing the material, but also the responsibility that the offender has to act with care.

## Overlap between offline and online offending

Norwegian jurisprudence demonstrates how interrelated different forms of child sexual exploitation and abuse are. One category that emerged in the material were cases that involved sexual abuse of children perpetrated offline, thus in-person abuse,<sup>293</sup> combined with the possession, dissemination and/or production of CSAM, or online (facilitated) forms of abuse such as sending sexualized text messages or other sexually offensive behaviour. A study conducted by ECPAT Sweden has shown that among the reviewed 'child pornography' offences, 44% of offenders were also guilty of in-person abuse.<sup>294</sup>

## Penalties<sup>295</sup>

Over the last few decades, the penalties for sexual offences have been significantly increased several times. These increases, which reflect the recognition of sexual offences as particularly serious and harmful crimes,<sup>296</sup> have been supported and spurred by the government and the parliament.<sup>297</sup> These changes have occurred at the same time as the rapid developments of the internet and the recognition that the internet provides new ways to sexually abuse children.

The preparatory works reflect these considerations, and the practice of the courts before and after the entry into force of the new Penal Code in October 2015 reflects the reasoning behind how to adjudicate sentences in regards to various forms of sexual offences against children. The maximum term of

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<sup>291</sup> E.g. HR-2015-1360-A; HR-2015-1361-A.

<sup>292</sup> E.g. HR-2015-1361-A; HR-1360-A.

<sup>293</sup> Norwegian: seksuelle kontakt overgrepp.

<sup>294</sup> Kaldal, A. & Andersson, M. (2017). *Barnpornografibrottet: Det straffrättsliga skyddet mot mot dokumenterade sexuella övergrepp mot barn*. Stockholm: ECPAT Sweden. Access at: [https://www.ecpat.se/uploads/2.PDF/Rapporter/ECPAT\\_Barnpornografibrottet\\_2017.pdf](https://www.ecpat.se/uploads/2.PDF/Rapporter/ECPAT_Barnpornografibrottet_2017.pdf). In an earlier report by Brottsförebyggande rådet in 2003 they found a correlation of 38%, thus the correlation seems to have increased over the years.

<sup>295</sup> Penal Code (Straffeloven) 2005, section 29. The possible penalties are: conditional or unconditional imprisonment (in cases of rape unconditional prison should be applied); preventive detention; community service; youth sentences; fines; loss of rights and/or property. Offenders guilty of aggravated forms of sexual abuse may be sentenced to preventive detention if deemed at great risk of reoffending.

<sup>296</sup> Innst.O.nr.92 (1999-2000) p. 7.

<sup>297</sup> Prop. 97L (2009-2019).

imprisonment of 21 years<sup>298</sup> for the aggravated rape of a child under 14 years of age, which represents one of the highest possible terms of sentence within Norwegian penal law. When applying this maximum sentence, the court will consider how many times the offence has occurred, whether the offence was committed by several offenders, if the offence was committed in a particularly painful or degrading manner, the victim's age, the harm caused and the impact the offence has had on the victim's overall health.<sup>299</sup>

One of the reviewed cases included 270 victims and received a sentence of 16 years in prison.<sup>300</sup> Another case involved 256 victims and the offender was sentenced to 13 years and 6 months in prison.<sup>301</sup> Yet another offender was sentenced for, among other offences, 135 counts of rape over the internet against 16 victims.<sup>302</sup> The penalties in the reviewed cases ranged from a fine<sup>303</sup> to 21 years in prison.<sup>304</sup> The longest prison sentence was for offences against close to 200 child victims in the Philippines, including aggravated rape against a child under the age of 14 over the internet.

Two offenders had abused 49 victims respectively. One of the offenders received a 12-year sentence and the other a 5-year sentence. In both cases the offenders had established contact with the female victims online and had built relationships of trust with them, which then transitioned into sexual contact. However, the court found that one of the offenders used threats to obtain these sexual acts in two instances.<sup>305</sup> The other offender was not found to have used threats or force, but rather to abuse a relationship of trust and on this basis his sentence was significantly shorter.<sup>306</sup>

The Supreme Court has deemed that 'pornographic' images of children are the product of abuse of a child, and that engaging with such material is an exploitation of the initial abuse. The Court has noted that a strict prohibition of all forms of engagement with CSAM, including possession, is meant to protect children from the abuse that results from the production and dissemination of CSAM.<sup>307</sup> In determining the penalty for the possession of CSAM, the Court has considered several aspects such as: the amount of material; the qualification of the acts depicted; the age of the children depicted; the time the offender has been in possession of the material and whether the offender has shared or disseminated any of the material.<sup>308</sup> The practice of the District Court and the Court of Appeals, concerning, among others, section 266 of the Penal Code 2005, indicates that the spreading of one or a few sexualized images or films depicting CSAM will engender a sentence of between 60 to 90 days in prison. In the case HR-2017-1245-A, the Supreme Court states that the law does not consider the intentions of the offender but rather classifies the act itself based on the facts of the case. However, courts have nonetheless taken intentionality into consideration in cases concerning offenders who have unknowingly downloaded CSAM with legal pornography.<sup>309</sup>

The highest penalties among cases involving offline and online offending were mostly applied in connection to abuse that had been ongoing over a long period of time, and where the victim was in a

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<sup>298</sup> Penal Code (Straffeloven) 2005, section 301.

<sup>299</sup> Skrilbrei and Stefansen (2018), op.cit. p. 105-106. Haugen, F., and Ejfestad, J.S. (2015). *Strafferett – håndbok (4th ed.)*. Oslo: Cappelen Damm Akademisk.

<sup>300</sup> TNERO-2018-130781.

<sup>301</sup> TNERO-2018-182729.

<sup>302</sup> LE-2016-38512: the court pointed out that the offender got a reduced sentence due to his young age of 21.

<sup>303</sup> The offender was found guilty of grooming what he believed to be a 13-year old girl.

<sup>304</sup> HR-2020-2136-A.

<sup>305</sup> HR-2019-271-A.

<sup>306</sup> LG-2018-69755.

<sup>307</sup> See HR-2001-1545 – Rt-2002-1187.

<sup>308</sup> See: Rt-2013-950.

<sup>309</sup> See page 67

familial relationship of dependence to the offender (such as father, mother or stepfather, or where the victim was financially reliant on the offender) combined with the possession of CSAM depicting aggravated forms of abuse.<sup>310</sup> In cases concerning the in-person sexual abuse of a victim in the offenders' care these types of offences led to penalties of between 5 and 16 years in prison.

Some of the longest penalties of incarceration (between 12 and 21 years) concern the rape of infants,<sup>311</sup> the extended sexual abuse of the offender's own children over a long period of time;<sup>312</sup> the sexual abuse of a significant number of victims, including online;<sup>313</sup> live-streamed sexual abuse of children abroad<sup>314</sup> and several instances of in-person rape.<sup>315</sup>

Concerning OCSEA offences where offenders have been in direct contact with victims, we are, to date, aware of only one offender who has been convicted of the maximum penalty of 21 years in prison.<sup>316</sup> We note that this is the first case where the maximum penalty was issued, having been increased from the Court of Appeals ruling of 19 years. We welcome this development but note that in other cases of live streamed sexual abuse, including aggravated instances of rape against several child victims under the age of 14 years, offenders have received more lenient sentences. Some OCSEA offenders have abused over 250 victims,<sup>317</sup> of which several of the instances of abuse were qualified as rape against a child yet still have not received the maximum penalty.

## Human trafficking of child victims abroad

Among the cases involving live-streamed sexual abuse of child victims situated abroad, one of the offenders was found guilty of aggravated human trafficking in accordance with the Penal Code 1902, section 224. The offender had ordered filmed sexual abuse material and live-streamed sexual abuse via webcam from the Philippines.<sup>318</sup> The District Court argued that the offender knew that the families procuring their children for the offender were financially reliant on the offender's payments. The court pointed to the fact that the offender planned and described in detail what age he wanted the victims to be and described how the instances of abuse were to be performed, deeming such acts to surpass the qualifications for the 'purchasing of sexual services from a minor.' The court further found that he acted knowing that the children were victims of human trafficking. The offender also decided on the amount of the payment and used the images and film that he procured in order to groom girl victims in Norway. The court thus found that he was not just a recipient of a sexual services from a person who is a victim of human trafficking, he orchestrated the key aspects of the offence, and therefore was found guilty of aggravated human trafficking, as the victims were below the age of 18.

In another case the offender was tried for aggravated human trafficking under the Penal Code 1902, section 224 and the Penal Code 2005, sections 257 and 258.<sup>319</sup> The court found that the offender persuaded the contacts in the Philippines to procure children for sexual exploitation and found that he was able to do this by abusing the contacts' vulnerable socio-economic situations. The sexual assault

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<sup>310</sup> Often very young children.

<sup>311</sup> LB-2015-106198 the offenders received prison sentences of 9 and 12 years respectively.

<sup>312</sup> E.g. LB-2018-45322-1; LB-2017-48815 the offender was sentenced to over 12 years in prison for the prolonged sexual abuse of his daughter.

<sup>313</sup> LB-2017-82747 15 years; TNERO-2018-182729 13 years; HR-2020-2137-A 16 years.

<sup>314</sup> HR-2020-2136-A: 21 years for the abuse of an estimated 200 children.

<sup>315</sup> LE-2016-14310.

<sup>316</sup> HR-2020-2136-A.

<sup>317</sup> TNERO-2018-130781— in the 'Operation Sandra' case with 270 victims the offender was sentenced to 16 years in prison.

<sup>318</sup> TBERG-2016-61974.

<sup>319</sup> TBERG-2018-51923- HR-2020-2136-A.

therefore had a financial incentive, not a sexual one for the adults procuring the children. The prosecutors argued that the offender knew this and abused this fact, knowing that the contacts were willing to go to extreme measures to get paid. The Supreme Court judges were not all in agreement on this matter, with one dissenting judge. The court nonetheless argued that the offender could not be found guilty of human trafficking under sections 257 and 258 because he had not functioned as a trafficker, referred to by the court as ‘ringleader’,<sup>320</sup> which they argued the preparatory work as well as jurisprudence indicates the provision on human trafficking intends to cover.<sup>321</sup> The court also found that the child victims had not been trafficked as a result of the offenders’ actions. The dissenting judge instead argued that the intention behind section 257 is to prohibit the exploitative aspects of the illegal act, and that offender’s actions should be considered a qualified form of participation to human trafficking.<sup>322</sup> The dissenting judge further argued that child victims who have been procured by their caregivers for ‘prostitution or other sexual services’ (section 257 (a)) on an internet based marketplace are not able to extract themselves from the exploitative circumstances by their own free will should they have wanted to. The judge therefore argued that there can be no doubt that this form of exploitation falls within the intent and purpose of section 257 (a) (para. 144).<sup>323</sup>

The Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC Guidelines) require a prohibition of all the offences included in the protocol.<sup>324</sup> This includes a **legal prohibition on the sale of children for the purpose of sexual exploitation, transfer of organs, engagement in forced labour and ‘situations in which adoption constitutes the sale of children.’**<sup>325</sup>

**The Committee reminds states that the international legal definition of ‘sale of children’ is not the same as that of ‘trafficking.’ While ‘the sale of children always involves some form of commercial transaction, which trafficking in children does not require’, trafficking, on the other hand, ‘always has the intended purpose to exploit the child’, which is not ‘a required constitutive element for the sale of children, although the effect of sale can still be exploitative.’<sup>326</sup>**

Sale of children means ‘any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.’<sup>327</sup> Such a provision seems to be lacking in the Norwegian Penal Code and should therefore be considered.

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<sup>320</sup> In Norwegian referred to as ‘bakmannsrolle’.

<sup>321</sup> HR-2020-2136-A See para. 38.; Ot.prp.nr.62 (2002-2003).

<sup>322</sup> Ibid. See para. 134-161. The dissenting judge further argued that the preparatory work specifically expresses that also the person who is responsible for the actual act of exploitation can be guilty of human trafficking (para. 141).

<sup>323</sup> The judge also refers to the Palermo Protocol, article 3(a) which defines human trafficking in the following way: “‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs [...]’

<sup>324</sup> Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, op.cit., para. 43.

<sup>325</sup> Ibid. Para 14.

<sup>326</sup> Ibid. para. 15.

<sup>327</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, article 2(a).

## Attempt to commit a sexual offence online

According to the basic conditions for criminal liability ‘any person who intends to commit an offence which may be punishable by imprisonment for a term of one year or more, and performs an action leading directly to its commission, shall be penalised for attempt, unless otherwise provided.’<sup>328</sup> The penalty may be set below the minimum penalty of the penal provision or to a less severe penalty when the offender is sentenced for attempt.<sup>329</sup>

Among the cases reviewed for this study, 15 cases included the consideration of offenders for the attempt to commit an offence. The court argued that even though an offender may not have managed to get a victim to, for instance, undress in front of a web camera,<sup>330</sup> or to engage in acts that correspond to sexual intercourse,<sup>331</sup> an act constituting criminal attempt has been completed. The various stages of the intended criminal act may not have been fulfilled due to circumstances that are not within the offender’s power. The court may also deem the offender equally punishable as if the acts had been completed, had circumstances not led to another outcome.<sup>332</sup> Offenders have also been convicted for sexually offensive conduct against a child for chatting in a sexualized way with someone they believe is a child.<sup>333</sup> Several offenders were found guilty of attempted rape against a child online, by trying to get victims to perform sexual acts on themselves that correspond to sexual intercourse, and therefore rape.<sup>334</sup> The courts recognize that when an offender has attempted to commit an OCSEA offence, even though the intended acts may not have come to fruition, these acts can nevertheless have long lasting and serious consequences for the well-being and health of victims.<sup>335</sup>

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<sup>328</sup> Penal Code (Straffeloven) 2005, section 16.

<sup>329</sup> Penal Code (Straffeloven) 2005, section 80b.

<sup>330</sup> LG-2018-69755; TOVRO-2016-200174; TOVRO-2016-491.

<sup>331</sup> HR-2016-2357-A.

<sup>332</sup> See HR-2013-1072-A; LB-2012-192905.

<sup>333</sup> LB-2018-34648; LF-2016-106879; TOSLO-2017-148798.

<sup>334</sup> LB-2017-176279; LE-2016-38512; TBERG-2018-51923.

<sup>335</sup> See e.g.: LB-2012-192905.

## Conclusions and Recommendations

The Convention on the Rights of the Child requires Norway to ‘undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.’<sup>336</sup> The past few years have seen a dramatic increase in the number of reported cases of various forms of online child sexual exploitation and abuse (OCSEA) related offences perpetrated within Norway. The recognition of OCSEA as a growing social problem has led to significant efforts made by legislators, police and academia to tackle this challenge to the right of the child to be protected from all forms of violence.

The authors of this report have reviewed and analysed 223 cases of online child sexual exploitation and abuse (OCSEA), including child sexual abuse material and live online child sexual exploitation of child victims abroad. The analysis shows that the Norwegian court system takes OCSEA offences very seriously and is aware of the immense negative impact that OCSEA causes to child victims. Norwegian courts are, through the recent case law on OCSEA, contributing to the crystallisation of international legal definitions relating to the sexual exploitation and sexual abuse of children, as these crimes are increasingly committed with an online component. It is the hope of the authors that the Norwegian case law will serve as an example to other court systems that are beginning to address OCSEA cases.

At the same time, the present report has identified a number of challenges in adjudicating OCSEA cases. These challenges need to be addressed to ensure that Norway continues to adequately implement the rights of the child as set forth in the Convention on the Rights of the Child and guarantees that every child can benefit from the right to be protected from all forms of violence.

The authors recognise the wealth of good practice in preventing and responding to OCSEA in Norway, including the hotline for reporting cases concerning sexual exploitation of children online;<sup>337</sup> various awareness-raising and educational resources, in particular to teenagers;<sup>338</sup> the work of the Norwegian Safer Internet Centre<sup>339</sup>, the helplines *Cross my heart* run by the Red Cross<sup>340</sup> and the “The alarm telephone” 116 111<sup>341</sup>, as well as the work of a number of businesses, such as Google and Telenor.

The following list of recommendations aims to foster a continued and constructive discussion on OCSEA in Norway and beyond. To facilitate the reading, the recommendations have been listed under subsections referring to the different chapters of this report.

## Legislation and Policy (Chapter 1)

This report found that new legislation and policy regarding (directly or indirectly) sexual offences against children have not always undergone a formal process to assess their potential impact on the rights of the child. To ensure that national legislation and policy respect the Convention on the Rights of the

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<sup>336</sup> Convention on the Rights of the Child, article 4.

<sup>337</sup> [Seksuell utnyttelse av barn på internett – Politiet.no](https://www.politiet.no/nyheter/nyheter-og-nyheter/2018/08/18-seksuell-utnyttelse-av-barn-pa-internett)

<sup>338</sup> [Nettvett og sosiale medier \(ung.no\)](https://www.nettvett.no/).

<sup>339</sup> [Norwegian Safer Internet Centre | Medietilsynet](https://www.saferinternetcentre.no/).

<sup>340</sup> [Kors På Halsen - Hjem \(rodekors.no\)](https://www.korspa-halsen.no/).

<sup>341</sup> <https://www.116111.no/>



Child, the CRC Committee has stipulated, in its General Comment No. 5, that child impact assessments need to be built into government processes at all levels. Such child impact assessments should assess the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights.

**Recommendation 1:** Norway should make use of **child rights impact assessments** when developing new legislation and policy to ensure that the rights in the UN CRC have been respected and that the best interests of the child are a primary consideration.<sup>342</sup>

**Recommendation 2:** Legislation should be **periodically reviewed** and updated to ensure that it is compatible with the rights in the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Sale of children, child prostitution and child pornography (OPSC) and that it remains relevant in the context of technological advances and emerging practices.<sup>343</sup> In this regard, ECPAT Norway particularly recommends that:

- i. The Penal Code is brought fully into line with the OPSC, including by ensuring that it explicitly prohibits the sale of children.
- ii. Considering that OCSEA offences are made possible through platforms and technologies owned by private businesses:
  - It is crucial to adopt specific legislation on the corporate liability and obligations of businesses to undertake child-rights due diligence. Such legislation should specify the obligations of internet providers in relation to child sexual abuse material (CSAM), including the sharing of live content, the storing of such materials, and the distribution of such materials, as well as obligations to actively prevent grooming, sexual abuse and sexual extortion on their platforms;
  - Legislation should include a requirement for internet service providers in Norway to report any suspected cases of OCSEA to the police.<sup>344</sup>

**Recommendation 3:** ECPAT Norway recommends that Norwegian policy and strategy on digital online abuse should:

- i. Include all forms of online child sexual exploitation and abuse (OCSEA).
- ii. Be informed by the voices and experiences of survivors of OCSEA, and all policy measures should be child rights and victim centred.
- iii. Norway is part of the global WeProtect Alliance to protect children from sexual exploitation and abuse online.<sup>345</sup> The National Model Response provides a framework for Norwegian government agencies, businesses and civil society to work together and should form the basis for the anticipated new strategy on digital online abuse.

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<sup>342</sup> CRC/GC/2003/5, para. 45 and CRC/C/GC/25, para. 24.

<sup>343</sup> CRC/C/GC/25, para. 24.

<sup>344</sup> An example of this is the US legislation requiring all internet service providers to report suspected cases of OCSEA. This generates millions of cases every year which are processed by NCMEC, many of these cases are then brought to the attention of the Norwegian police. See: 18 US Code, section 2258 A: Reporting requirements of providers, found at: <https://www.law.cornell.edu/uscode/text/18/2258A>

<sup>345</sup> 'Government and law enforcement cannot tackle this crime without widespread support and engagement. It is only through working as a broad coalition with the private sector and civil society that we can ensure all children are safe from sexual exploitation and abuse online.' See [Our Alliance - WePROTECT Global Alliance](#)

## Forms of online exploitation and abuse (Chapter 2)

The case review has revealed that offenders in Norway are perpetrating various forms of OCSEA cases against children within Norway as well as abroad. The analysis has also brought to light the grave nature of these offences and highlighted how many of the offences include various forms of payment offered to children for a variety of sexual favours online. The review of cases also revealed the aggravated forms of abuse that child victims of OCSEA have had to endure.

**Recommendation 4:** The analysis of the case law showed that section 309 in the Penal Code 2005 on the purchase of sexual favours from a minor is rarely applied in OCSEA cases. This despite the fact that many of the OCSEA cases reviewed included aspects of purchasing various forms of sexual services from children through various forms of payment. ECPAT Norway therefore recommends that legal practice be brought in line with the OPSC, which recognizes the gravity of such offences.

- i. Section 309 of the Penal Code should be applied as an aggravating factor and/or cumulative offence in cases where offenders have attempted to, as well as committed, the offence of purchasing sexual favours from any person below the age of 18.
- ii. Considering also the grave nature of such offences,<sup>346</sup> the penalty for the crime of purchasing sexual favours from a child under section 309 of the Penal Code should be increased to 6 years.

**Recommendation 5:** Considering that much of the acts committed and material depicted in the OCSEA cases reviewed in this study included aggravated forms of abuse that amount to cruel, degrading and humiliating forms of abuse, (arguably even torture), and considering that these forms of abuse are aimed at very young children, Norwegian law and legal practice should ensure:

- i. That the penalty in section 311 of the Penal Code be increased to 6 years as is the case in neighbouring countries.
- ii. That the highest penalties be applied in cases where offenders are found responsible for such acts.

## Child victims of OCSEA (Chapter 3)

**Recommendation 6:** The findings of this study have highlighted the serious and damaging nature of OCSEA offences, and also pointed to the great risk of secondary traumatization of victims throughout the legal process. All child victims should be able to access child-sensitive and comprehensive services in child-friendly environments throughout the legal process to minimize the risk of secondary traumatization. ECPAT Norway therefore makes the following recommendations:

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<sup>346</sup> See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Article 27 – Sanctions and measures 1. ‘Each Party shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness.’

- i. To ensure that child victims aged 16 and above in contact with the justice system benefit from the same procedural guarantees as children under 16, including the option to give their testimony in a child-friendly environment, such as provided by the Children's Houses.
- ii. There are 11 Children's Houses spread out over Norway, and these are mostly placed in densely populated areas. There is therefore a risk that children in rural areas cannot access their services. All child victims of sexual exploitation and abuse up until the age of 18 should be able to access the services of the Children's Houses. To ensure that all children can benefit from these child-sensitive and comprehensive services, Children's Houses should be established across the country.

**Recommendation 7:** The case law analysis for this study revealed how easily Norwegian offenders are able to access child victims anywhere, across Norway but also abroad. Victims abroad typically find themselves in situations of extreme vulnerability. It is therefore crucial that legislative amendments are made to ensure that, when a case is assumed by a Norwegian court:

- i. OCSEA victims abroad can access effective remedies, including the same forms of compensation as child victims in Norway.
- ii. Appropriate procedures and routines are put in place for the payment of compensation to victims situated abroad. These procedures should include cooperation with relevant authorities and/or non-governmental organizations to ensure that the child is taken out of his or her situation of abuse and that he or she can access child friendly psychological and physical rehabilitation, as well as follow up. The procedures should also seek to ensure that the monetary compensation does not come to benefit those that have procured the victim for exploitation.
- iii. Through international development cooperation, Norway should work to prevent sexual exploitation of children, strengthen child protection systems and promote one-stop centres (Children's Houses) that provide multi-disciplinary and child-sensitive support and services for recovery and social reintegration of child victims in destination countries.<sup>347</sup>

**Recommendation 8:** Some groups of children can have increased vulnerability to online sexual exploitation and abuse. The cases reviewed for this study indicated that child victims of online sexual exploitation and abuse are often especially vulnerable and experience multiple forms of abuse and neglect in their various life venues.<sup>348</sup> ECPAT Norway recommends that further research should be carried out focused on how to protect groups of children who are particularly vulnerable to online sexual exploitation. This would include groups such as children with disabilities, children in specialised or institutional care and LGBTI children. Such research should involve participatory action methodologies in which children and young people themselves take on an active role in the research.<sup>349</sup>

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<sup>347</sup> ECPAT Norway (2018), op.cit.

<sup>348</sup> See page 46 of this report. Further, as a report by We Protect Global Alliance highlights, children with disabilities can have increased vulnerability to online abuse due to several factors including poverty, extensive time online, lack of education and awareness, loneliness and isolation. They note that there is often a failure of the global child protection community to adequately protect children with disabilities. See <https://www.weprotect.org/wp-content/uploads/Intelligence-briefing-2021-The-sexual-exploitation-and-abuse-of-disabled-children.pdf>

<sup>349</sup> The research should be carried out in accordance with guidelines on ethical research involving children. See <https://www.ecpat.org/wp-content/uploads/2019/11/Guidelines-for-Ethical-Research-on-Sexual-Exploitation-of-Children-ECPAT-International-2019.pdf>

## Offenders (Chapter 4)

**Recommendation 9:** As the findings of this study have shown, OCSEA offenders have been identified to include, among others, academics, social workers, teachers, child psychologists, judges and politicians. In some cases, offenders used specialized knowledge about children to be able to commit sexual offences against them. In light of these findings, ECPAT Norway recommends to increase efforts to raise awareness on the responsibility of employers (public and private), as well as to establish firm rules and mechanisms to prevent staff from committing OCSEA crimes in the workplace, during business travels and by using the intranet and IT equipment. This concerns both public and private establishments.

**Recommendation 10:** The findings of this study also support previous findings that there is significant overlap between online and offline offending. In addition, the case law analysis revealed that many offenders are repeat offenders and only stop offending upon arrest or once they are taken into custody. Therefore, ECPAT Norway recommends that efforts are increased to identify and arrest OCSEA offenders.

**Recommendation 11:** The review of the Norwegian caselaw indicates that the number of cases concerning young offenders of OCSEA is increasing. ECPAT Norway therefore underlines the need to develop age-appropriate preventative measures such as awareness raising, information and education tools that target children and young people, as we have seen an increase in the number of OCSEA cases as well as offline sexual abuse offences committed by young people over the past few years.

## Investigation and prosecution (Chapter 5)

The case review in the present study revealed that there are significant obstacles to investigating cases of OCSEA and identifying victims. For instance, the findings showed that victims depicted in CSAM circulated online are rarely identified, and therefore remain without access to justice or support for their recovery and social reintegration. The analysis also showed that there is little effort and possibility to identify victims in cases involving the possession, consumption or dissemination of already produced CSAM.

**Recommendation 12:** Our case review showed that there is a need to strengthen the investigation of OCSEA offences, in particular when committed against victims abroad. ECPAT Norway recommends:

- i. That the National Criminal Investigations Unit Kripos be provided with the necessary resources to step up the efforts to identify child victims in CSAM cases.
- ii. That all police districts report identified OCSEA victims to INTERPOL's International Child Sexual Exploitation (ICSE), so that scarce resources are not used to identify the

same victims again. This will allow specialized investigators to exchange information across more than 60 countries.<sup>350</sup> ()

**Recommendation 13:** The findings of this and other studies within Norway have revealed that the short amount of time during which IP addresses are stored by internet service providers represents a significant obstacle for police to pursue cases of OCSEA, which are often uncovered or reported only after some time has passed. ECPAT Norway recommends:

- i. To ensure that the police has the necessary time and tools to identify and investigate offenders and victims of OCSEA. For that purpose, the new Ecom legislation on electronic communications should allow the storing of IP addresses for up to 12 months.
- ii. Efforts should be stepped up to remove CSAM online, in partnership with technology companies and relevant civil society organizations.

**Recommendation 14:** The case law analysis for this study revealed that the highest penalties are seldom applied in OCSEA cases, even when offenders have committed hundreds of serious offences against a large number of victims. Considering the extreme gravity of OCSEA offences and the devastating and long-lasting impact on victims, ECPAT Norway recommends that:

- i. The highest penalties should be applied when offences meet the requirements set forth by the relevant legal provisions.
- ii. Victim impact statements should be taken into consideration when establishing appropriate sentencing and victim compensation.

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<sup>350</sup> See INTERPOL, International Child Sexual Exploitation Database, <https://www.interpol.int/en/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database>

## Annexes

### Annex 1:

#### Cases of live streamed sexual abuse of child victims abroad

Case	TBERG-2016-61974 District Court	HR-2020-2136-A Supreme Court	LF-2018-129538 Court of Appeals	TGJOV-2017-86572 District Court	HR-2020-2137-A Supreme Court
Country of destination	The Philippines	The Philippines	The Philippines	The Philippines	Romania, the Philippines and Madagascar
Total number of victims	18 victims in Norway 43 victims in the Philippines	ca 190 victims	2	8	8
Victims identified	1 victim	1 identified victim	None	None	2
(Oppreising) Compensation to victim abroad	None	2 victims 200'000 NOK 170'000 NOK	None	None	2 victims 250'000 each
Live streaming of child sexual abuse	Paid for livestreamed sexual abuse of children. Convicted of aggravated human trafficking.	Paid for livestreamed sexual abuse of children. Complicit to incest. Freed from human trafficking.	Misleading a child to sexually offensive conduct.	Paid for livestreamed sexual abuse of children. Applied Penal Code 2005, §309	Paid for livestreamed sexual abuse of children. Freed from human trafficking.
Penal Code 1902	1902 §201, §204a, §195, §205, §224, §200,	1902 §195, §196, §200, §201, §204a §205, §206, §224	\$200	\$195, \$200, §203c, §204a	\$195, §197, §258
Penal Code 2005		\$257, §299a, §301, §305, §312, §258, §300, §304, §311,		\$299, §309, §300,	\$301, §303, §312, §302, §311,
Penalty	8 years	21 years	120 days	7 years	16 years

## Annex 2:

# Penal Code 2005 relevant provisions

## Chapter 24 Protection of personal freedom and peace

### § 257. Human trafficking

Any person who by violence, threats, taking advantage of a vulnerable situation or other improper conduct forces, exploits or deceives another person into/for

- a) prostitution or other sexual services,
- b) labour or services, including begging,
- c) active military service in a foreign country, or
- d) consenting to the removal of one of the person's internal organs,

shall be punished for human trafficking with imprisonment for a term not exceeding six years.

The same penalty shall be applied to any person who

- a) facilitates such force, exploitation or deception as specified in the first paragraph by procuring, transporting or receiving the person,
- b) otherwise contributes to the force, exploitation or deception, or
- c) provides payment or any other advantage to obtain consent for such a course of action from a person who has authority over the aggrieved person, or who receives such payment or advantage.

Any person who commits an act as specified in the first or second paragraph against a person who is under 18 years of age shall be subject to punishment regardless of whether the act involved violence, threats, taking advantage of a vulnerable situation or other improper conduct. Any person who was ignorant of the fact that the aggrieved person was under 18 years of age shall be subject to a penalty if he/she may be held to blame in any way for such ignorance.

### § 258. Aggravated human trafficking

Aggravated human trafficking is punishable by imprisonment for a term not exceeding 10 years. In determining whether the violation is aggravated, particular weight shall be given to whether the person subjected to the act was under 18 years of age, whether severe violence or force was used and whether the act generated significant proceeds. Any person who was ignorant of the fact that the aggrieved person was under 18 years of age shall be punished if he/she may be held to blame in any way for such ignorance. Section 259. Slavery

Any person who enslaves another person shall be subject to imprisonment for a term not exceeding 21 years. The same penalty shall apply to any person who engages in slave trading or the transport of slaves or persons destined for slave trading.

### § 259. Slavery

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### § 260. Conspiracy to engage in slavery

Any person who enters into a conspiracy with another person to commit an act specified in section 259 shall be subject to a penalty of imprisonment for a term not exceeding 10 years.

## Chapter 26 Sexual offences

### § 299. Sexual assault on a child under 14 years of age

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

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

### § 300. Minimum penalty for sexual assault involving intercourse on a child under 14 years of age

The penalty is imprisonment for a term of between three and 15 years if the sexual assault as specified in section 299 involved:

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

### § 301. Aggravated sexual assault on a child under 14 years of age

Aggravated sexual assault on a child under 14 years of age is punishable by imprisonment for a term not exceeding 21 years. The same applies if the offender has previously been convicted of acts specified in sections 291, 294 or 299.

In determining whether the sexual assault is aggravated, particular weight shall be given to

- a) whether it was committed by multiple persons acting together,
- b) whether it was committed in a particularly painful or offensive manner,
- c) the age of the aggrieved person at the time of the act,
- d) whether repeated abuse occurred, or
- e) whether the aggrieved person died or suffered considerable harm to body or health as a result of the act. A sexually transmitted disease is always considered considerable harm to body or health pursuant to this section.

### § 302. Sexual activity with a child between 14 and 16 years of age

Any person who engages in sexual activity with a child between 14 and 16 years of age shall be subject to imprisonment for a term not exceeding six years, unless the conduct also falls within the scope of other provisions. The same penalty shall be applied to any person who makes a child between 14 and 16 years of age perform acts corresponding to sexual activity on himself/herself.

### § 303. Aggravated sexual activity, etc. with a child between 14 and 16 years of age

Aggravated violation of section 302 is punishable by imprisonment for a term not exceeding 15 years. The same applies if the offender has previously been convicted of acts specified in sections 291, 299 or 302.

In determining whether a violation of section 302 is aggravated, particular weight shall be given to whether

- a) the act was committed by multiple persons acting together,



- b) the act was committed in a particularly painful or offensive manner, or
- c) the aggrieved person died or suffered considerable harm to body or health as a result of the act. A sexually transmitted disease is always considered considerable harm to body or health pursuant to this section.

#### **§ 304. Sexual act with a child under 16 years of age**

Any person who performs a sexual act with a child under 16 years of age shall be subject to imprisonment for a term not exceeding three years, unless the conduct falls within the scope of section 299.

#### **§ 305. Sexually offensive conduct, etc. directed at a child under 16 years of age**

A penalty of a fine or imprisonment for a term not exceeding one year shall be applied to any person who

- a) by words or conduct exhibits sexually offensive or other indecent conduct in the presence of or directed at a child under 16 years of age.
- b) forces or induces a child under 16 years of age to exhibit sexually offensive or other indecent conduct, unless the situation falls within the scope of stricter provisions.

#### **§ 306. Arranging a meeting to commit sexual abuse**

A penalty of a fine or imprisonment for a term not exceeding one year shall be applied to any person who has arranged a meeting with a child under 16 years of age, and who with intent to commit an act with the child as specified in sections 299-304, section 305 b) or section 311 first paragraph a) has arrived at the meeting place or a place where the meeting place may be observed.

#### **§ 307. Due care requirement with regard to the age of the child**

For the provisions of sections 299-306, ignorance of the correct age of the child does not lead to exemption from punishment if the indicted person may be held to blame for his or her ignorance in any way. For the provisions of section 295 c) and sections 309 and 310, ignorance of the correct age of the child does not lead to an exemption from penalty if the indicted person may be held to blame for his or her ignorance.

#### **§ 308. Waiver of penalty**

The penalty pursuant to the provisions of sections 299-304, section 305 b) second alternative and section 306 may be waived or set below the minimum penalty of section 300 if the persons involved are approximately equal in age and development.

#### **§ 309. Purchase of sexual services from minors**

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

- a) obtains for himself/herself or another person sexual activity or a sexual act with a person under 18 years of age by providing or agreeing on payment,
- b) obtains sexual activity or a sexual act with a person under 18 years of age on the basis of such payment being agreed on or provided by another person, or
- c) in the manner described in a) or b) makes a person under 18 years of age perform acts corresponding to sexual activity on himself/herself.

If the sexual activity or act was conducted in a particularly offensive manner, and the conduct does not fall within the scope of stricter provisions, the penalty is imprisonment for a term not exceeding three years.

#### **§ 310. Showing of sexual abuse of a child or shows which sexualise children**

A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who attends a show of sexual abuse of a child or a show which sexualises children. «Child» means a person under 18 years of age.

#### **§ 311. Depiction of sexual abuse of children or depiction which sexualizes children**

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

- a) produces a depiction of sexual abuse of children or a depiction which sexualises children,
- b) publishes, offers, sells, supplies to another person, makes available or otherwise seeks to disseminate depictions as specified in a),
- c) acquires, imports or possesses depictions as specified in a), or intentionally acquires access to such material,
- d) gives a public presentation or arranges a public performance or exhibition of depictions as specified in a), or
- e) induces a person under 18 years of age to allow himself/herself to be depicted as part of commercial production of moving or still pictures with sexual content.

In this section «children» means persons who are or appear to be under 18 years of age.

A person who negligently commits an act specified in the first paragraph shall be subject to a fine or imprisonment for a term not exceeding six months. The same penalty shall apply to any proprietor or superior who intentionally or negligently fails to prevent the commission of an act as specified in the first paragraph within an enterprise.

The penalty may be waived for a person who takes and possesses a picture of a person between 16 and 18 years of age if this person consented and the two are approximately equal in age and development.

This provision does not apply to depictions that must be regarded as justifiable for artistic, scientific, informational or similar purposes. Nor does this provision apply to any film or videogram that the Norwegian Media Authority has by prior review approved for commercial screening or sale.

#### **§ 312. Incest**

A penalty of imprisonment for a term not exceeding six years shall be applied to any person who engages in sexual activity with a relative in the descending line or makes that person perform acts corresponding to sexual activity on himself/herself. Biological and adopted descendants are considered relatives in the descending line.

#### **§ 313. Sibling incest**

A penalty of imprisonment for a term not exceeding one year shall be applied to any person who engages in sexual activity with a brother or sister or makes such person perform acts corresponding to sexual activity on himself/herself.

#### **§ 314. Sexual activity between other closely connected persons**

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

- a) engages in sexual activity with a foster child or step child, or a person under 18 years of age who is in his care or under his authority or supervision, or
- b) makes a person specified in a) perform acts corresponding to sexual activity on himself/herself.

## **Chapter 21. Protection of information and exchange of information**

#### **§ 204. Intrusion into a computer system**

A penalty of a fine or imprisonment for a term not exceeding two years shall be applied to any person who by breach of a protective measure or other illicit means obtains access to a computer system or a part thereof.

#### **§ 205. Violation of the right to private communication**

A penalty of a fine or imprisonment for a term not exceeding two years shall be applied to any person who illicitly

- a) and using technical means secretly monitors or makes secret recordings of a telephone conversation or other communication between other persons, or of negotiations at a closed meeting he/she is not attending personally, or to which he/she has illicitly gained access,
- b) breaches a protective measure or otherwise illicitly gains access to information that is transmitted using electronic or other technical means,
- c) opens a letter or other sealed written message addressed to another person, or otherwise illicitly gains access to the content thereof, or
- d) obstructs or delays receipt by the addressee of a communication by concealing, modifying, distorting, destroying or withholding the message.

