

# 4

## Child Sexual Abuse

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**ABSTRACT** This chapter investigates how the rights of the child, in both the UN Convention on the Rights of the Child and the Lanzarote convention, are reflected in official Norwegian efforts to combat child sexual abuse and meet the needs of its victims. With a focus on the criminal justice system, the chapter analyzes law, policy and practice and seeks to shed light on how the rights of minors subjected to sexual abuse in Norway have been formulated, institutionalized and practiced. It argues that dilemmas exist in the balancing of the strong emphasis on and belief in legal strategies on the one hand, and the need for a multi-faceted approach on the other. It also points to challenges related to measuring children's rights given the complexity of child sexual abuse.

**KEYWORDS** child sexual abuse | CRC | Lanzarote Convention | law in action | procedural law

### **4.1 INTRODUCTION**

Child sexual abuse is a serious offence and is formally sanctioned in every modern society. It is well-documented that victims of child sexual abuse run an elevated risk of short and long-term health consequences including depression, self-harming, suicidal behaviour, low self-esteem and revictimization (Lacelle et al. 2012; Noll et al. 2003). Sexual abuse of children is a serious violation of their fundamental rights according to the Convention on the Rights of the Child (hereafter CRC) and the European Council Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (hereafter Lanzarote Convention).

Our aim with this chapter is two-fold; first, we will map and discuss the implementation of the rights of the child according to international conventions by ana-

lysing Norwegian law, policy and practice regarding child sexual abuse, focusing mainly on the criminal justice system. We intend to examine how the conventions have influenced Norwegian policy, legislation and practice and in this way estimate or measure the implementation of children's rights in this area. Second, we will reflect upon the challenges involved in estimating or measuring children's rights related to sexual abuse given the complexity of the issue, and we will discuss whether such measuring is expedient.

The background to this analysis is knowledge of the scope and manifestations of child sexual abuse in Norway and how this crime has been perceived and combated. In recent decades, thinking on childhood and governments' responsibilities to combat child sexual abuse has changed radically. In the Norway of the 1950s, the sexuality of adolescent girls was regarded as a threat to society and the nuclear family and as something that the state should protect men from being lured into (Ericsson 2005). In recent decades, it is adult sexuality that has come to be seen as dangerous to children. While there has been greater visibility of, and sensitivity towards, sexual abuse of children over the past 40 years, the focus has shifted in terms of causes for concern and measures implemented. A key focal shift during the 1980s was from the dangerous stranger to the dangerous relative (Bakketeig 2000). In 1980, most cases of sexual abuse of children reported to the Oslo police district were committed by strangers, whereas in 1990 family members and others close to the child victims topped the statistics. As there is no evidence that sexual abuse within families or institutions was a new phenomenon in the 1990s, this shift illustrates the power of discourse over public statistics and research. Another development during the past 10 to 15 years has been the increased attention to domestic violence, resulting in a more pluralistic understanding of the concept of 'violence'. Given this insight, when discussing the sexual abuse of children, we need to consider the relationship between public discourse, priorities in public policies and what at a given time is believed to be true about the phenomenon. We therefore discuss whether the relevant legal amendments adopted during the past decade represent an improvement of children's rights in cases of sexual abuse, or whether the measures taken have had unintended negative effects. As we consider the formulation and implementation of the rights of the child, our prime focus is on the victim.

In order to analyse, in the context of sexual abuse, the implementation of the rights of the child according to international conventions in Norwegian law, policy and practice, we have collected two sets of materials. The primary material consists of legislation and work in preparation for its drafting and introduction, governmental white papers, and other representations of policy processes by govern-

mental agencies. The second set of material consists of NGO reports and academic research that shed light on how the rights of minors subjected to sexual abuse in Norway have been formulated, institutionalized and practiced.

In this chapter we first describe the rights of the child in relation to sexual abuse perpetrated against them by identifying relevant law, primarily the CRC, but we also refer to the Lanzarote Convention, ratified by Norway 13 June 2018.<sup>1</sup> Even though this convention only recently entered into force, it has influenced amendments to the Act of Criminal Procedure. We also consider national regulations regarding sexual abuse against children. Previous studies have explored whether national regulations comply with the rights stated in the conventions (see, for example, Hennum 2016 and Søvig 2009). Below, we focus on how these conventions have influenced national legislation.

As legal protection does not guarantee such protection in practice, we also include materials that shed light on 'law in action'. By analysing policy documents (i.e. action plans) we get an understanding of how the Norwegian government have planned for and operationalized their responsibility to combat child sexual abuse over time. National statistics give us information about how many cases of child sexual abuse reach the child welfare or penal system. Relevant research gives us access to information about how the system response works in practice, for instance by addressing questions like: Do relevant professionals have the necessary competence in detecting signs of abuse? Do regulations regarding professional confidentiality stand in the way for professionals passing on the information to the relevant authorities? And what happens when suspicion of abuse is disclosed – do the systems handle the cases in a child-friendly way? The fact that law in action does not necessarily comply with law in the books, forms the basis of a discussion of whether the actions taken actually uphold children's rights in practice, and whether there are areas that need to be reinforced.

First and foremost, it is necessary to define what sexual abuse towards children is and to present what is known about sexual abuse in Norway.

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1. European Council Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, into force 1 July 2010.

## 4.2 DEFINITION OF CHILD SEXUAL ABUSE

### 4.2.1 ISSUES OF DEFINITION AND KNOWLEDGE OF CHILD SEXUAL ABUSE

CRC Article 19 uses the term ‘sexual abuse’. CRC Article 34 provides for protection of children against ‘sexual abuse’ and ‘sexual exploitation’. General Comment No. 13 (2011) clearly defines the former term as:<sup>2</sup>

Sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State party for consensual sexual activities.

In the judicial context, we define the term child sexual abuse with reference to sections of the Norwegian Penal Code on sex crimes against minors.<sup>3</sup> The provisions on sexual abuse of children can be categorized according to the age of the child, the seriousness of the offence and the characteristics of the offence. For the purpose of this chapter, we firstly include sexual acts and relations with minors aged between 14 years and the age of sexual consent, 16 years, namely Sections 302, 303, 304 and 305, and secondly sexual acts and relations with minors under the age of 14, which as of 2015 is defined as rape in Section 299.<sup>4</sup> These provisions form the core of our analysis. However, we include other aspects of abuse that are unrelated to the child’s age, especially incest (Section 312) and grooming (Section 306). These sections are presented later in the chapter.

### 4.2.2 CURRENT KNOWLEDGE ON EXTENT, TYPES AND SITUATIONS OF CHILD SEXUAL ABUSE

Sexual abuse of children are criminal acts, which in many cases are difficult to detect. They often occur in the home or other private spaces with no witnesses. Such criminal acts are strongly condemned, especially when the victims are young

2. General Comment No. 13, 2011, on the right of the child to freedom from all forms of violence.

3. Lov om straff av 20. mai 2005, nr 28. (Norwegian Penal Code).

4. The current Penal Code is not yet formally translated into English. When we describe the current legislation, the formulations and terms are taken from the unofficial translation made by the Ministry of Justice and Public Security published In Lovdata.no 2018. In addition, we have made some adjustments to ensure clarity.

children, because they break a powerful moral taboo. Although such a taboo may serve to prevent crimes, it also compels the perpetrator to conceal his or her actions. These aspects make it difficult to obtain information on the prevalence of sexual abuse against children. In the following paragraphs, we consider available figures on the extent and nature of such abuse.

#### 4.2.3 CRIME STATISTICS

Statistics Norway provides crime statistics that indicate how many assumed victims and perpetrators pass through successive stages of the criminal justice process, from reporting to sentencing. As these are numbers on incidents, the same victim may be counted several times. Over the past decade, the number of reported sex crimes against children has steadily increased: against victims aged 0–9 years, from 572 in 2004 to 731 in 2014; against victims aged 10–19 years, from 1,174 in 2004 to 1,725 in 2014.<sup>5</sup> It is difficult to determine whether these marked increases are due to greater police efforts, growing incidence or a combination of both these factors.

As statistics on age and gender are included in different data sets, we cannot precisely determine the gender composition of the pool of victims. Overall, women and girls are more often registered as victims of sex crimes reported in Norway. In 2014, for example, 3,182 female and 448 male child victims of reported sex crimes were registered, though for some of the sexual offences against minors that we consider in this chapter the gender difference is smaller than for statutory rape.<sup>6</sup> Although the figures may indicate that girls are victimized more often than boys, it may also be that people around the victims, public officials, including police officers, and the victims themselves are more likely to recognize what has happened to girls as crimes to be reported to the police (Hollander 2004). Table 1 (below) shows the steady increase in the number of victims of reported sexual offenses against minors in the period 2004 to 2014. As the offenses included were pursuant to the former Penal Code, these figures are not directly comparative to those registered after 2015.

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5. Source: Statistics bank Statistic Norway table 08637, *Personoffer for anmeldte lovbrudd, etter type lovbrudd og alder. Absolutte tall*. These are the latest figures available, broken down on current age, probably attributable to how several of the provisions and their definitions of sexual abuse changed with the introduction of the Penal Code of 2005 in 2015.

6. Source: Statistics bank Statistic Norway table 08638: *Personoffer for anmeldte lovbrudd, etter type hovedlovbrudd og kjønn. Absolutte tall*. These are the latest figures available, broken down on current age, probably attributable to how several of the provisions and their definitions of sexual abuse changed with the introduction of the Penal Code of 2005 in 2015.

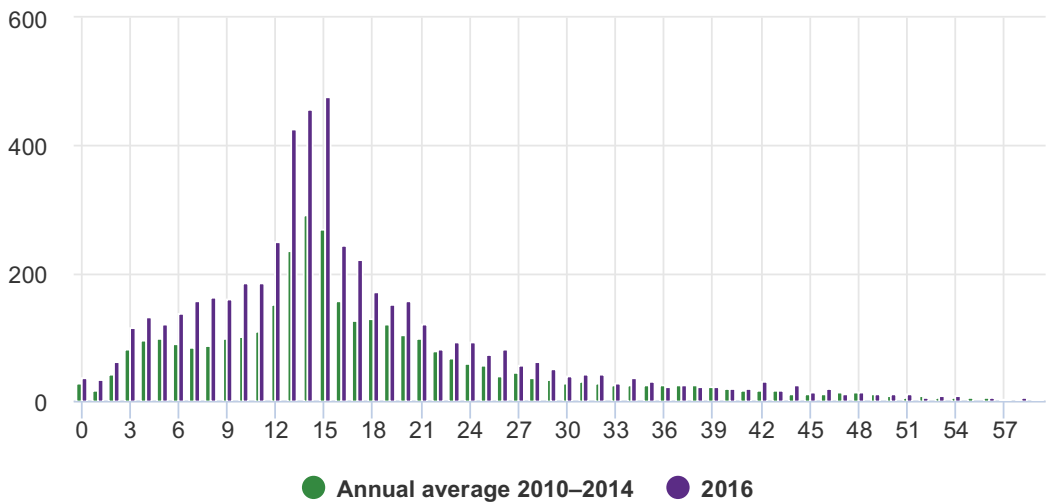
**TABLE 4.1** Annual total number of victims of reported offences in two age groups

Age of sex-offense victim	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
0–9	572	540	564	638	642	617	653	672	686	702	731
10–19	1174	1202	1364	1462	1466	1516	1516	1698	1623	1675	1725

Source: Statistics Norway, Table 08637.

More recent and higher resolution statistics on the age distribution of sex-offense victims are presented in this figure from Statistics Norway.

Number

**FIGURE 4.1** Victims of sexual abuse, over the age of one year. Annual average for 2010–2015 and 2016.

Source: SSB, Statistics Banks Table 08634.

In recent decades, many European countries, including Norway, have implemented major reforms to their legislation on child sexual abuse, which makes it difficult to evaluate incidence trends. However, Norwegian politicians and police are seriously concerned about the increase in reported sex crimes against victims in their mid-teens shown in the figure above.

Given these weaknesses in the national statistics on registered cases of child sexual abuse, it is important to complement these figures with other sources of information and to discuss them in light of qualitative research findings.

#### 4.2.4 SURVEYS

Other population-based studies provide valuable information on the extent of child sexual abuse in Norway, its forms and the situations in which it occurs. Since the mid-1990s, several academics have conducted child sexual-abuse surveys among minors and retrospectively among adults (see, for example, Tambs 1994, Clausen & Schei 2005, Steine et al. 2012, Thoresen & Hjelmdal 2014; for an earlier study, see Sætre, Holter & Jebsen 1986). The surveys differ in their definitions of child sexual abuse and methodology, and some of them have low response rates. As some adopt narrow definitions of sexual abuse or largely depend on the respondents' own classifications of what they experienced, which may differ substantially from the Penal Code definition, caution is necessary in interpreting the results. Furthermore, many surveys do not differentiate between victims under or over the age of sexual consent or 18 years. Nevertheless, these surveys offer valuable insights into both the extent of child sexual abuse and, to some degree, the situations in which it occurs.

In one of the most recent studies, three times more women than men retrospectively reported having had their first sexual encounter before the age of 13 with someone at least five years their senior: 10.2% of women and 3.5% of men (Thoresen & Hjelmedal 2014). Steine et al. found in a population-based survey among 706 respondents that 18% of women and 3% of men reported that they had been subjected to unwanted sexual acts before the age of 16 (which is equivalent to the definition in Section 304 but can also include abuse occurring before the age of 14). Retrospective studies have the possible bias that victims of sexual abuse in childhood are overrepresented in those members of the population who as adults suffer from problems of health, crime and substance abuse, which entail a higher risk of mortality and institutionalisation, and therefore to a lesser extent are also represented among survey respondents (Steine et al. 2012). Whereas the above surveys focused on certain types of sexual experience, others asked young people whether they had experienced sexual abuse within a certain time period, typically the last 12 months. In a larger population-based survey ( $N = 15\,930$ ) Schou, Dyb and Graff-Iversen (2007) found that, in the age group 15–16 years, 6.1% of girls and 1.6% of boys had experienced sexual abuse in the past year.

In summary, not only statistics based on public registers but also population-based surveys on child sexual abuse have considerable weaknesses. Taken together, they do indicate approximately how common such abuse is, but the available statistics are not comparable over decades and therefore cannot serve as a reliable starting point for an evaluation of Norwegian efforts to prevent and prosecute child sexual abuse. Later in this chapter, we will return to the issue of low reporting rates in the child welfare and criminal justice systems.

#### 4.2.5 SEXUAL ABUSE IN NORWAY: INCREASINGLY COMPLEX PATTERNS

In the early 1980s, violence against and abuse of children received scant attention in Norway and other countries. However, for several years the women's movement had campaigned for recognition of violence against women as a public problem and in this regard had highlighted that children also suffered as a result of such violence (Whittier 2015). In Norway, the situation started to change in 1983, when child sexual abuse was first brought to public attention by a documentary film shown on national television about a girl who had been subjected to incest, which caused much public debating. The first Norwegian national survey of child sexual abuse followed in 1986 (Sætre, Holter and Jebsen 1986) and reported that 19% of the female and 14% of the male respondents ( $N = 2\ 135$ ) had experienced sexual abuse at least once before the age of 18. These results not only led to a public debate on the extent of the problem but also much use of the term 'moral panic' by some scholars and the public. Telephone helplines, the first centre against incest and most of the Norwegian shelters for victims of violence and abuse were established in the 1980s. Sexual abuse in the family was at the centre of public attention throughout the 1980s, until a new category of sexual offence against children entered the agenda: sexual abuse of children in institutions. Public outrage was sparked by the suspected abuse of children at a kindergarten in the small mid-Norwegian town of Bjugn. Not only kindergarten employees but also local inhabitants were suspected of abuse (Haugsgjerd 1994). In the same period, similar cases also received much attention in Denmark, notably the so-called 'Roum case', and in the United States (Nielsen 1998). The Bjugn case, in which one person was first convicted but later acquitted, focused attention on the critical issue of the validity of evidence.

In subsequent years the public agenda has become more complex, with various forms of violent abuse of children receiving attention. Technological developments have introduced us to new forms of abuse, including Internet-based sexual abuse of children, which has received increasing public and police attention



(Director of Public Prosecutions 2017) and was in June 2018 underlined as an area of concern by the Committee on the Rights of the Child.<sup>7</sup> Since 2005, there has also been a growing awareness that children are often victims of domestic violence—both directly and indirectly. A broad array of institutions, including the police and welfare services, have experienced an increase in the number of reported cases of domestic abuse (Hjemdal and Danielsen 2017) and some have been given greater responsibility for working on cases of domestic abuse (Meld. St. 24, 2015–2016, Familien – ansvar, frihet og valgmuligheter [The Family – responsibility, freedom, and choices]).

Although domestic violence is presently at the centre of attention, the overall pattern has become more complex in terms of forms of violence and abuse that receive attention from policy makers and the public. Increasingly, domestic violence and sexual abuse are simultaneously addressed in governmental action plans. In the latest action plan (Prop. 12 S, 2016–2017), the sexual abuse of children is not defined separately but as one of several forms of domestic violence. So far, there has been scant empirical research on the consequences of this joint approach on public and official awareness of child sexual abuse.

It is important to recognize that only through political responses and private initiatives to the trends described above have appropriate assistance services, law and guidelines been developed. This context is key to a deeper understanding of the current situation of implementing and protecting children's rights in relation to sexual abuse.

#### 4.2.6 LIMITATIONS

As described above, child sexual abuse encompasses many different acts and raises numerous contentious and complex issues. For the purpose of this chapter,

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7. *Concluding observations on the combined 5<sup>th</sup> and 6<sup>th</sup> periodic reports of Norway*, UN doc. CRC/C/NOR/CO/5-6, para. 17. “The Committee notes with appreciation the measures taken by the State party to prevent and combat the sexual exploitation and abuse of children, including by strengthening legislation on child sexual abuse and exploitation in the new Penal Code. The Committee is concerned, however, that current plans of action insufficiently focus on the dangers arising online.” Specific concerns are then articulated, including ‘particular vulnerability of girls to sexual abuse and exploitation’, ‘lack of free consent not being at the centre of the definition of rape’, ‘reported increase of online child sexual abuse and exploitation’, ‘reported trend of underreporting of sexual abuse of children’, cases of ‘sexual abuse and exploitation of children committed by persons under the age of 18, and ‘lack of disaggregated data on the different forms of sexual abuse and exploitation of children’. The Committee make a series of recommendations directed at these issues (para. 18).

we firstly focus on criminal acts directed at minors under the age of 16, even though the Convention on the Rights of the Child defines children as being up to the age of 18. The age of sexual consent in Norway is 16 years, which marks a divide in various respects and is also in line with the definition of sexual abuse in General Comment No. 13 (see above), which refers to national regulations on the age of consent. Our choice of definition implies that we do not discuss protecting children's rights in relation to sexual abuse in cases where the child is aged between 16 and 18. Although many of the policies and systems that we present in this chapter also apply when the victims are aged 16 and 17, we have chosen to focus on the system in place for minors aged less than 16.

Secondly, we emphasize sexual acts involving direct contact, either physically or online, between the victim and the perpetrator. Therefore, we do not focus on the production and acquisition of images of child sexual abuse, as this involves much broader issues, though we acknowledge that this topic is important to understanding contemporary vulnerabilities, especially when such production takes place in 'the Global South' (O'Connell Davidson 2005), even though such production and consumption does also not always involve a victim (Gillespie 2017).

Thirdly, while minors may be subjected to sexual abuse in many different situations, we focus specifically on abuse committed by adults against children. Obviously, some children do subject other children to sexual abuse, and in recent years this aspect has received increased attention in research and policymaking.<sup>8</sup> Although sexual abuse committed by children against other children is an important topic, there are key differences to cases involving adult abusers. When a child commits sexual abuse, the fact that he or she is not only an offender but also a minor may polarize views among professionals, and institutions and organisations that are concerned with victims' wellbeing may not develop measures to assist the perpetrator, even when it is within their expertise to do so (McVeigh 2003). There are signs that this situation is changing (Askeland et al. 2017). Section 308 of the Norwegian Penal Code provides the option of not penalizing, or giving a milder sentence to, the perpetrator if the involved parties are of similar age and developmental stage. Although the policies and systems that we describe in this chapter may be relevant to such situations, we focus exclusively on situations with adult perpetrators.

Finally, we examine issues pertaining to crimes committed by individuals or smaller groups and do not include systematic institutionalized abuses. In the following paragraphs, we present the relevant international obligations and the standards that they establish for Norwegian policymakers and institutions.

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8. For an overview, see Askeland et al. 2017.

## 4.3 INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS TO PROTECT CHILD VICTIMS

### 4.3.1 THE CRC

According to the CRC, children have a basic right to be protected from sexual abuse. The CRC entered into force on 7 February 1991 and, in 2003, was incorporated into the Norwegian code on human rights (Section 2, No. 4), whereby the CRC applies as national law.<sup>9</sup> If there is any inconsistency between the CRC and other Norwegian legislation, the convention takes precedence (code on human rights Section 3). National authorities' obligations to respect and secure human rights, as established in the Constitution and relevant international treaties, are also stated in the Norwegian Constitution (Section 92).

Children's right to protection against sexual abuse and exploitation is stated in CRC Articles 19 and 34. Article 19 states that:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social *programmes* to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

This article targets abuse committed by the child's parents, guardians or other caregivers and, according to the General Comment, is the most important article regulating violence against children, including sexual abuse (General Comment No. 13, 2011). Article 34 specifically targets sexual exploitation and sexual abuse, stating that:

States Parties [shall] undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in par-

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9. Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) av 21. mai 1999 nr. 30. (Code on strengthening of the position of human rights in Norwegian law).

ticular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Four principles are key to the CRC (Smith 2016 updated by Høstmælingen, Kjørholt and Sandberg): non-discrimination; the child's best interests; the right to life, survival and development; and respect for the views of the child. These principles are reflected in the Norwegian Constitution and other national legislation (i.e. the child welfare act). Section 104, Subsection 1 of the Constitution states: '*Children have the right to respect for their human dignity. They have the right to be heard in questions that concern them, and due weight shall be attached to their views in accordance with their age and development*'. Finally, according to Subsection 3: '*The authorities of the state shall create conditions that facilitate the child's development, including ensuring that the child is provided with the necessary economic, social and health security, preferably within their own family.*' As our subsequent analysis shows, especially in relation to the principle of the child's best interests, tensions arise between the need to criminally prosecute child sexual abusers and the need to protect and support the child.

#### 4.3.2 THE LANZAROTE CONVENTION

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as 'the Lanzarote Convention', is another important legal instrument regarding children's right to protection from sexual abuse, as it specifically targets child sexual exploitation and abuse. According to the convention, the member states of the Council of Europe and the other signatories hereto shall adopt specific legislation and take measures to prevent sexual abuse, protect child victims and prosecute perpetrators of such abuse. Recognition of the need for stronger protection against child sexual exploitation and for child-sensitive inquiry and judicial procedures in such cases led to the drafting of this Convention (Explanatory Report CETS 201), which was adopted by the

European Committee of Ministers on 12 July 2007 and signed by Norway on 25 October 2007. This convention was ratified by the Norwegian government 13 June 2018 and entered into force 1 October 2018.

As the Lanzarote Convention only recently was incorporated into Norwegian law, its implementation in Norway cannot be assessed. However, as we subsequently demonstrate, it has been referenced as a legal instrument in the development of our national legislation. According to Article 4: 'Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children'. With our focus on the criminal system, we are particularly concerned with certain obligations regarding criminalization and prosecution. For example, Article 18 (a) obligates the State parties to take: 'all necessary legislative or other measures to ensure that intentional conduct *is* criminalised.' This applies to '...engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities'. It also applies to '...engaging in sexual activities with a child where: – use is made of coercion, force or threats; or – abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or – abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.' (Subparagraph b). In this regard, the defining age limit for minors is to be decided by each State Party (ref. no. 2). It is also emphasized that the provisions '...are not intended to govern consensual sexual activities between minors.'<sup>10</sup> The obligation to criminalize also includes children witnessing sexual abuse without participating in the activities (Article 22).

Chapter 7 of the Lanzarote Convention regulates investigation, prosecution and procedural law and includes a detailed list of requirements. Here, we only consider general principles established in Article 30, especially Nos. 1–4, as these relate to prosecution of child sexual abusers. We subsequently consider more specific provisions of the convention when discussing legislation and practice in relation to the Norwegian prosecutorial system. Article 30 states that 'each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights

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10. Obligations to criminalize also pertain to the area of prostitution and child pornography, including participation of children in pornographic performances (Article 19–21). There has been some criticism of applying the terms 'prostitution' and 'pornography' to cases involving minors. Some argue that the first should be termed 'commercial exploitation of children' and the second 'Documentation of child sexual abuse'. The obligation to criminalize also includes solicitation of children for sexual purposes (Article 23).

of the child' (No. 1). Furthermore, 'Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate' (No. 2). Article 30 also emphasizes that the states shall ensure that: 'the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.' The importance of simultaneously respecting the offenders' right to a fair trial is underlined in No. 4, which refers to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Aspects of the significance of the Lanzarote Convention are evident in certain amendments in our national legislation. In preparatory work for reform of the Norwegian Act on Criminal Procedure (ref. Ot. prp. no. 11, 2007–2008) several amendments were proposed to strengthen the position of crime victims in general (for example, improved right to information during the police investigation). For children, it was proposed that the right to make statements outside the courtroom (e.g. during forensic interviews) be expanded to apply to children below 16 years of age, with the opportunity to make statements in court if they preferred this. Previously, in accordance with Section 239, only children younger than 14 years could make statements outside court. The Government concluded that the suggested amendments would contribute to fulfilment of Norway's international obligations towards crime victims and explicitly stated that this also included the obligations set out in the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse.<sup>11</sup> The Norwegian Act on Criminal Procedure was subsequently amended to make the process more child-friendly.<sup>12</sup> In this context, the Lanzarote Convention, as well as the CRC and the European Convention on Human Rights, is referred to as an important part of the legal framework for the proposed amendments. We discuss this aspect in greater detail below.

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11. (ref. Ot.prp. no. 11 (2007–2008) Om lov om endringer i straffeprosessloven mv. (styrket stilling for fornærmede og etterlatte). Changes in the Act on Criminal Procedure etc. (strengthened position of the aggrieved party and descendants).

12. (ref. Prop. 112 L [2014–2015]) Endringer i straffeprosessloven (avhør av barn og andre særlige sårbare fornærmede og vitner). Changes in the Act on Criminal Procedure (forensic interview with children and other especially vulnerable aggrieved parties and witnesses).

## 4.4 NATIONAL OBLIGATIONS TO PROTECT CHILD VICTIMS AND DEVELOPMENTS

### 4.4.1 THE NORWEGIAN PENAL CODE

In 1842, the first prohibition was included in the Penal Code to protect children from sexual abuse (Criminalloven af 1842). Prior to this, sexual abuse between relatives (incest) was prohibited regardless of age. In other words, it was the relationship between the parties and not the child's age that justified criminalization of the sexual abuse (Hennum 1999). That the law has subsequently been amended several times to incorporate prohibitions protecting children from sexual abuse reflects changes in societal and cultural understandings of children and childhood vulnerability. Contemporary society regards children as vulnerable and therefore needing to be legally protected from sexual abuse. Hennum (1999) analysed the penal legislation on child sexual abuse in a historical perspective, showed how the political climate in this respect varied during the 20<sup>th</sup> century and observed that, in the wake of such crimes, discussions about appropriate sentencing tend to recur. In 1925, for example, politicians and general society were concerned about an increase in rape and child sexual abuse, and it was felt that the penalties should therefore be more severe. This concern led to the introduction of minimum penalties. Two years later, this measure was strongly criticized for being the result of a panic, and the minimum penalties were reduced. As described below, the minimum penalties in cases of child sexual abuse were later increased again.

### 4.4.2 CURRENT LEGISLATION

Currently, prohibitions against various forms of child sexual abuse are regulated in Chapter 26 of the Penal Code of 2005. Sections 302–305 protect children under the age of 16, whereas Sections 299–301 protect children under the age of 14. The younger the victim, the more severe the penalties are.

Section 299 stipulates a penalty of up to 10 years' imprisonment for a person who engages in sexual activity with a child under the age of 14 (Subparagraph a). This penalty also applies if the perpetrator makes a child under the age of 14 perform such sexual acts on him- or herself. The same penalty applies if a person performs an aggravated sexual act with a child under the age of 14. This term refers to touching of the child's naked genitalia or making them touch themselves (Ot. prp. no. 22, 2008–2009). As of 2015, sexual acts as described in Section 299 are classified as rape. This provision was included to emphasize that children cannot consent to such a sexual act and to underline the severity of committing sexual abuse against children (ref. Ot.prp. no. 22, 2008–2009: 243).

If the sexual act involved penetration as described in Section 300 (i.e. vaginal, oral or anal penetration) the penalty is 3 to 15 years' imprisonment. If the sexual act is assessed as aggravated assault, the sentence is longer: up to 21 years' imprisonment (Section 301). The factors that may result in assessment as aggravated assault include among others repeated abuse, partaking in an act involving more than one perpetrator, and the child being very young at the time of the abuse (see Section 301(a-e)).

Sexual activities against children aged 14–16 years is regulated in Sections 302 and 303. For such offences, the penalty is up to six years' imprisonment if they are not punishable under other articles of the Penal Code as well. As stated above, the same applies if the perpetrator makes a child between 14 and 16 years of age perform acts corresponding to sexual activity on himself/herself. If the abuse is assessed to be an aggravated violation of Section 302, the penalty is up to 15 years' imprisonment (Section 303). In this context, factors that may result in assessment as aggravated violation are among others, the sexual abuse having been committed in an especially painful or offensive manner, the involvement of multiple perpetrators, or the victim having died or suffered considerable harm to body or health as a result of the abuse.

Section 304 targets other sexual offences with children under the age of 16. Such offences are punishable with up to three years' imprisonment provided they do not fall under Section 299 (see above). A typical example is touching a child's genitalia without penetration.

Section 305 targets sexually offensive conduct towards children under 16 years. Such offences are punishable by a fine or up to 1 year's imprisonment and include to exhibit sexually offensive material or perform other indecent conduct in the presence of or directed at a child under 16 years (Subparagraph a). It also includes forcing or inducing a child under 16 to exhibit sexually offensive behaviour or perform other indecent conduct in the case that the offences do not fall within the scope of stricter provisions (Subparagraph b).

Children are also protected against sexual abuse according to other articles of the Penal Code.<sup>13</sup> Sections 312–313 target sexual offences where the parties are closely related, including incest, and the prohibitions apply regardless of the ages of the involved parties. These may be applied in addition to those referred to above that target sexual abuse of children under 14 or 16. Section 314 targets sexual

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13. Section 309 targets child prostitution, whereas Section 310 targets those who are present at presentations of child sexual abuse or at presentations that sexualize children. According to this section, the age limit for being a child is 18 years. The same age limit is set by Section 311, which targets the making of such material (i.e. child pornography).



offences against other persons with whom the child has a personal relationship, for instance foster children.

We now consider important amendments to the Penal Code and the Criminal Procedure Act over the past 20 years in order to assess how they reflect, first, Norwegian society's view of children's right to protection against sexual abuse and, second, implementation of the conventions described above. We focus on three areas of amendments: criminalization of a new offence (i.e. 'grooming'), increased penalties, and more child-friendly criminal procedures.

#### 4.4.3 CRIMINALISATION OF A NEW OFFENCE

Section 306 establishes penalties for the recently recognized offence of 'grooming'. This section targets any person who has arranged a meeting with a child under 16 years of age, and who with intent to commit a sexual offence specified in section 299–304, section 305b) or section 311 first paragraph a) has arrived at the meeting place or a place where the meeting place may be observed. This offence is punishable by a fine or up to 1 year's imprisonment. This prohibition first became law in 2009 and was subsequently amended to fulfil the requirements of the Lanzarote Convention (ref. Ot. prp. no. 22, 2008–2009). This criminalization of grooming, inspired by UK penal legislation, was initiated by the Norwegian Barneombud (Child Ombudsperson) and Save the Children. The Ministry of Justice has emphasized the need for stronger protection of children from sexual abuse. Even though a majority of the replies in the consultation process supported the proposed amendments, there were some concerns. Some indicated the difficulty of finding sufficient proof of the perpetrator's intent to commit abuse and feared that the amendment would not realize its intentions of preventing sexual abuse. Others found it difficult to accept that the offence implied criminalizing the intention to commit sexual abuse. However, as was emphasized in the proposal by the Ministry of Justice and the Police, '...it is not the evil will or intention alone that is criminalized, but the risk of child abuse that is created when the adult takes steps to fulfil [his or her] intentions.' [Our translation] (ref. Ot. prp. no. 18, 2006–2007: 11).

#### 4.4.4 INCREASED PENALTIES

In the past few decades, the penalties for child sexual abuse have been increased several times. In 2010, in proposing amendments to the Penal Code of 1902 regarding child sexual abuse, the Ministry of Justice and the Police explicitly

stated that there was a need to increase penalties for sexual abuse and other serious criminal offences. The Ministry referred to the then government's Soria-Moria Statement, which called for stricter penalties for homicide, other violent crimes and sexual abuse. (Ref. Ot. prp. 97 L, 2009–2010). Harsher penalties were proposed for the new Penal Code of 2005, but as preparations were still necessary before that law could enter into force, amendments were instead made to the Penal Code of 1902. The penalty for sexual relations with a child between 14 and 16 years of age was increased from 5 to 6 years' imprisonment, as in the Penal Code of 2005. In the preparatory work, the Ministry of Justice and Police explicitly stated their intention to introduce a longer prison sentence for rape of children under the age of 14 years. The actual sentences handed down by the courts had been found to be too lenient in comparison to those for other types of crime and in comparison, to the desired severity of penalties for child sexual abuse, which, as emphasized by the Ministry, should not normally be less than 4 years' imprisonment.

A clear motivation for the Norwegian government to increase the penalties was to deter others from committing child sexual abuse.<sup>14</sup> This development was not only punitive but was also meant to reflect societal norms and to demonstrate solidarity with the victims. The criminologist David Garland has investigated the more expressive sides of punishment: *Such measures [punishments] are designed to be expressive, cathartic actions, undertaken to denounce the crime and reassure the public. Their capacity to control future crime, though always loudly asserted, is often doubtful and in any case is less important than their immediate ability to enact public sentiment, to provide an instant response, to function as a retaliatory measure that can stand as an achievement in itself* (2001: 133). Proposing such amendments may also be a way for the government to communicate to the public that something is being done to prevent children from being exposed to sexual abuse. However, amendments to penalties may have other rationales. As described above, Norwegian penalties for child sexual abuse have varied over the past century. In 1926, the minimum penalty for sexual abuse of a child under 14 years was increased from one to three years' imprisonment. In the 1960s, however, after criticism from the Supreme Court, the minimum penalty was reduced to one year. In several cases, the Supreme Court had stated that they would have ruled differently if they had not been bound by the minimum penalty. In some

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14. Prop. 97 L (2009–2010) Endringer i straffeloven 1902 mv. (skjerping av straffen for drap, annen grov vold og seksuallovbrudd.). Changes to the Penal Code of 1902, etc. (increasing the penalty for homicide and other serious offences of physical and sexual violence).

cases,<sup>15</sup> they would have upheld the verdict but recommended that the perpetrator not serve part of his/her sentence.

Such a situation is unlikely to occur today, for a large body of recent research has revealed the severe physical and psychological consequences for children who suffer sexual abuse (Browne & Finkelhor 1986, Paolucci, Genuis & Violato 2001). This knowledge is recognized by the courts and the general awareness among society has also greatly increased. As a result, the imposing of minimum penalties would be unlikely to attract official or public criticism today (see, for example, the arguments regarding severity of penalties in Rt. 2017: 1282). However, there may still be some disagreement between courts and lawmakers' severity of penalties. Arguments in the preparatory work for the implementation of the Penal Code of 2005 show that the government found court sentencing for child sexual abuse to be too low.

#### 4.4.5 CHILD-FRIENDLY JUSTICE

Another important aspect is amendments to legislation that are intended to ease the burden of police reporting and criminal investigation on children. Child-friendly investigation is required by the Lanzarote Convention, which, in Article 35, specifically obligates State parties with regard to investigative interviews of children '...to safeguard the interests of the child and ensure that he or she is not further *traumatised* by the interviews...' (Explanatory report 2007: 34). All necessary legislative or other measures should be taken to ensure that: (a) the interview is conducted 'without unjustified delay'; (b) the interview takes place in premises designed or adapted for this purpose; (c) the interviewers are professionals with special training; (d) the same person conducts all the interviews with the same child; (e) the number of interviews be as few as possible; and (f) the child is accompanied by a legal representative or a person of his or her choice. It is also stated that the videotaped interview should be accepted as evidence during the court proceedings (Article 35, Section 2).

Special regulations regarding children's testimony in cases of child sexual abuse have existed in Norwegian legislation since 1926 (Hennum 1999). At the time, the main provision was that the child did not have to make statements in court, which was a major improvement. In the following paragraphs we describe more recent legal reforms for child-friendly proceedings.

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15. See Rt. 1957 pp. 118, 899, 1073, and 1158.

In October 2015, several amendments came into force regarding forensic interviewing of children, including a method now termed ‘facilitated interview’, which refers to an interview designed to meet the special needs of children and adults with mental impairments. Three amendments are noteworthy. Firstly, it became mandatory that the interviews take place in a Statens Barnehus (State Children’s House, hereinafter ‘Barnahus’, described in greater detail below); for example, when it is suspected that a child has been sexually abused (ref. Section 239 f in the Criminal Procedure Act). Interviewing the child in a Barnahus represents a child-friendly, inter-agency approach with the double aim of facilitating the legal process and ensuring that the child and his/her family receives the necessary help to cope with what the child has experienced. Prior to the establishment of the Barnahus,<sup>16</sup> child investigative interviews were conducted in courthouses or police stations. There were no official measures to ensure that the child received support or follow-up after the investigative interview had been conducted (Bakketeig et al. 2012). An evaluation of a sample of children’s experiences after being interviewed at a Barnahus showed positive experiences for the majority of children (Stefansen et al. 2012).

A second amendment in this respect requires that the police conduct child interviews within certain time limits after a suspected offence has been reported to them. Prior to this amendment, interviews were to be conducted as quickly as possible, and no later than two weeks after reporting of a suspected offence. However, these time limits were often exceeded by months rather than weeks, which was a serious problem that needed to be solved. Section 239e still stipulates that the interview shall be conducted as soon as possible, but within one week in child sexual abuse cases if the abuse is suspected to have happened less than two weeks earlier (Subparagraph a), if the child has made a spontaneous and comprehensive statement about the reported offence (Subparagraph b) or if there is reason to believe that the statement is necessary to protect the child (Subparagraph c). If the child is less than six years old the interview is to be conducted within two weeks regardless of the child’s formal status as a witness or an aggrieved party. The two-week limit also applies for all children who have the formal status as an aggrieved party and a facilitated interview is required by the law. In other cases, the time limit is three weeks. The legislation allows for exceptions in specific circumstances that we need not go into here. One purpose of these deadlines, obviously, is to reduce the burden on the child of having to wait for the interview. However, it is also intended to increase the likelihood of obtaining information of eviden-

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16. The first Barnahus was established in 2007. As of December 2017, there were 11 Barnahus in Norway.

tiary value from the child. The CRC Committee, in its 2010 comment to Norway's fourth periodic report, expressed concern that children had to wait too long before being interviewed.<sup>17</sup> This amendment is therefore a step in the right direction, although the annual report from the Norwegian Barnahus (2016) indicates that it is demanding to conduct all the interviews within these time limits due to a large increase in the number of investigative interviews.

A third noteworthy amendment is that the forensic interviews must be managed and supervised by a police official with prosecutorial authority, instead of the judge that used to be responsible for such interviews. One implication of this amendment is that the first interview of the child can be conducted without notifying the suspected perpetrator (Section 239b). This is an important amendment, because notifying the perpetrator could put the child at extra risk, for example, of being influenced and/or pressured in cases where a family member is suspected of committing the abuse. However, it is important to consider whether this new provision violates the defendant's rights to question witnesses according to the European Convention on Human Rights Article 6. This question was discussed in the proposal for this amendment, and the Ministry of Justice and Public Security concluded that the defendant's right to a fair trial was fulfilled, as the suspected perpetrator and his defence lawyer are given the opportunity to see the recorded interview and can request that a supplementary interview be conducted with the child, during which their questions may be addressed by the child.<sup>18</sup> However, an obligation to notify the perpetrator has later been proposed in a Committee's proposal for an Act relating to the Conduct of Criminal Cases (the Criminal Procedure Act, see NOU 2016:24).

According to Section 107 a of the Criminal Procedure Act, if there is suspicion that a child has been sexually abused, that child also has a right to legal representation during the investigation and subsequent court proceedings. In 2008, the right to legal representation was extended to a wider range of victims of child sexual abuse (see Ot. prp. nr. 11, 2007–2008), thereby strengthening the child's right to legal representation in cases of sexual abuse.

In summary, the criminalization of grooming, the increased penalties for child sexual abuse and amendments facilitating more child-friendly justice have all contributed to improving children's right to protection against sexual abuse. They also

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17. *Consideration of reports submitted by States parties under article 44 of the Convention*. Concluding observations: Norway, UN doc. CRC/C/Nor/Co/4, 12.

18. (Prop 112 L [2014–2015] *Endringer i straffeprosessloven (Avhør av barn og andre særlige sårbare fornærmede og vitner*, p. 59). Changes to the Act on Criminal Procedure (forensic interview with children and other especially vulnerable aggrieved parties and witnesses).

illustrate how the CRC and especially the Lanzarote Convention have influenced Norwegian legislation in this area. In practice, however, there are challenges to fulfilling these legal requirements. In the following section of the chapter we therefore closely examine how the child's right to protection against sexual abuse is upheld in practice.

## 4.5 POLICY AND PRACTICE

Making the investigative and court systems more child-friendly will have little effect if suspected child abuse is not reported to the police. Even more important is whether suspicion of child sexual abuse is disclosed to anyone. In this section, we examine and discuss key aspects of policy implementation in this field, again focusing primarily on the criminal justice system. Our analysis is primarily based on official documents regarding the combatting of child sexual abuse, as well as on available statistics and research.

### 4.5.1 APPROACHES TO IDENTIFICATION

#### *Professional competence with regard to child sexual abuse*

One approach to identification is through professionals who are in a position to disclose child sexual abuse, including child welfare workers, teachers, health personnel, dentists, asylum detention staff and immigration officers. Such professionals are required to be competent in the area of sexual abuse. A 2007 survey explored whether and to what degree those studying to become child welfare officers or preschool and primary school teachers had received instruction about the CRC, about physical and sexual abuse and about methods of talking to children.<sup>19</sup> The survey found that 56% of the students who wanted to become primary school teachers and 37% of those who wanted to become preschool teachers reported that they had not received any instruction on sexual abuse, whereas all the child welfare students reported that they had received such instruction (Øverlien et al. 2013). The researchers recommended that this subject should be integrated into vocational education plans. A 2016 follow-up study using the same questionnaire as in 2007 revealed improvements in terms of received instruction about sexual abuse and related issues among those training to become preschool

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19. This was a survey of 161 child welfare students, 178 primary student teachers and 209 preschool student teachers, in total 548 students.

and primary school teachers but emphasized that there was still a need for more instruction in this area (Øverlien et al. 2016).

This aspect was subsequently addressed by the Ministry for Children and Equality in its action plan to prevent and combat physical and sexual abuse of children, which explicitly set the goal that knowledge about prevention and early intervention should be reinforced in all relevant education programmes.<sup>20</sup> In 2015, the Ministry of Education and Research explicitly proposed that competences relevant to dealing with physical and sexual abuse of children should be part of teacher training and that this aspect should therefore be included in education plans. The continuance of this work is also described in the Government's plan for 2017–2021, which incorporates a systematic approach to identifying areas in need of further improvement in the education of professionals.<sup>21</sup>

The importance of improving competences in schools is highlighted by child welfare statistics from the year 2015, which show that schools are the third most important service in reporting concerns about specific children to the child welfare services, even though such reports often refer to problems other than physical and sexual abuse. Surprisingly, kindergartens more often report about child sexual abuse than do schools. Even though kindergartens accounted for only a few of all the reports to the child welfare services in 2015, 33% of those reports were about violence and sexual abuse (Statistics, Bufdir 2015).

### ***Professional confidentiality and obligation to report or prevent violence and abuse***

Rules on professional confidentiality are a potential obstacle to communicating information about suspected child abuse. When suspicion of sexual abuse arises, most professionals, however, have a right and often a duty to report their suspicion to the child welfare services, regardless of their obligations of professional confidentiality. This applies, for example, to kindergarten workers and school teachers, health personnel and employees at family centres and crisis shelters.<sup>22</sup> They are

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20. Tiltaksplan for å bekjempe vold og seksuelle overgrep mot barn og ungdom, 2014–2017: 37 “En god barndom varer livet ut”. (Action plan to combat violence and sexual abuse against children and youth, 2014–2017: 37 “A good childhood is for life”).

21. Prp. 12 S, 2016–2017: Opptappingsplan mot vold og overgrep, 2017–2021 (plan to increase the efforts against violence and abuse)

22. (ref. lov om barnehager 17. juni 2005 nr. 64 §22, lov om grunnskolen og den vidaregående opplæringa (opplæringslova) 17. juli 1998 nr. 61 §15–3, lov om helsepersonell 2. juli 1999 nr. 64 §33, lov om familievern 19. juni 1997 nr. 62 §10, lov om kommunale krisesentertilbud (krisesenterlova) 19. juni 2009 nr. 44, §6)

also obligated to provide information if this is required by child welfare services.<sup>23</sup>

If a professional has concrete information indicating that child sexual abuse is about to happen, he or she (as well as any private person involved) is obligated under the Penal Code (Section 196) to act to prevent the abuse. Failing to act on such suspicion is punishable by law (*ibid.*). A 2013 survey of the understanding of rules regarding professional confidentiality among professionals within the healthcare sector, at kindergartens, in child welfare services and in the police force, etc., concluded that such professionals were aware of regulations on professional confidentiality and the obligation to report suspected abuse to the child welfare system. However, this survey also showed that many of the professionals had not read the regulations and that there was insufficient knowledge about some of the exceptions to rules of confidentiality. Fortunately, the professionals did not experience the regulations on professional confidentiality as an important hindrance to inter-agency collaboration (Stang et al. 2013). Detailed consideration of the regulations on professional confidentiality is beyond the scope of this chapter. Suffice it to say that there are legal dilemmas in this context too, for example due to differences in the applicability of regulations between professions. In 2017, a commission that analysed a sample of serious cases of physical and sexual abuse of children in Norway recommended that the regulations on professional confidentiality be simplified to reduce the risk of professionals not acting in cases where they are legally entitled and even obligated to do so (NOU 2017:12).<sup>24</sup>

#### 4.6 THE SYSTEM RESPONSE

When suspicion of sexual abuse is reported, several agencies may become involved, including general services (i.e. child welfare and family services) and more specialized services such as the Barnahus or incest centres. The involved services may also include agencies representing public bodies and/or civil society, the latter supplementing the public welfare services (Bakketeig et al. 2014, Smette et al. 2017). In addition to welfare services, the police and court systems are also important. In the following paragraphs we focus on the police system and the child welfare services and describe key procedures in cases of child sexual abuse. We

23. (lov om barneverntjenester §6–4).

24. NOU 2017:12 Svikt og svik. Gjennomgang av saker hvor barn har vært utsatt for vold, seksuelle overgrep og alvorlig omsorgssvikt (Evaluation of cases where children have been subjected to violence, sexual abuse and serious neglect).



also consider possible implications of the strengthening of the legislation, as described above. We first consider the child welfare services.

### CHILD WELFARE SERVICES

Few cases reported to the child welfare services are registered as child sexual abuse. Of the 58 254 cases reported to the child welfare services in 2016, less than 3% were registered as child sexual abuse. When a suspicion of child sexual abuse is reported to the child welfare services, they have to decide whether to investigate the case or drop it without further investigation. Of the total number of cases of all kinds reported to the child welfare services in 2015, they decided to further investigate 80%. According to the Child Welfare Act, the main rule is that cases requiring further investigation must be finalized within three months after the initial reporting. Of the total number of reports of all kinds in 2015, only 40% resulted in the child welfare services taking action. Of all the child sexual abuse cases in which the child welfare services did decide to take action, only 7% went to County Court (which usually leads to the child being placed outside the family home). In the rest, the County Courts were not involved, meaning that services were provided to the child's home (Bufdir 2015).

### REPORTING OF CASES TO THE POLICE

The Government's national plan to combat physical and sexual abuse of children (Proposition [Prp.] 12 S 2016–2017) calls for prioritizing investigation of such cases, strengthening investigative capacity and improving the quality of investigations. The Government emphasizes the need to increase police competence regarding Internet-related sexual abuse of children (p. 71).

If suspicion of child sexual abuse is reported to the police, the child will undergo an investigative interview at a Barnahus. Prior to the interview, the Barnahus personnel organize a joint meeting of concerned professionals, the investigator, Barnahus staff and often also the child welfare services. The purpose of this meeting is to prepare and plan for the investigative interview. If requested by the police and in situations where there is reason to believe that there may be forensic medical evidence, the child undergoes a medical examination, which in 2016 was conducted on 1030 children. After the investigative interview, the Barnahus staff assess whether the child needs psychological treatment. If so, the child may receive a short-term treatment of 15 hours, and if more is needed the Barnahus puts the child in touch with psychological services in his/her local community.

Often, a joint meeting is organized after the investigative interview to decide what further help the child will need from other services, for example the child welfare services.

As mentioned above, it is now mandatory that such interviews be conducted at a Barnahus (ref. Criminal Procedure Code Section 239 f). In 2015, nationwide 5,867 investigative interviews were conducted,<sup>25</sup> an increase of 24.2% compared to the year before (Statens Barnehus, 2016). In its report, the Barnahus partly attributes this to an increase in the number of reported cases of children being subjected to sexual abuse and/or Internet-related abuse, as a public disclosure of one such case often leads to many victims being identified. This may be related to police prioritization of Internet-related abuse,<sup>26</sup> which may also result in more cases being discovered. However, a slight majority of all the cases the Barnahus handled in 2016 were suspected cases of physical abuse. Of the 5 867 children interviewed, 55.7% were believed to have been exposed to physical violence and 41.9% to sexual abuse. (The rest were other types of offence). Some of the Barnahus also interview suspects who are minors. Most of these are suspects in cases of child sexual abuse. An increase in these offender interviews has recently been reported by the Barnahus, which explain this as a result of their prioritising cases with young offenders. The Committee on the Rights of the Child has underlined the need for research and developing measures to prevent sexual abuse and exploitation of children by other children.<sup>27</sup>

The crime statistics on numbers of cases that go to trial or are dropped reveal that in 2015 almost two-thirds of the investigated cases of suspected rape of children under 14 years were dropped, as were about half of the cases regarding sexual relations or acts with children under 16 years (Statistics Norway 2015). In other words, while harsher penalties and the efforts to make investigations more child-friendly may be seen as victories in the fight against child sexual abuse, the result for most of these children is that their case never goes to trial.

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25. These were first-time interviews. Pursuant to amendments to Norwegian legislation in 2015, supplementary child interviews may be conducted. These are not included in this figure (Police Directorate 2016).

26. The Director of Public Prosecutions' memorandum on targets and priorities for 2017.

27. *Concluding observations on the combined 5<sup>th</sup> and 6<sup>th</sup> periodic reports of Norway*, UN doc. CRC/C/NOR/CO/5-6, para. 18.

#### 4.7 CONCLUDING REMARKS

As shown above, both the CRC and the Lanzarote Convention have influenced Norwegian national legislation in several important aspects, including the criminalisation of child sexual abuse, the criminal procedures adopted following an initial report of suspected abuse, the severity of penalties stipulated and the aftercare for victims. Not only national legislation but also government policy documents reflect that the various forms of child sexual abuse are regarded and treated as serious offences. Therefore, we can reasonably conclude that the *intention* among policymakers and legislators to combat child sexual abuse seems to be strong.

Norwegian systems and policies regarding child sexual abuse also reflect a *strong belief* in the penal system as an effective way to combat such crimes. The CRC and the Lanzarote Convention have influenced the development of our criminal procedures towards more child-friendly justice. However, when we look at law in practice, there is compelling evidence that an extremely low percentage of child sexual abuse incidents are reported to the police or the child welfare service, even though most professionals in welfare-related positions are obligated to report suspicion of abuse to the child welfare services. The explanation for this disconcertingly low level of reporting is probably complex, and we need to study the mechanisms that prevent child sexual abuse from being disclosed and reported to responsible professionals and officials. There is also compelling evidence that victims of sexual abuse find it difficult and/or are unwilling to report their abuse experiences to healthcare personnel, child welfare officers or the police. This may be related to how victims are met by the welfare and criminal justice system, but may also be related to the stigma and experience of shame that is often experienced by victims of sexual abuse (McElvaney et al. 2014).

Clearly, what is needed is a multi-faceted approach based not only on awareness that involvement of child welfare and police officials can inhibit disclosure but also on careful listening to the fears and concerns of children and young people to determine what kinds of help will benefit them. This relates to the dilemma of heeding the public interest to prosecute child sexual abuse while serving the best interests of the child. Prosecuting child sexual abuse can be understood as expressing and channelling societal reactions to such criminal offences. The official justification for prosecution and punishment is to deter potential offenders from committing child sexual abuse. However, the child victim may not want the offender to be punished, especially if he/she is the victim's parent or other family member. Furthermore, the threat of punishment may even prevent the child from disclosing the abuse and thus hinder his/her access to necessary assistance. Whatever the victim's opinions and feelings about disclosure, it should be recognized that in some

cases the threat of punishment is at odds with the victim's needs for help and support. Considering the child's best interests as defined in the CRC, there is an evident need to combat child sexual abuse with a multi-faceted approach.

If we return to the question of challenges involved in estimating or measuring children's rights related to sexual abuse, we have pointed at several: There are limitations related to both register data and surveys regarding the measure of the extent of the problem over time. This may be improved by conducting regular longitudinal surveys regarding child sexual abuse, which again require substantial funding. Some methodological problems in this regard will, however, remain as surveys will miss out on vulnerable groups with experiences of child sexual abuse. Lack of reliable and comparable figures means that we do not have a reliable way to assess whether implemented laws and policies affect the extent and expressions of child sexual abuse. There are also limitations as to what measuring children's rights actually tells us. The motivation for combatting child sexual abuse has shifted over time – from protecting the nuclear family in the '50s to later protecting the vulnerable child. These shifts imply that measuring children's rights over time may conceal different social meanings of policies.

Even though the legislation and regulations are developing in line with Norway's international obligations, it is primarily the *intent* of combatting child sexual abuse that we must measure. This may be important knowledge as long as we recognize the limitations. Keeping track of a development in the criminal justice process is also of value. The amendments made seem to have represented important qualitative improvements for children who are enrolled in the criminal justice system as victims. As mentioned above, many victims do however not get the necessary help and most cases do not end up being prosecuted. This may be interpreted as an indication of failure of our welfare and criminal justice systems. But even if cases of child sexual abuse are reported, the child may not want the offender convicted. Hence, a dropped case may not represent a negative result for the child, as long as the child is no longer in an abusive situation. With an aim to measuring the implementation of children's rights, a dropped case may be assessed as a negative result, but it could still be experienced as a positive result by the individual child. The point we want to make is that the complexity of child sexual abuse makes it difficult to interpret what the results of measuring children's rights mean. A measurement regarding law in books may not represent a good result for the individual child in practice. This calls for careful considerations and a realization that more and more qualitative data is required if we are to assess the extent to which the rights of the child in relation to sexual abuse are realized in Norway.

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