



International Labour
Organization



National Centre against
Violence

IMPROVING THE LEGAL PROTECTION OF CHILD VICTIMS OF SEXUAL ABUSE AND EXPLOITATION

ANALYTICAL REPORT

ULAANBAATAR
2010

Copyright © International Labour Organization and National Centre against Violence (NCAV) of Mongolia 2010

First published 2010

Web PDF edited 2014

For rights of reproduction application should be made either to the ILO: ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org or to National Centre against Violence (NCAV) of Mongolia: Ulaanbaatar, Mongolia; by e-mail: mongolcav@mongol.net. For rights of translation application should be made to the ILO, acting on behalf of both organizations, to the address mentioned above.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

ILO; National Centre against violence of Mongolia

Mongolia: Improving the legal protection of child victims of sexual abuse and exploitation - Analytical report / International Labour Office; ILO International Programme on the Elimination of Child Labour; National Centre against Violence (NCAV) of Mongolia – Ulaanbaatar: ILO, 2010

ILO ISBN: 978-92-2-124437-0 (print); 978-92-2-124438-7 (web pdf)

NOTE
Funding for this publication was provided by the United States Department of Labor (MON/05/50/USA).
This publication does not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government.

The designations employed in this publication and the presentation of data therein do not imply the expression of any opinion whatsoever on the part of the ILO and National Centre against Violence (NCAV) of Mongolia concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

ILO and National Centre against Violence (NCAV) of Mongolia do not accept any responsibility in case of inaccuracy, error or omission of for any consequence related of the use of this data.

For more information please contact the National Centre against Violence (NCAV) of Mongolia at: Ulaanbaatar, Mongolia by e-mail: mongolcav@mongol.net

Visit our websites: www.ilo.org/ipec and <http://www.safefuture.mn>

Printed in Mongolia

CONTENTS

Abbreviations	4
Foreword	5
CHAPTER 1. INTRODUCTION	6
1.1. Objectives	6
1.2. The definition of sexual exploitation International legal norms	6
1.3. The circumstances of sexual exploitation and the offences of abuse against children in Mongolia	7
CHAPTER 2. AN ANALYSIS OF THE LEGAL NORMS OF MONGOLIA	10
2.1. The legal norms of Mongolia	10
2.2. Duplications in the law	12
CHAPTER 3. ANALYSIS OF THE SETTLEMENT OF OFFENCES OF SEXUAL EXPLOITATION AND SEXUAL VIOLENCE AGAINST CHILDREN	14
3.1. The preliminary investigation and enquiry	14
3.2. The court procedure	16
3.3. Obstacles in the practice of protecting child victims	16
CHAPTER 4. CONCLUSIONS AND RECOMMENDATIONS	18
4.1. Conclusions	18
4.2. Suggestions for advancing the legal framework	19
4.3. Recommendations for the law enforcement agencies	19
4.4. Recommendations for improving the social work and services to rehabilitate the victims	20
CHAPTER 5. RECOMMENDATIONS FOR THE LAWYERS AND INVESTIGATORS ON THE PROTECTION OF THE RIGHTS OF CHILD VICTIMS OF SEXUAL EXPLOITATION AND ABUSE	21
5.1. Recommendations for the lawyers	21
5.2. Practical recommendations for the investigators	23
Appendix I. Legal feasibilities for the rehabilitation service for child victims of sexual exploitation and abuse	27

Abbreviations

UN	United Nations
ILO	International Labour Organization
CC	Criminal Code
SC	Supreme Court
GPD	General Police Department
SKHD	Songino-Khairkhan District
CIA	Centre for Information and Analysis
TDC	Teenager Development Centre
NCAV	National Centre against Violence
CPL	Criminal Procedure Law
NGO	Non-Governmental Organisation
CP	Criminal procedure
HT	Human trafficking
LCDV	Law on combating domestic violence
LPCR	Law on the protection of children's rights
GEC	Gender Equality Centre
CSCL	Criminological Sector of Criminal Legislation

Foreword

The increase in the number of children involved in sexual exploitation and abuse in Mongolia has been recognised by many institutes¹.

Mongolia joined the UN Convention on the Rights of the Child in 1999; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2002; the ILO's Convention on the Worst Forms of Child Labour (1999/C182) in 2002; and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2008. These international instruments require countries to take immediate measures to prevent and suppress the worst forms of child labour, the sexual exploitation of children and to rehabilitate the child victims. However, the implementation of the conventions is still not satisfactory as the legal environment for the protection of children from sexual abuse, exploitation and the punishment of offenders is too loose and the protection, assistance and rehabilitation services for the child victims are inadequate.

In order to support the establishment of an adequate legal environment for protecting children from sexual abuse and exploitation, the project entitled "Improving the legal protection of children against sexual exploitation and abuse" was successfully implemented by the National Centre against Violence (NCAV), in collaboration with other NGOs such as the Adolescents' Development Centre, the Centre for the Development and Protection of Children and Young People, and the National Centre for Child Rights, with the support of the ILO's International Programme on the Elimination of Child Labour.

As a result of the project, this analytical report has been prepared in order to contribute to the total prohibition of sexual exploitation and abuse of children in Mongolia, protect the child victims, advance the legal environment for the rehabilitation measures and services, as well as to contribute to the improvements of accurate implementation.

Special thanks go to G. Oyunbold, the researcher of the Criminal Code sector of the National Legal Institute who worked as a legal advisor, B. Arvintaria, the project coordinator of "Legal reform" of the NCAV who worked as a legal editor, Ts. Erdenechimeg, the Executive Director of the Social Work Development Centre who worked as a social work consultant, and to all the people who have contributed valuable suggestions and recommendations for discussion of the analytical report.

¹ *Government of Mongolia, 2004*

CHAPTER 1. INTRODUCTION

1.1. Objectives

The objective of the project was to contribute to the improvement of the legal environment to protect children and rehabilitate child victims from sexual abuse and exploitation.

The following strategies were implemented within the framework of the project:

- Define the advantages, gaps and duplications in the legal environment; identify the failing practical issues of the law enforcement agencies; and develop recommendations through analysis on the adjudication of 20 selected cases of sexual exploitation and abuse against children;
- Define the legal feasibilities for the protection of child victims of sexual exploitation;
- Test and document the methodology of a multi-disciplinary team for the protection and rehabilitation of child victims of sexual exploitation and abuse, and develop a manual and recommendations;
- Develop recommendations on improving the operations of the law enforcement agencies, the institute of social welfare and the services provided to the child victims of sexual exploitation;
- Suggest recommendations to the legislative body and policy developers and also to advocate the advancement in the legal environment, practice and cooperation of the lawyers.

The analytical report was based on the following research methods:

- **Desk review:** review of statistics and judgments;
- **Case study:** documentation of obstacles and progress encountered during the settlement of cases;
- **Interview:** interviews with the examining authorities/persons conducting the enquiry, investigators, prosecutors, court staff, social workers and psychologists;
- **Analysis:** accurate evaluation of collected data, cases and facts, and investigation of the nature of the cases and carry out analytical research from general through to specific.

1.2 The definition of sexual exploitation

International legal norms

UN Convention on the Rights of the Child

This convention requires comprehensive measures to be taken to recognise the rights of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development and to take all

appropriate national, bi-lateral and multi-lateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The protocol requires the State parties to be gravely concerned about protecting children who are at a greater risk of sexual exploitation and to take all practicable measures to ensure appropriate assistance is given to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

The ILO Convention No.182 concerning the Worst Forms of Child Labour

This Convention requires the ratifying Member States to take immediate and effective measures to secure the prohibition and elimination of the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances (Article 3 (b)).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, Supplementing the United Nations Convention Against Trans-national Organised Crime

The Protocol defines the 'trafficking in persons' as to be the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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. Furthermore, the Protocol defines the following concepts:

- **'Making a profit'** means 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.
- **The consent of a victim** of trafficking in persons to the intended exploitation shall be irrelevant where the means of human trafficking have been used.
- The **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 above.

1.3 The circumstances of sexual exploitation and the offences of abuse against children in Mongolia

Even though there has been significant progress in the legal environment for the protection of children from sexual exploitation, only a small number of cases have gone through the courts as such offences remain hidden behind the scenes. The results of the research demonstrate that the rate of sexual exploitation of children in Ulaanbaatar City and the border areas has soared, while offences are not investigated in rural areas.

Often the child victims of sexual exploitation are runaways due to domestic violence and family conflicts. The 2008 NHRC report reveals that the girls most likely to end up being sexually exploited are those who have led itinerant lives either in families or charities, drop-outs or whose families have migrated from the rural areas into urban towns, those living in poverty, involved in domestic violence, or who are engaged in work in the market places, and those whose parents are divorced or who live with stepfathers².

The forms of such offences include:

- prostitution
- rape
- inducement into pornography
- satisfaction of sexual desire in an unnatural manner
- sexual intercourse with a minor/under the age of 16 years
- human trafficking

Registration of the offences

Statistics for the past four years from the Centre of Information and Analysis of the GPD provide that³:

- The number of offences against children, families and social morality declined by 10% in 2006 compared to that of 2005.
- In 2007, the number of offences against children, families and social morality dropped by 12.0% compared to the number recorded in the previous year. 5.8% of the 19,931 victims were children.
- In 2008, the number of offences against children, families and social morality increased by 10.9% compared to the number in 2007 and it accounted for 2.1% of the total registered offences.
- In 2009, a total of 375 offences against children, families and social morality were officially registered and the number decreased by 12% compared to the previous year. 5.3% of the 19,545 victims were children.

The statistics reveal that the offences against children, families and social morality are not steadily declining. The rise and fall of registered offences over the period can be related to investigations. An interview with investigators demonstrates that such offences are committed and registered in small numbers and in most cases remain uninvestigated⁴. The low percentage of investigation of the offences against minors leads to an increase in such type of offences.

The reasons for the unsatisfactory implementation of the law include a failure to report the offences to the law enforcement agency, and the entity who can demand lawsuit on behalf of the children was not defined⁵. A report from the Department of Public Relations

² *Annual report of National Human Rights Commission, 2008, p46*

³ *Annual statistics of the GPD*

⁴ *Research report on the application of the Criminal Code, National Legal Institute, 2009*

⁵ *From an interview with the 15 investigators of the Criminal Police Department carried out within the framework of the project, November 2009*

of the Metropolitan Police Department reveals that the number of girl minors who were identified as prostitutes, and who were under the supervision of police inspectors in charge of children, was 93 in 2005, 156 in 2006 and 127 as of the first nine months in 2007.

Jurisdiction history: Convictions for human trafficking, the involvement of others in prostitution or the organisation of prostitution of others during 2002-2008 included four convicts for four offences sentenced under Article 113 of the Criminal Code and 53 convicts for 32 offences sentenced under Article 124 of the Criminal Code.

65% of all offenders sentenced under Article 124 were female and 73% were between the ages of 19 to 35.

Conviction for the offences of human trafficking and prostitution of others has relatively improved as a result of the interpretation of human trafficking by the Supreme Court in 2009 and the frequent training and campaigns conducted by the governmental and non-governmental organisations. However, the imposition of administrative penalties and fines allows offenders to escape punishment and is closely related not only to duplications in law and regulations, but also to the lack of initiatives from the law enforcement agencies.

CHAPTER 2.

AN ANALYSIS OF THE LEGAL NORMS OF MONGOLIA

2.1 The legal norms of Mongolia

The commercial sexual exploitation of children is prohibited under Clause 115.1 for “inducing a minor in prostitution” of Article 115 of the Criminal Code.

<p><i>Article 115. Induce a minor to heavy drinking, drug abuse, prostitution, vagrancy and beggary</i></p> <p><i>115.1. Inducing a minor to heavy drinking, drug abuse, prostitution, vagrancy and beggary shall be punishable by a fine equal to 2-50 times the minimum wage, 100-250 hours of compulsory labour or by imprisonment for a term of 1-3 months.</i></p> <p><i>115.3. The same crime committed repeatedly, or by using violence or threat shall be punishable by a fine equal to 100-250 times the minimum wage, or by 100-250 hours of compulsory labour or by imprisonment for a term of 3-5 years.</i></p>	<p><i>Article 124. Induce others to prostitution and organise the prostitution</i></p> <p><i>124.1. Inducing others to engage in prostitution by means of violence or threat of violence or deception shall be punishable by a fine equal to 100-200 times the minimum wage or by imprisonment for a term of 3-6 months.</i></p> <p><i>124.3. The same crime committed by an organised group shall be punishable by imprisonment for a term of 5-10 years.</i></p>
--	--

From these articles, it can be clearly seen that the person who induces children to prostitution is punished less seriously under criminal law than they would be if they had involved an adult. Under the current code the sexual exploitation of children by prostitution is considered to be a ‘light’ crime. This regards the rights of children as inferior to adults. Moreover, there is a principle that “A culprit whose guilt has been established by the court shall be subject to punishment defined in accordance with the nature of the committed crime”.

Because the legislators ignored the fact that the offender had power or authority over the minors engaged in prostitution, the offender escaped punishment with only a light sentence, and this contributes to the growth and wide prevalence of such offences.

The Supreme Court interpreted the clause 124.1 of Article 124 “to induce to prostitution” as “inducing the victims to sexual intercourse with others for payment with a greedy or private motive” and furthermore, it explained that “inducing to prostitution” provided in 115.1 of Article 115 of the Criminal Code shall be understood and applied similarly as above.

It is not understood why the legislators equated the sexual exploitation of minors with “inducing to prostitution”, and why “inducing a minor to prostitution’ is penalised as a light

crime. Indeed, it is not understood what the reasons are for including this crime among the offences stipulated in Article 115 of the Criminal Code. **It is clear that the sexual exploitation of children has to be considered as a matter of an aggravating crime under Article 113 of the Criminal Code under the penalty of "human trafficking".**

Therefore, it is considered appropriate to exclude "induce to prostitution" from Article 115 of the Criminal Code and to include "inducing a child to prostitution" as a matter of aggravation of the crime under Articles 113 and 124 of the Criminal Code.

The international legal norms⁶ that Mongolia has joined and the Law on the Protection of Child Rights defines a 'child' as a person under the age of 18 years. Sexual intercourse with a child must be considered as a criminal offence, regardless of whether or not violence was used or received the consent of the child. However, the Criminal Code penalises sexual intercourse by an adult with a person under the age of 16 years only⁷. This can be interpreted as allowing sexual intercourse of an adult with a child aged 16-17 years so long as there is no threat of violence.

Therefore, it is compulsory to amend the Clause 122.1 of the Criminal Law to read "sexual intercourse by an adult with a child when the age of the child was known to the adult offender..."

The Law on Combating Prostitution and Pornography has provided the definition of the prostitution and pornography as "prostitution, inducing others to prostitution, the organisation and facilitation of prostitution, and the promotion of pornographic materials" under Clause 3.1.2 of Article 3. This definition contains the elements essential to the offences of the 'promotion of pornography' in Article 123 and 'inducing others to prostitution and the organisation of prostitution' in Article 124 of the Criminal Code, and as such **it allows administrative liabilities for these criminal offences**. The Supreme Court of Mongolia declared that "inducing minors to prostitution by the use of violence or threat" shall not be viewed either as a non-criminal offence or as an offence without harm to society"⁸. However, police officers impose an administrative liability for criminal offenders allowing them to escape punishment based on the duplicated regulations in the laws.

Case 1. ...I was abducted by B and G. The girls near my home are frightened of them as they say that they 'trade in girls'. I was forced into the room of a hotel to sleep with a man for a payment of 15000 after they negotiated the price. The man left when I asked him to let me go, telling him, "I am not a prostitute, I was abducted by these women..." When my friends called the police, these two women and myself were taken to the police station in the Bayan-Zurkh district. The police officer said to them, "Are you still doing the same business?" and let them go away with a fine of 15000 tugrugs. I am very frightened that these two women might abduct me again.

From the complaint by U who was placed in the NCAV shelter

6 UN Convention on Child Rights, ILO Convention No.182 and Palermo Protocol

7 Article 122 of the Criminal Code

8 Resolution No.47 of the Supreme Court of Mongolia, 2007

From the report by the Criminal Police Department, the number of minors who were imposed an administrative liability for prostitution increased to 380 in 2005, 412 in 2006 and 426 (duplicated numbers).

2.2. Duplications in the law

The duplications in prohibitions and penalties in the **Criminal Code** and **other laws** for the acts of sexual exploitation of children allow offenders to escape appropriate punishment and repeatedly commit the same offences. These duplications are:

- Articles 115 and 124 of the Criminal Code which both refer to “inducing to prostitution”.
- Some features of the crimes penalised under the above Articles duplicate with features of crimes under Article 113 of the same code.
- “Inducing to prostitution” in Articles 115 and 124 of the Criminal Code is duplicated with “inducing others to prostitution” in the Law on Combating Prostitution and Pornography.
- Furthermore, there are other duplications in other laws, which are described below:

• **The Law on the Protection of Children’s Rights:**

Article 25. If the violation of the legislation on the protection of children’s rights is not subject to criminal liability, the offender shall be imposed with the following administrative penalty by the decree of the Governor of the soum and district:

1) a person or an official who exerts psychological or physical pressure on a child shall be punishable by a fine equal to 40000-50000 tugrugs or imprisoned for a term of up to 30 days;

5) a person who forces a child into beggary and the official who engages a child in a labour which is harmful to the child’s health shall be punishable by a fine equal to 10000-20000 tugrugs;

6) the income or profit of a person or an official who engages in the exploitation of a child in promotional activities, or makes a profit by using the child illegally or by other forms; or engages a child in activities harmful to the child’s health and safety shall be punishable by a fine equal to 30000-60000 tugrugs.

If a child was exploited as a means of profit-making, was kept in harsh conditions or captivity, forced into labour, used for forming an advantage, or was transferred for a liability, resulting in the child being harmed, such offences contain the nature of the crimes punishable under the Criminal Code as related to “the misuse of custodial duty” and “engaging a child in forced labour”.

Thus, the possibility of imposing administrative liabilities under this law for offences prohibited in the Criminal Code can be seen as a duplication.

- **The Law on Combating Domestic Violence**

“Sexual violence” stated in Article 6 of this law shall be considered as a criminal offence to be punished under the Criminal Code, taking into consideration the nature of the offence. For instance, sexual violence is an offence subject to punishment under the appropriate Articles of the Criminal Code on “human trafficking” (Article 113); or “sexual intercourse by an adult with a minor under the age of 16” or “satisfaction of sexual desire in an unnatural manner” or “rape”. Therefore, “sexual violence” within a family (since these crimes against children are usually hidden behind closed doors and are repeated for a long duration) **shall be punished under the Criminal Law.**

The liabilities for legal infringements should be stated exactly and clearly. However, the statement in 19.1 of the law *“a person violating the law against domestic violence shall be subject to the liability stipulated in the legislation, taking into account the nature of the social harm, state of offence and extent of damages of the offender’s action or inaction”* is too non-committal and it is not clear whether it refers to a quote or a liability.

CHAPTER 3.

ANALYSIS OF THE SETTLEMENT OF OFFENCES OF SEXUAL EXPLOITATION AND SEXUAL VIOLENCE AGAINST CHILDREN

3.1. The preliminary investigation and enquiry

Offences of sexual abuse committed behind the closed doors of homes are not reported properly. Victims of rape, especially children, are seriously exposed to psychological fear, stress and shock, so the circumstances are not disclosed or are hidden for some time, thereby complicating the possibility of ascertaining proof. There are always difficulties in ascertaining proof during an enquiry, and certain skills are required of the investigator as the offences of incestuous rape are revealed late. Since the prosecution of an offence is based only on the testimony of the victim and the witness, attempts are made to interfere with testimonies, which leads to the victim feeling frightened or exasperated and eventually withdrawing their testimony or delaying the prosecution.

Therefore, it would be appropriate to consider the expert conclusions of the doctor, professional social worker and psychologist as evidence and establish a regulation defining the responsibilities of the specialists making the conclusions.

Even though the repeated actions of sexual exploitation of a child shall be punished under the offence of human trafficking, the offender is punished only with an administrative liability.

One of the cases that the project worked on contained the elements essential to the offence of human trafficking where a child was engaged in repeated sexual exploitation, but the victim was accused by the police officer of lying and being a 'prostitute' and she was blamed for it being her 'own fault or guilt'. The offender was subsequently imposed with only a fine.

As the police officers at khoroo level are unwilling to clear up such offences and lack certain skills for investigations, they try to avoid criminal investigations. Instead **they prefer to use the administrative liabilities** offered by law, other than under the Criminal Code, to ease the procedure.

It would be possible to gain a successful prosecution if the offences of sexual exploitation and abuse against children were examined by an investigator qualified in crimes against children.

There is a common practice where family members of the child victim are put under pressure or influenced by the offenders/suspects to subsequently negotiate privately and settle the case non-arbitrarily by reporting a 'no complaint' to the police, resulting in the closure of the investigation proceedings.

Case 2. The offender made an agreement with my mother to transfer ownership of half of the land, together with the house, to my name if I claimed, "I was not raped; I only agreed when I was watching a pornographic film". Also he persuaded me that I would not be convicted if I lied as I am a minor. I provided a false testimony as I felt frightened to go out with my brothers and mother and I agreed to do so as he was the husband of my aunt.

from the testimony of B, the child victim

Frequently there are cases where there are serious attempts by the offender's family members or relatives demanding the victim change his/her testimony, promising a reward and threatening or deceiving the victims. This is mainly because of the close relationship between the victim and offender or the dependence the victim has on the offender.

It needs to be made compulsory for the police to investigate every piece of information related to the sexual exploitation and abuse of children and to block the illegal dismissal of the case because the parents and relatives of the victim have requested it.

Even though the victim may state in their initial deposition and explanation that they "have complaints and will apply for compensation", the gradual changes of "no complaints, no request for compensation, will not attend the trial, etc" are of much interest. Behind all this, **the victim is likely to be under threat or deception** so the examining authorities and investigators have to draw attention to the settlement and refrain from the 'conventional' way of working.

A forensic medical service is provided for the victim upon payment. In particular, the bills for forensic medical examinations and diagnoses cause great pressure on a child living in poverty. It is important that the forensic examinations are carried out without delay. Child victims of poor families face additional hardship to bear the cost of the forensic examinations.

Furthermore, **child victims encounter health problems resulting from sexual abuse**, for which they victims had to pay as well. During the investigation, the victim may appear to be pregnant and infected with sexually transmitted infections (STI) leaving the victim in a condition endangering his/her life or once again being affected physiologically and mentally, as well as physically. Even though the diagnosis of and examination for STIs is free of charge, the cost for treatment is charged. The victim is under financial pressure if more time is wasted, and the worse the infection is the more costly the treatment.

Therefore, the necessary forensic medical bills, healthcare, reproductive services and rehabilitation from the injuries inflicted on the child victim should be provided and covered by the state free of charge.

The average period of an investigation into an offence is five months and appears to be too long for the victim. During this period the relatives of the defendant attempt to influence the victim through threatening or deceiving the child victim. As a result, the child victim feels frightened and eventually withdraws their testimony or delays the prosecution.

Therefore, it is necessary to introduce simplified procedures in practice to prosecute such offences.

In the case where a boy was raped, the offender escaped punishment due to a failure to provide documentation during the examination procedure. This case was investigated under the Article “satisfaction of sexual desire in an unnatural manner” of the Criminal Law, and was dismissed at the end. **This shows that there is a need to improve the understanding of lawyers about sexual violence against a boy child** in order to effectively prosecute such offences. As well as the physical injury, the victim suffered psychologically too as so many people were aware of the case.

3.2. The court procedure

From the testimony of the trial records and examination, the examining authority, investigators, prosecutors and judges tend to blame the victim as **“someone of easy virtue”** by asking, “You seem to have been raped with your own consent?” As a result the victim fails to trust the legal institutes.

The practice continues to **bring the victim to the court room** when the psychological trauma of the child is clearly visible and when the victim feels it is too hard to bear.

Moreover, the sentence imposed on a child for an offence he/she conducted **ignores the circumstances or causes where the victim was sexually exploited and suffered grave physiological damage**⁹. It reveals that the investigation of the causes of the offence by a child has to take into account the circumstances in which the child was in.

3.3. Obstacles in the practice of protecting child victims

The attitude of the law enforcement staff blaming the victims

One of the consequences of psychological trauma suffered by child victims of sexual abuse is the abrupt changes in their behaviour. Such children are easy prey for criminals and they are at a higher risk than others to be induced into prostitution. Therefore, staff of the law enforcement agency should be aware of such vulnerability. However, there is a **critical trend among many staff of the law enforcement agencies which accuses the victims** as ‘prostitutes’, which explains their indifference to child victims in ignoring the nature of the crime and the guilt of offenders.

Environment of the investigation

During an investigation, there is **no special room set aside for questioning the child victim** so questioning takes place in a room occupied by other criminals involved in theft, robbery and rape. The victim frequently gets distracted and embarrassed by having to divulge private matters, and subsequently withdraws from the investigation. No qualified female investigator exists in dealing with offences where the girls appear to be the victim, and even rooms which have been specially set aside have been taken over as an office for investigators or other persons in charge.

The **frequent changes of investigator** during the procedure drags the case on longer and the child victims become seriously depressed with having to repeat the details of the incident several times over.

⁹ One case found during the desk review was that of an adolescent girl who was sentenced to imprisonment for theft, which was committed when she was traumatised by sexual abuse.

No methods for the measurement and assessment of the psychological suffering

Sexually abused and exploited children suffer from severe mental anguish and trauma. This includes depression, attempted suicide or suicide. The social harm of these offences is the mental trauma and suffering. The most complicated part in protecting the victim is the lack of any practical method for the measurement and assessment of the mental suffering, and there is no practice in court to compensate for mental suffering.

It should be appropriate for the court to state in its writ the compensation to a victim for his/her mental suffering along with the verdict against the culprit, rather than merely mentioning the possibility of being compensated under Civil law.

No regulation for the protection of victims

Among the cases which the working team dealt with, several were related to the vulnerability of the victim. Vulnerability of a victim means having no assistance or support from relatives, having no social or reliable ties, being overly trusting towards friends or others, lacking parental love and care, or being a runaway due to domestic violence and vagrancy, etc.

It was observed that often no lawyer was appointed for the case of the child victim who was from a very poor family. Therefore, often the child victims of sexual abuse and exploitation were not given legal assistance and were not protected because there was no advocate assigned to them.

This demonstrates that an amendment into relevant legislation is needed to ensure the compulsory free legal assistance to child victims of sexual exploitation and abuse.

CHAPTER 4.

CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusions

- The trafficking of children is hidden behind the offence “to induce the minor to prostitution”.
- The practice of accusing the victims as ‘prostitutes’ and the imposition of a fine for the offenders under the law on administrative responsibilities continues and serious offences of ‘human trafficking’ committed against children are being not punished.
- The imposition of an administrative liability for minors involved in sexual exploitation leads to a failure of trust in the law enforcement agency, eventually causing a reluctance to go to the police.
- Duplications in the legislation which allows administrative liability for criminal offences cause difficulties in combating such crimes. The weak interpretation by the Supreme Court stating that “if not subject to criminal liability...” complicates the practice of law and settling the case¹⁰.
- Since the criminal procedures are very time-consuming for the victim and there are doubts about compensation for the losses, it often leads to private negotiations with the offender for payment in return for the victim withdrawing their lawsuit.
- According to Article 25 of the Criminal Procedure Code, only an offence stipulated as a ‘light crime’ is dismissed on the grounds set forth in the law. As for the other type of offences, dismissal is not allowed. However, in the legal procedures of cases of sexual exploitation or abuse of children, there has been malpractice where some cases were dismissed based on the fact that they were ‘reconciled with the family of the victims’.
- The environment and circumstances of the investigation do not provide privacy and safety for the victims.
- No specific chapter or provision exists in the Criminal Procedure Code on the “questioning of a minor victim or a minor witness”. It is only stipulated that the hearing of the testimony by a minor-victim takes place at the trial¹¹. However, the regulation on the questioning of the minor-witness as stipulated in Article 154 does not take into account the need for the “protection of the victims”.
- There is no legal means for the victims to be protected from any interference during the phases of the investigation and court procedures. Since the roles of the investigator, prosecutor and judge are not included in the criteria of their job evaluation, they tend to see the issues as ‘not being obliged’.
- The NGOs which operate to ensure the safety, rehabilitation and protection of the child victims of sexual exploitation and abuse have no regular funding resources; they are funded by foreign organisations.

¹⁰ *Research report “Application of the Criminal Code and Law on Administrative Liabilities”, National Legal Institute, 2007*

¹¹ *Article 269 of the Criminal Procedure Code*

- One of the successes of the project teams was the successful provision of evidence to the court and convincing the court of the mental trauma and suffering of child victims, and that the criminal court ruled to compensate the damage by 2m tugruqs for each child along with the criminal verdict¹². This was the first time the criminal court ruled for compensating mental trauma.

4.2. Suggestions for advancing the legal framework

- Extend and classify the term ‘rape’.
- Properly draw interpretations by the Supreme Court on distinguishing and stipulating ‘rape’ and other similar offences.
- Develop and implement methods to measure, assess and compensate the mental trauma of the victims.
- Eliminate duplications in the Criminal Code, the Law on Combating Prostitution and Pornography, the Law on Administrative Responsibility, the Law on the Protection of Children’s Rights and the Law to Combat Domestic Violence.
- Amend Article 122 “sexual intercourse with a person under the age of 16” of the Criminal Code to comply with the international treaties and conventions to read “sexual intercourse with a minor”.
- Add a specific chapter or provision for ‘the questioning of minor-witnesses and victims’ to the Criminal Procedure Code based on certain research and analysis.
- Add the measure of “temporary restriction on the offender not to see the victim” to the Criminal Procedure Code as a part of the compulsory measures.
- Stipulate the issues of the safety and security of the victims and witnesses in the Criminal Procedure Code. Legalise as an obligation the duty to protect the victims and witnesses by the law enforcement officers (examining officer, investigator, prosecutor and judge).
- Advance the legal environment for delivering the services for the protection, healthcare, psychological counselling, rehabilitation and other social services for the child victims of sexual exploitation and abuse. Specifically:
 - Include legal assistance to the ‘types of services and assistance to the children in difficult conditions’ in the Law on the Protection of Children’s Rights;
 - Stipulate services to be provided free of charge for child victims of sexual abuse and exploitation in the Law on Health, Law on Social Welfare and Health Insurance law, based on accurate research.

4.3. Recommendations for the law enforcement agencies

- It shall not be acceptable to use the term “a minor prostitute”. These children are the victims of sexual exploitation or violence. Therefore, every incident of sexual abuse and the exploitation of a child shall be examined accurately and the investigation of offenders should be done under criminal legislation.

¹² Court writ No.97 dated on 5 February 2010 by the Court of Songino Khairkhan District

IMPROVING THE LEGAL PROTECTION OF CHILD VICTIMS OF SEXUAL ABUSE AND EXPLOITATION

- Establish a special room in the police stations of provinces and districts, as well as in the State Department for Investigation, for the questioning of child victims of sexual exploitation and abuse.
- Train qualified female investigators to deal with the offences against children.
- Apply to the Mongolian Association of Advocates to request an advocate to be assigned to the child victim.
- In order to protect the victims of rape committed by the relative of the child, there should be a practice of imposing a restraining order on the offender stipulated under the Law to Combat Domestic Violence.
- Organise training courses to change the prevalent attitude amongst lawyers who see the under aged girls engaged in prostitution as 'offenders'.

4.4. Recommendations for improving the social work and services to rehabilitate the victims

- Considering the exceptional circumstances of the child victim, Article 19 of the Law on Social Welfare should be revised to ensure that a child victim protected by the NGO receives a conditional cash allowance.
- Enhance the cooperation of the public and non-governmental organisations in the field of the protection of and prevention from sexual exploitation and abuse of children.
- Run activities on the prevention of and protection from the sexual exploitation of children and hold regular training and public awareness promotions against such offences in order to increase awareness in the community.

CHAPTER 5.

RECOMMENDATIONS FOR THE LAWYERS AND INVESTIGATORS ON THE PROTECTION OF THE RIGHTS OF CHILD VICTIMS OF SEXUAL EXPLOITATION AND ABUSE

5.1. Recommendations for the lawyers

Defended evidence and the evidence limit of the crimes of sexual exploitation and violence

It is not possible to legalise a full list of defended evidence. In other words, the evidence can be defined by law, but its limits cannot be defined. The **evidence limit** of the offence means the scope of evidence collection, while **evidence limit** means the range of facts and the information needed to prove the case fully.

A number of ways exist for lawyers to be actively engaged in collecting and consolidating evidence when dealing with criminal cases. Attention must be paid to the concept of 'means not forbidden by law', and that evidence collection and defending must not be done illegally or against the reputation or dignity of others, including:

1. If the victim received health or social services provision before he/she went to the police, the victim's primary source of information and the circumstances of the incident can be collected and consolidated in cooperation with a social worker and psychologist. A camera or video recorder should be used. A common mistake of the organisations rendering the service is a failure to document all the information, assuming that such documentation cannot be used as evidence. It is necessary to apply the practice of submitting a petition by the lawyer to collect and consolidate such documentation as evidence¹³. This will not contradict to the criminal procedures and the consolidation of evidence can include the lawyer's personal record or collection of documents¹⁴.
2. **Obtain testimonials of character:** As stipulated in the Law on Advocacy¹⁵, the lawyer has a right to obtain references from other organisations. If it is considered vital for the settlement of the incident, then a written request should be submitted to consolidate and include those references into the case file. Such acts increase the significance of proof of evidence. For instance, a copy of the history of the patient when the victim has undergone heavy medical treatment which is harmful to their life, including surgery or psychological counselling for abortion following rape, should be included in the file after being recorded by the investigator.
3. **Involve the psychologist and social worker in the procedure as a witness and specialist:** Assistance from the social worker and psychologist who rendered the service for the child is vital for the investigator in clarifying the damage made to the child and in consolidating the evidence that is significant to the case and its

¹³ It is stipulated in 12.2.4 of the Law on Advocacy that 'the lawyer has the right to request evidence, demand new evidence or request examination of other circumstances relevant to the case and request an expert's conclusion'

¹⁴ Excerpts from an interview with investigators, 2010

¹⁵ 15.2 of Article 15 of the Law on Advocacy states 'The lawyer has the right to submit a request to the court, prosecution, examination and investigation organisations and their officials for receiving documents and information which is necessary to implement his/her professional duty'.

settlement. Such involvement of social workers and psychologists in the procedure was particularly effective during the project in convicting offenders.

4. **Issues to be considered in collecting evidence:** A lawyer is not the person with the power to collect evidence as stipulated in the Code of Criminal Procedure. Therefore, it would be effective to provide the police with the information and evidence obtained during the performance of his/her duties. The issues of concern are:
 - State the true facts of the incident and provide full details clearly and exactly.
 - Consolidate the facts, which could be used as evidence later for the settlement of the case, by taking photographs, sealing the documents, photocopying and recording the specific elements of the case so that they do not become lost, changed or torn.
 - Follow and meet the requirements which would allow for the opportunity to testify and further examine the facts and significant information of the case. In doing this, consider the circumstances where the integrity of the evidence may be lost.
 - Protect privacy: Divulging private facts was an obstacle encountered by the team members during the settlement of a case. In particular, there was an attempt by the person being examined as a witness and a suspect who threatened to divulge the privacy of the victims. Therefore, it is necessary to take immediate measures against every such incident. For instance, since the issues of the privacy of a victim are an essential part of the criminal procedure, it is possible to submit a petition for the 'violation in a criminal procedure' to the Head of the Investigation Department and for the judge to stop the disclosure or the threat of disclosure of private facts¹⁶.
5. **Submission of the request/solicitation:** The right of making a request is provided to the lawyer under the Law on Advocacy and the Criminal Procedure Code. The request may be made to protect the client's interests, identifying the nature and circumstances of the offence committed, as well as the assessment for compensation.
6. **Petition for compensation for mental trauma:** Careful consideration is needed by the lawyer when dealing with a civil lawsuit in a criminal case. The lawyer can provide advice or assistance during the criminal procedure and support the lawsuit of the victim in the collection of evidence relating to the mental damage/suffering and personal injuries caused by the offence.

It is possible to identify the level of mental anguish of the victim by the expert psychiatrist and estimate the cost of the treatment. These can serve as evidence to be included in the civil lawsuit.

It is possible to claim compensation for mental anguish in accordance with the "minimum standard of living". This financial compensation could be necessary for the survival of the person in case of unemployment or having no income.

7. It is very useful to **video record the questioning of the minor as part of the criminal procedure and to have in attendance the prosecutor supervising the case.** It is beneficial for the settlement of the case.

¹⁶ The legal grounds for imposing a fine for violating criminal procedures were stated In Articles 77 and 78 of the Criminal Procedure Law, and the size of the fine was defined as the 1-4 times of the minimum wage.

8. **The cooperation of lawyers with social workers and psychologists working in the NGO:** Collaboration with the psychologists and social workers of the NGOs should be promoted. Also the NGOs should take the initiative in bringing the investigators, if possible casually dressed, to the place where the victim is and making themselves available when the victim gives his/her testimony during the criminal procedure. It could be of great significance when the court evaluates the evidence.

Even though the services and assistance rendered for children are stipulated in the Law on the Protection of Children's Rights, it should be noted that legal assistance has not been included.

9. **Notes for questioning:** The lawyer should pay attention to developing a trust and mutual understanding between the victim and investigator.

5.2 Practical recommendations for the investigators

Questioning victims: Particular skills are required for an investigator in the questioning of a victim. In particular, victims refuse to give true accounts of the facts and they hide the information or details as they feel frightened, shocked or depressed as a result of being under such heavy physical and mental pressure. A victim suffering from post-traumatic stress disorder will show the following characteristics;

- Give wrong accounts of the facts due to fear;
- Reject themselves as a victim of sexual exploitation;
- Be incapable of giving a true account because of a failure or loss of logical thinking skills;
- Lose their memory about the incident.

Therefore, it is very challenging to identify the victims, call them as a witness and to cooperate with the victims.

The questioning of the victim suffering from post-traumatic stress disorder should consist of two phases:

- 1) Establish an emotional connection and build up trust with the victim with the assistance of a psychologist ;
- 2) Recommend questioning takes place after the victim has calmed down as much as possible.

The presence of a qualified psychologist could be necessary in case the victim is exposed to heavy psychological pressure where the victim refuses to accept she has been a victim of sexual exploitation or provides testimony which contradicts the evidence.

Questioning the victim is considered to be one of the most important steps in the investigation of the case, so the following recommendations should be implemented:

- **Interpreter:** when the victim has a poor understanding of the language, an interpreter should be present;

IMPROVING THE LEGAL PROTECTION OF CHILD VICTIMS OF SEXUAL ABUSE AND EXPLOITATION

- **Psychologist:** a qualified psychologist should be available when the victim is not ready psychologically to give an account of the events
- **Legal advisor/lawyer:** if possible, involve the teacher or a person close to the victim or a relative or legal advisor from the organisations supporting the victim.

The following rules should be adhered to before questioning a sexually exploited victim.

Preparatory work:

- Ensure the room has no noise and that there is no hindrance to others;
- Agree on involving only the victim and investigator, and if necessary the interpreter, legal advisor and psychologist;
- Switch off mobile phones;
- In case the designated room is not available, submit a petition to carry out the questioning where the conversation cannot be heard by others;
- If the victim needs medical assistance, the questioning should be postponed until medical assistance has been given.

Introduction

- Ensure the victim feels relaxed and comfortable. Ask if they need the bathroom and anything else if her/his health is normal, or whether they need any medical assistance.

Explanation

- Explain that answers to the questions can be given in peace and have a break when needed;
- Clarify and explain the questions that do not seem to be fully understood by the victim;
- Ask if there are any questions that will be refused to be answered.

In most cases the minor victim glosses over repeated incidents or events as he/she is not likely to recall them during questioning. Therefore it would be more effective to direct the minor to events about special occasions, such as before or after a holiday or the New Year¹⁷.

Dealing with a child victim and identification of personal circumstances

When questioning a child victim involved in sexual exploitation and abuse for the first time, it should be restricted to only a brief description of the incident/offence with short answers about the details. Since the questioning of a child requires specialist skills, preliminary questioning should start with casual questions but questions should be restricted.

A child victim of sexual exploitation is usually more seriously mentally affected than adults so they are likely to be unwilling to respond or provide details. Moreover, it should be noted that wrong or improper questions may emotionally traumatise a child and worsen the situation.

¹⁷ *In an investigation practice, it is called 'the chronological method'.*

Then the child victim should be referred to the professional service rendered by the organisations operating in the field of child care and protection.

Documentation of the interview with the victim and any other relevant information related to their testimony should include:

- Any suicide attempts, wrongdoing and behavioural abnormalities;
- For children of a young age, whether there is any dysfunction in their normal life or any serious behavioural abnormalities;
- A report from the teacher or close friends;
- Others.

Enquiry from the police and the preliminary administration units:

- Enquire from the local investigator of the khoroo whether any repeated acts of drunken violence have taken place in the home and whether any administrative measures have been taken;
- Even though administrative measures may not have been taken, enquire if there have been any repeated calls or complaints made to the local investigator as a result of violence or threats;
- Enquire from the local governor and social worker if any domestic disagreements or repeated violence have occurred;
- Others.

Enquiry from the family doctor and other medical institutes:

- Records made by the family doctor;
- Diagnosis of disease and notes of the treatment;
- Comments by the doctor and the medical organisation.

Conclusions of the medical organisations on the trauma:

- Level of the trauma concluded from forensics;
- Contraceptives taken forcefully by the victim of sexual exploitation;
- Abortion records of the doctor.

Conclusions of the Centre for Forensic Psychiatry and Narcology

- Conclusions of any mental disorders due to violence and pressure;
- Use of any drugs or medicines which could affect the victim's mental state.

Documentation of the traumalinjuries by photographing:

- Record in medical terms what the traumas are and document them;
- When documenting the trauma by photograph, initially photos of the whole body should be taken and then partial photos of particular traumas should be taken;

IMPROVING THE LEGAL PROTECTION OF CHILD VICTIMS OF SEXUAL ABUSE AND EXPLOITATION

- The trauma should be put onto film. Note that digital photographs can be manipulated and that the recording of or images taken by mobile phone are not admissible as evidence;
- The date and the number of photographs relating to the traumatised parts of the body of the victim should be photographed and carefully documented and recorded;
- The date of the photographs should be visible in the photograph.

Facts on violence by phone or other media:

- The collection of evidence of intimidation, exertion by pressure and threat by SMS text message (the SMS text message should be photographed);
- Document the voice of the victim and the intimidating speech by phone onto film and record it.

Note: The evidence should be collected from a reliable resource in compliance with legal requirements.

APPENDIX I

Legal feasibilities for the rehabilitation service for child victims of sexual exploitation and abuse

Within the scope of this recommendation, the feasibilities to protect the rights of sexually exploited children under laws other than the Criminal Code of Mongolia, were taken into consideration.

Article 16.1 of the Constitution of Mongolia states the basic principle for the protection of children's rights, in that "the State protects the interests of the family, motherhood and the child." Therefore, the issues regarding children are considered separately in any legislation.

The term "sexual exploitation" does not exist in any laws in effect. Therefore, the term is equated in practice with the legal term of "children in a severe condition".

The following factors should necessarily be taken into account for the protection of the rights and legitimate interests¹⁸ of sexually exploited or abused children:

1. Health - physical and mental
2. Education – compulsory education
3. Family and living environment - the family is the primary social unit and the environment for being free
4. Others - property and non-property rights

Based on these factors the following laws were selected for this section¹⁹.

1. Law on Health, 7 May 1998

Article 35. Guarantee for the protection of the health of mothers and children

35.1. The health of mothers and children shall be under permanent State protection.

35.2. "The State shall carry the costs incurred in relation to health care assistance or the service provided by the State medical institutes to mothers and children."

26.1.2. of Article 26 guarantees that "the health care service shall be provided in any circumstances to a citizen whose life is endangered through unexpected disease or accident and to pregnant women in labour."

Even though some obstacles are encountered in practice, efforts should be made to practice these legal provisions when sending a child victim to the health care service.

¹⁸ Rights and legitimate interests mean the rights and interests guaranteed by the law

¹⁹ Although there are more laws which could be applied here, some were omitted due to the availability of analysis in other reports.

2. Law on the Protection of Children's Rights, 7 May 1996

Article 15. The social welfare service and assistance for children in an emergency or who are in a severe condition

2. "Children in a severe condition" refers to orphaned children; children with disabilities; children of ultra-poor families, children suffering mental and psychological damage from sexual violence, abuse and humiliation, and children engaged in labour harmful to the child's health. The following social welfare service, assistance and discount shall be provided to children in a severe condition if stipulated differently in other laws and regulations:

1/ assistance with education and qualifications

2/ health rehabilitation, nursing, artificial limbs free of charge and other facilities to children with disabilities

3/ allowance for families who adopt children in a severe condition

4/ the transfer of children to an orphanage and provision of the social welfare service

5/ support for families taking care of the children on a voluntary basis

The educational service is of great importance to the child victim. Article 32 of the Law on Education stipulated the power of the governor of the bagh and khoroo. This includes the "organisation of compulsory education services to citizens who have not acquired it". To conform with this, the education service should be provided based on the principles of cooperation.

3. Law on Social Welfare, 1 December 2005

Article 19. Forms of conditional cash allowance of social welfare

19.1. The conditional cash allowance of social welfare may take the following forms:

19.1.6. An allowance for a citizen having custody of a child and taking care of one who suffers mental and physical loss due to domestic violence and seeks protection as stipulated in Article 25.5 of the Family Code.

Article 19. Rights to the conditional cash allowance of social welfare

19.1.2. Have custody of and take care of a child as stipulated in Article 74 of the Family Code who suffers mental and physical loss due to domestic violence and seeks protection as stipulated in Article 25.5 of the Family Code.

The regulation on conditional benefits stipulated by this law is established by the Government and the regulation which is currently in effect was approved by the decree #162 in 2008.

Article 26. Forms and scope of the community-based social welfare service

26.1 The community-based social welfare service provided to households and citizens seeking social welfare support and assistance may take the following forms:

26.1.3. rehabilitation service

26.1.4. temporary placement and care

26.2. The following citizens and households shall be involved in the service mentioned in 26.1 of this law:

26.2.3. a child in a severe condition

26.2.4. a citizen engaged in abuse

The citizen involved in abuse and children in a severe condition have the right to the community-based social welfare service and care under this Article.

4. Family Code, 11 June 1999

25.5. The rights and interests of a full orphan child or a child whose parents are defined as non-able or whose parents cannot take care of the child for reasons such as both parents are restricted in their rights over the child or had their rights withdrawn over the child, or are involved in long-term treatment or are imprisoned or have refrained from their duty of taking care of the child, shall be protected by the governor of the soum/district.

From this regulation, the subject for the protection of children's rights is the governor of the preliminary administration unit whose duties include the provision of a compulsory education, the involvement in vocational training and the provision of documents etc.

5. Civil code, 10 January 2002

Article 497. Grounds for liability caused by damage

497.1. A legal person who deliberately causes damage to others' rights, life, health, dignity, business reputation or property or due to a negligent action (or inaction) shall compensate for that damage.

One of the possibilities of protecting the victim and compensating for the damage caused is the protection under the Civil Code. Despite the claim in a criminal incident, the significance of this possibility is that the rights for an independent claim are open for the victim in compliance with the Civil Code. It could compensate in cash for the mental loss caused by the offence. In other words, compensation for the costs of psychotherapy, for the damage that was caused if the person was employed at the time, the amount lost in salary or income, the cost of gaining an education, etc. It is complicated to assess the mental damages, but making it standard practice for lawyers would lead to significant 'progress' in the protection of children's rights and those who are the victims of sexual exploitation.

Victims of sexual exploitation are exposed to heavy psychological pressure when they make a claim, which contains personal and private information regarding their reputation, sexual

life etc. Therefore, it is necessary to make it standard practice to evaluate material and non-material damages, to claim for compensation and to get it resolved.

The sub-heading in chapter 3 regulates the family property as a child is considered to be a family member. Therefore, a child victim has a right to a claim in terms of his/her per member share of the family property.

Civil legal capability to acquire the rights and obligations by his/her own conduct or full legal capacity comes into force on reaching the age of 18. The guardian can make a claim on behalf of the citizen without civil legal capability. A claim for the per member share of the family property, taking into account the grounds, could be another option for the protection of the victim. The child victim has to live independently when he/she reaches 18. This option could also be a legal possibility to address financial needs of the child in the future life.

PS: It is noteworthy to mention that these legal possibilities are not mitigating circumstances for criminal liabilities, but only methods for the protection of the victims.

6. Law to Combat Domestic Violence, 13 May 2004

Article 6. Forms of domestic violence

Domestic violence stipulated in this law may have forms of physical, psychological, sexual and economic violence.

If the child victim is a runaway due to domestic violence, or that living with the parents causes harm to his/her life and health, it is feasible to take measures to restrain the perpetrating family members in accordance with this law.