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BALANCING CHILDREN'S CONFIDENTIALITY AND JUDICIAL ACCOUNTABILITY:

**A Cross-Country Comparison of Best
Practices Regarding Children's Privacy in the
Criminal Justice System.**

**A Report for HAQ: Centre for Child
Rights**



LAWS4052

**International Participation and
Community Engagement**

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Balancing children's confidentiality and judicial accountability: A cross-country comparison of best practices regarding children's privacy in the criminal justice system.

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I INTRODUCTION

'States should ensure the child such protection as is necessary for his or her well-being. All children shall be protected from any form of hardship while going through state and non-state justice processes and thereafter and States shall implement appropriate measures to ensure this.' - Convention on the Rights of the Child; Guidance Note of the Secretary

General: UN Approach to Justice for Children.¹

'Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.' - Lord Shaw quoting philosopher Jeremy Bentham.²

Almost universally it is recognised that children are deserving of extra protection when navigating the criminal justice system. This is in recognition of their young age, limited life skills, and vulnerability engaging in a complex legal system.

This paper will explore the relationship between the principle of confidentiality for children in the criminal justice system whilst upholding judicial accountability. Through a comparative

¹ *Convention on the Rights of a Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*Convention on the Rights of the Child*').

² *Scott v Scott* [1913] UKHL 2.

analysis of the approaches of several nations including the United States (US), Australia, the United Kingdom (UK) and Singapore, this paper will suggest best practices in protecting children's confidentiality, balanced with the fundamental right of judicial transparency and access to justice. Some States have managed to balance these competing principles better than others, and it is the authors' intention to recommend the best practices to ensure that the privacy of children in criminal justice matters is maintained while ensuring an accountable and open court system and government.

This paper was prepared for HAQ: Centre for Child Rights (**HAQ**) by a remote student team at Macquarie University, Sydney. The research project was co-supervised by Bharti Ali, co-founder of HAQ and Debra Ronan, convenor of LAWS4052 at Macquarie University. The Macquarie University student team consists of:

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III EXECUTIVE SUMMARY

As the team expected, there were varying levels of State practice in balancing the competing interests of children's privacy and judicial transparency.

Most countries investigated had noted their clear intention of ensuring children's privacy. Almost all countries, at least formally, promised to redact names in files, use pseudonyms or initials for any children involved in the case, and limit the amount of public information relating to the child. There were varying degrees of success in this. In Nepal, members of the police force have an extraordinarily broad ability to access the children's information, including their name, address, and offence committed. The Indian criminal justice system faces issues due largely to underfunding, and as such children's information would sometimes be left on court documents without having been redacted. In contrast, a number of countries were successful in protecting the confidentiality of children in the criminal justice system. Australia, for example, successfully uses pseudonyms to ensure anonymity. Additionally, the justice systems in New Zealand and Canada tend to use initials consistently to ensure the children's anonymity.

In relation to the accessibility of court information and judicial transparency, the team found greater stratification between States. Some States essentially do not allow access to information in any case (Malaysia). Other States permit court documents to be accessed in such limited circumstances (Canada) that the utility is severely reduced. The US, Hong Kong and Germany all permit 'bona fide' researchers to access court documents and have clear processes by which the applicant may access those records. Theoretically, South Africa had excellent accessibility legislative measures, but the lack of an e-Court system meant that the process to access information was hindered. The team's success in finding relevant legislation varied from country to country. Additionally, locating the forms and processes by which bona fide researchers may access court documents differed between jurisdictions.

Overall, the team suggests that are seven principal best practices that compose an effective balance between privacy and access of information. From a cross-country comparative perspective, the team concludes that balancing these competing interests in the criminal justice system is achievable. While issues such as lack of funding, cultural differences, and accessibility to resources such as the internet have not been taken into account in this report, it is the team's conclusion that open justice and children's confidentiality are two principles that are not mutually exclusive and, where possible, should promoted in the criminal justice system.

IV METHODS OF RESEARCH

This report on the best practices regarding children's privacy in the criminal justice system is heavily reliant on data collection and analysis from international sources. Due to the subject matter of this report, the research conducted by the Macquarie University team was both qualitative and quantitative in nature. The team endeavoured to examine and evaluate the different approaches taken by different jurisdictions to protect the confidentiality of children in the courts, particularly those who have been victims of sexual crimes, whilst maintaining judicial accountability. As such, the research methods used were largely qualitative, as team members undertook research into court systems and other mechanisms that have been put in place to ensure that court records are transparent in providing necessary data to bona fide researchers and members of the public while maintaining confidentiality over children's personal information.

A quantitative approach has also been used to determine best practices among countries. Where statutory obligations and practice in the courtroom differ between States within the same country, a quantitative evaluation of those differences proved to be more effective. In particular, our study on the United States of America revealed that the laws regarding the protection of children's personal information in relation to the maintenance of court records differ between States. For example, in Illinois, any person authorised by a 'director' may access court records for bona fide research purposes,³ but in North Carolina, researchers may not access those records even with permission from the court.⁴ Due to the number of differences in law and practice between American States, it was more fitting to quantitatively assess data and produce our findings in a table format.

³ *Abused and Neglected Child Reporting Act*, 325 Ill Comp Stats § 5/11.1(a) (2012).

⁴ *Juvenile Code*, 7B NC Gen Stat § 7B-2901 (1985).

The research underpinning this report has been guided by two leading principles. As the subject matter of the report pertains to the balancing of children's confidentiality and accessibility of court records, the principles of confidentiality and accessibility have formed the basis of our research criteria. The two principles were appropriated into two questions that were then applied to each jurisdiction examined. The questions were:

1. What protections are in place for children's confidentiality in relation to court records?
2. What information about cases involving children is made available and who may access that information?

By undertaking research into the information available on court portals, legislation regarding the maintenance of children's confidentiality, and processes by which researchers may access case information, the team has been able to collect data relating to the two principal questions. Due to the predominantly international focus of this project, most of the research was limited to online resources available on the internet. Where the research concerned Australia's laws and practices relating to children's confidentiality, the research methods originally included interviewing personal contacts and enquiring by phone and email to court personnel. However, as the team's research direction evolved, these research methods became redundant and the team focused more on information available on the internet.

V LIMITATIONS OF RESEARCH

Each team member encountered similar limitations in their individual research. Primary amongst these issues was an inability to access certain information that was either restricted, unavailable in English or inaccessible on public internet searches. While the team originally endeavoured to conduct primary research by contacting professionals in Australia with firsthand experience of court accessibility, this method could not be conducted across the range of jurisdictions that were to be researched. As such, the team's research has been limited to online sources and publications instead of firsthand personal knowledge or interviews.

In relation to online searches, the principal limitation was a severe lack of information regarding the court's practices in dealing with information relating to child sexual abuse cases. The lack of data not only related to the composition of court systems, but also related to the manner in which court records were organised, and if records were available, which of those could be accessed. In some jurisdictions, only the final court judgment was available, but in other jurisdictions, other documents filed with the court could be accessed. There was a general consensus across each State that the identity of children must be protected from the public eye, however some States including Malaysia and Canada used that as a reason to withhold vital information relating to children and sexual assault.

This was a further limitation. Due to the strict nature of the confidentiality practices in some States, it was impossible to obtain much information on such practices. Despite it being possible to report on cases without exposing the identity of the victim, some States continue to withhold court records under the guise of protectionist agendas. This reflects some of the issues faced by researchers in India where the grounds of protection have superseded access for research purposes and public education in the judicial system.

A further limitation was that the team members were only able to research into jurisdictions with information accessible in English. Many countries researched in the preliminary stages of this project did not have substantial material accessible in English to analyse. This presents a major limitation in the scope of information provided in this report.

Additionally, the team was unable to find much information relating to the timeliness of cases and how fast a case involving a child moves through the court system. The court systems in the UK and Australia provide hearing dates and list the previous years of appeal at the top of public judgments, however there were difficulties in accessing other States' judgments and daily listings to make this a comparable line of research. Regardless, specific information that would allow you to track the case through the courts is vague and could be linked to underreporting and the pressure on the system due to the vast numbers of cases.⁵

The one exception to this limitation was Singapore which has a system allowing you to track the history and timeline of the cases.⁶ The only issue here was that the system required a log-in which we were unable to access, so it is difficult to comment on the exact information available as the cases progress through the courts. The team encountered similar issues often. While many countries had sound anonymity practices allowing courts to release records without compromising the identity of the child (including Singapore, the United States and UK), the real limitation was accessing these files without being within the appropriate jurisdiction with functioning log-in details.

⁵ Penny Lewis, 'Delayed Prosecution for Childhood Sexual Abuse' (2006) 12(4) *International Journal of Evidence and Proof* 356, 356.

⁶ Ecquaria Technologies Pte Ltd, 'ICMS - Training Guide - Court Lists', *State Courts Singapore* (Publication, 31 August 2017) <<https://www.statecourts.gov.sg/cws/CriminalCase/Documents/TRG-Court%20Lists.pdf?fbclid=IwAR0qyWjbV9KUHQCmMdwsmlkAsmWumGvpp2u5vNBotjBLua0YyNEHtZThvQ>>.

The final limitation relates to the scope of the research undertaken by the Macquarie University team. Due to the narrow scope of the research topic, the team was unable to research into and comment on why some jurisdictions were successful in balancing the competing interests of children's confidentiality and judicial transparency. There are many factors affecting the ability of court systems to maintain proper record-keeping practices and to simultaneously promote children's privacy and the concept of open justice. These factors could include differences in culture and values, accessibility to resources such as the electronic case management systems, accessibility to government funding, and overwhelming case numbers putting pressure on courts. The team was unable to consider all these factors nor comment on how they may have impacted on our findings.

Ultimately the limitations to conducting comprehensive research were vast and the team struggled to find all the information requested in the brief. This final report is a narrow appraisal of transparency and accessibility of cases involving children (particularly in cases of sexual crime) in jurisdictions with resources in English.

VI IN-DEPTH CASE STUDIES

A Australia: New South Wales

New South Wales (NSW) has a highly developed system for balancing children's confidentiality and judicial accountability. The *Children (Criminal Proceedings) Act 1987* (NSW) effectively protects children, whether they are offenders, victims, witnesses or any other party who are involved in the criminal justice system. Nevertheless, judicial transparency is a guiding principle of the open court philosophy that NSW upholds. Consequently, there are effective processes to allow parties to access court documents, filings and information that will assist bona fide researchers with their projects.

1 Relevant Legislation or Codes

In NSW the law prohibits the publication of the names of children involved in criminal proceedings – including as defendants, offenders, victims, siblings of victims, witnesses, or are otherwise mentioned. This is to reduce the stigma for the juvenile of being associated with a crime and assist in their effective rehabilitation.⁷

Section 15A of the *Children (Criminal Proceedings) Act 1987* (NSW) covers the publishing and broadcasting of names. Subsection 1 outlines that the name of a person must not be published or broadcast in a way which connects the person with criminal proceedings and then breaks down the many scenarios involving children.⁸ For example section 15A(1)(a) 'the

⁷ Standing Committee on Law and Justice, *The prohibition of the publication of names of children involved in criminal proceedings* (Legislative Council Report, April 2008)

<<https://www.parliament.nsw.gov.au/lcdocs/inquiries/1841/FINAL%20REPORT.pdf>> references within this report to Section 11 are materially similar to the current s 15A.

⁸ *Children (Criminal proceedings) Act 1987* s15A(1) ('CCPA Act').

proceedings relate to the person and the person was a child when the offence ... was committed'.⁹

Subsection 2 illustrates that this prohibition applies to the publication or broadcast of the person's name. However, broadcast is essentially not limited, as it is said to include broadcast to the public or section of the public, publication in newspaper, radio, television or other electronic broadcast, by internet or any other means of dissemination.¹⁰ It can be seen that in reality the prohibition extends to any form of media that can reach any section of the public.

Not only does the prohibition apply during the trial but also before and after the proceedings occur,¹¹ and even if the person is no longer a child, or is deceased.¹² This emphasises the scale of the prohibition, meaning the name of a child involved in criminal proceedings in NSW can never have their name publicly disclosed, even when they become adults. This section also captures the publication of any information including photographs or other material that would lead to the identification of the child.¹³ The penalty for breach of this section is 500 penalty units for a corporation, 50 penalty units or imprisonment for 12 months or both for an individual.¹⁴

⁹ *Children (Criminal proceedings) Act 1987* s 15A(1)(a).

¹⁰ *Ibid* s 15A(2).

¹¹ *Ibid* s 15A(4)(A).

¹² *Ibid* s 15A(4)(B).

¹³ *Ibid* s 15A(5).

¹⁴ *Ibid* s 15A(7).

2 Record Maintenance

Date ▾	Time	Case no. ⬆	Case name ⬆	Jurisdiction ⬆	Court ⬆	Listing type ⬆	Presiding officer	Location ⬆	Court room	List no.
04 May	9:00 am	2018/00056198	R v PETER REAY COLLINS	Criminal	Local Court	Mention (Police)	Magistrate H Donnelly	Muswellbrook	Unassigned	8
04 May	9:00 am	2020/00089541	R v JASON CRAIG MCCULLOCK	Criminal	Local Court	LC Sentence	Magistrate H Donnelly	Muswellbrook	Unassigned	25
04 May	9:00 am	2020/00111813	R v STEVEN KADAR	Criminal	Local Court	Mention (Police)	Unassigned	Newcastle	Newcastle Court 3.2	6
04 May	9:00 am	2020/00108917	R v STEVEN KADAR	Criminal	Local Court	Mention (Police)	Unassigned	Newcastle	Newcastle Court 3.2	8
04 May	9:00 am	2020/00038418	R v CANDICE LEE READ	Criminal	Local Court	Mention (Police)	Magistrate D Price	Newcastle	Newcastle Court 2.2	-
04 May	9:00 am	2019/00347705	R v JACQUELINE LOUISE ARNOTT	Criminal	Local Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2019/00387775	R v ALICIA MARIE HOWARTH	Criminal	Local Court	Breach	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2020/00053633	R v TYK COCHRANE	Criminal	Local Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2020/00002412	R v DESMOND KENNETH WILLIAM KNIGHT	Criminal	Local Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2020/00059023	R v DARREN JOHN OSTINI	Criminal	Local Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2018/00397619	R v TREVOR IAN CRAWFORD	Criminal	Local Court	Breach	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2020/00062559	R v ANDREW STEVEN JESSOP	Criminal	Local Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2020/00052632	R v DARREN JOHN OSTINI	Criminal	Local Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-
04 May	9:00 am	2020/00080329	Closed Court	Criminal	Children's Court	Mention (Police)	Magistrate D Day	Orange	Unassigned	-

15

The above screen shot from the NSW Online Court registry demonstrates compliance with section 15A of the *Children (Criminal Proceedings) Act*. The last case is listed at the Children's Court and does not state the name of the matter, in contrast to the other cases listed on the registry. The only information available is the case number, location and time of the matter.

Additionally, the NSW Case law website publishes judgment and decisions of all NSW Courts and tribunals, including the Children's Court. However, the Children's Court does not publish all decisions,¹⁶ and those that are published are anonymised to protect the identity of the children involved. The identity of adults may also be anonymised in order to protect the identity of the children, and other details including locations may also be changed. For example some cases the Courts use two-letter pseudonyms such as in *R v IG* (2019)¹⁷, in this case the

¹⁵ NSW Online Registry Courts and Tribunals (Web Page) <<https://onlineregistry.lawlink.nsw.gov.au/content/>>.

¹⁶ NSW Children's Court, *Judgments* (Web Page)

<<http://www.childrenscourt.justice.nsw.gov.au/Pages/publications/judgments.aspx>>.

¹⁷ *R v IG* [2019] NSWChC 7.

children were not named, only their ages were given, and their parents were referred to as simply ‘the mother,’ and ‘father.’ Whereas, in other cases the Courts have used complete pseudonyms including new first and last names. One example of this is the case of *DCJ and the McAlister Children* [2020],¹⁸ where the ‘McAlister’ children were all given first names and their parents as well.

3 Anonymity Practices

The Children’s Court is generally closed to the public,¹⁹ however, the media generally has a right to attend and report on the proceedings (without reporting the child's name as per section 15A discussed above). The Court can direct the media to leave or be excluded for all or some of the proceedings.²⁰ The media can request to publish identifying details from the Court, if the child is under 16 years and directly from the child if they are aged over 16 years.²¹

Nevertheless, each case is individually listed with its file number, meaning that each one can be identified. At common law there is no general right of access to judicial records, as these are not a publicly available register but for the proper conduct of proceedings.²² This position has long been accepted in Australia.²³ However, this is to be distinguished with court orders which are public documents and there is a common law right to access but not to copy.²⁴

¹⁸ *Department of Communities and Justice (DCJ) and the McAlister Children* [2020] NSWChC 4.

¹⁹ *CCPA Act* (n 8) s 10.

²⁰ NSW Government Communities and Justice, *Guide to Process involving children and young people* (online) <<https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/court-processes/chapters/childrens-court>>.

²¹ *Ibid.*

²² *Dobson v Hastings* (1992) Ch 391, 401.

²³ *John Fairfax Publications Pty Ltd & Ors v Ryde Local Court & Ors* [2005] 62 NSWLR 512.

²⁴ *Titelius v Public Service Appeal Board* [1999] WASCA 19; accepted in *John Fairfax Publications v Ryde Local Court*.

4 Criteria for Access

The Supreme Court of NSW as the superior court in the state has inherent powers to grant access to non-parties even if the parties involved object.²⁵ While the District Court, Local and Children's Courts do not have these inherent powers, but they do have implied powers to allow the court to act effectively within its jurisdiction.

5 Access to Court Records in Australia

(a) High Court of Australia

Any person can inspect and copy any document filed in the registry, except affidavits not received in evidence and documents disclosing the identity where it is protected.²⁶

(b) Supreme Court of NSW (including Court of Criminal Appeal)

No person may search or inspect documents filed in proceedings, without the leave of the Court.²⁷ Leave, access and permission to copy is normally granted for completed judgments, documents recording what would have been heard or said in open court and material admitted into evidence.²⁸ Access to other information is not allowed unless a judge or registrar is satisfied exceptional circumstances exist. Additionally, the applicant must demonstrate why access should be granted and why it is desired.²⁹

²⁵ *Hammond v Scheinberg* (2001) 52 NSWLR 49.

²⁶ *High Court Rules 2004* (Cth) r 4.07.4.

²⁷ Practice Note Supreme Court Gen 2, 'Access to Court Files'.

²⁸ Tim Dick, 'Open, Justice and Closed Courts: Media access in criminal proceedings in NSW' <<https://criminalcpd.net.au/wp-content/uploads/2017/01/Open-Justice-and-Closed-Courts.pdf>> 6.

²⁹ *Ibid.*

(c) District Court of NSW

Parties that are not involved in the proceedings are not allowed access to the file without leave of the court.³⁰

(d) Local Court of NSW

A person with leave of the Magistrate or registrar can access a copy of the court record or transcript of evidence taken at the proceedings, or obtain a copy of the court record or transcript of evidence (on payment of the prescribed fee).³¹ In determining whether access should be granted, the Court is to have regard to the principles of open court, the impact of granting leave on protected persons, the connection of the person requesting has to the proceedings, the reasons access is being sought and any other relevant considerations.³²

(e) Children's Court of NSW

The *Children's Court Act 1987* (NSW), *Children's Court Rule 2000* (NSW), *Children (Criminal proceedings) Act 1987* (NSW) and related regulations do not mention third-party and media access to the court files, as opposed to the explicit exclusion from the courtroom and non-publication rules.

³⁰ *Criminal Procedure Act 1986* (NSW) s 314 ('CP Act'); *District Court Rules 1973* (NSW) s 52.3(2).

³¹ *CP Act* (n 30) s 314; *Local Court Rules 2009* (NSW) s 8.10(3) ('LCR').

³² *Ibid*; *LCR* (n 31) s 8.10(5)(a-e).

B New Zealand

New Zealand possessed an intersecting group of legislation and court cases that ultimately produced an effective system in balancing child confidentiality and access to information. Whilst the New Zealand system did have shortcomings, specifically in relation to *who* can gain access to court documents, it was ultimately a well-rounded judicial system which fairly balanced the two major objectives.

1 Relevant Legislation or Codes

There are three main pieces of legislation that create the legal requirements surrounding confidentiality and access of information in child abuse cases. These are the *Criminal Procedure Act 2011* (NZ), the *Senior Courts (Access to Court Documents) Rules 2017* (NZ), and the *Family Violence Act 2018* (NZ).

There are also a number of pieces of case law that have bearing upon New Zealand law in this area. These are largely in relation to anonymity practices, and include *Beacon Media Group v Waititi*, *Robertson v New Zealand Police*, and *Forsyth v District Court*.³³

2 Anonymity Practices

In *Beacon Media Group v Waititi*,³⁴ the New Zealand High Court established that, as a baseline, proceedings are to be held in open court and the ‘media can report on those proceedings’. However, child abuse cases represent a variation from this practice.

³³ *Beacon Media Group v Waititi* [2014] NZHC 281; *Robertson v New Zealand Police* [2015] NZCA 7; *Forsyth v District Court* [2015] NZHC 2567 (‘*Forsyth*’).

³⁴ *Beacon Media Group v Waititi* [2014] NZHC 281.

Under the *Criminal Procedure Act 2011* (NZ), the ‘name suppression guidelines’ are set out.³⁵

In the ‘case of sexual offending’, name suppression of both the offender and victim will almost always be automatic in order to protect the victim.³⁶

Family Court matters usually identify each of the parties by their full initials (e.g. *KAB v PRJ*). However, when publishing family court cases, fictitious names are often used for children (and usually the other party).³⁷ The original judgments, with the parties correct names, are kept on the online legal database and only accessible with specific leave.³⁸

These ‘name suppressions’ are permanent, as seen in the case of *Forsyth v District Court [2015] NZHC 2567*.³⁹

3 Record Maintenance

New Zealand uses an e-Court system to maintain their court records and to publish the court’s schedules.

The Ministry of Justice website provides all the details of courts in New Zealand (including their address, phone number, and email).⁴⁰ The website also has a search function in which published judicial decisions can be located, as well as locate forms to apply for case information

³⁵ Tanya Surrey, ‘Why is There Name Suppression in Court?’ (2016) 71 *New Zealand Law* 21.

³⁶ Ibid.

³⁷ New Zealand Law Society, *The loss of anonymity in relationship property proceedings* (at 30 June 2017).

³⁸ Alice Coppard et al., *New Zealand Law Style Guide* (Thomson Reuters, 3rd ed, 2018) pt 3.1.2.(g).

³⁹ *Forsyth* (n 33).

⁴⁰ Courts of New Zealand, ‘Access To Court Information in the High Court, Court of Appeal, and Supreme Court’ (Court Publication, September 2019) <<https://www.courtsofnz.govt.nz/assets/7-Publications/5-Resource-sheets/RS-Access-court-information.pdf>>.

as well as other applications.⁴¹ The Courts of New Zealand also publish future court dates for the upcoming month, including location and time of the cases.⁴²

The only time judicial decisions are not published are if they are subject to suppression, relate to bail applications or bail appeals.⁴³ In that instance, an interested party would need to apply to the court to access the case.

4 Criteria for Access

To access court documents in New Zealand, there are two main application forms. An interested party can send a letter or email to the registrar of the relevant court. Here, it is expected that you will provide your name, contact details, information about the case, why access is required.⁴⁴

The other option is to fill out an 'Access to Court' document requiring the same questions to be answered. Subsequently, either a registrar or judge will evaluate the submission of that document.

In determining whether to accept a request for document access, the registrar will take into account rule 12 of the *Senior Courts Rules 2017* (NZ).⁴⁵ Most relevant to applications for children cases is subsection (d), 'the protection of confidentiality and privacy interests including children', and subsection (g), which contains a reference to restrictions under Rule 7. Rule 7 then references that a person may not access a document under a proceeding brought

⁴¹ Courts of New Zealand, 'Access to Court Information', Ngā Kōti o Aotearoa (Court Publication, 2020) <<https://www.courtsofnz.govt.nz/going-to-court/media/finding-out-about-a-case/>>.

⁴² Ibid.

⁴³ Courts of New Zealand (n 40).

⁴⁴ Courts of New Zealand, 'Access to Court Information' (n 41).

⁴⁵ *Senior Courts (Access to Court Documents) Rules 2017*(NZ) ('SCR').

under certain other legislation unless the Judge is satisfied that there is ‘good reason for permitting access.’⁴⁶

The legislations referenced here includes the *Family Violence Act 2018* (NZ),⁴⁷ which is the most likely Act to be applicable in cases of child sex abuse and other forms of child abuse. Within this Act, part 2 deals with information sharing. Under section 19, it determines that a ‘family violence agency’ (who can have access to information about child abuse cases) includes a ‘non-governmental organisation that is funded in part by the government’.⁴⁸ Assuming the information is transferred ‘to help stop child abuse/family violence’, it is likely to be granted by the court.

What this mixture of legislation ultimately results in is agencies such as HAQ gaining access to court documents in relation to child abuse, as long as, firstly, the judge is ‘satisfied there is good reason for permitting access’ and, secondly, the information is used to help prevent (in a broad manner) child abuse. There is evidence of this in practice, with the University of Auckland being granted access to child abuse data supplied by the Ministry of Social Development to help develop a predictive algorithm for children at risk of abuse.⁴⁹ This occurred with a ‘confidentiality agreement’ that all data be ‘de-identified’ before being released to the University of Auckland.

⁴⁶ *SCR* (n 45) s 12.

⁴⁷ *Family Violence Act 2018* (NZ).

⁴⁸ *Ibid* s 19.

⁴⁹ Rhema Vaithianathan, ‘Can Administrative Data Be Used to Identify Children At Risk Of Adverse Outcomes’, *New Zealand Ministry of Social Development* (Government Report, September 2012)

<<https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/research/vulnerable-children/auckland-university-can-administrative-data-be-used-to-identify-children-at-risk-of-adverse-outcome.pdf>>.

C United Kingdom

The United Kingdom (UK) has a very disjointed system of record maintenance, being split across the National Archives, individual courts and the British and Irish Legal Information Institute. However, its overarching focus on open justice and transparency of the judicial system has given courts the discretion to release a wide variety of court documents and information on a case-by-case basis.

1 Relevant Legislation and Codes

The UK utilises a number of different pieces of legislation to ensure the identity of children in sexual assault cases remain protected, while also guaranteeing principles of open justice (often through open courts or continued media presence in restricted court proceedings with children). These include the *Children and Young Persons Act 1933* (UK), *Youth Justice and Criminal Evidence Act 1999* (UK) and *Sexual Offences (Amendment) ACT 1992* (UK).⁵⁰

Additionally, a recent Supreme Court decision evaluated the *Civil Procedure Rules* in relation to the courts common law jurisdiction to release documents to non-parties to proceedings.⁵¹ The court upheld where there is good reason to do so, a court can order the release of certain court material to non-parties as a part of its inherent jurisdiction (including family and criminal

⁵⁰ *Children and Young Persons Act 1933* (UK) ('CYP Act'); *Youth Justice and Criminal Evidence Act 1999* (UK) ('YJCE Act'); *Sexual Offences (Amendment) Act 1992* (UK) ('SOA Act').

⁵¹ *Civil Procedure Rules 1998* (UK) ('CPR').

proceedings).⁵² The relevant piece of legislation and court case are the *Civil Procedure Rules* and *Cape Intermediate Holdings Ltd v Dring*.⁵³

While the UK focuses heavily on open justice, it also strongly adheres to international human rights law through the *Human Rights Act 1998* (UK) (which aligns with the *European Convention on Human Rights*).⁵⁴ To ensure the rights listed in this convention are always safeguarded there exists an Editors Code of Practice which allows court proceedings to be reported on transparently while protecting vulnerable parties.⁵⁵ The relevant clauses in this report are eleven and seven (referred to below in ‘anonymity practices’).

2 Anonymity Practices

There are very strong protections in the UK to prevent children from being identified in sexual assault cases. All victims of sexual offences are granted automatic anonymity for life from the moment they make an allegation (a victim over the age of 16 can choose to waive the right to anonymity through writing and a judge can choose to waive it where necessary).⁵⁶ Despite this, the UK focuses a great deal on transparency of the courts and allowing public access and understanding for the administration of justice.⁵⁷ Courts must act in ways compatible with the

⁵² David Burrows, ‘Release of court documents to people who are not parties to the proceedings’, *International Conference on Learning Representations* (Web Page, 16 August 2019) <<https://www.iclr.co.uk/blog/commentary/release-of-court-documents-to-people-who-are-not-parties-to-the-proceedings/>>; *Cape Intermediate Holdings Ltd v Dring* (*Asbestos Victims Support Groups Forum UK*) [2019] UKSC 38 (‘*Cape Intermediate Holdings*’).

⁵³ *CPR* (n 51) r 5.4C(2); *Cape Intermediate Holdings* (n 52).

⁵⁴ *Human Rights Act 1998* (UK) (‘HRA’); *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953).

⁵⁵ Independent Press Standards Organisation, ‘Guidance on Reporting of Sexual Offences’ (Web Page, 2018) <<https://www.ipso.co.uk/member-publishers/guidance-for-journalists-and-editors/guidance-on-reporting-of-sexual-offences/>>.

⁵⁶ *Ibid*; *SOA Act* (n 50) s 1.

⁵⁷ Burrows (n 52).

European Convention on Human Rights, codified in the *Human Rights Act 1998* (UK), and they also have to balance these rights with principles of open justice and media access.⁵⁸ Accordingly, the aforementioned media Editors' Code stipulates that a journalist must not 'publish material that is likely to identify a victim of sexual assault unless there is adequate justification and you are legally free to do so' in clause eleven.⁵⁹ Clause seven of the code states that a journalist must not identify child victims or witnesses in sexual offence cases under the age of sixteen unless the public interest is so great as to override the paramount interests of the child.⁶⁰

Youth court proceedings are generally not open to the public regardless of whether the child is a defendant, victim or witness,⁶¹ however the press are allowed to report on proceedings without reporting on the identity of the child (including details that could lead to their identification).⁶² The Youth court can make orders allowing these reporting restrictions to be lifted where it would be necessary to avoid injustice to the child or where essential to apprehend an at-large defendant charged with a sexual offence.⁶³ While child witnesses do not receive the same automatic anonymity as child victims of sexual offences,⁶⁴ an order can be made under the *Youth Justice and Criminal Evidence Act 1999* (UK) with the discretion of the court.⁶⁵

⁵⁸ *HRA* (n 54); *Convention for the Protection of Human Rights and Fundamental Freedoms* (n 50); Crown Prosecution Service, 'Reporting Restrictions - Children and Young People as Victims, Witnesses and Defendants' (Web Page, July 2018) <<https://www.cps.gov.uk/legal-guidance/reporting-restrictions-children-and-young-people-victims-witnesses-and-defendants>>.

⁵⁹ Independent Press Standards Organisation (n 55).

⁶⁰ *Ibid.*

⁶¹ *CYP Act* (n 50) s 47.

⁶² *Ibid* s 49.

⁶³ Crown Prosecution Service (n 58); *CYP Act* (n 50) s 49(5)(a).

⁶⁴ Crown Prosecution Service (n 58).

⁶⁵ *YJCE Act* (n 50) s 45.

Generally, the identity of child witnesses, victims and defendants in both the Magistrates Court and Crown Court can be published unless the court makes an order restricting reporting where it is likely to ‘identify them as being concerned in the proceedings whilst he is under 18; or in a sound or television broadcast’.⁶⁶ Matters relating to the child in this circumstance include name, address, identity of schooling or place of work and any picture or video of them.⁶⁷ Regardless, child victims of sexual assault have lifelong anonymity.⁶⁸ In cases involving a child victim of sexual assault, the child is not named in the judgments publicly available on the main British and Irish database.⁶⁹ The victim is simply referred to in the judgment as ‘him’, ‘her’, ‘the child’ or by a letter and the case name is given a Neutral Citation Number (with letters assigned, for example SW or M etc.).⁷⁰

In the UK it is clear that principles of open justice and judicial transparency are taken very seriously, with children in sexual assault cases being protected unless public interest requires otherwise (for example, to capture the offender).

3 Record Maintenance

While the UK promotes transparency, its system of record keeping is not standardised. There is no single e-court portal which has a comprehensive database of all the different courts and

⁶⁶ Crown Prosecution Service (n 58); *YJCE Act* (n 50) 45; *CYP Act* (n 50) s 39; *Children and Young Persons Act 1963* (UK) s 57(4).

⁶⁷ *YJCE Act* (n 50) s 45(8).

⁶⁸ *SOA Act* (n 50) s 1.

⁶⁹ See, eg, England and Wales Court of Appeal (Criminal Division) Decisions, ‘M, R v [2020] EWCA Crim 10 (15 January 2020)’ (Web Page, 2020) <<https://www.bailii.org/ew/cases/EWCA/Crim/2020/10.html>>; *M v R* [2020] EWCA Crim 10.

⁷⁰ BAILII, ‘2020 England and Wales Court of Appeal (Criminal Division) Decisions’ (Web Page, 2020) <<https://www.bailii.org/ew/cases/EWCA/Crim/2020/>>.

progression of cases. Depending on the court (Crown Court, Court of Appeal (criminal), or Magistrates Court), and what kind of court records are required, records are either held by the National Archives or in the records of that specific court. Additionally, judgments for every court (including the highest court of appeal in the United Kingdom - the Supreme Court) are accessible through the British and Irish Legal Information Institute database.⁷¹ This database only shows cases that are complete and lists only the final judgment. If a judgment is clicked on involving sexual assault or children, the following warning message is displayed in red at the top of the judgment:

*'WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.'*⁷²

For more in-depth information on court cases (not just a summation of the judgment), there are a number of different avenues of access.⁷³ It should be noted here that researchers can gain

⁷¹ BAILII, 'British and Irish Legal Information Institute' (Web Page) <<https://www.bailii.org/>>.

⁷² See, eg, England and Wales Court of Appeal (Criminal Division) Decisions, 'SW, R. v [2020] EWCA Crim 127 (05 February 2020)' (Web Page, 2020) <<https://www.bailii.org/ew/cases/EWCA/Crim/2020/127.html>>; *SW v R* [2020] EWCA Crim 127.

⁷³ Burrows (n 52).

access as a third party to the proceedings for open justice reasons due to the decision in *Cape Intermediate Holdings Ltd v Dring*, however it is unclear what criteria is required for researchers specifically to gain access.⁷⁴ There is an existing guide for England and Wales criminal cases from 1972 onwards which goes through the different courts and avenues of access for each.⁷⁵ Each of the three courts (Crown, Appeal, and Magistrates) have records accessible either through the National Archives or directly with the court (unless transcripts have not been kept for not having enough public interest value).⁷⁶

The National Archives hold publicly available cases that have to be ordered and a fee needs to be paid. Only specific cases are held (depending on if they have enough public interest value to be kept or if the court has not sent them to the Archives yet) and an example of the order form is available.⁷⁷ All criminal judgments from the House of Lords (previously the highest court of appeal in the UK until 30 June 2009) from 14 November 1996 to 30 July 2009 are available on the Parliament website.⁷⁸ Access to cases preceding this from the House of Lords are available in the Parliamentary Archives.⁷⁹ Ultimately, the UK's system of record maintenance is spread across a range of different access points, making the system difficult to navigate despite the single database of judgments.

⁷⁴ Burrows (n 52).

⁷⁵ The National Archives, 'Criminal Courts in England and Wales from 1972', *How to Look for Records of* (Web Page) <<https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/criminal-courts-england-wales-from-1972/>>.

⁷⁶ Ibid.

⁷⁷ The National Archives, 'National Archives and Records Administration Criminal Cases - Ordering Instructions' (Web Page) <<https://www.archives.gov/files/research/court-records/form-92.pdf>>.

⁷⁸ UK Parliament, 'Judgments', *How Parliament Works* (Web Page) <<https://www.parliament.uk/about/how/business/judgments/>>.

⁷⁹ Ibid.

4 Criteria for Access

The recent Supreme Court decision *Cape Intermediate Holdings Ltd v Dring* applies to all courts covered by common law (civil, criminal and family).⁸⁰ While there are exceptions relating to child proceedings, ‘privacy interests’ and private proceedings relating to minors,⁸¹ third parties to proceedings can apply for access to court materials.⁸² Regardless of the body requesting access (media, researcher, interested charity etc.), the applications are determined on their individual facts and reasoning.⁸³ Hearings are to remain private to protect the interests of any child or protected party.⁸⁴ At this point it is unclear how difficult it is to access court records relating to child sexual assault cases as a researcher under this new Supreme Court decision.

There is a form to be used to request access.⁸⁵ This form allows an organisation not party to the proceedings to apply for a transcription of the proceedings for a fee.⁸⁶ In criminal proceedings boxes can be ticked as to what records you want to access. These include whole hearing, prosecution opening of facts, mitigation, judge’s summing up, sentencing remarks, sentencing hearing, proceedings after verdict, evidence, counsels’ opening/closing remarks, legal argument(s) and ruling, confiscation ruling and other (where details can be given as to what you are requesting access to).⁸⁷ In family proceedings the options include whole hearing, counsels’ opening/closing submissions, evidence, judgment, proceedings after judgment and

⁸⁰ Burrows (n 52); *Cape Intermediate Holdings* (n 52).

⁸¹ *Administration of Justice Act 1960* (UK) s 12 (‘AJA’); Burrows (n 52).

⁸² *Cape Intermediate Holdings* (n 52).

⁸³ Ibid.

⁸⁴ *CPR* (n 51) r 39.2(3)(d).

⁸⁵ UK Government, ‘EX107 Request for transcription of Court or Tribunal Proceedings’ (Web Page)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748226/EX107_0618_static.pdf>.

⁸⁶ Ibid.

⁸⁷ Ibid.

other.⁸⁸ There are also guidance notes available to allow a person requesting court records through this form to understand exactly what they are requesting.⁸⁹

While theoretically, researchers like HAQ would be able to gain access to relevant court records for open justice and transparency reasons - it is unclear the exact criteria that needs to be met to override privacy and protection principles contained within UK law.⁹⁰

⁸⁸ UK Government (n 85).

⁸⁹ Ibid.

⁹⁰ *CPR* (n 51) r 39.2(3)(d); *AJA* (n 81) s 12.

D Singapore

Singapore has a strong and cohesive system of balancing children's confidentiality and judicial transparency. The *Children and Young Persons Act 2001* (Singapore) is effective in protecting the privacy of children who are involved in criminal proceedings whether as victims, offenders or witnesses.⁹¹ Nevertheless, judicial transparency is a key principle that guides Singaporean court processes. As such, there are effective systems in place that allow authorised persons to access key court documents and case information that would assist with research projects.

1 Relevant Legislation or Codes

The *Children and Young Persons Act 2001* (Singapore) (**CYPA**) is the leading piece of legislation in Singapore which 'provides for the welfare, care, protection and rehabilitation of children and young persons who are in need of such care, protection or rehabilitation, to regulate homes for children and young persons and to consolidate the law relating to children and young persons'.⁹² Consistent with the United Nations *Convention on the Rights of the Child*, the CYPA provides children in Singapore with protection from abuse, neglect, exploitation (economic and sexual), discrimination and also protects children's privacy.⁹³

In particular, sections 87A and 27A of the CYPA protect the privacy of children in legal proceedings and in the exercise of guardianship powers. Section 87A makes it an offence to disclose information relating to a child or young person unless authorised by the Director of Social Welfare.⁹⁴ Section 27A prohibits the publication of information leading to the

⁹¹ *Children and Young Persons Act* (Singapore, cap 38, 2001 rev ed) s 87A ('CYPA').

⁹² *Ibid.*

⁹³ *Convention on the Rights of the Child* (n 1).

⁹⁴ CYPA (n 91) s 87A.

identification of a child or young person who is subject of any investigation, has been taken into care or custody by the Director of Social Welfare, or is the subject of an order made by a court under the CYPA.⁹⁵

Significantly, section 35 of the CYPA restricts the publication of information relating to proceedings involving children and young persons. Specifically, any information that reveals 'the name, address or school or that includes any particulars that are calculated to lead to the identification of any child or young person concerned in the proceedings' is prohibited.⁹⁶ This restriction includes the publication or broadcast of any picture of the child or young person and applies whether the person is a victim, offender or witness of the proceedings.

Section 35(2) provides that 'the court or the Minister may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirement' that the young person's personal information may not be published.⁹⁷ The test that must be satisfied is whether the publication of information would be 'in the interests of justice'.⁹⁸ This is a highly discretionary test.

2 Anonymity Practices

(a) Gag Orders

There are several measures taken by Singaporean courts to protect the identity of children and young people in legal proceedings. One measure often taken in cases of sexual offences is the enforcement of a 'gag order' by the court to protect minors, vulnerable persons and victims.

⁹⁵ CYPA (n 91) s 27A.

⁹⁶ Ibid s 35.

⁹⁷ Ibid s 35(2).

⁹⁸ Ibid.

The Supreme Courts of Singapore (including the Court of Appeal, the High Court, and the Family Division) is empowered by section 8(3) of the *Supreme Court of Judicature Act 2007* (Singapore) to issue a gag order. A court may at any time order that no person shall publish the name, address or photograph of any witness in any proceeding, nor any evidence that is likely to lead to the identification of that witness.⁹⁹

There is a similar provision for State Courts of Singapore (including District Courts, Magistrates' Courts, and Small Claims Tribunals) whereby a court may impose a gag order prohibiting the publication of any personal information of a witness or any evidence that may lead to the witness's identification.¹⁰⁰ Gag orders may also be enforced to protect the identity of the accused person, though this is 'imposed not so much as to protect the accused but to protect the victim'.¹⁰¹

The gag orders apply to 'everyone' including the media, members of public and even the person it was designed to protect.¹⁰² In the case known as the 'Chin Swee Road murder', a gag order was found to have been breached when a Facebook post sharing the identities of the accused persons was posted and shared over 4,600 times.¹⁰³

⁹⁹ *Supreme Court of Judicature Act* (Singapore, cap 322, 2007 rev ed) ord 8 r 3.

¹⁰⁰ *State Courts Act* (Singapore, cap 321, 2007 rev ed) ord 7 r 3.

¹⁰¹ Johannes Tjendro, 'Gag orders: What to know about the legal provision that protects victims, 'vulnerable' witnesses', *Channel News Asia* (online, 27 September 2019) <<https://www.channelnewsasia.com/news/singapore/what-is-a-gag-order-legal-term-law-singapore-courts-crime-11948824>>.

¹⁰² *Ibid.*

¹⁰³ Lydia Lam, 'AGC looking into potential breaches of gag order relating to Chin Swee Road murder case', *Channel News Asia* (online, 25 September 2019) <<https://www.channelnewsasia.com/news/singapore/chin-swee-road-death-agc-warns-of-breaching-gag-order-11941310>>.

(b) Name suppression

Singaporean courts regularly use name suppression measures to protect the identities of children and young persons. In all family law cases, a series of three letters are used in the place of a surname in order to identify the case.¹⁰⁴ Additionally, where a court judgment refers to a child victim or witness, they are referred to by either their initial or a random letter in order to protect their identity. In civil cases, where the child is a plaintiff to a civil proceeding, a series of three letters will be used and the child is often represented by an adult who is also referred to by one letter.¹⁰⁵ Significantly, in cases of sexual crime against a child victim, the name of the accused person is sometimes also suppressed.¹⁰⁶ Where the offender's name is not suppressed, the child victim is not referred to by name in the judgment.¹⁰⁷ These name suppression measures are implemented consistently throughout the judgment in order to ensure that no information leading to the identification of the victim or perpetrator is published.

It is clear, by examining the privacy protection laws and the anonymity practices that are in place, that confidentiality is highly regarded in Singaporean courts. There are strong laws in place to ensure that the privacy of children's personal information is protected from the wider public.

3 Record Maintenance

In *Tan Chi Min v The Royal Bank of Scotland PLC* [2013] SGHC 154, the court stated that the principle of open justice requires decisions to be 'amenable to scrutiny by members of the

¹⁰⁴ See, eg, *BOR v BOS* [2018] SGCA 78.

¹⁰⁵ See, eg, *AOD (a minor suing by his litigation representative) v AOE* [2015] SGHC 272; *BBN (by her next friend B) v Low Eu Hong (trading as EH Low Baby N' Child Clinic)* [2012] SGHC 262.

¹⁰⁶ See, eg, *Public Prosecutor v BLV* [2017] SGHC 154.

¹⁰⁷ See, eg, *Yue Roger Jr v Public Prosecutor* [2019] SGCA 12, [2019] and *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015.

public through the inspection of documents' that were considered in the decision-making process.¹⁰⁸ In order that public confidence in the justice system may be promoted, Singaporean courts adhere to the principle of open justice and generally permit documents to be open to inspection. However, the principle of open justice only applies in cases where a court has made a decision in consideration of court documents.¹⁰⁹

The two court systems, the State Courts and the Supreme Court of Singapore, both provide accessibility to court documents and judgments in differing ways. These two systems will be examined in turn.

(a) State Courts of Singapore

Generally, selected judgments issued by State Courts are published on the State Courts of Singapore website and are available for three days from the date of posting.¹¹⁰ Selected judgments are also published on the Singapore LawNet website and are available for three months from the date of posting.¹¹¹ While the judgments are only available for a limited time on the State Courts and the LawNet websites, all judgments are available on CommonLii and have been organised by court and date.¹¹²

¹⁰⁸ *Tan Chi Min v The Royal Bank of Scotland PLC* [2013] SGHC 154 ('*Tan Chi Min*').

¹⁰⁹ 'Guide on Court Reporting', *Supreme Court of Singapore* (Publication, 13 November 2019) <<https://www.supremecourt.gov.sg/docs/default-source/default-document-library/supreme-court-journalist-guide.pdf>>.

¹¹⁰ 'Latest judgments', *State Courts Singapore* (Web Page, 28 April 2020) <<https://www.statecourts.gov.sg/cws/Resources/Pages/Latest-Judgments.aspx>>.

¹¹¹ 'Latest Singapore Judgments - State Court Judgments of the last 3 months', *LawNet Singapore* (Web Page, 2020) <https://www.lawnet.sg/lawnet/web/lawnet/free-resources?p_p_id=freeresources_WAR_lawnet3baseportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_pos=2&p_p_col_count=3&freeresources_WAR_lawnet3baseportlet_action=subordinate>.

¹¹² 'Singapore Databases', *CommonLii* (Web Page) <<http://www.commonlii.org/resources/257.html>>.

All Singaporean State Courts (including District Courts, Magistrates' Courts, and Small Claims Tribunals) use an e-Court filing system for criminal proceedings. The Integrated Case Management System (**ICMS**) is an internet-based case management system that is used from the start of the prosecution process when charges are filed to when the verdict is handed down.¹¹³ The ICMS is used by State Courts, the Attorney-General's Chambers, law firms, the police, law enforcement agencies, prisons and accused persons. As such, the ICMS portal requires log in details from authorised users such as law firm users, accused persons or the media.¹¹⁴ Unfortunately, it is not clear whether bona fide researchers such as HAQ would be able to obtain an authorised user log-in.

Through the ICMS, authorised users can access daily court lists with case information such as the case history, the offence of the accused person, and the next court event.¹¹⁵ Additionally, users are able to file requests for access to court records such as statements of facts, mental health reports, notes of evidence and grounds of decisions.¹¹⁶

This is a comprehensive source of information and adheres to the principle of open justice by enabling authorised users to access case histories and court documents and thus scrutinise the judgment that has been passed down. It must be noted that due to the fact that the Macquarie University team was unable to access the ICMS through an authorised account log in, we were

¹¹³ 'Integrated Case Management System (ICMS)', *State Courts Singapore* (Web Page, 10 December 2019) <<https://www.statecourts.gov.sg/cws/CriminalCase/Pages/The-ICMS-portal.aspx>>.

¹¹⁴ 'Integrated Case Management System', *State Courts Singapore* (Court Portal, 2020) <<https://icms.statecourts.gov.sg/sop/>>.

¹¹⁵ Ecquaria Technologies Pte Ltd (n 6).

¹¹⁶ Ecquaria Technologies Pte Ltd, 'ICMS - Training Guide - Request for Court Records', *State Courts Singapore* (Publication, 9 October 2017) <[https://www.statecourts.gov.sg/cws/CriminalCase/Documents/TRG-Request for Court-Records.pdf](https://www.statecourts.gov.sg/cws/CriminalCase/Documents/TRG-Request%20for%20Court-Records.pdf)>.

unable to verify whether all authorised users can access the case history or only a certain category of users.

(b) Supreme Court of Singapore

Judgments issued by the Supreme Court of Singapore are published on the Supreme Court website.¹¹⁷ Like the State Court judgments, the Supreme Court judgments are also made available on the CommonLii website and have been organised by court and date.¹¹⁸ Additionally, the Supreme Court website provides details on the daily hearing list for matters before the Supreme Court.¹¹⁹ However, the daily hearing list does not provide all information about the case such as the case history nor the charge faced by the accused.

Like the State Courts, the Supreme Court of Singapore utilises an e-Court system to manage and file court documents. However, this electronic filing service is only available for civil proceedings¹²⁰ and is not deemed necessary for documents to be filed electronically in criminal proceedings.¹²¹ As such, criminal matters proceeding in the Supreme Court of Singapore are entirely paper-based as parties must make paper submissions to the court.

Overall, the State Courts case management system appears stronger than the Supreme Court case management system as it allows users to access information such as case history and criminal charges through the ICMS. However, both the State Courts and the Supreme Court

¹¹⁷ ‘Supreme Court Judgments’, *Supreme Court Singapore* (Web Page, 17 May 2020) <<https://www.supremecourt.gov.sg/news/supreme-court-judgments/year/2020>>.

¹¹⁸ ‘Singapore Databases’ (n 108).

¹¹⁹ ‘Today’s Hearing List’, *Supreme Court Singapore* (Web Page, 17 May 2020) <<https://www.supremecourt.gov.sg/hearing>>.

¹²⁰ ‘E-Litigation’, *Supreme Court Singapore* (Web Page, 3 September 2018) <<https://www.supremecourt.gov.sg/services/services-for-the-legal-profession>>.

¹²¹ *Supreme Court Practice Directions* (Singapore, 2020 rev ed) para 117.

of Singapore excel in publishing judgments soon after they have been handed down by the judges or magistrates.

4 Criteria for Access

In compliance with the principle of open justice, Singaporean courts are committed to providing the public with access to documents relied on in judicial decision-making processes.¹²² Subsequently, the State Courts and the Supreme Court of Singapore all have procedures which enable the inspection of court records and documents. These processes will be examined in turn.

(a) State Courts

For certain court documents, members of the public may request access to documents that have been tendered in court. For details of the offences committed by the accused, a member of the public and media personnel must contact the Communications Directorate in order to obtain a copy of the charge sheet.¹²³ Unless a gag order provides otherwise, media personnel are encouraged to attend court to take note of the orders made by the presiding Judge.¹²⁴ However, in matters proceeding under the CYPA, it should be recalled that it is an offence to report or disclose any information that may lead to the identification of the child or young person concerned in the proceedings.¹²⁵

¹²² *Tan Chi Min* (n 108).

¹²³ 'FAQs on Court Reporting', *State Courts Singapore* (Web Page, 4 May 2020) <<https://www.statecourts.gov.sg/cws/Resources/Pages/FAQs-on-media-reporting.aspx>>.

¹²⁴ *Ibid.*

¹²⁵ *CYPA* (n 91) s 87A.

Additionally, authorised users (such as legal professionals and media personnel) may request for documents through filing a request through ICMS. Authorised users may request for charge sheets, mental health reports, statements of facts, notes of evidence and judgments/grounds of decisions.¹²⁶

The applicant must provide a reason for the request and pay a fee once the judicial officer has granted the request. As noted previously, due to the unavailability of an authorised account ICMS log in, the Macquarie University team was unable to verify whether all users are permitted to access these court documents or whether only a certain category of users, such as legal counsel. Nevertheless, it is possible to ascertain from the relevant legislation that such processes are also open to members of the public though perhaps through a different process.

(b) Supreme Court of Singapore

In the Supreme Court of Singapore, members of the public may also apply to inspect case files and documents maintained by the Court Registry under order 60 of the *Rules of the Court 2004* (Singapore).¹²⁷ The request to inspect must be filed to the court and may only be approved by the Registrar upon payment of applicable fees. Similar to the process of requesting information from State Courts, a request for documents from the Supreme Court of Singapore must contain the reasons for requiring inspection.¹²⁸

While there is a clear process to request court documents from the Supreme Court Registry, certain documents may not be available for inspection. These include documents relating to

¹²⁶ Ecquaria Technologies Pte Ltd (n 116).

¹²⁷ *Rules of Court* (Singapore, Cap 322, 2004 rev ed) ord 60 r 4 (*'Rules of Court'*).

¹²⁸ 'Inspection and supply of court documents', *Supreme Court Singapore* (Web Page, 19 February 2019) <<https://www.supremecourt.gov.sg/services/court-services/inspection-and-supply-of-court-document>>.

criminal and family cases and documents that have been sealed by an order of the court.¹²⁹

Ultimately, it is for the Registrar to determine whether a request for the inspection of documents filed in the Registry should be granted.¹³⁰

The process by which court documents may be accessed differs between State Courts and the Supreme Court of Singapore. While both court systems have strong laws in place to protect the privacy of any child involved in criminal proceedings, the State Courts Integrated Case Management System proves to be a powerful tool enabling authorised users to access court documents and case information. If bona fide researchers, such as HAQ, were to obtain access to the ICMS, it would prove invaluable to the research involving children as victims of sexual crimes.

¹²⁹‘Guide on Court Reporting’ (n 109).

¹³⁰ *Rules of Court* (n 127) ord 60 r 4.

E United States

America has no nation-wide legislation. Instead each State possesses separate laws and separate legislation dealing with child confidentiality and information access. Since the *Child Abuse Prevention and Treatment Act 1988* (US) has certain requirements for States to receive funding, America is one of the most transparent nations in terms of legislation. The Children's Bureau provides a comprehensive report that outlines each States' legislation, rules, and forms that needs to be filled out.¹³¹ This resource was heavily relied on by the team due to its comprehensive nature.

Notably, the American legislation makes it explicitly clear which States allow a person to access information if they are a 'bona fide' researcher, akin to HAQ. It also clarifies whether public disclosure of records is allowed and in what circumstance. Amongst the States that allow the publication of case information, the only public disclosure allowed is where there has been a child fatality or near fatality. All information is linked to the relevant specific State legislation or code, so locating the relevant authority is not difficult.

One of the states that appeared most successful in balancing judicial transparency and children's confidentiality is Arizona. The law in Arizona provides detailed information as to the persons or entities allowed to access court records, which includes 'bona fide research' purposes. There is a separate department, the Department of Child Safety (DCS), which retains most of the relevant research. The victim may authorise the release of DCS information, while not compromising the confidentiality of other people. Furthermore, the DCS is permitted to

¹³¹ Child Welfare Information Gateway, 'Disclosure of Confidential Child Abuse and Neglect Records' (Publication, 2017) < <https://www.childwelfare.gov/pubPDFs/confide.pdf?fbclid=IwAR1IeqvoFi9ydvV94wi-66hYRTslljjV7pqRmA09adCgB6Fs1DmVUBPp0oY>>.

provide extra information where child abuse or neglect ‘has been made public’ to ensure accurate information, as well as where there has been a fatality or near fatality. It also provides the information that may be released. Arizona also uses the records to determine employment for specific relevant occupations, including ‘foster home licensing’ and ‘adoptive parent certification’. This shows the value in maintaining child abuse records in a coherent system; it ensures the safety of children in the future as well.

Below is a chart comparing each US state with three criteria including:

1. Are child records kept confidential?
2. Are bona fide researchers given access?
3. Is public disclosure of records allowed in specific circumstances?

	Are Child Records Kept Confidential	Bona Fide Researchers Are Given Access	Is Public Disclosure of Records Allowed In Specific Circumstances?
Alabama	✓	✓	✓
Alaska	✓	✗	✓
Arizona	✓	✓	✓
Arkansas	✓	✓	✓
California	✓	✗	✗
Colorado	✓	✓	✓
Connecticut	✓	✓	✓
Delaware	✓	✗	✓
Florida	✓	✓	✓
Georgia	✓	✗	✓
Hawaii	✓	✗	✗
Idaho	✓	✗	✗
Illinois	✓	✓	✓
Indiana	✓	✗	✓
Iowa	✓	✓	✓
Kansas	✓	✗	✓
Kentucky	✓	✗	✓
Louisiana	✓	✓	✓
Maine	✓	✓	✓
Maryland	✓	✗	✓
Massachusetts	✓	✗	✗
Michigan	✓	✓	✓
Minnesota	✓	✗	✓
Mississippi	✓	✓	✓
Missouri	✓	✓	✓
Montana	✓	✓	✗
Nebraska	✓	✓	✓
Nevada	✓	✓	✓
New Hampshire	✓	✓	✗
New Jersey	✓	✓	✓
New Mexico	✓	✗	✓
New York	✓	✓	✓
North Carolina	✓	✗	✓
North Dakota	✓	✓	✗
Ohio	✓	✗	✗
Oklahoma	✓	✗	✓
Oregon	✓	✗	✓
Pennsylvania	✓	✗	✓
Rhode Island	✓	✗	✓
South Carolina	✓	✓	✓
South Dakota	✓	✗	✓
Tennessee	✓	✓	✓
Texas	✓	✗	✓
Utah	✓	✓	✗
Vermont	✓	✗	✗
Virginia	✓	✗	✗
Washington	✓	✗	✗
West Virginia	✓	✓	✓
Wisconsin	✓	✗	✓
Wyoming	✓	✗	✗

VII BRIEF SUMMARIES OF OTHER JURISDICTIONS

A Canada

Canada has a dual legal system where English common law exists with civil law based on French law. Civil law prevails in most matters of a civil nature, for example contract, property and family law. Federal statutes account for this bi-juridical nature and use both common and civil law where appropriate.

A fundamental principle of youth justice in Canada is that generally the identity of a young person should be protected. Under the *Young Offenders Act 1984* (Canada) (**YOA**)¹³² in force from 1982-2003, there was an exception to this general principle, that publication of information was permitted if the young person was transferred to adult court. Consequently, information about the child could be published even before the guilt or innocence of the child was found, this was controversial and considered widely to be unfair.

The *YOA* was replaced by the *Youth Criminal Justice Act 2003* (Canada) (**YCJA**),¹³³ the general against publishing identifying information of children remains. However, it outlines exceptions to this rule, for example publication is allowed if the child received an adult sentence. In 2012, amendments were made by the Canadian Parliament allowing publication of identifying information where a child is convicted of a violent offence. However, the court must take into account the YCJA's general principles of sentencing and determine whether the child poses a significant risk of committing another violent offence and whether publishing the name is necessary to protect the public from that risk.

¹³² *Young Offenders Act* (1984) (Canada).

¹³³ *Youth Criminal Justice Act* (2003) (Canada).

Outside of these exceptions when a child is convicted of a crime, his or her name cannot be published. When courts report the matter, the youth will be referred to the initials of their name.¹³⁴

Section 110 of the YCJA outlines privacy in relation to the identity of young offenders, and access to their criminal records, and disclosure of their personal and trial information. Trial information can be published by the media, however not their name. Breaching this publication ban is a criminal offence. However, online publications have posed a recent issue, and caused controversy.¹³⁵ Criminal records of children cannot be viewed by the general public, only criminal justice officials and within a particular time period from the offence.¹³⁶

B Germany

As in other civil law jurisdictions, case law plays a limited role in the German legal system. Court cases are generally not published unless they are considered noteworthy or important. There are strong privacy laws in Germany, particularly in relation to the collection, processing and use of personal data.¹³⁷ Children's confidentiality is highly regarded in Germany, with the requirement that the parents/guardians and children must both be made aware of the legal basis for collecting personal information.¹³⁸ Additionally, the personal information collected from

¹³⁴ Justice Education Society, *Young Offenders* (online), <<https://www.justiceeducation.ca/legal-help/crime/youth-and-crime/young-offenders>>.

¹³⁵ See, eg, Betsy Powell and Bob Mitchell, *Gag orders in a Facebook Age* (online, January 04 2008) <https://www.thestar.com/news/gta/2008/01/04/gag_orders_in_a_facebook_age.html>.

¹³⁶ Nicholas Bala, *Youth Criminal Justice Law*, (Irwin Law, Toronto, 2002) 381-388.

¹³⁷ *Bundesdatenschutzgesetz* [Federal Data Protection Act] (Germany) 30 June 2017, BGBl IS, 2017, 2097, s 4.

¹³⁸ *Sozialgesetzbuch - Aches Buch (VIII) - Kinder- und Jugendhilfe* [Social Code - Book VIII - Elimination of child labour, protection of children and young persons] (Germany) 8 December 1998, BGBl IS, 1998, 3545, s 62.

children and adults must be concealed in any publication of court judgments and children's identities may not be revealed by the media.¹³⁹

In terms of accessing court records, third parties may request access to these records with a proven legitimate interest.¹⁴⁰ The third party's right to access court records must always be balanced with the right to record protection and the maintenance of confidentiality.¹⁴¹

C Hong Kong

This common law jurisdiction manages confidential information relating to children quite effectively. There are several legislative provisions which prohibit the publication of any proceedings which may identify children involved in the Juvenile Court of Hong Kong,¹⁴² and prohibit the publication of information that may identify the complainant of a sexual offence,¹⁴³ except where authorised by the court. There are a variety of measures in courts in Hong Kong which aim to protect the identity of child victims of sexual crimes. These include the prohibition on photography or videos in court,¹⁴⁴ the closure of the Juvenile Court to the public,¹⁴⁵ the prohibition on mass media reports relating to child victims or witnesses,¹⁴⁶ the

¹³⁹ Presserat, 'Publizistische Grundsätze (Pressekodex) Richtlinien für die publizistische Arbeit nach den Empfehlungen des Deutschen Presserats' [Guidelines for Publication], *German Press Council* (2017) rule 8.3.

¹⁴⁰ *Zivilprozessordnung* [Civil Code] (Germany) 5 December 2005, BGBl IS, 2006, 3202, s 299(1).

¹⁴¹ *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany] (Germany) art 2(1) and 1(1).

¹⁴² *Juvenile Offenders Ordinance* (Hong Kong) cap 226, s 20A ('*JOO*').

¹⁴³ *Crimes Ordinance* (Hong Kong) cap 200, s 156.

¹⁴⁴ *Summary Offences Ordinance* (Hong Kong) cap 228, s 7.

¹⁴⁵ *JOO* (n 142) s 3D(3).

¹⁴⁶ *Ibid* s 20A.

provision of screens in the courtroom,¹⁴⁷ and the use of initials to protect the child's identity on the Daily Cause List of the courts.¹⁴⁸

Courts in Hong Kong publish most of their judgments online, except for judgments from the Court of Children. Subject to the Code on Access to Information,¹⁴⁹ members of the public may request access to certain information held by the court registries including the daily cause list of each court, reasons for decisions and judgments that have been handed down.¹⁵⁰ In relation to requesting access to personal data from the courts, third parties must submit a form to the registry which confirms the applicant's authority to access the data and the purpose for which the data is sought.¹⁵¹

D Malaysia

Malaysia's common law legal system has two main statutes which protect the identity of children relating to sexual crimes.¹⁵² In particular, the *Child Act 2001* (Malaysia) contains specific provisions requiring court proceedings in the Court of Children to be closed and that no mass media reports can identify a child (whether they are a victim, suspect or witness).¹⁵³ There is also a special court dedicated to dealing with sexual crimes relating to children.¹⁵⁴

¹⁴⁷ Legislative Council Panel on Administration of Justice and Legal Services, 'Enhancing protection of complainants in sexual offence cases and mentally incapacitated persons during court proceedings' *Department of Justice Hong Kong* (2017) 1, 7.

¹⁴⁸ Betty Pang Mo-yin, 'Policies for Victim Protection and Support: Current Situation and Problems faced by Victims of Crime in Hong Kong' *Hong Kong Police Force* (2014) 65, 69.

¹⁴⁹ 'Code on Access to Information', *Government of Hong Kong* (Web Publication, 6 April 2016) <<https://www.access.gov.hk/en/codeonacctoinfo/index.html>>.

¹⁵⁰ 'List of information available to the public (free of charge or at a cost)', *Hong Kong Judiciary* (Web Page, 27 March 2020) <https://www.judiciary.hk/en/other_information/access_to_info.html>.

¹⁵¹ 'Procedures for Personal Data Access or Correction Requests', *Hong Kong Judiciary* (Web Page, 21 September 2018) <https://www.judiciary.hk/en/other_information/access/proc_for_personal_data_access.html>.

¹⁵² *Child Act 2001* (Malaysia) ss 12(3), 15 ('CA'); *Official Secrets Act 1972* (Malaysia) ('OSA').

¹⁵³ CA (n 152) ss 12(3), 15; S Thayaparan, 'Why are official child sexual abuse stats still a state secret?', *Malaysiakini* (Web Page, 4 August 2018) <<https://www.malaysiakini.com/columns/437320>>.

¹⁵⁴ Chief Registrar's Office Federal Court of Malaysia, 'Sexual Crime Court Against Children' (Web Page, 2019) <<http://www.kehakiman.gov.my/en/sexual-crime-court-against-children>>; The Straits Times, 'Malaysia

In terms of general information available from the courts system – there is the ‘Malaysian Judgment Portal’ which allows full public access.¹⁵⁵ It is unclear how the provisions protecting children’s identities is carried out – as access to the Portal is restricted with a log-on system. The e-Court system in Malaysia is quite sophisticated, with six major management systems. This includes queue management, case management, court recording and transcribing, audio and video conferencing, electronic legal database and data exchange.¹⁵⁶ Despite the efficiency of this system, access to court proceedings of cases involving either minors or relating to sexual offences are wholly restricted unless a member of parliament requests it.¹⁵⁷ The *Official Secrets Act 1972* (Malaysia) prevents the publication (to the public and for research purposes) of these kinds of cases.¹⁵⁸ Despite its comprehensive record keeping system, Malaysia fails to provide transparency of child sexual abuse cases in the courts.

E Nepal

Nepal’s legal system is based upon the civil code, the National Code of Nepal. This single document is a comprehensive code that includes all criminal and civil code and procedures of

launches Special Court to deal with Sexual Crimes against Children’ (Web Page, 22 June 2017) <<https://www.straitstimes.com/asia/se-asia/malaysia-launches-special-court-to-deal-with-sexual-crimes-against-children>>.

¹⁵⁵ Null, ‘Public can now access court judgments via newly launched Malaysian Judgment Portal’, *New Straits Times* <<https://www.nst.com.my/news/nation/2018/04/358233/public-can-now-access-court-judgments-newly-launched-malaysian-judgment>>; Chief Registrar’s Office Federal Court of Malaysia, ‘Official Portal’ (Web Page, 2019) <<http://www.kehakiman.gov.my/en>>; Malay Mail, ‘Court judgments now available on Malaysian Judgments Portal’ (Web Page, 16 April 2018) <<https://www.malaymail.com/news/malaysia/2018/04/16/court-judgments-now-available-on-malaysian-judgments-portal/1620816>>.

¹⁵⁶ Wan Satirah Wan Mohd Saman and Abrar Haider, ‘Electronic Court Records Management in Malaysia: A Case Study’ (2012) *Journal of e-Government Studies and Best Practices* 1, 5.

¹⁵⁷ A Ananthalakshmi, ‘How Malaysia allows child abuse to go unpunished’, *Reuters* (Web Page, 14 November 2016) <<https://www.reuters.com/article/us-malaysia-sexcrimes-insight/how-malaysia-allows-child-abuse-to-go-unpunished-idUSKBN1390AT>>.

¹⁵⁸ Ibid; *OSA* (n 152).

Nepal. In 2018, this single document was replaced with the Muluki Criminal Code and Code of Procedures and the Muluki Civil Code and Code of Procedures. As such the code outlines how the judiciary interacts with children in the Nepalese legal system.

The *Children's Act 2048 1992* (Nepal), outlines in Chapter 6, section 49 that 'only certain persons to attend in cases relating to child.' Further, subsection 2 illustrates that the particulars of any cases relating to a child shall not be published in any paper without the permission of 'the investigating officer of the case or the officer hearing the case.' These restrictions apply to correspondents or the press photo representatives.¹⁵⁹

In regard to publishing statistics, the *Children's Act 1992* (Nepal) allows for statistics to be published for study or research, on the basis of age or sex of the child without mentioned the name, surname or address of the child.¹⁶⁰ Section 52 empowers the Nepalese Police to hold unredacted records relating to any offences committed by children in confidential manner including their name, address, age, sex, family background, economic conditions, offence committed and if proceedings are initiated. Copies of these statistics are sent to the Police Head Quarters every six months.¹⁶¹

Notably, the Code punishes those who disclose or publish information relating to children in the judicial system, section 53(9) outlines that a punishment of three thousand rupees or imprisonment for three months or both will apply. Additionally, any books or papers relating

¹⁵⁹ *The Children's Act 2048 (1992) (Nepal) ('TCA')*.

¹⁶⁰ *Ibid* s 52(2).

¹⁶¹ *Ibid* s 52.

to the child offender or offences will be confiscated. It should be noted that in Nepal a child means a minor not having reached 16 years.¹⁶²

F Philippines

The Philippines has no overriding legislation that dictates the extent to which Access of Information is to interact with child confidentiality. Whilst it does have the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992* (Philippines), this Act does not specify who has access to these cases and how to access them.¹⁶³ Section 7 of the Constitution of the Philippines does provide a baseline of judicial transparency however, with it recognising ‘the right of the people to information on matters of public concern’.¹⁶⁴

For protecting children’s identities, under section 12 of the *Establishing Family Courts Act 1997* (Philippines), all cases involving children as either victims or perpetrators ‘shall be dealt with the utmost confidentiality and the identity of the parties shall not be divulged unless necessary and with authority of the judge’.¹⁶⁵

For access to information, it depends on the type of child abuse that has occurred as to which legislation is invoked and to what degree information is able to be accessed. More generally no information is accessible, but there are exceptions. For example, with cases involving child pornography, the court record shall be kept confidential and only be released to relevant parties in the case.¹⁶⁶ If the circumstances of the case consider you a ‘relevant party’, you must submit

¹⁶² TCA (n 159) s 1(2).

¹⁶³ *Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992* (Philippines).

¹⁶⁴ *The Constitution of the Republic of the Philippines*.

¹⁶⁵ *Family Court Act of 1997* (Philippines).

¹⁶⁶ *An Act Defining the Crime of Child Pornography, Prescribing Penalties Therefor and for Other Purposes* (Philippines) 2009.

to the Supreme Court's Public Information Office two access to Information Request Forms, the reason of the request, and two valid identification documents.¹⁶⁷

G South Africa

South Africa's mixed legal system has two main statutes relevant to children. The *Child Justice Act 2008* (South Africa) ensures children under the age of 18 are not treated as adults in the criminal justice system.¹⁶⁸ A recent Constitutional Court decision involving the Centre for Child Law and South Africa Media Houses decided that child offenders, victims and witnesses must have their identity protected until they turn 18 (and when they turn 18 they then have the choice of revealing their identity - otherwise it remains private).¹⁶⁹ Parliament has been given 24 months to amend the relevant statute – the *Criminal Procedure Act 1971* (South Africa) – to formalise this judgment.¹⁷⁰ As Parliament has not done this yet, current protections relating to the privacy of children are weak.

In relation to information that is available, there is no standardised electronic database of judgments. The Judiciary still uses manual systems on cases, however the province Gauteng is currently trialling the use of 'CaseLines'.¹⁷¹ CaseLines is an online system that allows legal

¹⁶⁷ Merceidez Louise S Ragaza, 'Philippines: The right to know - Freedom of Information in the Supreme Court', *In-House Community* (Information Publication, 8 February 2019) <<https://www.inhousecommunity.com/article/right-know-freedom-information-supreme-court/>>.

¹⁶⁸ *Child Justice Act 2008* (South Africa); Department of Justice and Constitutional Development, 'Child Justice', *Criminal Law* (Web Page, 2020) <<https://www.justice.gov.za/vg/childjustice.html>>.

¹⁶⁹ Ground Up, 'Court rules that child offenders, victims and witnesses may not be named - even in adulthood' (Web Page, 5 December 2019) <<https://www.groundup.org.za/article/court-rules-child-offenders-victims-and-witnesses-may-not-be-named-even-adulthood/>>.

¹⁷⁰ *Ibid*; *Criminal Procedure Act 1971* (South Africa).

¹⁷¹ Kgomotso Ramotsho, 'Gauteng High Courts on a journey to go paperless', *De Rebus* (Web Page, 21 October 2019) <<http://www.derebus.org.za/gauteng-high-courts-on-a-journey-to-go-paperless/>>.

practitioners to register cases without installing additional infrastructure.¹⁷² It is unclear whether it will be permanently implemented.¹⁷³ It is possible for an accused to apply to obtain transcripts from the court by paying a fee, however it appears that unless you are directly connected to the case, you cannot apply for these transcripts.¹⁷⁴ South Africa appears to have a very decentralised system of record keeping which is almost entirely inaccessible to the public.

¹⁷² CaseLines, 'About Us' (Web Page) <<https://caselines.com/about-us>>.

¹⁷³ Ramotsho (n 171).

¹⁷⁴ Justice Project, 'How to obtain transcripts from the Court' (Web Page, 2015) <<https://www.witsjusticeproject.co.za/uploads/Justice-Projects-How-to-obtain-Transcripts-ENGLISH.pdf>>.

VIII CONCLUDING REMARKS, BEST PRACTICES AND RECOMMENDATIONS

A Comprehensive Countries Chart

This chart represents an overview of all our main findings of every country researched (both in-depth and short summary countries). It demonstrates that most countries have multiple best practices already in place.

	Strong Non-Identifying Features (XYZ)	Redacting Names	E-Courts	Accessible Court Judgments	Clear Privacy Legislation	Clear Accessibility Legislation	Clear Process To Access Court Documents
Australia	Green	Green	Green	Yellow	Green	Yellow	Green
Canada	Green	Green	Yellow	Red	Green	Green	Yellow
Germany	Green	Green	Green	Yellow	Green	Yellow	Green
Hong Kong	Yellow	Green	Green	Green	Yellow	Green	Green
Malaysia	Green	Green	Green	Red	Green	Green	Red
Nepal	Yellow	Yellow	Green	Yellow	Green	Yellow	Yellow
New Zealand	Green	Yellow	Green	Yellow	Green	Green	Green
Philippines	Green	Yellow	Green	Green	Red	Red	Red
Singapore	Green	Green	Green	Yellow	Green	Green	Green
South Africa	Yellow	Green	Red	Green	Green	Yellow	Green
United Kingdom	Green	Green	Yellow	Green	Yellow	Yellow	Yellow
United States	Green	Green	Green	Green	Green	Green	Green

Green = Strong (Practices are in Place)

Yellow = Moderate (Improvements Required)

Red = Weak (Non-Existant or Otherwise)

B Key Findings

The team's primary finding was that every State had differing strengths and weaknesses in relation to balancing transparency and judicial accountability with child protection. States that lacked an e-Court system often had comprehensive protection practices and allowed third party researchers to gain access to court records despite lacking a singular database that tracked cases from start to finish and recorded all information relating to the case. Despite the limitations listed at the commencement of the report, the majority of countries researched make a concerted effort to allow at least some access to data relating to child sexual abuse court cases. The extent of this access differs, and there were difficulties in gaining access through a range of different processes. However, there were very few jurisdictions that barred access to court

records entirely. Our cross-country comparison of policies and practices make clear the fact that children's confidentiality and judicial transparency is not mutually exclusive. It is possible for States to maintain the anonymity of the identity of children through simple name suppression measures which would then enable the release of court documents without endangering the child's privacy.

C Recommendations of Best Practices

No State that was researched has perfectly implemented every 'best practice' as identified by the team. Many countries have implemented one or two 'best practices', however this does not mean that the two competing interests of children's confidentiality and open justice have been served. For example, in India, while there is a comprehensive e-Court system, this does not necessarily mean there is complete transparency of the judiciary. An ideal system is one which combines strong and clear legislation, with direct avenues of access to court records through instructions and forms (with clear directions) and has a complete redaction of children's identities through pseudonyms to allow full judicial transparency. No state does this perfectly, however an in-depth appraisal of each makes it clear that it is possible to strike a balance between accessibility, transparency and protection of children.

Countries that were notable in their successful balance between anonymity and access to information were: Australia (NSW), Singapore, Hong Kong, United States, United Kingdom.

(a) Strong Non-Identifying Features

Best Practice: United Kingdom; Australia (NSW); Philippines

States ensuring the anonymity of children involved in the case, whether as victim, witness or perpetrator, were identified as better than States that did not. States that employed this practice

used different name suppression measures, usually by utilising initials or pseudonyms. Furthermore, in those States, when the victim reaches adulthood, they can generally decide whether or not to maintain their anonymity. This empowering feature allows victims of sexual crimes to take autonomy over their own lives. Most States examined by the team employed some form of name suppression measures to protect the children's identity.

(b) Redacting Names

Best Practice: Australia (NSW); Malaysia; Singapore

States that ensured a total redaction of children's names were identified as better than States that did not. The majority of States did have redaction mechanisms in place, at least on a formal level. However, the team encountered issues where either due to a lack of funding or an overwhelmed court system, manual errors occurred in the redaction of names.

(c) E-Courts

Best Practice: Singapore, Australia (NSW), Germany

E-Courts presented the best ability to access court judgments. Whereas visiting courts can be difficult and inaccessible in certain locations, the e-Court system ensured that geographical location would not impact the ability to seek justice.

(d) Accessible Court Judgments

Best Practice: United Kingdom; Hong Kong

Whilst policies and processes are important for accessing files, if in practice files cannot be accessed, then those policies and processes are redundant. Among many of States studied by the team, the practicability of accessing court documents was difficult to ascertain,

particularly when limited to internet searches. The States that provided consistently published court documents were identified by the team as better than those that did not. Those States offered court judgments for predetermined relevant parties. Best practice was also identified where parties, when applying for court documents, could specifically request which aspects of the case they are seeking (such as submission of evidence, charge sheets, expert reports and judicial reasoning). This was permitted in Singapore through the Integrated Case Management System for certain lower courts.

(e) Clear Privacy Legislation

Best Practice: Australia (NSW); Nepal; Singapore

States that had accessible and clear legislation relating to how privacy interacts with child sex abuse cases were identified as better than States that did not. Even where the legislation offers discretion (such as magistrate's decision and the 'balance between right of information and privacy'),¹⁷⁵ the team considers the legislation to be sufficiently clear.

(f) Clear Accessibility Legislation

Best Practice: Hong Kong; Canada; United States

Determining whether or not access was to be granted regarding cases was, in some States, made clear through the relevant legislation. Where the legislation offers a process for accessing court records, those provisions could be seen in a specific section of the relevant Act. This is considered a 'best practice' by the team as it demonstrates the willingness of the court system

¹⁷⁵ SCR (n 45) s 12.

to commit to the concept of open justice. A process to access court records substantiated in legislation is a significant step towards promoting judicial accountability.

(g) Clear Process to Access Court Documents

Best Practice: United States; Philippines; Germany

States that had a clear process to access court documents on their court websites were identified as stronger than those that did not. The process tends to be publicly available on a government website, which would provide the relevant forms and information required to make the request.

D Recommendations for Future Research

The team believes this report provides a basic foundation for further research. Future research that overcomes the limitations stated at the commencement of this report would benefit this research area greatly. In particular, researchers who would have local connections in differing jurisdictions or who are able to employ translators would not only widen the scope of States examined, but would provide a more authentic representation of the strengths and weaknesses of the local criminal justice system.

Furthermore, the team's current findings would be further enriched if future researchers could include countries that do not have resources available in English. By including countries such as South East Asia, Africa and the Middle East, we would have access to more perspectives and be able to come to a more well-rounded perspective on 'best practices' globally. Additionally, if funding was provided to future researchers, they may consider hiring local researchers who would be able to access documentation or e-Court portals requiring a local log-in. This was a significant barrier to comprehensive results from the Macquarie University team.

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