

FRAMING CHILD SEXUAL ABUSE AND EXPLOITATION ONLINE AS A FORM OF HUMAN TRAFFICKING: OPPORTUNITIES, CHALLENGES, AND IMPLICATIONS

Expert Roundtable Outcomes Briefing

Hosted on 29th June 2021 by WeProtect Global Alliance and
International Justice Mission's Center to End Online Sexual Exploitation of Children
- an affiliated event to the Together to #ENDviolence Solution Summit Series

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Organisations represented¹

- Anti-Money Laundering Council, Philippines
- Child Circle, Belgium
- Crown Prosecution Service, UK
- Dentons
- Department of Justice, US
- ECPAT International
- European Commission
- Europol
- Global Partnership to End Violence Against Children (EVAC)
- Group of Experts on Action against Trafficking in Human Beings, Council of Europe (GRETA)
- International Centre for Missing & Exploited Children (ICMEC)
- International Justice Mission (IJM)
- Interpol
- Jones Day
- King's College London (University)
- Ministère de l'intérieur, France
- National Center for Missing & Exploited Children (NCMEC)
- Organization for Security and Co-operation (OSCE)
- Panorama Global
- South Asia Initiative to End Violence Against Children (SAIEVAC)
- Suojellaan Lapsia, Finland
- UNICEF Albania
- University of Edinburgh
- University of Leiden, the Netherlands
- University of South Wales, Australia
- United Nations Office on Drugs and Crime (UNODC)
- Walk Free
- WeProtect Global Alliance

¹ This paper reflects the summary of a discussion involving the following organisations and is not a representation of their policies or views.

Background to the roundtable

Child exploitation and abuse online sits within a wider framework of harms, including violence against children, child abuse, gender-based violence, human trafficking and modern slavery, online harms, financial exploitation and so on. Abuse that is facilitated by technology is an issue of growing concern as access to the internet grows significantly globally, with a third of users thought to be under 18².

The new General Comment No. 25 on children's rights in digital environments adopted by the UN Committee on the Rights of the Child in March 2021³, recognises child trafficking as one of the risks for children in digital environments and sets the basis of stakeholders' responsibilities towards child rights in digital environments.

In practice, there is much overlap in the forms of abuse and exploitation that children suffer, with sexual abuse now frequently having an online or technology-facilitated element (such as online grooming for the purposes of sexual exploitation and abuse; production, distribution, possession of child sexual exploitation and abuse material; and livestreaming of child sexual exploitation and abuse).

Cases of trafficking also increasingly have an online or technology-facilitated element. According to Europol, traffickers are moving their business model online⁴, which is likely to have been exacerbated by the COVID-19 global pandemic.⁵ With traffickers utilising technology to recruit, control and exploit child victims, it is important to understand the implications of technology on this crime.

Many countries' domestic laws on child abuse material were drafted in a time when the internet did not exist or was in its infancy. Equally, the internationally agreed trafficking definition, known as the 'Palermo Protocol', was drafted in 2000 and makes no mention of the internet in its text. Law is still evolving in this area and how these online-facilitated crimes are defined may vary across domestic legal instruments. This poses a challenge to policymakers, legislators and practitioners; the way in which a particular type or form of abuse is framed and defined can have significant implications for the response to it and to its victims.

A group of experts was brought together for a virtual roundtable to better understand how child trafficking for sexual purposes and child sexual exploitation and abuse online overlap; and to explore the opportunities, challenges, and implications of framing some online exploitation crimes as a form of trafficking.⁶

² <https://www.unicef-irc.org/growing-up-connected#:~:text=At%20the%20global%20level%2C%20it,shift%20over%20the%20past%20decade.>

³ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

⁴ European Commission, Strategy on Combatting Trafficking in Human Beings (2021-2025): https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1663

⁵ IJM, COVID-19 Brief on Online Sexual Exploitation of Children (2021): https://osec.ijm.org/documents/3/2021-04_IJM_-_COVID_19_OSEC_Brief.pdf

⁶ Four key discussion questions guided the debate:

- i. *What are the areas of overlaps between child trafficking and online child sexual exploitation, and what are the best practices to prevent and respond to them?*
- ii. *What are participants' views on the assertion that using children to create child sexual abuse materials could be considered a form of human trafficking under the Palermo Protocol? What forms of online child sexual exploitation are clearly not included in the definition of human trafficking (the Palermo Protocol)?*
- iii. *What are the implications of framing livestreaming of child sexual exploitation and abuse – and other aspects of online-facilitated abuse – as a form of child trafficking?*
- iv. *More broadly, how should the response to child trafficking evolve given the increasing role of technology and the internet in cases? What are the key gaps and priority areas?*

The Philippines experience – International Justice Mission

There is significant evidence of the internet being used in the Philippines not only to facilitate transactions and trafficking for sexual purposes, but also to traffic children to meet the demand for new child sexual exploitation and abuse material, including via live streaming.⁷ Online trends towards trafficking have led to calls to delineate child sex trafficking from general trafficking under law, with stronger penalties enforced due to the dual nature of the crime.⁸ IJM, through its work in the Philippines, argues that taking an anti-trafficking approach to the production of child sexual exploitation and abuse material, including live streaming of abuse, yields benefits to victims and survivors. This approach, based on definitions in Philippine law⁹ and the Palermo Protocol¹⁰, has led to more than 840 victims rescued, over 100 convictions, and trauma-informed rehabilitation interventions. Existing structures that support anti-trafficking efforts include specialised law enforcement units, aftercare programs, and dedicated prosecution task forces. These resources proved helpful in upholding the best interests of the child, as trauma-informed care has become a prominent approach in the Philippine anti-trafficking community.

Key themes of the roundtable discussion

Challenges with framing online exploitation and abuse as trafficking

- The Palermo Protocol includes ‘sexual exploitation’ as one of the various forms of exploitation for which a person may be trafficked. In theory, this may cover some or all online sexual offences against children, even though this is not explicitly referenced in the text. However, the domestic interpretation of the Palermo Protocol means there is wide variation in how trafficking laws are proscribed. In some countries, it may not be possible to charge online child sexual exploitation and abuse cases using trafficking legislation as these laws require some aspect of ‘movement’ or ‘travel’ to be demonstrated. Elsewhere, such as in the United States, domestic sex trafficking legislation requires a commercial element, which is not a requirement under the Palermo Protocol.
- Human trafficking is seen primarily as a crime that is associated with migration / organised crime. Sexual abuse against children, which is often committed within a family setting, may often be more associated with a known perpetrator and more domestic setting, making the two crimes seem quite different.
- However, there are exceptions on both sides. For example, some forms of online child sexual exploitation and abuse, particularly the searching for, possession and viewing of child sexual abuse material (including livestreamed abuse), may have a more organised element that crosses borders and involves a commercial aspect. In many trafficking cases, there can be family involvement.

⁷ IJM, Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society (SUMMARY REPORT): https://ijmstoragelive.blob.core.windows.net/ijmna/documents/studies/Final_OSEC-Public-Summary_05_20_2020.pdf

⁸ WeProtect Global Alliance, Global Threat Assessment (2019): <https://www.weprotect.org/issue/global-threat-assessment/>.

⁹ Congress of the Philippines, Republic Act No. 10364: www.lawphil.net/statutes/repacts/ra2013/ra_10364_2013.html.

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx.

- Trafficking is a broader crime that, by definition, also includes crimes against adults, as well as several other forms of exploitation (domestic servitude, forced labour, organ harvesting, etc). There is a risk, according to some, that subsuming sexual abuse of children into the trafficking framework could mean less focus on the sexual and child aspects of the crime (and associated long-term harms) and hamper specific prevention efforts.
- It was said by some that trafficking cases are known to be difficult to prosecute and convict (with very low convictions in some countries when compared with numbers of suspected or known victims). In addition, some sexual exploitation and abuse charges may have linked protections (such as civil prevention orders and management of offenders).

Risks and benefits of framing online exploitation and abuse as trafficking vary with country-specific legal, legislative, and operational contexts

- The framing of and response to sexual exploitation and abuse of children may vary across countries, depending on a number of factors (the domestic laws, political will, operational contexts, resources, etc). On both sides, there may be risks and benefits to if the issue is framed as ‘child trafficking’ or not.
- It was broadly agreed that human trafficking attracts more attention, political will and resources globally than online sexual exploitation. Multiple law enforcement requests for support on ‘cyber-enabled trafficking’ cases were reported in some parts of the world, along with a general need to develop cyber capabilities. In some areas, a political focus on trafficking has led to more police and prosecutorial capability and capacity. Consideration should therefore be given to better utilise these resources, particularly where other departments, such as child protection, may be under-resourced.
- Achieving restitution for child victims of sexual exploitation and abuse is possible in some jurisdictions. It was argued that trafficking offences could potentially unlock specific restitution processes and procedures that could benefit and compensate a child victim. For example, compensation claims against Western demand-side offenders (sometimes referred to as ‘consumers, buyers, or customers’) of livestreamed abuse of children in the Philippines. In these cases, the trafficking protocols of a country may facilitate a recovery pathway for the child, including specialist support and accommodation. However, no matter how the crime is framed, restitution can be challenging to achieve for children.
- In many countries, trafficking charges may carry more severe penalties, which could potentially act as a deterrence to offenders – although it is not always possible or appropriate to use this legislation.
- Domestic laws on legal consent to sexual activity vary. Apparent or perceived ‘consent’ by a child is sometimes used as a defence against the crime of sexual exploitation or abuse. The internationally agreed definition of child trafficking recognises that no child (an individual under 18, according to the UN Convention on the Rights of the Child) can give informed consent to his or her own exploitation.
- The role of the private sector in trafficking presents a possible opportunity to focus attention on online crimes. For example, many companies were active in tackling human trafficking in their supply chains and various domestic laws require larger companies to produce transparency statements about this. The inclusion of child sexual exploitation

and abuse online within this framework could help to raise the profile and translate to additional resources. It was noted that human trafficking was the only human rights exception to Section 230 of the United States' Communications Decency Act¹¹, highlighting its power politically in the corporate sector.

Putting the child first

- Participants felt that child protection systems in general were under-resourced, which hampered efforts to prevent all forms of child abuse and to respond to victims. A lack of robust data also meant that it was difficult to fully comprehend and assess the true scale of sexual violence against children.
- Notably, the majority of participants agreed that a child protection response was required that put the best interests of the child at the heart of any investigation, whatever the domestic context or legal mechanisms provided.

Mapping the way forward

The fast-changing pace of technology across the world presents challenges for those interpreting laws and trying to prevent the exploitation and abuse of children in a digital age. How this issue is framed and defined will have important consequences for children and their protection. Therefore, it is vital that further work is done to better understand the evolving nature of online-facilitated exploitation, abuse and trafficking – and the implications for law, policy and practice.

Based on the evidence and the roundtable discussion, WeProtect Global Alliance makes the following key recommendations:

1. **Improved legal clarity:** Legal and policy reform should be explored to help improve legal clarity in cases of child trafficking and wider offences of child sexual exploitation and abuse that have an online element.
2. **Conduct further research and data to scope the specific gaps, challenges, and good practices referenced at the event:** A review of current practice and legislation relating to child trafficking and child sexual exploitation and abuse online, which includes an analysis of restitution, compensation, sentencing and victim support, could provide better data at country level on what works best for children in terms of protection, prevention and justice against sexual offences and trafficking.
3. **Strengthen child protection systems:** A child protection response that puts the child's best interests first is the most important element when a sexual crime has been committed against a child. Improved resourcing of the systems can ensure an improved multi-agency response to child victims of online sexual offences and trafficking.
4. **Increase priority and funding:** More political will and resourcing is required to raise the profile of child sexual exploitation and abuse online and to generate the funding necessary to tackle it, including training law enforcement on preserving and presenting evidence in cases with a cyber element.

¹¹ Section 230 broadly protects online services and users from liability when they do not remove third-party content, and also protects them from liability when they do remove content. In 2018, Section 230 was amended by the Stop Enabling Sex Traffickers Act (FOSTA-SESTA) to require the removal of material violating federal and state sex trafficking laws.