

Gender-Based and Child Rights Analysis of Laws on Child Sexual Exploitation

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I. INTRODUCTION

Child sexual exploitation (CSE) is a form of sexual abuse that is often clandestine and difficult to investigate.¹ It does not spare even the youngest

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of children, some victims being as young as two months old when sold to foreigners.² It victimizes all children — boys and girls alike — especially those who live in vulnerable areas.³

Prevalent forms of child sexual exploitation are (1) traditional sex trafficking, i.e., children being employed in brothels to have sex with foreigners and/or locals, and (2) online child sex trafficking, also known as online sexual exploitation of children (OSEC), which involves the use of internet-enabled devices to facilitate the sexual exploitation of children. An analysis of available data on OSEC helps child protection specialists and other stakeholders have a better understanding of the current child protection landscape and identify ways forward.

This Article aims to analyze the legal framework to combat child sexual exploitation and examine a statistically meaningful size of OSEC casework data through a gender-based lens with a child protection focus. Further, this Article seeks to identify the needs of OSEC victims, system gaps, and propose possible solutions.

Parts II, III, IV, and V of this Article (a) introduces its methodology, (b) provides a background of OSEC casework, and (c) summarizes available literature on OSEC victim behavior and needs, and examines them using a gender lens.

Part VI, VII, VIII, and IX provides an overview of the legal framework and performs (a) a gender analysis of the legal provisions, (b) a responsibility analysis of OSEC duty-bearers, and (c) a gender analysis of casework data sourced from International Justice Mission (IJM), a non-government organization focused on casework-driven public justice system enhancement.

Part X provides recommendations to enhance legislation and implementation of laws.

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1. Child Sexual Exploitation Definition and Practitioner Briefing Paper, *available at* <https://beta.gov.scot/binaries/content/documents/govscot/publications/guidance/2016/10/child-sexual-exploitation-definition-practitioner-briefing-paper/documents/00508563-pdf/00508563-pdf/govscot:document> (last accessed Nov. 30, 2018).
 2. *See* Patty Pasion, Even 2-month-old babies can be cybersex victims – watchdog, *available at* <https://www.rappler.com/nation/174257-child-cybersex-trafficking-philippines-status> (last accessed Nov. 30, 2018).
 3. *Id.*

II. ANALYSIS METHODOLOGY: GENDER-BASED ANALYSIS WITH CHILD PROTECTION FOCUS

This Article utilizes a gender-based analysis with a child protection focus to examine relevant laws and casework data.

This Article's gender analysis is based on the Canadian Government's Gender-Based Analysis Methodology, currently called GBA+, narrowed to focus on available information and known gender concerns.

The GBA+ framework focuses on the intersectionality of twelve factors: religion, age, disability, gender, geography, culture, income, sexual orientation, education, sex, race, and ethnicity.⁴ The GBA+ framework focuses on ensuring substantive and procedural measures promote diversity and inclusion.

The GBA+ framework is applied in this Article by crafting tests to analyze the legal system's ability to address the most pressing child sexual exploitation victim issues: (a) gender discrimination and stereotyping, (b) gender bias, and (c) the need for gender-sensitivity in the prosecutorial process and victim aftercare continuum (these issues are fleshed out in Part V). Further, when actual casework results are discussed, the article considers the intersectionality of factors whenever the data makes it possible.

As this Article covers substantive and procedural measures, the gender analysis subjects the legal provisions to the following tests, when applicable:

- (1) Does the law address issues on gender stereotyping that makes children of either sex vulnerable to sex predators?
- (2) Does the legal process of child victim assistance address gender-specific needs?
- (3) Does the law mandate a gender-sensitive and child-protective prosecutorial process?
- (4) Does the law limit itself only to providing the rescue and prosecutorial processes or does it extend its scope to mandating a gender-sensitive child recovery mechanism?

The section on the legal framework governing CSE and OSEC will chronologically discuss and analyze legal provisions using the appropriate test(s), starting international law and ending with domestic law.

4. Status of Women Canada, Government of Canada's Approach: Gender Based Analysis Plus, *available at* <https://cfc-swc.gc.ca/gba-acs/approach-approche-en.html> (last accessed Nov. 30, 2018).

The combined analysis for casework data focuses on (A) examining available data points: (1) victim sex, (2) victim age, (3) victim relationship with the abuser, and (4) casework results, and (B) determining:

- (1) Examples of success in gender-appropriate and child protective service delivery, and
- (2) Gaps in the filling of roles and responsibilities or service delivery.

The most complete and available casework data accessible to the authors pertains to OSEC. In the interest of accuracy and relevance, the casework data analysis will be restricted to OSEC cases within the IJM database.

III. BEHAVIOR OF BOY AND GIRL VICTIMS OF SEXUAL ABUSE

OSEC is an emerging crime type with scarce literature discussing its psychological impact on victims. However, OSEC victims have been observed to suffer trauma similar to victims of child sexual abuse (CSA). OSEC and CSE are forms of child sexual abuse, and often involve the commission of rape or act of lasciviousness. Thus, the Authors deemed it necessary to include a review of related literature on CSA to shed light on factors affecting crisis and recovery.

Globally, CSA grows in severity, as millions of victims — both boys and girls — continue to increase.⁵ There has been variety in the definition of sexual abuse, since this issue hinges on varying factors namely cultural background, values of sexuality, and societal roles.⁶ However, in the broadest sense, the following definition of child sexual abuse may be used — “[S]exual activities that a child does not understand, to which a child cannot give informed consent[,] or which violate the social taboos of society.”⁷

Papers have tackled several aspects of CSA, from its psychological impact to recommendation of therapeutic and aftercare services. Despite the abundance of literature, analysis of gender differences of the outcomes in

5. Laura K. Murray, et al., *Child Sexual Abuse*, 23 CHILD ADOLESC. PSYCHIATRIC CLIN. N. AM. 321, 321 (2013).

6. ADRIENNE F. CROWDER, OPENING THE DOOR: A TREATMENT MODEL FOR THERAPY WITH MALE SURVIVORS OF SEXUAL ABUSE 2-3 (2014).

7. *Id.* at 2 (citing Anne Banning, *Mother-Son Incest: Confronting a Prejudice*, 13 CHILD ABUSE NEGL. 563, 566 (1989) (citing Richard D. Krugman, *Recognition of Sexual Abuse in Children*, 8 PEDIATRICS IN REV. 25, 25 (1985))).

sexually abused victims remains to be lacking.⁸ Moreover, available gender-based papers were written in international context while there is scarcity in Philippine context. The succeeding sections aim to fill these gaps, through comparison of the male versus female in the following stages: (1) response to sexual abuse; (2) recovery process of the victim; and (3) disclosure of their stories to peers.

A. How Boys and Girls Differ in Responding to Sexual Abuse

Widespread discussions have been made on the psychological and emotional impact of CSA on the victim.⁹ Scholars have been creative in tackling these by comparing its prevalence between boy versus girl victims, within certain ages and child abuse victims versus adults who have grown from their abused in the childhood.¹⁰ However, Andrea Maikovich-Fong and Sara R. Jaffee argue that there may not be a strong evidence to support the assumption that one is more susceptible to negative effects of abuse than the other or that it affects the genders differently.¹¹ Studies exist on either side of this issue, and these perspectives are unpacked below.

With regard to gender differences in response to sexual abuse, the reviewed literature discussed short-term and long-term consequences.

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8. Amélie Gauthier-Duchesne, et al., *Gender as a Predictor of Posttraumatic Stress Symptoms and Externalizing Behavior Problems in Sexually Abused Children*, 64 CHILD ABUSE NEGL. 79, 80 (2017).
 9. See David M. Fergusson, et al., *Childhood Sexual Abuse and Adult Developmental Outcomes: Findings from a 30-year Longitudinal Study in New Zealand*, 37 CHILD ABUSE AND NEGLECT 664, 665 (2013) (citing DAVID M. FERGUSSON & PAUL E. MULLEN, CHILDHOOD SEXUAL ABUSE: AN EVIDENCE-BASED PERSPECTIVE 71 (1999); Tanja Hillberg, et al., *Review of Meta-Analyses on the Association Between Child Sexual Abuse and Adult Mental Health Difficulties: A Systematic Approach*, 12 TRAUMA VIOLENCE ABUSE 38, 39 (2011); Harriet L. MacMillan, et al., *Interventions to Prevent Child Maltreatment and Associated Impairment*, 373 LANCET 250, 250-266 (2009); Roberto Maniglio, *The Impact of Child Sexual Abuse on Health: A Systematic Review of Reviews*, 29 CLIN. PSYCH. REV. 647, 654 (2009); & Frank W. Putnam, *Ten-Year Research Update Review: Child Sexual Abuse*, 42 J. AM. ACADEMY CHILD & ADOLESC. PSYCHIATRY 269, 269-78 (2003)).
 10. *Id.*
 11. Andrea Kohn Maikovich-Fong & Sara R. Jaffee, *Sex Differences in Childhood Sexual Abuse Characteristics and Victims' Emotional and Behavioral Problems: Findings from a National Sample of Youth*, 34 CHILD ABUSE NEGL. 429, 435-36 (2010).

1. Short-term Consequences

Sexually abused teenage boy victims were more likely to report externalizing problems, namely delinquent tendencies, sexual risk behaviors, and substance abuse, compared to sexually abused girls.¹² These findings coincided with studies done by Leah M. Blain, Tara E. Galovski, Tristan Robinson, David F. Tolin, and Edna B. Foa as cited by Amélie Gauthier-Duchesne, Martine Hébert, and Marie-Éve Daspe.¹³ The latter scholars argued that the societal gender role may have been influential in determining the symptoms of externalizing or internalizing problems.¹⁴ For instance, boys are not so often scolded for delinquent behaviors compared to girls, causing the boys to lean towards developing externalization and girls towards internalization.¹⁵ Moreover, Victoria L. Banyard, Linda M. Williams, and Jane A. Siegel noted that boys have a different sense of guilt and shame compared to girls as they felt emasculated for their inability to protect themselves.¹⁶ The *traumagenic dynamics theory* of Finkelhor and Browne explains that this stigmatization influences the likelihood of externalizing behavior problems (substance abuse, criminal activity, and suicide attempts) — meaning boys who feel guiltier compared to girls consequently develop these types of problem.¹⁷ In fact, this characteristic influences the delay of their disclosure.¹⁸

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12. Gauthier-Duchesne, et al., *supra* note 8, at 80 (citing Joseph M. Chandy, et al., *Gender-Specific Outcomes for Sexually Abused Adolescents*, 20 CHILD ABUSE NEGL. 1219, 1219–31 (1996) & Nadia Garnefski & Ellen Arends, *Sexual Abuse and Adolescent Maladjustment: Differences Between Male and Female Victims*, 21 J. ADOLESC. 99, 99–107 (1998)).
 13. Gauthier-Duchesne, et al., *supra* note 8, at 80 (citing Leah M. Blain, et al., *Gender Differences in Recovery from Posttraumatic Stress Disorder: A Critical Review*, 15 AGGRESSION VIOLENT BEHAVIOR 463, 464 (2010) & David F. Tolin & Edna B. Foa, *Sex Differences in Trauma and Posttraumatic Stress Disorder: A Quantitative Review of 25 Years of Research*, 132 PSYCH. BULLETIN 964, 979 (2006)).
 14. Tolin & Foa, *supra* note 13, at 979.
 15. Gauthier-Duchesne, et al., *supra* note 8, at 80.
 16. *Id.* (citing Victoria L. Banyard, et al., *Childhood Sexual Abuse: A Gender Perspective on Context and Consequences*, 9 CHILD MALTREATMENT 223 (2004)).
 17. David Finkelhor & Angela Browne, *The Traumatic Impact of Sexual Abuse: A Conceptualization*, 55 AM. J. ORTHOPSYCHIATRY 530 (1985).
 18. Gauthier-Duchesne, et al., *supra* note 8, at 80 (citing Banyard, et al., *supra* note 16).

Gauthier-Duchesne, et al. found that female victims seem to experience more traumatic symptoms than male victims.¹⁹ These victims report more internalizing problems, namely, psychiatric and major depressive disorders compared to the male victims; however, posttraumatic stress disorder (PTSD) was prevalent in both genders.²⁰ Maikovich-Fong and Jaffee explain that adolescent girls were more likely to have their exploitation substantiated, compared to boys.²¹ Several papers have similar conclusions that girls were more associated to longer durations of sexual abuse and these negative outcomes.²² In contrast, results of Carol Coohy concluded that sexually abused boys (52%) were more likely to have an internalizing behavior problem compared to girls (24%).²³ The Author elaborated that exposure to other factors may contribute to the likelihood of this behavioral problem, such as domestic violence, severity of the abuse, identity of the perpetrator, and the availability of support.²⁴

Maikovich-Fong and Jaffee argued that there are no gender differences for internalizing, externalizing, and PTSD symptoms.²⁵ Methodological differences, including the demographics of the samples, the definition of sexual abuse and underrepresentation of boys, should be taken into consideration when conducting a study.²⁶ Gender analysis among the abuse

19. Gauthier-Duchesne, et al., *supra* note 8, at 84.

20. *Id.* at 80 (citing Nusret Soylu, et al., *Gender Differences in Sexually Abused Children and Adolescents: A Multicenter Study in Turkey*, 25 J. CHILD SEX ABUSE 415, 422 (2016) & Blain, et al., *supra* note 14, at 464).

21. Gauthier-Duchesne, et al., *supra* note 8, at 87 (citing Maikovich-Fong & Jaffee, *supra* note 12 & Mylène Villeneuve Cyr & Martine Hébert, *Analyse comparative des caractéristiques de l'agression sexuelle et des conséquences associées en fonction du sexe* (An Article Submitted as a Partial Requirement for a Masters in Sexology), available at <https://archipel.uqam.ca/4869/1/M12436> (last accessed Nov. 30, 2018)).

22. Gauthier-Duchesne, et al., *supra* note 8, at 81 (citing Carol Coohy, *Gender Differences in Internalizing Problems Among Sexually Abused Early Adolescents*, 34 CHILD ABUSE NEGL. 856, 859-60 (2010); Martine Hébert, et al., *Correlates of Behavioral Outcomes in Sexually Abused Children*, 21 J. FAMILY VIOLENCE 287 (2006); & C. Thresa Yancey & David J. Hansen, *Relationship of Personal, Familial, and Abuse-Specific Factors with Outcome Following Childhood Sexual Abuse*, 15 AGGRESSION VIOLENT BEHAVIOR 410, 412 (2010)).

23. Coohy, *supra* note 22.

24. *Id.* at 859.

25. Maikovich-Fong & Jaffee, *supra* note 11, at 435-36.

26. *Id.*

victims was often restricted only to descriptive analyses and few studies delved into the explanatory nature.²⁷ Furthermore, the same authors argued that gender did not moderate the association between abuse characteristics and youth emotional and behavioral problems.²⁸

2. Long-term Consequences

It was commonly found in studies that when trauma from the abuse is not treated immediately, these effects carry over to their adulthood and evolve into various disorders and behavioral problems including: mental health problems,²⁹ substance use disorders,³⁰ suicidal behaviors and self-harm,³¹ sexual risk-taking,³² PTSD,³³ lowered self-esteem,³⁴ lowered life

27. *Id.*

28. *Id.*

29. Fergusson, et al., *supra* note 9, at 665 (citing Margaret Cutajar, et al., *Psychopathology in a Large Cohort of Sexually Abused Children Followed up to 23 Years*, 34 CHILD ABUSE NEGL. 813, 819 (2010); Stephen H. Dinwiddie, et al., *Early Sexual Abuse and Lifetime Psychopathology: A Co-Twin-Control Study*, 30 PSYCH. MED. 41, 51 (2000); David Fergusson, et al., *Childhood Sexual Abuse and Psychiatric Disorder in Young Adulthood: I. Prevalence of Sexual Abuse and Factors Associated with Sexual Abuse*, 35 J. AM. ACADEMY CHILD ADOLESC. PSYCHIATRY 1355, (1996); Hillberg, et al., *supra* note 9, at 43; Maniglio, *supra* note 16, at 637; & Putnam, *supra* note 9, at 271-72)).

30. Fergusson, et al., *supra* note 9, at 665 (citing David M. Fergusson & L. John Horwood, *The Christchurch Health and Development Study: Review of Findings on Child and Adolescent Mental Health*, 35 AUSTL. N.Z. J. PSYCHIATRY 287 (2001); Kenneth S. Kendler, et al., *Childhood Sexual Abuse and Adult Psychiatric and Substance Abuse Disorders in Women*, 57 ARCHIVES GEN. PSYCH. 953 (2000); & Marius K. Nickel, et al., *Sexual Abuse in Childhood and Youth as Psychopathologically Relevant Life Occurrence: Cross-Sectional Survey*, 45 CROAT. MED. J. 483, 483 (2004)).

31. Fergusson, et al., *supra* note 9, at 665 (citing Debra Neumann, et al., *The Long-Term Sequelae of Childhood Sexual Abuse in Women: A Meta-Analytic Review*, 1 CHILD MALTREATMENT 6, (1996); Nickel, et al., *supra* note 30 at 487; & Elizabeth Paolucci, et al., *A Meta-Analysis of The Published Research on the Effects of Child Sexual Abuse*, 135 J. PSYCH. 17, 17-36 (2001)).

32. Fergusson, et al., *supra* note 9, at 665 (citing David Fergusson, et al., *Childhood Sexual Abuse, Adolescent Sexual Behaviors and Sexual Revictimization*, 21 CHILD ABUSE NEGL. 789, 798-801 (1997); Jay P. Paul, et al., *Understanding Childhood Sexual Abuse as a Predictor of Sexual Risk-Taking Among Men who Have Sex with Men: The Urban Men's Health Study*, 25 CHILD ABUSE NEGL. 557, 557-84. (2001); & Ron Roberts, et al. *The Effects of Child Sexual Abuse in Later Family*

satisfaction,³⁵ physical health problems,³⁶ and educational underachievement.³⁷

As the literature with adult samples who were sexually abused during their childhood show, sexually abused women express more internalizing problems — namely: anxiety, depression, and PTSD — than sexually abused men.³⁸ This reflects the findings found for girl victims, in terms of short-term effects.³⁹ Other studies disagree with this argument and claim that there are no gender differences between male and female victims on showing

Life; Mental Health, Parenting and Adjustment Of Offspring, 28 CHILD ABUSE NEGL. 525, 525–45. (2011)).

33. Fergusson, et al., *supra* note 9, at 665 (citing Elizabeth Paolucci, et al., *A Meta-Analysis of the Published Research on the Effects of Child Sexual Abuse*, 135 J. PSYCH. 17, 17 (2001) & Putnam, *supra* note 10, at 272).
34. Fergusson, et al., *supra* note 9, at 665 (citing Sascha Griffing, et al., *The Process of Coping with Domestic Violence in Adult Survivors of Childhood Sexual Abuse*, 25 J. CHILD SEXUAL ABUSE 23, 33–36 (2006); Shan Jumper, *A Meta-Analysis of the Relationship of Child Sexual Abuse to Adult Psychological Adjustment*, 19 CHILD ABUSE NEGL. 715, 715 (Author’s Abstract) (1995); Mullen, et al., *The Long-Term Impact of the Physical, Emotional, and Sexual Abuse of Children: A Community Study*, 20 CHILD ABUSE NEGL. 7, 7 (Author’s Abstract) (1996); & Roberts, et al., *supra* note 33, at 557–84).
35. Fergusson, et al., *supra* note 9, at 665 (citing Nickel, et al., *supra* note 36, at 485 & Roberts, et al., *supra* note 32, at 557–84).
36. Fergusson, et al., *supra* note 9, at 665 (citing Robert Anda., et al., *Adverse Childhood Experiences and Frequent Headaches in Adults*, 50 HEADACHE 1473, 1473 & 1477 (2010) & Leah Irish, et al., *Long-term Physical Health Consequences of Childhood Sexual Abuse: A Meta-Analytic Review*, 35 J. PEDIATRIC PSYCH. 450, 457 (2007)).
37. Fergusson, et al., *supra* note 9, at 665 (citing Joseph Boden, et al., *Exposure to Childhood Sexual and Physical Abuse and Subsequent Educational Achievement Outcomes*, 31 CHILD ABUSE NEGL., 1101, 1112 (2007); Janet Currie, J. & Cathy Spatz Widom, *Long-Term Consequences of Child Abuse and Neglect on Adult Economic Well-being* (Author’s Manuscript of Article Published in CHILD MALTREATMENT, Volume No. 15, Issue No. 2) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3571659> (last accessed Nov. 30, 2018); & Jennie Noll, et al., *Receptive Language and Educational Attainment for Sexually Abused Females*, 126 PEDIATRICS 615, 619 (2010)).
38. Gauthier-Duchesne, et al., *supra* note 8, at 80 (citing Blain, *supra* note 14, at 464).
39. Gauthier-Duchesne, et al., *supra* note 8, at 80 (citing Soyly, et al., *supra* note 21, at 420 & Villeneuve Cyr & Hébert, *supra* note 22).

depressive symptoms⁴⁰ and PTSD.⁴¹ Dube and others further explained that adult victims were also found more likely to have substance abuse problems as against to non-adult victims, but could similarly happen to both men and women.⁴² David M. Fergusson, Gerald F.H. McLeod, and L. John Horwood's work, a commonly cited source in these papers' review of related literature, conducted a 30-year longitudinal study on the survivors of sexual abuse to further investigate the gender differences in adult developmental outcomes.⁴³ Their findings highlighted that gender did not impact adult developmental symptoms; thus, these behavioral problems could happen to both boys and girls growing up.⁴⁴ Another finding was that male victims were also linked with more severe abuse, which predicted post-traumatic stress symptoms.⁴⁵ Fergusson, McLeod, and Horwood further added that gender differences should be thoroughly analyzed among sexually abused children victims, as different outcomes happen to boys versus girls.⁴⁶ These papers are essential to the analysis of long-term sexual abuse consequences, especially in comparing male versus female victims; however, other intervening factors may be taken into consideration for future research such as biases related to memory and measurement error,⁴⁷ sense of guilt,⁴⁸ and influence of long-term support and therapy.⁴⁹

40. Bruce Arnow, et al., *Does Gender Moderate the Relationship Between Childhood Maltreatment and Adult Depression?*, 16 CHILD MALTREAT 175, 175 (2011).

41. *Id.*

42. Shanta R. Dube, *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREV MED, 430, 435 (2005).

43. Fergusson et al., *supra* note 9, at 665-68.

44. *Id.*

45. *Id.* at 671.

46. *Id.*

47. Gauthier-Duchesne, et al., *supra* note 8, at 80 (citing Jochen Hardt & Michael Rutter, *Validity of Adult Retrospective Reports of Adverse Childhood Experiences: Review of the Evidence*, 45 J. CHILDHOOD PSYCH. PSYCHIATRY 260, 269-70 (2004)).

48. *Id.* at 85.

49. Fergusson, et al., *supra* note 9, at 673 (citing Gail Horner, *Child Sexual Abuse: Consequences and Implications*, 24 J. PEDIATRIC HEALTH CARE 358, 358-64 (2010)).

B. How Boys and Girls Differ in the Process of Recovering from Sexual Abuse

As previously mentioned, effects of exposed trauma and development of different behavioral problems were frequently discussed in literature.⁵⁰ Aftercare services, specifically counselling and therapy, were also common themes in studies; however, Jennifer Foster and Bryce Hagedorn mention that the personal perspectives of the children and their unique recovery processes were noticeably delineated in the analyses.⁵¹ The scholars further discuss that these narratives are essential in providing care, since professionals could properly cater to their patients accordingly to their thoughts, feelings, and beliefs.⁵² Crowder affirms this and argues that formulation of these treatment models is particularly difficult, since the recovery process differs per victim.⁵³ Emphasis should be given to their distinct experiences because formal medication is only one part of the child's entire healing journey.

Child victim-survivors participate in healing processes that encompass both growth and recovery from the abuse.⁵⁴ Draucker prefers the phrase "healing from CSA," compared to "coping with CSA."⁵⁵ This is because the former encapsulates positive growth and overcoming trauma from the abuse.⁵⁶ Lawrence Calhoun, et al., on the one hand, defines growth as "*the individual's experience of significant positive change arising from the struggle of a major life crisis.*"⁵⁷ On the other hand, Matthias Domhardt, et al., explain that resilience would best encapsulate the healing process. In recovery of the abused victims, scholars have commonly focused on resilience as an indicator

50. See Tara Galovski, et al., *Sex Differences in Recovery from PTSD in Male and Female Interpersonal Assault Survivors*, 51 BEHAVIOR RESEARCH THERAPY 247, 247-48 (2013) & Matthias Domhardt, et al., *Resilience in Survivors of Child Sexual Abuse: A Systematic Review of the Literature*, 16 TRAUMA VIOLENCE ABUSE 476, 476-77 (2015).

51. Jennifer Foster & Bryce Hagedorn, *Through the Eyes of the Wounded: A Narrative Analysis of Children's Sexual Abuse Experiences and Recovery Process*, 23 J. CHILD SEXUAL ABUSE 538, 553-54 (2013).

52. *Id.*

53. CROWDER, *supra* note 6, at 42.

54. Claire Burke Draucker, et al., *Healing from Childhood Sexual Abuse: A Theoretical Model*, 20 J. CHILD SEX ABUSE 435, 436 (2014).

55. See Draucker, et al., *supra* note 54, at 436.

56. *Id.*

57. *Id.* (citing Lawrence Calhoun, *A Correlational Test of the Relationship Between Posttraumatic Growth, Religion, and Cognitive Processing*, 13 J. TRAUMA STRESS 521, 521 (2000)) (emphasis supplied).

of treatment.⁵⁸ Resilience has been widely debated on, in terms of its definition and conceptualization; however, in the study of Domhardt, et al., they used it in the context of “*adaptive functioning and/or absence of psychological disorders*.”⁵⁹ Resilience in child and adolescent samples ranged from 10% to 53%, which is highly similar to the rates in adult samples ranging from 15% to 47%.⁶⁰ Moreover, 0% to 20% was found in mixed child maltreatment samples for global indices of resilient functioning.⁶¹ Adults who have grown from their abuse during their childhood have determined positive growth processes, according to Clare Woodward and Stephen Joseph.⁶² These victim-survivors are intrinsically motivated towards healing and expressing positive changes in their lives. These changes are usually taking control of their own decisions, social acceptance, self-care, and cultivate senses of freedom, accomplishment, achievement, belongingness, and connection.⁶³

Papers that analyzed gender differences between male and female victims were also scarce in terms of literature. Tara Galovski, et al. explained that studies would usually impose “combat-trauma” for male victims and interpersonal violence focused on females.⁶⁴ They argued that this may be caused by the historic assumption that males are more inclined to fight when compared to the other gender.⁶⁵ Gerald K. Crete and Annaliese A. Singh, on the one hand, found in their study that adult males who experienced sexual abuse in their childhood were resilient as they showed therapeutic processing through engaging and maintaining romantic relationships, development of mutual empathy, greater trust, recalibration of their masculinity, and positive

58. Domhardt, et al., *supra* note 50, at 479.

59. *Id.* at 477 (emphasis supplied).

60. *Id.* at 479.

61. *Id.* at 487.

62. Clare Woodward & Stephen Joseph, *Positive Change Processes and Post-Traumatic Growth in People who have Experienced Childhood Abuse: Understanding Vehicles of Change*, 76 PSYCH. PSYCHOTHERAPY PRACTICE 267, 273–80 (2003).

63. Draucker, et al., *supra* note 54, at 438 (citing Woodward & Joseph, *supra* note 81, at 273–80).

64. Tara E. Galovski, et al., *Gender Differences in the Clinical Presentation of PTSD and Its Concomitants in Survivors of Interpersonal Assault*, 10 J. INTERPERSONAL VIOLENCE 247, 248 (2010).

65. *Id.*

outlook on their future.⁶⁶ On the other hand, in the study of Galovski, et al., on differences in recovery, both genders exhibited similar rates of change in PTSD and depressive symptoms.⁶⁷ However, female victims showed more signs of guilt, anger or irritability, and dissociation during the conducted therapy (Cognitive Processing Therapy), compared to the male victims.⁶⁸ In contrast, based on the paper by Victoria L. Banyard and Linda M. Williams, women who experienced sexual abuse during their childhood were monitored over seven years.⁶⁹ Data found resilience as the participants exhibited positive functioning, social role satisfaction, and sense of community.⁷⁰

Scholars express the need for more theoretical models on the healing process as it is necessary for the informed practice of professionals.⁷¹ As aforementioned, Adrienne F. Crowder elaborated on the complication of treatment models, since recovery of each victim-survivor is unique from one another.⁷² Moreover, Benjamin Saunders explained that children may also be exposed to other forms of abuse such as physical and emotional, neglect and family dysfunctions.⁷³ These cumulative traumas and repeated victimization, if present, are influential to the victim's recovery but are rarely considered in papers.⁷⁴ Thus, Foster and Hagedorn strongly suggest that professionals tailor their treatment to fit the narratives and distinct experiences of their patients.⁷⁵ The uniqueness in their healing process makes it difficult to

66. Gerald K. Crete & Annaliese A. Singh, *Resilience Strategies of Male Survivors of Childhood Sexual Abuse and their Female Partners: A Phenomenological Inquiry*, 37 J. MENTAL HEALTH COUNSELING 341, 350-51 (2015).

67. Galovski, et al. *supra* note 64, at 251-52.

68. *Id.* at 252-53.

69. Victoria L. Banyard & Linda M. Williams, *Women's Voices on Recovery: A Multi-Method Study of the Complexity of Recovery from Child Sexual Abuse*, 31 CHILD ABUSE NEGL. 282, 287-88 (2007).

70. *Id.*

71. Draucker, et al., *supra* note 54, at 436 (citing Benjamin Saunders, *Understanding Children Exposed to Violence: Toward an Integration of Overlapping Fields*, 18 J. INTERPERSONAL VIOLENCE 356, 369-72 (2003) & Linda Williams, *Understanding Child Abuse and Violence Against Women: A Life Course Perspective*, 18 J. INTERPERSONAL VIOLENCE 441, 447 (2003)).

72. CROWDER, *supra* note 6, at 42.

73. Saunders, *supra* note 71, at 359.

74. *Id.*

75. Foster & Hagedorn, *supra* note 51.

measure which gender would recover faster, since each trauma differs per victim and the procedure is assumed to be life-long.

C. How Boys and Girls Differ in Disclosing Their Stories of Sexual Abuse

Various aspects of the disclosures from CSA victims have also been well-documented in the literature. Courtney E. Ahrens, et al. mentioned that the time of the first disclosure does not encapsulate the entire problem, since other factors should be taken into consideration, such as length of disclosure, to which they disclose, and feedback received from peers.⁷⁶ Research further entails that the disclosure of sexual abuse is often delayed, more so for the younger victims.⁷⁷ Younger victims are more inclined to non-disclosure, isolation from external support, and disallowing detection of their perpetrators.⁷⁸ Most of the time, victims initially disclose to their parents, teachers, or friends (informal), rather than to professionals (formal).⁷⁹ It was commonly mentioned in papers that the proper understanding of barriers and facilitators to disclosure is relevant to practitioners and researchers.⁸⁰ Knowledge on the aforementioned would be greatly helpful as reported rates of delayed disclosures continue to spike.⁸¹

76. Courtney E. Ahrens, et al., *To Tell or Not to Tell: The Impact of Disclosure on Sexual Assault Survivors' Recovery*, 25 VIOLENCE & VICTIMS 631, 631 (2010).

77. Kamala London, et al., *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?*, 11 PSYCHO., PUB. POL'Y, & L. 194, 195 (2005).

78. Franziska Meinck, et al., *Disclosure of Physical, Emotional and Sexual Child Abuse, Help-Seeking and Access to Abuse Response Services in Two South African Provinces*, 22 PSYCHO. HEALTH & MED. 94, 95 (2017) (citing London, et al., *supra* note 77, at 207-08).

79. Debbie Allnock & Pam Miller, No one noticed, no one heard: a study of disclosures of childhood abuse, available at <https://learning.nspcc.org.uk/media/1052/no-one-noticed-no-one-heard-report.pdf> (last accessed Nov. 30, 2018) & Rosaleen McElvaney, et al., *To Tell or Not to Tell? Factors Influencing Young People's Informal Disclosures of Child Sexual Abuse*, 29 J. INTERPERSONAL VIOLENCE 928, 938-42 (2014).

80. Charlotte Lemaigre, et al., *Barriers and Facilitators to Disclosing Sexual Abuse in Childhood and Adolescence: A Systematic Review*, 70 CHILD ABUSE NEGL. 39, 50 (2017).

81. See Delphine Collin-Vezina, et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123, 124 (2015); Micaela Crisma, et al., *Adolescents who Experienced Sexual Abuse: Fears, Needs and Impediments to Disclosure*, 28 CHILD

Paula Schaeffer, et al., categorized the reasons behind the disclosures of child victims into three:

- (1) disclosure as a result of internal stimuli (e.g., the child had nightmares);
- (2) disclosure facilitated by outside influences (e.g., the child was questioned); and
- (3) disclosure due to direct evidence of abuse (e.g., the child's abuse was witnessed).⁸²

The same scholars also categorized the barriers to disclosure into five:

- (1) threats made by the perpetrator (e.g., the child was told she or he would get in trouble if she or he told);
- (2) fears (e.g., the child was afraid something bad would happen if she or he told);
- (3) lack of opportunity (e.g., the child felt the opportunity to disclose never presented);
- (4) lack of understanding (e.g., the child failed to recognize abusive behavior as unacceptable); and
- (5) relationship with the perpetrator (e.g., the child thought the perpetrator was a friend).⁸³

Hanna-Mari Lahtinen, et al. conducted a study with a representative sample of CSA victims of 11,364 sixth to ninth graders.⁸⁴ Findings were that majority of the participants (80%) had disclosed to a friend (48%), while only

ABUSE NEGL. 1035, 1036 (2004); Scott D. Easton, *Disclosure of Child Sexual Abuse Among Adult Male Survivors*, 41 CLIN. SOC. WORK J. 344, 345 (2013); Tina B. Goodman, et al., *Why Children Tell: A Model of Children's Disclosure of Sexual Abuse*, 27 CHILD ABUSE NEGL., 525, 526-28 (2000); Irit Hershkowitz, et al., *Exploring the Disclosure of Child Sexual Abuse with Alleged Victims and Their Parents*, 31 CHILD ABUSE NEGL. 111, 112-14 (2007); Eva Jonzon & Frank Lindblad, *Disclosure, Reactions, and Social Support: Findings from a Sample of Adult Victims of Child Sexual Abuse*, 9 CHILD MALTREAT. 190, 191, 196-97 (2004); Rosaleen McElvaney, *Disclosure of Child Sexual Abuse: Delays, Non-disclosure and Partial Disclosure. What the Research Tells Us and Implications for Practice*, 24 CHILD ABUSE REV. 159, 160 (2015); & Lemaigre, *supra* note 80, at 40 (citing Smith, et al., 24 CHILD ABUSE NEGL. 273, 273-87).

82. Paula Schaeffer, et al., *Children's Disclosures of Sexual Abuse: Learning from Direct Inquiry*, 35 CHILD ABUSE & NEGLIGENCE 343, 343 (2011).

83. *Id.*

84. Hanna-Mari Lahtinen, et al., *Children's Disclosures of Sexual Abuse in a Population-Based Sample*, 76 CHILD ABUSE NEGL. 84, 89 (2018).

few disclosed to adults (26%), and even fewer to authorities (12%).⁸⁵ This order of priority coincided with the results of Gisela Priebe and Carl Göran Svedin.⁸⁶ As for the reason behind non-disclosure, participants thought that the abuse was not serious enough for reporting (41%), claimed their experience was not sexual abuse (50%) and not courageous enough to disclose (14%).⁸⁷ The scholars listed other intervening factors that may influence the children's disclosure such as perpetrator's and victim's (at the time of abuse) age, and absence of emotional abuse by a family member.⁸⁸

For boy victims, Charlotte Gagnier and Delphine Collin-Vezina argued that majority of the men in their study waited until adulthood to disclose their abuse.⁸⁹ Negative stereotypes were mentioned as an influential factor that had inhibited their disclosure.⁹⁰ These norms had contributed to an environment that dismissed their abuse.⁹¹ Priebe and Svedin conducted a study with a sample of 1,505 girls (65%) and 457 boys (23%) who were victims of CSA.⁹² The results came out with disclosure rates of 81% (girls) and 69% (boys).⁹³ This indicated that girls are more likely disclose their experiences, compared to the boy victims. It coincided with the studies of Lamb and Edgar-Smith and Goodman-Brown, et al., as cited by de Jonge.⁹⁴ Nonetheless, both genders had disclosed to a friend of their own age, few to professionals, and even fewer to the authorities.⁹⁵ Their study also reported increased rates of disclosure to a professional when the abuse was more severe (contact abuse with or without penetration) for girls, however, lower

85. *Id.*

86. See Gisela Priebe & Carl Göran Svedin, *Child Sexual Abuse is Largely Hidden from the Adult Society an Epidemiological Study of Adolescents' Disclosures*, 32 CHILD ABUSE NEGL. 1095, 1098-103 (2008).

87. Lahtinen, et al., *supra* note 84, at 92.

88. *Id.* at 92-93.

89. Charlotte Gagnier & Delphine Collin-Vézina, *The Disclosure Experiences of Male Child Sexual Abuse Survivors*, 25 J. CHILD ABUSE 221, 229-30 (2016).

90. *Id.*

91. *Id.*

92. Priebe & Syedin, *supra* note 86, at 1103.

93. *Id.*

94. R.L.J. de Jonge, *Gender Differences in Disclosing Child Sexual Abuse* (A paper submitted to Tilburg University) at 4-5, *available at* <http://arno.uvt.nl/show.cgi?fid=131792> (last accessed Nov. 30, 2018).

95. *Id.*

rates for boys.⁹⁶ Contrastingly, the higher the severity of the sexual abuse, the lesser likelihood of both girls and boys talked to a family member.⁹⁷ Both genders found difficulty in disclosing if the perpetrator was their family member or if they had perceived their parents as less caring and less overprotective.⁹⁸

As previously mentioned, determining and understanding the predictors and inhibitors of CSA disclosures would encourage earlier disclosures, timely and available support, and prevent further victimization. Accessibility to therapeutic services can also alleviate risk to the mental health of the victims.⁹⁹ Moreover, Lemaigre, et al. recommend prevention programs that would entice concerned parties — especially family members, friends and frontline professionals — to recognize indicators of sexual abuse, explicitly ask their children about the possibility of sexual abuse and know how to express support when disclosures occur.¹⁰⁰ This proper procedure is essential in safeguarding victims and encouraging better outcomes for the CSA victims.¹⁰¹

IV. OSEC CASEWORK IN THE PHILIPPINES

OSEC is a broad term internationally understood to mean any form of child sexual exploitation or abuse connected to the online environment.¹⁰²

For the purpose of this Article and analysis, OSEC refers to economically motivated child sexual exploitation online — “The production, for the purpose of online publication, of visual depictions (e.g. photos, videos, livestreaming) of the sexual abuse or exploitation of a minor for a third party who is not in the physical presence of the victim, in exchange for compensation.”

96. Priebe & Syedin, *supra* note 86, at 1100.

97. *Id.*

98. *See* Priebe & Syedin, *supra* note 86, at 1100.

99. Ramona Alaggia, et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, TRAUMA, VIOLENCE, & ABUSE, 2017, at 1-2.

100. Lemaigre, et al., *supra* note 80, at 49-50.

101. *Id.*

102. INTERAGENCY WORKING GROUP IN LUXEMBOURG, TERMINOLOGY GUIDELINES FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION AND SEXUAL ABUSE (2016).

The rise of OSEC cases in the Philippines is widely acknowledged and supported by data. The number of IJM-supported OSEC cases rose by 713% from the year-end figure of 15 in 2014 to 122 in 2018.¹⁰³

V. GENDER ISSUES IN CSE AND OSEC CASEWORK

CSE in general covers a vast pool of issues, beginning with its causes and ending with the rehabilitation of the child victim. For the purposes of this Article, only those that relate to the gender aspect of the problem will be discussed.

The first issue pertains to one of the root causes of CSE — gender discrimination. Gender discrimination puts into the mind of the society that a particular gender should act in a particular manner and that a gender that is perceived to be superior than the other is not allowed to be vulnerable. This is highly problematic especially to children. Females are commonly the victims of CSE because society perceives them as “the weaker sex,” which strengthens the sexual predators’ desire to commit these offenses by buying girls via the internet or personally. On the other hand, as mentioned in the review of related literature in this Article, male victims of sexual abuse do not speak of the abuse they had encountered because there is this prevailing societal gender perspective that “men can never be raped.” This societal perspective gives an opportunity for sexual predators to go after boys and sexually abuse them through trafficking and take advantage of the societal mindset that “boys who were raped will never become men.” In sum, there are two forms of gender discrimination present: for females, that they are of the weaker sex; and for males, that they are “the stronger” sex and, therefore, not allowed to speak of the sexual abuse they had experienced because it makes them “weak.”

The second issue pertains to the gender-appropriateness of laws addressing CSE and their implementing rules and regulations.

The third issue pertains to the gender-sensitivity of the prosecution process in view of child rights aspects. Often, it is misconceived that the role of a prosecutor is simply to produce convictions, but the role involves a much greater public service that includes safeguarding the rights of vulnerable victims entangled in the justice process. Misconceptions can put children at risk. For example, a misreading of jurisprudence such as Villanueva and Wellington cases would put into the mind of a prosecutor that the child has to be presented as a witness. A gender-sensitive

103. International Justice Mission’s (IJM) Casework Tracking and Management System Records (on file with the Authors).

prosecution with a child rights' perspective does not preclude the application of gender-neutral and child-protective processes.

The last issue pertains to the recovery of the child victim. As mentioned, there are only few shelters that would accept male victims and sibling groups, i.e., male and female siblings. This produces another struggle for the victims because even if their perpetrators are convicted and brought to justice, the victims will not truly achieve healing because they are not given the appropriate facilities that would cater their delivery.

These issues serve as the basis for the four tests crafted for the article's methodology.

VI. PHILIPPINE LEGAL FRAMEWORK

A. *International Law*

I. UN CRC

The Philippines ratified the United Nations Convention on the Rights of the Child (UN CRC) on 20 August 1990. In its second Article, it mandates that

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction *without discrimination of any kind, irrespective of the child's ... sex, language, religion, political[,] or other opinion, national, ethnic or social origin, property, disability, birth or other status.*¹⁰⁴

By ratifying the UN CRC,

[the Philippines] undertake[s] to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall[,] in particular[,] take all appropriate national, bilateral and multilateral measures to prevent:

- (1) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (2) The exploitative use of children in prostitution or other unlawful sexual practices; [and]

104. U.N. Convention on Rights of a Child art. 2, ¶ 1, *opened for signature*, Nov. 20, 1989, 1577 U.N.T.S. 3 (emphasis supplied).

- (3) The exploitative use of children in pornographic performances and materials.¹⁰⁵

This obligation imposed upon the States has been regarded as a landmark feat because “it implicitly recognizes that sexual exploitation of children is likely to occur in every country in the world.”¹⁰⁶

As a compliance to the mandate of the UN CRC, the Philippines enacted Republic Act No. 7610, which also declared that “[t]he best interests of children shall be the paramount consideration in all actions concerning them.”¹⁰⁷

2. Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography

In the preambulatory clauses of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, it was believed by the signatory and ratifying States that child trafficking, prostitution, and pornography can be prevented if States would adopt a holistic approach in addressing the contributing factors such as gender discrimination.¹⁰⁸

3. Other International Materials

In the UN General Comment No. 13 on UN CRC’s Article No. 19, the gender component of violence was recognized, to wit —

States parties should ensure that policies and measures take into account the different risks facing girls and boys in respect of various forms of violence in various settings. States should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy. This includes addressing gender-based stereotypes, power imbalances, inequalities[,] and discrimination[,] which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions[,] and in society more broadly. Men and

105. *Id.*

106. UNICEF Innocenti Research Centre, Handbook on the Optional Protocol on the Sale Of Children, Child Prostitution And Child Pornography at 1, *available at* https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf (last accessed Nov. 30, 2018).

107. An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation and Discrimination, And For other Purposes [Special Protection of Children Against Abuse and Discrimination Act], Republic Act No. 7610, § 32 (1992).

108. UNICEF Innocenti Research Centre, *supra* note 105, at viii-ix.

boys must be actively encouraged as strategic partners and allies, and along with women and girls, must be provided with opportunities to increase their respect for one another and their understanding of how to stop gender discrimination and its violent manifestations[.]¹⁰⁹

B. Statutes and Their Implementing Rules and Regulations

I. Laws

The four commonly used laws in prosecuting OSEC and CSE cases are the Revised Penal Code (RPC),¹¹⁰ Special Protection of Children Against Abuse, Exploitation and Discrimination Act or Republic Act No. 7610,¹¹¹ the Anti-Child Pornography Law,¹¹² and the Anti-Trafficking in Persons Act of 2003 as expanded in 2012.¹¹³

The earliest among the four pieces of legislation is the RPC. Gender discrimination is pronounced in some of the RPC provisions that criminalize acts of the nature of sexual exploitation and abuse. For instance, Article 202 limits the definition of “prostitutes” to women and penalizes only women for habitually indulging in sexual intercourse or lascivious conduct for money or profit, regardless of whether they are forced or coerced.

The RPC provision on rape, as amended, makes a distinction between a male and a female victim. Rape by sexual intercourse may be committed only against a female victim by a male offender who inserts his penis into the former’s vagina. All other forms of penetration of the genital or anal orifice, mouth, or vagina are considered rape by sexual assault. Although both are considered rape and categorized as crimes against persons, rape by sexual

109. U.N. Comm. the Rights of the Child, *General Comment No. 13: The Right to Education*, at 26, U.N. Doc. CRC/C/CG/13 (2011).

110. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3825 (1932).

111. Special Protection of Children Against Abuse and Discrimination Act.

112. An Act Defining and Penalizing the Crime of Child Pornography, Prescribing Penalties Therefor and for Other Purposes [Anti-Child Pornography Act of 2009], Republic Act No. 9775 (2009).

113. An Act Expanding Republic Act No. 9208, Entitled “An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations and for Other Purposes [Expanded Anti-Trafficking in Persons Act of 2012], Republic Act No. 10364 (2013).

intercourse is punished more severely than rape by sexual assault. There is a need to reconsider the difference in treatment because it tends to trivialize the impact of child sexual abuse on a male victim when studies show that such an act is damaging to boys and girls.

Another offense of a sexual nature punished under the RPC is acts of lasciviousness.¹¹⁴ The RPC does not define the term. It merely states that any person who shall commit any act of lasciviousness upon other persons of either sex is penalized. The Special Protection of Children Against Abuse, Exploitation and Discrimination Act defines lascivious conduct when committed against a child as

the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, [or] lascivious exhibition of the genitals or pubic area of a person.¹¹⁵

The RPC also punishes sexual exploitation in the form of obscene publications and immoral doctrines.¹¹⁶ This crime, however, does not concern itself with the victim but more on the material published.

The Special Protection of Children Against Abuse, Exploitation and Discrimination Act provides for the different offenses constituting child abuse.¹¹⁷ It does not make a distinction between a male or a female victim of child abuse. As a matter of fact, in its definition of child prostitution, it provides that “[c]hildren, whether *male or female*, who for money, profit, or any other consideration or due to the coercion or influence of any adult,

114. *Id.* art. 336.

115. Special Protection of Children Against Abuse and Discrimination Act, § 32.

116. REVISED PENAL CODE, art. 201 (3).

117. These are:

- (1) Sexual abuse;
- (2) Sexual exploitation;
- (3) Forced labor of children;
- (4) Discrimination of IP children;
- (5) Abuse committed in times of armed conflicts;
- (6) Mental abuse; and
- (7) Physical abuse.

Special Protection of Children Against Abuse and Discrimination Act, § 3, para. b.

syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.”¹¹⁸ This is a remarkable progress in Philippine law because the other law that defines prostitution, i.e., the Revised Penal Code, only considers females as prostitutes. In Republic Act No. 7610, the law made it clear that boys can be prostituted, as well.

Aside from defining the crime of child pornography,¹¹⁹ the Anti-Child Pornography Act also requires the DSWD to “ensure that the child who is a victim of any form of child pornography is provided appropriate care, custody, and support for their recovery and reintegration in accordance with existing laws.”¹²⁰ The law does not also make a distinction between male and female victims of child pornography.

The Anti-Trafficking in Persons Act, as amended, provides for the definition of human trafficking,¹²¹ to wit —

[T]he recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes[,] at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude[,] or the removal or sale of organs.

The recruitment, transportation, transfer, harboring, adoption[,] or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.¹²²

118. Special Protection of Children Against Abuse and Discrimination Act, § 5, ¶ 1 (emphasis supplied).

119. Anti-Child Pornography Act of 2009, § 5. Child pornography is “any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.” *Id.*

120. *Id.* § 14.

121. Expanded Anti-Trafficking in Persons Act of 2012, § 3.

122. *Id.*

Human trafficking is a crime against any person without distinction as to gender.¹²³ The use of the term “person” connotes that either sex or any gender may be the subject of human trafficking.

Aside from defining the offense of human trafficking and providing for its punishment, the Act gives the Department of Social Welfare and Development the mandate to provide the following assistance to victims of trafficking:

- (1) Temporary housing and food facilities;
- (2) Psychological support and counseling;
- (3) 24-hour call center for crisis calls and technology-based counseling and referral system;
- (4) Coordination with local law enforcement entities; and
- (5) Coordination with the Department of Justice, among others.¹²⁴

The law also provides for the creation of an trafficking in persons database —

An anti-trafficking in persons central database shall be established by the Inter-Agency Council Against Trafficking [(IACAT)] created under Section 20 of this Act. The Council shall submit a report to the President of the Philippines and to Congress, on or before January 15 of every year, with respect to the preceding year’s programs and data on trafficking-related cases.

All government agencies tasked under the law to undertake programs and render assistance to address trafficking in persons shall develop their respective monitoring and data collection systems, and databases, for purposes of ensuring efficient collection and storage of data on cases of trafficking in persons handled by their respective offices. Such data shall be submitted to the Council for integration in a central database system.

For this purpose, the Council is hereby tasked to ensure the harmonization and standardization of databases, including minimum data requirements, definitions, reporting formats, data collection systems, and data verification systems. Such databases shall have, at the minimum, the following information:

- (a) The number of cases of trafficking in persons, sorted according to status of cases, including the number of cases being investigated, submitted for prosecution, dropped, and

123. *See* Expanded Anti-Trafficking in Persons Act of 2012, § 3.

124. Expanded Anti-Trafficking in Persons Act of 2012, § 15.

filed and/or pending before the courts and the number of convictions and acquittals;

- (b) The profile/information on each case;
- (c) The number of victims of trafficking in persons referred to the agency by destination countries/areas and by area of origin; and
- (d) Disaggregated data on trafficking victims and the accused/defendants.¹²⁵

IACAT currently maintains a casework database. With proper investment and integration with other agencies, the Council should be able to generate a robust annual report and periodic insights helpful to duty-bearers across the Philippines.

2. Implementing Rules and Regulations

In child-protective operations, the Implementing Rules and Regulations of the laws provide, as such —

When an entrapment operation on OSEC cases is conducted, the rescue of the victims is necessarily included. This rescue is conducted, whenever possible, ‘with the assistance of the Department of Social Welfare and Development (DSWD) or an accredited NGO that services trafficked victims.’ The rescued victims or potential victims must be immediately placed under the custody of the local social welfare and development office or any accredited or licensed shelter institution. The law enforcers must also develop protocols in the gathering of victims’ testimonies considering both the time necessary for the victims to recover and to be debriefed of the operation, and the time necessary to conduct the inquest.¹²⁶

¹²⁵. *Id.* § 16.

¹²⁶. Benjamin Lawrence Patrick E. Aritao & John Stephen B. Pangilinan, *Online Sexual Exploitation of Children: Applicable Laws, Casework Perspectives, and Recommendations*, 63 ATENEO L.J. 185, 208–09 (2018) (citing Revised Rules and Regulations Implementing Anti-Trafficking in Persons Act of 2003, as Amended by Expanded Anti-Trafficking in Persons Act of 2012, Republic Act No. 9208, § 32 & An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes [Anti-Trafficking in Persons Act of 2003], Republic Act No. 9208, § 17-A (2003) (as amended)). The Anti-Trafficking in Persons Act of 2003, as amended, provides —

The CPN-CSPC Protocol mandates that in the management of cases involving child exploitation, the approach, among others, must be gender-sensitive.¹²⁷ It provides —

[T]he ability to recognize that girls and women’s perceptions, experiences[,] and interests may be different from those of boys and men, arising from an understanding of their different social position and gender roles. The provision of gender-sensitive services to abused children necessarily includes rights-based approach, i.e., responding to victims’ peculiar needs at all times and in all stages, affording them respect, and promoting dignity as their inherent right.¹²⁸

It also requires that barangays “must designate a child and gender-sensitive barangay *kagawad* or *tanod*, preferably female, who shall be in charge of the barangay help desk that shall receive and monitor all child abuse and Violence Against Women-related cases, and refer the child victim to the proper agency for appropriate intervention.”¹²⁹

A law enforcement officer, on a reasonable suspicion that a person is a victim of ... trafficking in Persons, shall immediately place that person in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter institution devoted to protecting trafficked persons after the rescue.

Id. See also Republic Act No. 7610, § 28 & Committee for the Special Protection of Children, Protocol for Case Management of Child Victims of Abuse, Neglect, and Exploitation at 22, available at https://www.doj.gov.ph/files/transparency_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf (last accessed Nov. 30, 2018).

In rescuing a child victim, CPN-CSPC Protocol provides that

[t]he barangay or [Law Enforcement Agency] ... may immediately rescue a child if coordinating the rescue operations with the nearest available social worker would compromise the safety of the child... . As soon as the child is rescued, the child shall be immediately endorsed to [Local Social Welfare and Development Officer][.]

Committee for the Special Protection of Children, Protocol for Case Management of Child Victims of Abuse, Neglect, and Exploitation, available at https://www.doj.gov.ph/files/transparency_seal/2016-Jan/CPN-CSPC%20Protocol%2026Nov2014.pdf (last accessed Nov. 30, 2018).

127. *Id.*

128. Committee for the Special Protection of Children, Protocol for Case Management of Child Victims of Abuse, *supra* note 144.

129. *Id.*

When the child was rescued and will be undergoing a joint interview, the CPN-CSPC mandates that the social worker in the joint interview must be of the same gender.¹³⁰ During the preliminary investigation or inquest, the Law Enforcement Officer and the Social Worker must ensure that the proceeding is child and gender-sensitive.¹³¹ These are clear articulations of a gender-appropriate standards and procedures applicable to CSE and OSEC cases.

VII. ROLES AND RESPONSIBILITIES UNDER THE LEGAL FRAMEWORK

Having gone through the legal framework governing CSE and OSEC, it is now appropriate to examine the roles and responsibilities of primary duty-bearers under the framework.

The duty-bearers are: (1) law enforcement, (2) public and private aftercare agencies, (3) prosecutors, (4) judiciary, and (5) NGOs.

A. Law Enforcement

Law enforcement roles and responsibilities include (1) Investigation, (2) victim rescue, (3) referral to aftercare, (4) perpetrator arrest, (5) case filing and (6) case support during trial.

The responsibility to investigate OSEC and perform the related child-protective rescue operations and arrests originates in the Anti-Trafficking in Persons Act of 2003, as expanded in 2012. The law states that its main implementors are the PNP and the NBI. This Article refers to these agencies collectively below as “law enforcement.”

Section 17-A clarifies that law enforcement conducting rescues must turn over victims to the relevant aftercare agency: the local social welfare development officer, or any accredited or licensed institution. Until such turnover, law enforcement is responsible for the victims.

Law enforcement is duty-bound to turnover victims to aftercare when there is a reasonable suspicion of victimization under Republic Act No. 9208 as amended. Once the turnover is complete, the receiving agency exercises special protective custody over the victim.

Law enforcement, as the primary duty-bearers in OSEC investigations, are empowered to arrest suspected perpetrators caught *en flagrante delicto* under Rule 113, Section 5 of the Rules of Criminal Procedure.

130. *Id.*

131. *Id.*

Law enforcement is required by the rules of court to refer arrested suspects for inquest in accordance with Rule 112, Section 7, Rules of Criminal Procedure.

Law enforcement is duty-bound to appear and testify in OSEC cases when subpoenaed in accordance with Rule 119 of the rules of court.

B. Public and Private Aftercare Agencies

Public and private aftercare agencies are responsible for victim recovery across the three phases of victim care: (a) crisis, (b) recovery, and (c) reintegration.

At the crisis phase, aftercare agencies prioritize stabilizing the victim through trauma-informed crisis intervention. At the recovery phase, aftercare agencies prioritize needs assessment and the preparation of treatment plans. At the reintegration phase, aftercare agencies partner with local social workers to ensure the safe reunification of the victim with his or her community. The reintegration phase is thus a partnership between aftercare stakeholders in the recovery phase, and aftercare workers of the local government units (LGUs), with the local government code holding LGUs primarily responsible for the final phase of victim care.

C. Public Prosecutors

Public prosecutors are duty-bound to (1) resolve initiatory processes, (2) file appropriate cases, (3) prosecute cases, and (4) ensure victim-protective measures are maximized. The following are the sources of these duties:

- (1) The duty to resolve inquest or preliminary investigation originates in Rules 112, Rules of Criminal Procedure.
- (2) The duty to file appropriate cases in court likewise originates from the Rules of Criminal Procedure.
- (3) The duty to prosecute cases originates in Republic Act No. 10071 establishing the National Prosecution Service.
- (4) The duty to maximize victim protective measures rests in the declared state policy to protect the best interests of the child in Republic Act No. 7610, Republic Act No. 9775, and Presidential Decree No. 603.

D. Judiciary

The judiciary is duty-bound to resolve OSEC cases speedily and impartially. Its higher courts are likewise duty-bound to rule upon elevated cases in the disposition of their functions, generating jurisprudence to guide the implementation of laws. The process is guided by the following:

- (1) Republic Act No. 8493, the speedy trial act, outlines the necessary time frame within which criminal cases must be resolved. OCA Circular 151-2010 reiterates the necessary compliance with the time frame of the law in human trafficking cases.
- (2) Appellate jurisdiction and procedure is outlined in the Rules of Court. Special civil actions to elevate cases affected by grave abuse of discretion are likewise governed by the Rules of Court.

E. Non-Government Organizations

NGOs are recognized under Republic Act No. 9208 as amended as value-added stakeholders in the casework process. There is no law or rule that mandates the presence of NGOs in the OSEC casework process but the law mandates NGO participation in the Inter-Agency Council Against Trafficking and the Inter-Agency Council Against Child Pornography. NGOs may add value in (1) rescue operations (2) the aftercare continuum, (3) prosecution, and (4) system enhancement.

- (1) NGOs are recognized as desirable partners in rescue operations under Section 17-A of Republic Act No. 9208 as amended.
- (2) NGOs may be accredited and licensed by the DSWD to provide necessary aftercare services through shelters, therapeutic services, and other victim-centered intervention.
- (3) NGO-affiliated private prosecutors may assist victims and the national prosecution service when properly authorized under A.M. 02-2-07-SC.

NGOs may participate in system enhancement programs as part of civil society and as members of the Inter-Agency Council against Trafficking and the Inter-Agency Council Against Child Pornography.

Roles and responsibilities in OSEC casework are clearly defined by laws, implementing rules and regulations, Supreme Court Rules, and Department Orders. However, the above discussion does not address the most pertinent role-related question: what is the role of the child victim in an OSEC case?

To answer that, we must turn to pronouncements and issuances of the Supreme Court.

VIII. SUPREME COURT CASES AND ISSUANCES

The Supreme Court has made important pronouncements on a child's role in court cases in general. Through the Rule on Examination of a Child Witness, it has recognized that a child may be required to participate in court proceedings, and that in such cases, their best interests must be considered. The Supreme Court has consistently found children to be credible witnesses.

A. On the Credibility of a Child Witness

Courts give credence to a child's testimony on the account of the abuse he or she had experienced because of a child's innocent nature. In one case, the Supreme Court provides, to wit —

Verily, [children] would [not] knowingly expose [themselves] and the rest of [their] family to the humiliation and strain that a public trial surely entails unless [they are] so moved by her desire to see to it that the person who forcibly robbed [them] of [their] cherished innocence is penalized for his dastardly act. The imputation of ill motives to the victim of an incestuous rape [or lascivious conduct] becomes even more unconvincing as the victim and the accused are not strangers to each other. By electing to proceed with the filing of the complaint, the victim[s] risk not only losing a parent, one whom, before [a] moral descent, [they] previously adored and looked up to, but also the likelihood of losing the affection of [their] relatives who may not believe her claim. Indeed, it is not uncommon for families to be torn apart by an accusation of incestuous rape. Given the serious nature of the crime and its adverse consequences not only to [them], it is highly improbable for [children] to manufacture a rape charge for the sole purpose of getting even with [their] father. Thus, the alleged ill motives have never swayed the Court against giving credence to the testimonies of victims who remained firm and steadfast in their account of how they were ravished by their sex offenders.¹³²

Further, the Court even said that a child's "[y]outh and immaturity are generally badges of truth and sincerity."¹³³

The wisdom of the Court in *People v. Orotia*¹³⁴ is applicable to children testifying against the sexual abuse they had experienced via OSEC. As

132. *Flordeliz v. People*, 614 SCRA 225, 234-35 (2010) (citing *People v. Ortoa*, 529 SCRA 536 (2007)).

133. *Ortoa*, 529 SCRA at 550.

134. *People v. Ortoa*, 529 SCRA 536 (2007).

mentioned, majority of OSEC perpetrators are relatives of the child — most of whom is a parent of the victim. Children are not expected to make up statements that could ruin their families' reputation.

B. On the Necessity of a Child Witness and the Procurement of Child Testimony

The Supreme Court, in *People v. Villanueva*,¹³⁵ acquitted the accused therein because the prosecution failed to present the arresting officer or the child victim in court.¹³⁶ The Court clarified the value of an arresting officer's testimony in achieving a conviction for human trafficking, especially when the victim cannot testify in Court.¹³⁷ The Court, however, did not make any ruling that a child victim must be presented as a witness in Court.

In the case of *People v. Rodriguez*,¹³⁸ the Supreme Court acquitted the accused because the prosecution failed to showcase in the direct examination the actual unfolding of events that warranted the conduct of the arrest.¹³⁹ In the direct examination, the gist of the arresting officer's testimony is not the existence of the elements of human trafficking, but only the fact that the marked money is in the possession of the accused at the time of the arrest.¹⁴⁰ It was only during the cross-examination that the arresting officer was able to disclose that the accused said to him, “*Sir, sir, babae, sir.*”¹⁴¹ This statement was taken by the Court to be ambiguous.¹⁴² Because of the ambiguity of the statement and lack of supporting evidence that would allow an interpretation that the women were true victims of trafficking, the Court applied the equipoise rule, which allowed the interpretation of the statement in favor of the accused.¹⁴³ Since the prosecution merely relied on the deficient testimony of the arresting officer, the Court also stated that

[i]t is grossly erroneous to say that ‘the non-presentation of the three women is not fatal to the prosecution.’ Their testimonies that they were sexually exploited against their will through force, threat or other means of coercion are material to the cause of the prosecution. These women would

135. *People v. Villanueva*, 803 SCRA 228 (2016).

136. *Id.* at 245.

137. *Id.* at 244.

138. *People v. Rodriguez*, G.R. No. 211721, Sep. 20, 2017 (unrep).

139. *Id.* at 6-7.

140. *Id.*

141. *Id.*

142. *Id.* at 6.

143. *Id.*

be in the best position to say that Rodriguez had recruited or used these women by giving them payments or benefits in exchange for sexual exploitation. To rely solely on the testimony of PO1 Escobar as basis for convicting Rodriguez would run riot against logic and reason, and against the law. To sustain this whimsical reasoning would encourage anyone to accuse a person of ‘trafficking in persons’ or of any other crime, without presenting the material testimony of the alleged victim. *Given that PO1 Escobar’s testimony is missing on material details, the prosecution should have presented in court at least one of the three [] women that indeed they were sexually exploited or recruited by the accused for prostitution as alleged in the information.* Even a neophyte police officer of the lowest rank would be stupefied why PO1 Escobar and the two [] other police officers allegedly with him failed to get the statements of the alleged victims while they were under police custody after the entrapment operation.¹⁴⁴

A careful reading of the Court’s pronouncement in *Rodriguez* provides that, whenever a material witness of human trafficking who is not a victim of the crime and his or her testimony is deficient or not credible, the presentation of the victim(s) *may* be necessary to prove the guilt of the accused.

The ruling of the Court in those cases should not be read to arrive at a conclusion that a child has to be presented as a witness during trial or that his or her testimony should be presented. The Court, in deciding those cases, merely tells practitioners and law enforcers that if the credibility of the arresting officers or other witnesses aside from the child are questionable or doubtful, the court *may* find in such an instance that the presentation of the child’s testimony is necessary to prove the allegations against the accused. If such a case arises, and the prosecution requires a child’s testimony, it does not automatically mean that the child has to take the witness stand or be brought in the courtroom. To automatically require the child to be presented as a witness may cause a re-traumatization because he or she will see the abusers face to face.

To protect the interest of the child, the Supreme Court promulgated the Rule on the Examination of a Child Witness (RECW) that provides other means in obtaining a child’s testimony that could minimize the possibility of re-traumatization.¹⁴⁵

144. *Rodriguez*, G.R. No. 211721 (unrep) (emphasis supplied).

145. RULE ON THE EXAMINATION OF A CHILD WITNESS, A.M. No. 00-4-07-SC (November 21, 2000).

As previously discussed by the Authors, there are at least four methods of procuring a child testimony to be presented in Court during the trial phase, i.e., (1) Videotape In-Depth Interview (VIDI) or Disclosure Interview, (2) videotaped deposition, (3) live-link testimony taking, and (4) actual presentation of the child either in chambers, or in court.¹⁴⁶

In the case of VIDI utilization, a child is interviewed by a trained investigator or a multi-disciplinary team. The interview is electronically captured through a video camera. This recording is admissible as evidence if the following are met:

- (1) The child witness is unable to testify in court on grounds and under conditions established under section 28 (c).
- (2) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child-protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.
- (3) The party offering the videotape or audiotape must prove that:
 - (a) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
 - (b) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;
 - (c) the videotape and audiotape machine or device was capable of recording testimony;
 - (d) the person operating the device was competent to operate it;
 - (e) the videotape or audiotape is authentic and correct; and
 - (f) it has been duly preserved.¹⁴⁷

For a VIDI to be admissible in court, the prosecution must establish that a child is unable to testify under Section 28 (c) of the RECW, meaning the child is deceased, physically infirm, lacks memory, is mentally ill, or will be exposed to severe psychological injury, or is otherwise absent and unable to procure attendance.¹⁴⁸

146. *Id.*

147. *Id.* § 29.

148. *Id.* § 28 (c).

Furthermore, in the case of VIDI utilization, “the person who conducted the interview shall be available at the trial for examination by any party, and all parties may examine the videotape or audiotape and its written transcript before the videotape or audiotape is offered in evidence.”¹⁴⁹ In other words, only the interviewer will be presented as a witness.

Videotaped depositions are obtained by motion and presided upon by the court. The motion for a videotaped deposition may be granted when the court finds that a child will not be available to testify at trial. During trial, if the court confirms that the child is unable to testify in open court because of a high likelihood that exposure to the accused, his counsel, or prosecutor would cause trauma, the videotaped deposition may be used in lieu of testimony. If the child is unable to testify for reasons that justify use of normal depositions, the videotaped deposition may likewise be admitted in lieu of testimony.¹⁵⁰

In a live-link testimony taking, “a child is placed in a room outside the courtroom, and his or her testimony is displayed inside the courtroom via a television connected to a camera or other recording device in the other room.”¹⁵¹ In this case, the child is not in the courtroom so he or she will not see the accused face to face. This method, however, allows the defense to cross-examine the child.

Finally, a child may be presented as a witness in chambers, or in the courtroom — meaning he or she may be in the presence of the accused. Despite this scenario —

the judge ‘may, in [his or her] discretion, direct and supervise the location, movement[,] and deportment of all persons in the courtroom’ to create a more comfortable environment to the child. The child need not be in the witness stand when he or she gives his or her testimony, provided that the opposing party has a frontal or profile view of the child during his or her testimony. The requirement of allowing the opposing party to have a frontal or profile view of the child does not mean that the child is also required to look at the accused directly, except when the child is asked to

149. Aritao & Pangilinan, *supra* note 125, at 219.

150. Death, distance of over 100 kilometers from place of trial, age, sickness, infirmity, imprisonment, inability to procure witness by subpoena, exceptional circumstances in the interest of justice as provided under Section 4, Rule 23, Rules of Court. See RULES OF CIVIL PROCEDURE, rule 23, § 4.

151. Aritao & Pangilinan, *supra* note 125, at 217-18.

identify the accused. The guardian ad litem or the prosecutor may also apply for the use of device so that the child cannot see the accused.¹⁵²

C. Supreme Court Discussions of Gender Issues Surrounding Sexual Abuse

In the case of *Ricalde v. People*,¹⁵³ the Court took the opportunity to discuss the reality that males can be victims of sexual abuse.¹⁵⁴ In its opening, the Court, through Justice Marvic M.V.F. Leonen, said that “[e]ven men can become victims of rape.”¹⁵⁵

The case of *Ricalde* involves a boy who was raped by his relative.¹⁵⁶ One of the facts established by the lower courts is that the accused’s penis was able to touch the anal orifice of the victim.¹⁵⁷ Because of these findings by the lower courts, they respectively convicted the accused of rape by sexual assault.¹⁵⁸ In his petition for review, the accused theorized that, assuming *arguendo*, that the purported touching is actually his fingers or even if it was his penis, it would only amount to an act of lasciviousness and not rape.¹⁵⁹ Because of this reasoning, the Court applied the long-standing doctrine in rape by sexual intercourse cases that mere touching of the penis to the vagina is tantamount to rape to rape by sexual assault cases.¹⁶⁰ Thus, the mere touching of a penis, fingers, or any other object on the anal region for the purposes of committing rape amounts to consummated rape.

D. On the Rights of an Abused Child to Have His or Her Abuser Suffer a Higher Penalty

The Court, in *Ricalde*, went further to modify the accused’s conviction from rape by sexual assault to sexual abuse under Republic Act No. 7610 by affirming the doctrine it held in an earlier case — *People v. Chingh*.¹⁶¹ In *Chingh*, the Court was faced with the issue whether the provisions of Anti-

152. *Id.* at 217.

153. *Ricalde v. People*, 747 SCRA 542 (2015).

154. *Id.*

155. *Id.* at 568.

156. *Id.* at 549.

157. *Id.*

158. *Id.*

159. *Ricalde*, 747 SCRA at 549.

160. *Id.* at 560-61 (citing *People v. Bonaagua*, 650 SCRA 620, 640 (2011)).

161. *Ricalde*, 747 SCRA at 564-65 (citing *People v. Chingh*, 645 SCRA 573, 587 (2011)).

Rape Law repeal the provisions on Republic Act No. 7610 regarding sexual assault.¹⁶² The Court ruled in the negative, to wit —

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of reclusion temporal in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those persons below [18] years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation[,] or discrimination because of a physical or mental disability or condition.¹⁶³

The Court affirmed the State's duty to provide stronger protection by punishing an abuser with a higher penalty.

IX. GENDER ANALYSIS OF OSEC CASEWORK DATA

The Authors begin the analysis with the Revised Penal Code, which ends with the special penal laws, all of which are analyzed in view of the international instruments entered by the Philippines regarding CSE.

IJM's casework database generated the following important data points for this Article:¹⁶⁴

Victim Demographics	
Victims rescued or removed from places of risk	428
Females	342
Males	86

¹⁶² *Chingh*, 645 SCRA at 588.

¹⁶³ *Id.*

¹⁶⁴ IJM's Casework Tracking and Management System Records (on file with the Authors). Data presented are updated until 9 January 2019 unless otherwise indicated.

Adults	57
Minors	371
Minors 12 years old or below	204
Minors age 0 to 6 years old	80
Minors aged 7 to 12	124
Cases in database with known sibling relationship data	106
Cases with victims in siblings groups	43
Data on Suspects	
Suspected perpetrators with known relationship to the victim	126
Of Suspected perpetrators with known relationship data, number of those who are close friends, family, or neighbors	90
Suspected Arrested	183
Suspects Charged	186
Suspects at-large	15
Data on Law Enforcement Child-Protective Operations	
Operations with Law Enforcement and Performance Data at point of rescue	46
Cases with Law Enforcement transporting victims and suspects in separate vehicles	45 out of 46 observations on record
Cases with action taken to protect victim identity at point and place of	45 out of 46 observations on record

rescue	
Cases with Law Enforcement directly coordinating with victim processing staff	34 out of 56 observations on record
Cases with overall government official performance data at scene of rescue	43
Cases where law enforcement interviewed victims to confirm victimization under applicable laws	32 out of 43 observations on record
Cases with Video-taped In-Depth Interviews used to protect children at inquest phase	23 observations
Number of Inquest proceedings during which inquest prosecutor allowed use of video-taped in depth interviews	23 out of 23 observations
Number of victims who benefited from the use of video-taped in-depth interviews	52
Number of cases in which prosecution offers video interviews in lieu of child testimony	0
Child-protective Operations conducted	123
Criminal Case Statistics	
Accused Convicted (figure and all related figures for convictions accurate as of 1 December 2018)	50
Convicted after plea bargain	42
Convicted after full trial	8
Acquitted	4

Convictions with readily available data on length between arrest and conviction	50
Conviction by full trial, length between arrest and conviction (mean)	1281.625 days
Conviction by full trial, length between arrest and conviction (median)	1564 days
Conviction by full trial, length between arrest and conviction (mode/period appearing most often)	1564 days
Swiftest full trial	301 days
Conviction by plea bargain, average length between arrest and conviction (mean)	436.48
Conviction by plea bargain, length between arrest and conviction (median)	311.5
Conviction by plea bargain, length between arrest and conviction (mode/period appearing most often)	276
Swiftest plea bargain	13 days
Average length of sentence for cases full trial	Life Imprisonment
Success rate, full trials only (win-loss record of 8-4)	66.67%
Average length of sentence for cases plea bargained	15.82
Success rate, plea bargains only (42-0)	100%

Table 1: Data points of OSEC cases

The above data provides insight on victim age, sex, and relationship to perpetrator. It also gives insight into the performance of law enforcement and prosecution agencies.

A. Victim Age: Younger Victims

86.6% of OSEC victims in the database are children. This data can be further disaggregated by age group:

- (1) 47.66% of victims are 12 years old and younger;
- (2) 28.97% of all minor victims are in the ages of 7 to 12 years old;
and
- (3) 18.69% of all minor victims are 6 years old and younger.

In light of Dr. Fergusson's conclusion that severe abuse is connected to more difficult recovery,¹⁶⁵ there is an urgent need for expanded modes of care with the expectation of a complicated road to recovery for OSEC victims.

B. Victim Sex: Higher Number of Boy Victims

20.3% of OSEC victims were boys. This is a sharp rise from the less than 1 to 4.4 percent average number of boy victims in traditional sex trafficking cases. It calls attention to a clear need for gender appropriate victim care initiatives for boys within the 0-6 and 7-12 age ranges, as well as developmentally appropriate recovery programs.

C. Victim Relationship Data

71.43% of suspected perpetrators with known relationship data are family, close friends, or neighbors of the victims. The significance of this finding is the need for community-based solutions that consider the void left by parental separation from victims and the potential issues arising from adversarial proceedings between children and once-trusted adults.

40.57% of OSEC victims are rescued in siblings groups. Processing centers and aftercare facilities must be able to assess the proper pathway for such groups. For cases involving older siblings ordered to abuse younger siblings, temporary separation may form part of treatment plans. Specific measures will depend on a robust assessment, which is accommodated by existing protocols, but requires upgrades to the aftercare system's budgets and headcount. IJM's teams are currently able to supplement case management for victims close to Cebu and Metro Manila, but have increasingly had to partner with aftercare providers across the Philippines. A deeper analysis into the aftercare capacity of regions with increasing numbers of OSEC cases is

165. See Fergusson, et al., *supra* note 9.

necessary to determine prioritization of investments in regional and local aftercare capacity.

D. Law Enforcement Performance Data

In 97.8% of cases with available data (45 out of 46 observations), law enforcers involved in the rescue ensured separate transportation for minor victims and suspects from the crime scene to processing zones.

In 97.8% of cases with available data (45 out of 46 observations), law enforcers and/or social workers present attempted to protect victim identity at the point and place of rescue.

In 60.7% of cases with available data (34 out of 56), law enforcers directly coordinated with victim processing center staff.

In 74.4% of cases with available data (32 out of 43), law enforcers interviewed children to confirm victimization under applicable law.

Limitations of the above data include gaps in the number of available qualitative assessments of law enforcement performance. There is an opportunity to retroactively assess cases without recorded observations within the database, as the casework information and operational reviews are obtainable. A future study with more complete data should yield even more reliable information on law enforcement performance

E. Child-Protective Measures at the Inquest Phase

In 20% (25 out of 124) child protective operations, law enforcers supported the use of videotaped in depth interviews to protect children at the inquest phase. Out of the 25 cases, two did interviews contained no disclosures, while 23 cases contained interviews with disclosures of exploitation. 52 out of 55 victims benefited from these measures, not having to appear at inquest, while three victims made no disclosures during their interview.

Inquest prosecutors in OSEC cases have demonstrated a 100% willingness to spare children from appearing in person whenever a videotaped in depth interview exists. In 23 out of 23 cases, inquest prosecutors readily accepted the video recording in lieu of requiring the child to appear before him or her.

F. Trial Lengths: Statistical Insights

Data from OSEC trials on record show that the speed from arrest to conviction in full trials is significantly longer than the speed from arrest to conviction in plea bargained cases.

Of the eight full trials leading to convictions, the average (mean) length for full trials is 1281.62 days. Meanwhile, the length appearing most in the data is 1564 days. 1564 also registered as the mode, with 2 out of 8 cases lasting 1564 days from arrest. In short, most OSEC cases, when allowed to go through full trial, have lasted above four years between arrest and conviction. Further, only three out of eight convictions through full trial recorded in the database yielded a length of below 1000 days from arrest to conviction.

The picture is drastically different when plea bargains are involved. The mean length of 436.48 days from arrest to conviction stands in stark contrast with the mean length of 1282 in full trials. Meanwhile, the median length of plea bargained convictions within 311.5 days of arrest is about five times faster than the median length of convictions by full trial. Lastly, the period appearing most times for plea bargains is 276 days, a greatly shorter length than the 1564-day period appearing with greatest frequency in the observed OSEC cases by full trial.

G. Insight form the Middle 50% of the data range

The data on plea bargaining contains a large spread between 13 days and 1475 days. A meaningful subset emerged when computing for the middle 50% of the full range of observations. The middle 50% of the data showed plea bargains taking as fast as 130 days (first quartile being 130, or the median of the first 50% of the data), and as long as 700 (figure for the third quartile, or the median of the other 50% of the data), generating an Inter-quartile range (IQR) of 570.

H. Outliers and Potential Trends in Plea Bargaining

The plea bargain data showed that cases moving beyond 985 days (upper bound) could be considered much longer than average, in light of the performance of all other plea bargained cases.

Of the 42 cases analyzed, four proved to be considerably long when measured against an upper bound. When examined, those cases correlated to plea bargain considerations arising later in trial, as opposed to more serious consideration at the beginning of the judicial process.

For cases generating convictions quite rapidly, the data set showed a standard deviation of 375.17, which suggests that cases moving faster than 61.3 days would count as swifter than usual.

The data revealed that eight cases, all originating in Mindanao, moved faster than 61.3 days.

The cases in the middle of the data set had a speed range between 89 days to 721 days. This range, along with the middle 50% range of 130-700 days, is what might be seen as the current statistically expected speed of a plea bargained cases based on IJM casework data.

In 2018, six of the fastest plea bargains in the data set occurred below the one-month mark at 13, 13, 13, 22, and 22 (undoubtedly fast convictions within the Philippine context).

In 2017, however, the fastest plea bargain stood at 89 days. Therefore, prior to 2018, a conviction by plea bargain at a speed of below 30 days was only theoretically possible. The apparent trend is that plea bargained case lengths are decreasing at rapid rates, but this data must be contextualized.

In 2018, all of the eight faster-than-usual cases were Mindanao-based. There is no indication from the data that Luzon and Visayas courts followed a similar trend of increased plea bargain speed, and more plea bargain data is required before consistency and relevance can be determined.

I. Sentencing

The average sentence length of convictions stemming from OSEC full trials is life imprisonment. One third of OSEC cases reaching full trial produced acquittals. As of January 9, 2019, there were 8 convictions by full trial in the IJM casework database. These 8 convictions altogether took 10,253 days, or an average of 1281.625 days.

The average sentence length of convictions resulting from plea bargains is 15.82. The penalty most often provided by courts is 15 years, and the exact middle of the data spread of sentence lengths is 15 years. As of January 9, 2019, there were 42 convictions by plea bargain in the IJM casework database. These 42 convictions altogether took 18,332 days, or average of 436 days per accused- almost three times faster, on average, than full trials.

Considering the numbers alone, the tradeoffs appear to be efficiency and shorter but reasonably long sentences (at 15 years), versus longer sentences and almost triple the trial time and resource inefficiency. Given the persistently high caseload of prosecutors and high vacancy in prosecutorial positions, it stands to reason that a sustainable way forward is to move OSEC prosecutions efficiently through plea bargaining.

All of this becomes even more compelling in light of the victim-protective aspects of plea bargaining. Many of IJM's plea bargained cases occur without victims having to take the witness stand, and in the most recent cases, without victims even having to appear in inquest (an

achievement which prosecutors and law enforcers have made possible through the VIDI innovation).

J. Early Wins

Philippine law enforcement has made significant progress in conducting child-protective, gender-appropriate operations. In 97.8% of observed cases on record, law enforcement actively sought to protect victim identity and secured them separate transportation from the point of rescue.

In over 74% of observed cases, law enforcement facilitated the assessment of victimization through interviews.

Prosecutors have demonstrated a willingness to spare children from appearing at inquest, and have shown a 100% willingness to accept VIDIs at the inquest phase. As mentioned above, when plea bargains are accomplished, the use of VIDIs means that children are protected from appearance at nearly every stage of the prosecution process.

The high plea bargain success rates and increase in case resolutions show that prosecutors are willing to use plea bargaining to achieve justice for victims without having to present them as witnesses.

The child-protective benefits of plea bargains are compelling: when plea bargains are accomplished before trial, children need not testify against their abusers, many of whom are related to them by blood or trust bonds. A sustainable way forward is to equip the system to maximize the use of plea bargains while also protecting the rights of the accused.

The first step to a balanced system solution is a Department of Justice or Supreme Court guideline that helps prosecutors utilize plea bargains in OSEC casework in a fair, documented, and efficient way. As of the writing of this Article, The Interagency Council Against Trafficking-Department of Justice (IACAT-DOJ) has a draft circular to provide such guidelines, which may be released within 2019. The absence of this solution is mentioned as a gap below.

K. Gaps

The above results indicate the following most pressing gaps:

- (1) Developmentally-appropriate and gender-appropriate victim care;
- (2) The use of Videotaped In Depth or Disclosure Interviews (VIDIs) to protect children at the trial phase. The success of

VIDIs at the inquest phase must be replicated at trial through test cases;

- (3) Law enforcement capacity and tools to conduct VIDIs. Law enforcement will require training and tools to conduct VIDIs as part of standard procedure. The actual practice of using VIDIs in casework is the most pressing need; and
- (4) Plea bargaining as a long-term solution must be supported by the release of a set of guidelines or a Department Order.

X. RECOMMENDATIONS

The Authors now proceed to providing the recommendations for the improvement of the laws and their enforcement. These recommendations are classified into two: (1) Gender-Neutral Measures and (2) Gender-Sensitive Measures.

A. *Gender-Neutral Measures*

Gender-Neutral Measures do not give regard to a child's gender since these measures are applicable to all children in recognition of their vulnerable nature. Below are the Authors' recommendations:

- (1) Increase in the funding for Law Enforcement Agencies (LEAs) — specialized agencies that intervene in OSEC cases have proven to be most successful in rescuing children and filing viable court cases. The Philippine National Police-Women and Children Protection Center and the National Bureau of Investigation Anti Human Trafficking Division are key units that, if given more manpower and budget, will be better positioned to generate increased and nuanced responses to the OSEC problem. Any training investments made in these agencies must be done with extensive planning and consultation among well-meaning stakeholders, as unnecessary hours given to training may pull law enforcers away from investigation of perpetrators and the rescue of victims. The authors suggest application-based trainings such as the 2018 Advanced Investigation Workshops which focused on skill application in live cases. These workshops generated an increase in PNP OSEC operations in 2018 and tangibly contributed to victim relief.
- (2) Support plea bargaining through a policy measure — As mentioned earlier, a DOJ order or set of guidelines for

prosecutors will ensure the continued fair and appropriate use of plea bargaining to protect children and deliver justice efficiently.

- (3) Usage of Videotaped In-Depth Interview by Prosecutors and Law Enforcers — Should plea bargaining be unsuccessful, Prosecutors and LEAs may utilize the methods provided by the Rule on the Examination of a Child Witness, particularly the use of VIDI. VIDI allows the procurement of a child's testimony without being exposed to the possible re-traumatizing examinations of lawyers. VIDI relies on trained law enforcers, aftercare workers, or multi-disciplinary teams to conduct the interview, which means that the questions and the manner of questioning are appropriate to gender, mental stability, and maturity of the child.
- (4) Amendment of the Anti-Rape Law — The Revised Penal Code, as mentioned, makes a distinction to the forms over which rape can be committed but punishes them differently and does not take into account the possibility of a child being forced to do something sexually without the physical intervention of an abuser. It is thus recommended that the provisions of the Code on Rape to be amended to (1) punish all forms of rape equally and (2) include “no contact rape” as a form of punishment.¹⁶⁶
- (5) Amendment of Special Penal Laws to mandate gender and child-sensitive rescue operation protocols similar to the provisions of the Migrant Workers and Overseas Filipinos Act of 1995.¹⁶⁷

166. The phrasing of the amendment is suggested to be as follows —

Forcing or commanding another person to insert an object, including a finger, to his or her own vagina or anal orifice, without his or her consent. In case the victim is a child, his or her consent is not necessary to consummate the offense.

167. Migrant Workers and Overseas Filipinos Act of 1995 (Migrant Workers and Overseas Filipinos Act of 1995), Republic Act No. 8042 (1995). The law provides in its policy that the State must adopt gender sensitive measures in developing programs for migrant workers, and it defines gender sensitivity as “cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes.” *Id.* §§ 2 (d) & 3 (b).

B. Gender-Based Measures

Gender-Based Measures refer to those that are specific to a gender taking into account the characteristics and circumstances surrounding each gender. Generally, the recommendations provided by the Authors are for the small details that apply to rescue operations and prosecution.

- (1) Honing of Victim-Care Skills for Law Enforcers — IJM’s casework data supports the finding that an intentional application of specific skills is just as important as the existence of gender-appropriate protocols. LEAs should continually hone gender-appropriateness and gender-sensitivity through an intentional review of each operation. Existing trainings emphasize gender-sensitivity and the main gap is application, which is remedied through practice.
- (2) Specialized Services for Every Gender — The Authors concur with the recommendations of the United States Department of State on Gender-Based Approach in rehabilitating victims. It said that the Philippines should “[i]ncrease the availability of specialized comprehensive services that address the specific needs of trafficking victims, *with a particular focus on expanding access to mental health care and services for male victims.*”¹⁶⁸
- (3) Continuous Research on Child Development vis-à-vis the Gender Aspect of Development — Children grow up in unique and diverse contexts. Children from vulnerable areas will have needs specific to their gender and context. Further research is needed to develop a refined victim care approach. Important also is the ethos behind the research, which must support diversity and inclusion. LGBTQA+ individuals, persons with disabilities, and children at risk are beneficiaries whose protection depends on successfully integrating a gender and child-protective lens in the formulation of policies and the enforcement of law.

168. Office to Monitor and Combat Trafficking in Persons, 2017 Trafficking in Persons Report (Philippines), available at <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271264.htm> (last accessed Nov. 30, 2018) (emphasis supplied).

XI. CONCLUSION

While the law has generally progressed to recognize that males can be victims of sexual abuse also, its enforcement mechanisms and actual enforcement have room to improve in completely recognizing the differences of genders.

The Philippines has grown from traditional perspective of sexual abuse and exploitation, but there are gaps to fill in both substantive law and the implementation of existing protective frameworks. Most encouraging are the law enforcement and prosecutorial agencies taking the lead in ensuring that children who move through the justice system are protected from unnecessary trauma. IJM's casework results affirm that child protection and gender-appropriate victim care can be achieved within our context.

The victim demographics shared in this Article provide a challenging landscape for aftercare practitioners, but the results in perpetrator accountability and in actual victim protection offer hope. Greater numbers of children have been rescued and kept safe from exposure to repeated interviews; convictions have been achieved without sacrificing the welfare of children. The community of duty-bearers in OSEC casework is learning to keep the child at the center of collaborative casework, while also ensuring he or she plays as small a role as possible in the court process.