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Combating Sexual Exploitation of Children Online in the Pacific Region: Current Gaps and Challenges on Legal and Regulatory Framework

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Program. ECPAT International, Bangkok.

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Online Protection and Commonwealth National
Cybersecurity Framework Regional Workshop,
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Agenda

I. Regional context - overview

***II. Legal and regulatory frameworks
- progress and challenges***

III. Recommendations



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I.

Regional context



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INCREASE IN THE PERCENTAGE OF INTERNET USERS IN THE PACIFIC REGION...



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	Mobile-cellular subscriptions				Internet users				Fixed (wired)-broadband subscriptions			
	Per 100 population			% change per annum	Per 100 population			% change per annum	Per 100 population			% change per annum
	2000	2008	2012	08-12	2000	2008	2012	08-12	2000	2008	2012	08-12
Pacific	33.2	82.8	91.2	2.4	35.4	54.2	63.8	4.2	17.5	19.2		2.3
American Samoa	3.5											
Australia	44.7	102.8	106.2	0.8	46.8	71.7	82.3	3.5	23.9	25.1		1.1
Cook Islands												
Fiji	6.8	71.1	98.1	8.4	1.5	13.0	33.7	26.9	1.5	1.5		0.0
French Polynesia	16.8	70.7	81.7	3.7	6.4	33.9	52.9	11.8	10.5	14.5		8.6
Guam	17.5				16.1	48.4	61.5	6.2	1.5			
Kiribati	0.4	1.0	15.6	96.9	1.8	7.0	10.7	11.3	0.7	1.0		8.2
Marshall Islands	0.9				1.5	4.6	10.0	21.4	0.0			
Micronesia (F.S.)	0.0	24.9	24.6	-0.3	3.7	14.5	26.0	15.7				
Nauru	12.0		65.6								0.0	
New Caledonia	23.6	80.9	89.3	2.5	13.9	34.5	58.0	13.9	0.0	10.5	18.5	15.3
New Zealand	40.0	108.0	110.3	0.5	47.4	72.0	89.5	5.6	0.1	21.4	27.8	6.8
Niue												
Northern Mariana Islands	4.4								0.0			
Palau		57.7	82.6	9.4					0.5	3.0		52.3
Papua New Guinea	0.2	13.3	37.8	29.7	0.8	1.2	2.3	18.9	0.0	0.1		29.5
Samoa	1.4				0.6	5.0	12.9	26.6	0.1			
Solomon Islands	0.3	5.9	53.3	73.5	0.5	3.0	7.0	23.6	0.3	0.4		6.4
Tonga	0.2	49.0	53.4	2.1	2.4	8.1	34.9	44.0	0.7	1.4		19.5
Tuvalu	0.0		28.4		5.2	15.0	35.0	23.6	3.0	5.6		17.1
Vanuatu	0.2	15.8	54.4	36.3	2.1	7.3	10.6	9.9	0.1	1.0		85.3



GLOBAL THREATS in SECO AFFECTING CHILDREN IN THE REGION...

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Greater circulation of child pornography, especially through peer-to-peer file-sharing platforms:

In Australia (2012), a teacher was identified as a user of the Gigatribe P2P network to access child pornography materials.

Performance of live streaming of child sexual abuse over webcams.

An Australian man convicted (2011-2012) for instructed sexual acts to be performed with children in the Philippines (Victims' age 7-16)
Engaged through online chat sessions.



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Travel and Tourism - CAM: Fiji reported cases of visiting yachtsmen luring small children (4 and 7 year-old) with sweets so that they could photograph them as they played in the nude

Sexting - Sextortion: In Australia (2012) a man was found to send 135 text messages of sexually explicit content to his victim pretending he was a 19 year-old student.



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II.

***Legal and regulatory frameworks
progress and challenges***



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INTERNATIONAL AND REGIONAL INSTRUMENTS

- Convention on the Rights of the Child (adopted 1989 - into force 1990)
- OPSC (adopted 2000- into force 2002)
- CoE Convention on Cybercrime (adopted Nov 2001 - into force 2004)
- CoE Convention against Sexual Exploitation and Abuse (adopted 2007 - into force 2010)



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GAPS

OPSC does not criminalize:

- Mere possession
- Grooming (online solicitation of children for sexual purposes)
- Online real-time viewing to CP
- Intentional access to CP with ICT



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PROGRESS AND CHALLENGES AT NATIONAL LEVEL

A. The offence (child pornography) :

1. Definition
2. Criminalized conducts

B. Repression of the crime

1. Jurisdiction

C. The Rights of victims



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A.1

DEFINITION CP

Full compliance - article 2 OPSC

1. Papua New Guinea
2. New Zealand
3. Australia



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Definitions in obscenity laws/against morality in most PICs...problematic

1. Vanuatu (art. 147 Criminal Code)
2. Fiji (art. 188(1) Criminal Code)
3. Kiribati (art. 166 Criminal Code)
4. Nauru (Criminal Code art. 228)
5. Tuvalu (Criminal Code, art. 166)
6. Niue (The Niue Act, Article 174; The Film and Public Entertainment Act, 1979)
7. Samoa (Criminal Code, art. 43)
8. Palau (Film and Public Entertainment Act of 1979)



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A.2 CRIMINALIZATION OF ALL CONDUCTS - Child pornography - article 3 OPSC:

- Papua New Guinea



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Criminalization of conducts BEYOND the OPSC (1/2) :

MERE POSSESSION: Vanuatu, New Zealand, Tonga, Samoa, Papua New Guinea, Australia:

- Samoa criminalizes possessing “indecent material” on children in an electronic system(art. 82(m) Criminal Code).

GROOMING: New Zealand, Australia



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(2/2)

Knowingly accessing/ viewing child pornography:

- Australia
- N.B: Samoa criminalizes “knowingly obtaining access, through ICTs to “indecent material” on children (article 82(n) Criminal Code).

Virtual child pornography: Papua New Guinea, Samoa, Australia



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B.1

REPRESSION OPSC CRIMES - Jurisdiction



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TERRITORIAL AND EXTRATERRITORIAL JURISDICTION (art.4)

- **Obligation to exercise territorial jurisdiction:** crimes committed in Member States (article 4(1)).
- **Right of Member States to exercise jurisdiction** when (article 4(2)):
 - a) the offender is a national or habitual resident OR
 - b) the victim is a national



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EXTRATERRITORIAL JURISDICTION - CHALLENGES

No jurisdiction when crimes committed **entirely** abroad:

- Fiji (art. 5 and 6 Penal Code)
- Kiribati (art. 5 and 6 Penal Code - similar provisions to Fiji)
- Nauru (art. 12 Criminal Code)
- Tonga (art. 6 Criminal Code)

No extraterritorial jurisdiction for crimes committed by aliens against nationals abroad (variation):

- Vanuatu (article 4 Penal Code).



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EXTRADITION - CHALLENGES 1/2

Double criminality required:

- Papua New Guinea (Extradition Act 2005, art. 7);
- Fiji (Extradition Act, 2003, art. 3(1));
- Nauru (Extradition Act 1973, art. 5);
- Tonga (Extradition Act 1988, art. 5);
- Tuvalu (Extradition Act 2004, art. 5).



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EXTRADITION – CHALLENGES 2/2

Closed list of extraditable offences, not including child pornography:

e.g. Tonga (Extradition Act, art. 5, List in schedule 1)



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C.

***The Rights of Victims of Child
Pornography in the
OPSC***



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→ *ECPAT INTERNATIONAL is currently conducting a global research on “Access to Justice” for CSEC victims, including in Asia –Pacific , due for 2015/2016.*



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III.

RECOMMENDATIONS



RECOMMENDATION 1.

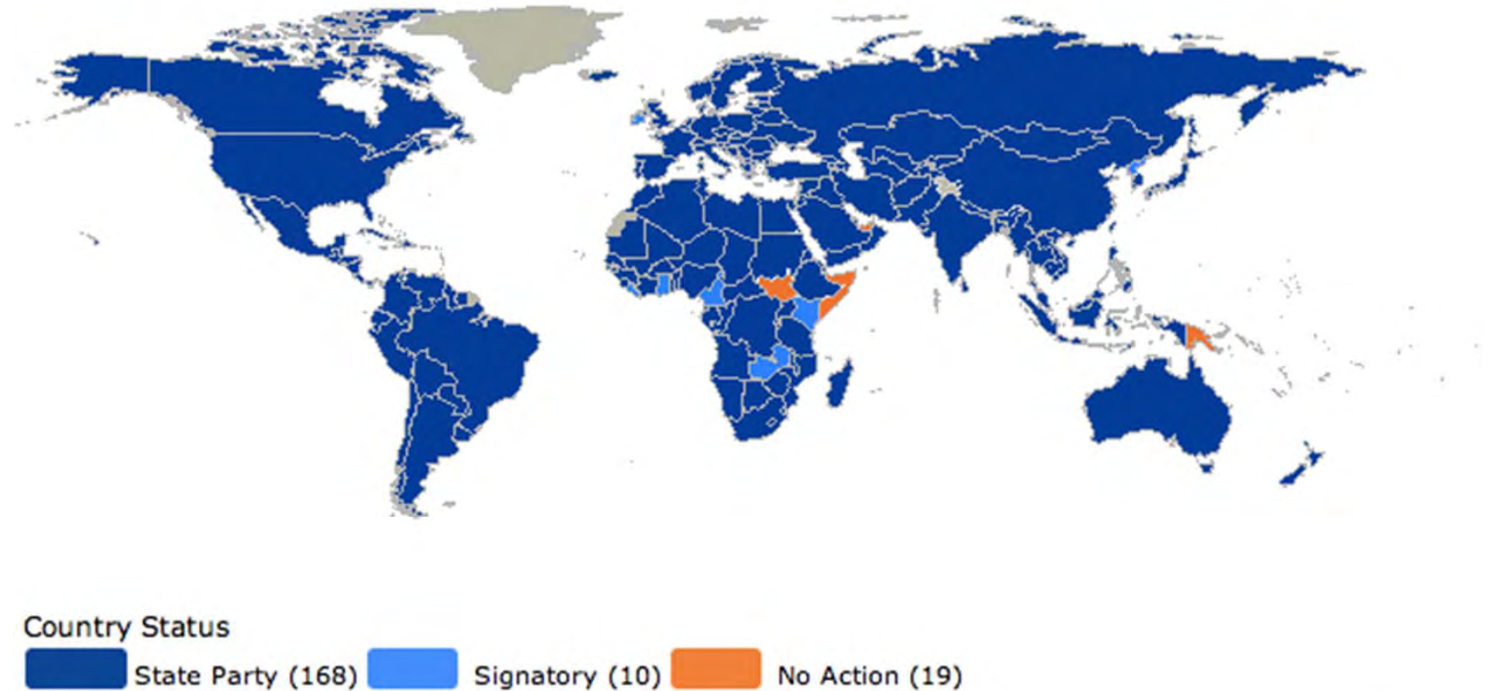
Signature and/or ratification of the OPSC

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Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography



Source: <http://indicators.ohchr.org>



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17 countries have not signed
worldwide (no actions)



7 are PICs



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- ✓ Bahamas
- ✓ Barbados
- ✓ Kiribati
- ✓ Marshall Islands
- ✓ Palau
- ✓ Papua New Guinea
- ✓ Saint Kitts and Nevis
- ✓ Samoa
- ✓ Sao Tome and Principe
- ✓ Singapore
- ✓ Somalia
- ✓ South Sudan
- ✓ State of Palestine
- ✓ Tonga
- ✓ Trinidad and Tobago
- ✓ Tuvalu
- ✓ United Arab Emirates



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10 countries worldwide
have signed not followed by
ratification /accession
among those

1. Fiji (2005)
2. Nauru (2000)
3. Solomon Islands (2009)



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**A TOTAL 10 PICS HAVE NOT EITHER SIGNED
AND RATIFIED/ACCESSED OR NOT EVEN
SIGNED**



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RECOMMENDATION 2. Criminalizing CP and associated conducts

1. Nauru
2. Kiribati
3. Nui
4. Marchall Islands



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RECOMMENDATION 3.

Harmonizing and/or updating national legislation with international standards 1/2

- ◆ Specific legislation without a definition: Fiji Islands

- ◆ Definitions not in compliance international standards :
 - Tonga – child person under 14
 - Vanuatu – child person under 16



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2/2

- ◆ Criminalization of **producing, distributing, disseminating, importing, exporting, offering, selling, and possessing for the above purposes** child pornography (article 3-c OPSC).
- ◆ Ensuring the application of **extraterritorial jurisdiction** and **extradition** according to the OPSC standards (articles 4 and 5).



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RECOMMENDATION 4.
To substitute laws referring to obscene/indecent behavior for laws that explicitly refer to “child pornography.”

- ◆ Recent obscenity laws
- ◆ Old legislations (obscenity)
 - 1966 - Niu
 - 1979 - Palau



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RECOMMENDATION 5.

Beyond OPSC.....

To criminalize other conducts and other forms of sexual exploitation not included in the OPSC

- ◆ Knowingly accessing
- ◆ Online solicitation - age factor
- ◆ Mere possession
- ◆ Virtual child pornography



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MANY THANKS !

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