

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Legal Analysis of OCSEA related Provisions in the Philippines

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

International, Regional and National Commitments and Legislation on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments		Date of ratification/accession
Convention on the Rights of the Child - 1989		21 August 1990
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		28 May 2002
Optional Protocol on a Communication Procedure - 2011		-
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		28 November 2000
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)		28 May 2002
Regional Instruments		Date of ratification/accession
ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)-2015		6 February 2017
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	24 August 2009	

General Issues Related to Children's Rights

In the Philippines, the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (hereinafter called "the Child Protection Act") defines 'children' as "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition".¹ A similar definition is contained in the Anti-Child Pornography Act.² The Juvenile Justice and Welfare Act defines a child as anyone below 18 years of age.³ Therefore, the definition of a child is **consistent across the national legislation** and in line with the definition provided by the United Nations Convention on the Rights of the Child.

Notwithstanding, some laws use **alternative terminologies** to address persons below the age of 18 years. The Revised Penal Code of the Philippines uses the term 'minor' inconsistently to address children of various age groups. For instance, in relation to criminal responsibility, the Penal Code treats children aged 9-15 years as minors⁴ whereas in relation to the offence of abandoning a minor, children below 7 years are treated as minors.⁵ This inconsistent use of the term 'minor' can be noticed throughout the Penal Code.

Similarly, the Child Protection Act uses the term 'minor' to address children aged 12 years or below and treats sexual offences against these children with more severity.⁶ Nevertheless, this does not seem to hamper the overall protection accorded to all child victims of online child sexual exploitation and abuse (OCSEA) offences under special laws like the Anti-Child Pornography Act and the Cybercrime Act.

The **age of sexual consent** for boys and girls is 12 years.⁷ Notwithstanding, sexual activity with a girl child below 18 years may amount to an offence in certain cases, for instance, the seduction of a girl between 12-18 years.⁸ The Revised Penal Code also criminalises the "prostitution or corruption of persons underage"⁹ to satisfy one's lust.¹⁰ It is important to note that the Code does not define the term "persons underage". Moreover, there is no **close-in-age exemption** or any criteria to determine whether the consent between peers under the age of 18 is **voluntary, well-informed and mutual**. Therefore, it is possible for children to be prosecuted for the offences relating to "seduction" under the Penal Code for

¹ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Section 3(a).

² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(a).

³ Republic of the Philippines. (2006). [The Juvenile Justice and Welfare Act of 2006 \(Republic Act No. 9344\)](#), Section 4(c).

⁴ Republic of the Philippines. (1930). [The Revised Penal Code of 1930 \(Act No. 3815\)](#), Article 12(3).

⁵ Republic of the Philippines. (1930). [The Revised Penal Code of 1930 \(Act No. 3815\)](#), Article 68.

⁶ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Sections 5(b), 9 and 10.

⁷ Republic of the Philippines. (1997). [The Revised Penal Code of 1930 \(as amended by Republic Act No. 8353\)](#), Article 266-A 1(d).

⁸ Republic of the Philippines. (1930). [The Revised Penal Code of 1930 \(Act No. 3815\)](#), Articles 337-338.

⁹ The term "corruption" has not been defined in the Revised Penal Code.

¹⁰ Republic of the Philippines. (1930). [The Revised Penal Code of 1930 \(Act No. 3815\)](#), Article 340.

engaging in consensual sexual intercourse with girls, both below 18 years of age. Moreover, the Revised Penal Code does not entitle boys the same protection as girls against sexual offences. Hence, it is discriminatory against boys. It is important to note that the laws establishing the age of sexual consent in the Philippines are rather ambiguous, giving rise to a number of conflicting legal issues. Therefore, in 2018, some civil society organisations launched a campaign to increase the age of sexual consent and harmonise the laws in determining the age of protection which refers to the age at which a child can legally consent to sexual activity. There have been bills proposed in the Congress to address the low age of sexual consent in the Philippines and increase the age covered by statutory rape, for instance, the House Bill 4160 which was filed in 2019¹¹ and remains pending as of April 2021.¹² The objective of these proposed laws is to deter adults from engaging in sexual intercourse with children. However, the bills are yet to be adopted by the Senate and remain pending.¹³

The **legal working age** for boys and girls in the Philippines is 15 years.¹⁴ Children below 15 years can only work either under the sole responsibility of their parents or guardians in a family enterprise or business, or when their participation in public entertainment or public information is necessary.¹⁵ In the former case, a child can only be employed if such employment does not endanger their life, safety, health or morals or impair their development.¹⁶ If a child below 15 years is employed in public entertainment or public information, it is the duty of the employer to ensure the “protection, health, safety and morals of the child” and take measures to prevent any exploitation of or discrimination against the child.¹⁷ Additionally, a “Working Child Permit” may be required in certain cases.¹⁸ Further, no child can be employed in the worst forms of labour which include slavery, prostitution, pornography and other **hazardous** forms of work.¹⁹

The **minimum age of criminal responsibility** is 15 years.²⁰ A child between 9-15 years guilty of an offence is exempt from criminal responsibility but is subjected to an intervention programme under the Juvenile

¹¹ Republic of the Philippines. (2019). [House Bill. No. 4160](#).

¹² Abad, Michelle. (2020). [Lawmakers mull over ages 16 or 18 for minimum age of sexual consent](#). *Rappler*.

¹³ Information received via personal communication with ECPAT Philippines.

¹⁴ Republic of the Philippines. (1993). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 7658\)](#), Section 12.

¹⁵ Republic of the Philippines. (1993). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 7658\)](#), Section 12(1).

¹⁶ Republic of the Philippines. (1993). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 7658\)](#), Section 12(1).

¹⁷ Republic of the Philippines. (1993). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 7658\)](#), Section 12(2).

¹⁸ Republic of the Philippines. (1993). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 7658\)](#), Section 12(2); Department of Labour and Employment of the Republic of the Philippines. (2018). [Amending Circular No. 2 of 2017 \(Guidelines on the issuance of work permit for children below 15 years of age engaged in public entertainment or information\)” \(Department Circular No. 2 of 2018\)](#), Guideline 1.

¹⁹ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 9231\)](#), Section 12-D.

²⁰ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 12(3).

Justice and Welfare Act.²¹ Likewise, a child aged 15-18 years is exempt from criminal responsibility, unless they have acted with “discernment” at the time of the commission of the offence.²² In accordance with the 2019 Revised Rule on Children in Conflict with Law, “discernment means the capacity of the child at the time of the commission of the offence to understand the difference between the right and wrong and the consequences of the wrongful act”.²³ Discernment is initially determined by a social worker and ultimately by the court, taking into account, *inter alia*, the ability of the child to understand the psychological and moral elements of criminal responsibility; the consequences of the wrongful act.²⁴

As per the Family Code, the **legal age of marriage** for boys and girls is 18 years with parental consent.²⁵ Parental or guardian consent is also required for persons aged 18-21 years.²⁶

²¹ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 12(3); Republic of the Philippines. (2019). [The Revised Rule on Children in Conflict with Law 2019](#), Section 7.

²² Republic of the Philippines. (2019). [The Revised Rule on Children in Conflict with Law 2019](#), Section 7.

²³ Republic of the Philippines. (2019). [The Revised Rule on Children in Conflict with Law 2019](#), Section 4(I).

²⁴ Republic of the Philippines. (2019). [The Revised Rule on Children in Conflict with Law 2019](#), Section 10

²⁵ Republic of the Philippines. (1987). [The Family Code of Philippines 1987 \(Executive Order No. 209\)](#), Article 5.

²⁶ Republic of the Philippines. (1989). [The Family Code of Philippines 1987 \(as amended by Republic Act No. 6809\)](#), Article 236.

Online Child Sexual Exploitation and Abuse

The Constitution of the Philippines guarantees every child the right to “special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development”.²⁷ Accordingly, the Philippines has established a strong legal framework to safeguard and uphold this right.

Offences relating to OCSEA have been addressed through a special law called the Anti-Child Pornography Act adopted in 2009. Additionally, the Cybercrime Prevention Act and Child Protection Act criminalise certain OCSEA offences.

Pursuant to the provisions of the Anti-Child Pornography Act, “child pornography” is defined as “any representation, whether visual, audio, or written, or combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of a child engaged or involved in real or simulated explicit sexual activities”.²⁸ This definition is **in line with international standards** as enshrined in the OPSC. The definition covers not only **visual child sexual abuse material** but also **audio** and **written material**. For the purposes of this definition, the term “child” also includes “computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child”.²⁹ Therefore, this definition covers **virtual child sexual abuse material**. In addition, “child” also refers to “a person regardless of age who is presented, **depicted or portrayed as a child** as defined herein”.³⁰

The Anti-Child Pornography Act comprehensively criminalises acts associated with child sexual abuse material. This Act establishes the offence of **production** of child sexual abuse material which involves directing, manufacturing, producing or creating any form of child sexual abuse material.³¹ Besides, this Act criminalises publishing, **offering**, transmitting, **selling, distributing**, broadcasting, advertising, promoting, **exporting or importing** any form of child sexual abuse material.³² **Possessing** any form of child sexual abuse material to sell, distribute, publish or broadcast it, is also an offence.³³ Additionally, if a person possesses more than three articles of child sexual abuse material of the same type, they shall be presumed to have possessed these articles for the purposes of selling, distributing, publishing or

²⁷ Republic of the Philippines. (1987). [The Constitution of the Republic of Philippines \(1987\)](#), Article XV, Section 3(2).

²⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(b).

²⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(a)(2).

³⁰ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(a)(1).

³¹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(b).

³² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(c).

³³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(d).

broadcasting.³⁴ Furthermore, **merely possessing** any form of child sexual abuse material³⁵ and **wilfully accessing** any form of child sexual abuse material are offences under the Anti-Child Pornography Act.³⁶

By virtue of the Cybercrime Prevention Act, the provisions of the Anti-Child Pornography Act are applicable to unlawful acts associated with child sexual abuse material committed through a computer system.³⁷ Hence, the abovementioned provisions apply for conduct carried out in the **online environment**.

The acts of hiring, employing, using, persuading, inducing or **coercing** a child to perform in the creation or production of child sexual abuse material constitute an offence under the Anti-Child Pornography Act.³⁸ The Act further provides that if parents, guardians or other persons having control or custody of a child knowingly allow that child to engage, participate or assist in any form of child sexual abuse material, they are liable to be punished under the Act.³⁹

In addition, the Act prohibits persons from knowingly, wilfully and intentionally providing a place including a den, private room, cubicle, cinema, house, et cetera, for the commission of any offence relating to child sexual abuse material.⁴⁰

The Cybercrime Prevention Act establishes the offence of “cybersex” which involves “the wilful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favour or consideration”.⁴¹ This provision aims to criminalise these acts, if carried out for financial gains.⁴² In the words of the Supreme Court of the Philippines, “the Act actually seeks to punish cyber prostitution, white slave trade, and pornography for favour and consideration. This includes interactive prostitution and pornography, i.e., by webcam”.⁴³ According to the Implementing Rules and Regulations of Cybercrime Prevention Act, the offence of cybersex involving a child would be punished as per the provisions relating to child sexual abuse material under the Cybercrime Prevention Act.⁴⁴ Consequently, the **live streaming of online sexual abuse** has been criminalised under this Act, albeit implicitly.

³⁴ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(d).

³⁵ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(l).

³⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(j).

³⁷ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 4(c)(2).

³⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(a).

³⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(g).

⁴¹ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 4(c)(1).

⁴² Supreme Court of the Republic of the Philippines. (2014). [Disini v. The Secretary of Justice, G.R. No. 203335](#).

⁴³ Supreme Court of the Republic of the Philippines. (2014). [Disini v. The Secretary of Justice, G.R. No. 203335](#).

⁴⁴ Republic of the Philippines. (2012). [Implementing Rules and Regulations of Cybercrime Prevention Act of 2012](#), Rule 2, Section 5(2).

The offence of cybersex could also be used to charge persons for **knowingly attending pornographic performances involving children**.

In addition, the Child Protection Act criminalises engaging a child in obscene exhibitions and indecent shows, whether live or in video, including pornographic materials is an offence under this Act.⁴⁵ Accordingly, for live streaming of online sexual abuse and knowingly attending pornographic performances involving children, offenders could also be charged under this offence.

Pursuant to the provisions of the Anti-Child Pornography Act, the acts of “luring” and “**grooming**” a child constitute offences in the Philippines.⁴⁶ Grooming means “the act of preparing a child or someone who the offender believes to be a child for sexual activity or sexual relationship by communicating any form of child pornography”.⁴⁷ The offence of grooming includes online enticement.⁴⁸ The provision seems to criminalise the mere act of a proposal, irrespective of whether or not it is followed by any **material acts leading to a meeting** between the offender and the child. Nevertheless, the offence of “grooming” is quite narrow in scope, since it only covers grooming carried out by means of communicating child sexual abuse material to the child. The offence of “luring” involves “communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of child pornography”.⁴⁹ This definition is wider than the definition of “grooming” and hence, could be used to cover acts that fall short of the offence of “grooming”.

Currently, national legislation does not explicitly criminalise other OCSEA offences like unwanted sexting, **sexual extortion** and **bullying through online sexual harassment**.

Furthermore, the Anti-Child Pornography Act does not criminalise the **attempt** of any of the offences under the Act. Under the Cybercrime Prevention Act, the attempt to commit certain offences has been criminalised, but not in respect of offences relating to child sexual abuse material.⁵⁰

The abovementioned laws seem to apply to **all children below the age of 18**. However, in practice, owing to a low age of sexual consent, the protection accorded to children between 12-18 may be different from that accorded to children below 12 years. This was observed in 2013 by the UN Committee on the Rights of the Child in its Concluding Observations for the Philippines, which recommended the Government to

⁴⁵ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Section 9.

⁴⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(h).

⁴⁷ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(h).

⁴⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(h).

⁴⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(i).

⁵⁰ Republic of the Philippines. (2012). [Implementing Rules and Regulations of Cybercrime Prevention Act of 2012](#), Section 5(4)(b).

raise the age of sexual consent.⁵¹ It appears that the recommendations of the Committee are yet to be implemented.

Notwithstanding, the laws criminalising OCSEA in the Philippines mentioned in this section, seem to apply equally to **boys and girls**.

In the absence of any explicit provision, it is not clear whether the **ignorance of the age of the victim** cannot be pleaded by the offender in excuse of their conduct.

As far as the **liability of Internet Service Providers (ISPs)** is concerned, under the Anti-Child Pornography Act, ISPs are obligated to deploy available technology, programmes or software to **block or filter** the access to or transmittal of any form of child sexual abuse material.⁵² Internet content hosts⁵³ are also bound under the duty to remove any form of child sexual abuse material within 48 hours of receiving a notice about the same.⁵⁴ Likewise, under the Cybercrime Prevention Act, the Department of Justice (DOJ) can make an order for restricting or blocking access to computer data that is found to be violating the provisions of this Act.⁵⁵ This provision does not mention the persons or entities to whom such an order would be addressed.

The Anti-Child Pornography Act obligates the National Telecommunications Commission (NTC) to make rules and regulations which provide for, *inter alia*, installation of filtering software by ISPs.⁵⁶ Accordingly, in January 2014, the NTC issued a memorandum instructing all ISPs to “install available technology, programs or software that will block access to or filter all websites carrying child pornography materials.”⁵⁷ The ISPs were supposed to install these features by June 2014.⁵⁸ ISPs were also instructed to submit to the Inter-Agency Council against Child Pornography (IACACP) a list of all websites containing child sexual abuse material that people tried to access but to which access was blocked by these technologies, within 5 days from the end of each month.⁵⁹ Indeed, in 2017, the Philippine authorities blocked some pornographic websites. However, it is not clear whether or not this move was in response to the NTC memorandum.⁶⁰

⁵¹ Committee on the Rights of the Child. (2013). [Concluding Observations on the Initial Report of Philippines](#), para 9-10.

⁵² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 9.

⁵³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(f): “internet content host” refers to a person who hosts or proposes to host internet content in Philippines.

⁵⁴ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 11.

⁵⁵ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 19.

⁵⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 9.

⁵⁷ Inter-Agency Council Against. (2014). [Block Child Porn Websites, NTC orders Internet Providers](#).

⁵⁸ Inter-Agency Council Against. (2014). [Block Child Porn Websites, NTC orders Internet Providers](#).

⁵⁹ Inter-Agency Council Against. (2014). [Block Child Porn Websites, NTC orders Internet Providers](#).

⁶⁰ The Filipino Times. (2017). [PH blocks popular indecent websites](#).

The Anti-Child Pornography Act authorises the local government unit (LGU) to regulate **internet cafés** or kiosks to prevent violations under this Act.⁶¹ Apart from this specific provision, the provisions relating to owners, operators or lessors of malls and other business establishments under the Anti-Child Pornography Act may also be applicable to them. Accordingly, a cybercafé owner may be required to report to the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) any information about the use of premises for the commission of child sexual abuse material within 7 days of receiving such information.⁶² Failure to comply with the requirements of this provision entails a civil penalty of 1-2 million pesos (approx. US\$20,602 to US\$41,204 as of April 2021) for the first offence and 2-3 million pesos (approx. US\$41,204 to US\$61,805 as of April 2021) for the second offence.⁶³

⁶¹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 12.

⁶² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 10.

⁶³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(l).

Extraterritoriality and Extradition

According to the provisions of the Cybercrime Prevention Act, the regional trial courts of the Philippines have jurisdiction over offences committed by a Filipino national irrespective of the place of commission.⁶⁴ Therefore, the Cybercrime Prevention Act establishes **active extraterritorial jurisdiction** over OCSEA offences. Furthermore, the Act states that the “jurisdiction shall lie if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines”.⁶⁵ The **principle of double criminality** does not apply to the extraterritorial provisions. The scope of the extraterritorial application of the provisions of this Act is quite limited. It does not extend to offences committed against Filipino nationals abroad, implying that there is no **passive extraterritorial jurisdiction**. Moreover, these provisions do not apply to offenders of other nationalities who habitually reside in the Philippines.

Surprisingly, the Anti-Child Pornography Act does not contain any explicit provisions relating to extraterritoriality. Notwithstanding, this Act recognises child sexual abuse material as a transnational crime⁶⁶ and allows the DOJ to seek the assistance of a foreign state in the investigation or prosecution of any child sexual abuse material-related offence.⁶⁷

In terms of **extradition**, the Extradition Law provides that extradition “may be granted only pursuant to a treaty or convention.”⁶⁸ As per the Implementing Rules and Regulations of Cybercrime Prevention Act, the criminal offences described under Chapter II of the Act are considered **extraditable** in any extradition treaty to which the Philippines is a party, provided that the offence in question is punishable under the laws of both the parties with imprisonment for at least one year or by more severe punishment.⁶⁹ This would make OCSEA offences, subject to these conditions, extraditable. This further implies that the **principle of double criminality** is applicable in extradition treaties for OCSEA offences. The Anti-Child Pornography Act provides that the DOJ, in consultation with the Department of Foreign Affairs (DFA), “shall endeavour to include child pornography among extraditable offenses in future treaties”.⁷⁰

⁶⁴ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 21.

⁶⁵ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 21.

⁶⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 22.

⁶⁷ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 22.

⁶⁸ Republic of the Philippines. (1977). [The Philippine Extradition Law \(Presidential Decree No. 1069\)](#), Section 3.

⁶⁹ Republic of the Philippines. (2012). [Implementing Rules and Regulations of Cybercrime Prevention Act of 2012](#), Rule 5, Section 25(g).

⁷⁰ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 23.

Other OCSEA-Related Provisions

In the Philippines, OCSEA offences carry penalties reflecting their grave nature. It is noteworthy that the Revised Penal Code categorises the penalties into various kinds based on duration. *Reclusion perpetua* is the highest penalty and is equivalent to life imprisonment. *Reclusion temporal* is another penalty for offences of grave nature and has a duration of between twelve years and one day to twenty years.⁷¹ The Anti-Child Pornography Act prescribes *reclusion temporal* for certain OCSEA-related offences. For instance, the offences of producing, publishing, offering, transmitting, selling, distributing, broadcasting, advertising, promoting, exporting or importing any form of child sexual abuse material are punishable with the penalty of *reclusion temporal* in its maximum period and a fine of 1-2 million pesos (approx. US\$20,602 to US\$41,204 as of April 2021).⁷² Possessing child sexual abuse material for selling, distributing, publishing or broadcasting entails a punishment of *reclusion temporal* in its medium period and a fine of 750,000-1 million pesos (approx. US\$ 15,451 to US\$20,602 as of April 2021).⁷³ The acts of hiring, employing, using, persuading, inducing or **coercing** a child to perform in the creation or production of child sexual abuse material are also punishable with the penalty of *reclusion temporal* in its maximum period and a fine of 1-2 million pesos (approx. US\$20,602 to US\$41,204 as of April 2021).⁷⁴

Besides *reclusion temporal*, the Anti-Child Pornography Act prescribes the penalties of *prision mayor* and *prision correccional* for certain OCSEA offences. The duration of the penalties of *prision mayor* is 6 years and one day to 12 years.⁷⁵ For the offence of grooming, the Anti-Child Pornography Act prescribes a penalty of *prision mayor* in its maximum period and a fine of 300,000-500,000 pesos (approx. US\$6,181 to US\$10,300 as of April 2021).⁷⁶ In addition, for the offence of engaging a child in obscene exhibitions and indecent shows, the Child Protection Act prescribes a penalty of *prision mayor* in its medium period and a penalty of *prision mayor* in its maximum period in case a child is below 12 years.⁷⁷ Similarly, the duration of *prision correccional* is six months and one day to six years.⁷⁸ Wilfully accessing any form of child sexual abuse material is punishable by *prision correccional* in its maximum period and a fine of 200,000-300,000 pesos (approx. US\$4,120 to US\$6,181 as of April 2021).⁷⁹ Furthermore, if any OCSEA offence is committed by a public officer or employee, they shall be served a penalty in its maximum duration.⁸⁰

⁷¹ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 27.

⁷² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(b).

⁷³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(c).

⁷⁴ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(b).

⁷⁵ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 27.

⁷⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(e).

⁷⁷ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Section 9.

⁷⁸ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 27.

⁷⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(g).

⁸⁰ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 16(d).

The Cybercrime Prevention Act provides that if an offence, defined and penalised by the Revised Penal Code and other special laws, is committed using ICTs, it shall be covered by the relevant provisions of this Act and the penalty imposed shall be one degree higher than those provided for by the Revised Penal Code and other special laws.⁸¹ Hence, the Cybercrime Prevention Act provides harsher penalties for OCSEA offences. Specifically, when the offences related to child sexual abuse material are committed using ICTs, the penalty imposed would be one degree higher than that provided in the Anti-Child Pornography Act.⁸² While commenting on the rationale behind this provision, the Supreme Court of the Philippines noted, “The potential for uncontrolled proliferation of a particular piece of child pornography when uploaded in the cyberspace is incalculable”.⁸³

Besides these penalties, the Anti-Child Pornography Act provides for “**confiscation** and forfeiture of the proceeds, tools and instruments used in child pornography”.⁸⁴

Under the Anti-Child Pornography Act, **advertising** any form of child sexual abuse material is unlawful.⁸⁵ Furthermore, this Act criminalises pandering, which involves advertising, promoting, representing or distributing any material to make another person believe that such material contains child sexual abuse material, irrespective of the actual content of that material.⁸⁶

In terms of **liability of legal entities**, the Anti-Child Pornography Act provides that the term “person” means “any natural or juridical entity”.⁸⁷ Therefore, legal entities are also liable for committing an OCSEA offence under this Act and the penalty shall be imposed upon their owners, managers, partners, members of the board of directors and any other responsible officer who either participated in, knowingly permitted or failed to prevent the commission of an offence.⁸⁸ Similarly, the Cybercrime Prevention Act prescribes for the liability of corporate entities.⁸⁹ Although this Act prescribes only fines as a penalty for corporate entities, it states that “the liability imposed on the juridical person shall be without prejudice to the criminal liability of the natural person who has committed the offense”.⁹⁰ Besides, the Child Protection Act also provides stringent penalties for violations made by corporate entities under the Act, stating that if an offence is committed by a “corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period”.⁹¹

⁸¹ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 6.

⁸² Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 4(c)(2).

⁸³ Supreme Court of the Republic of the Philippines. (2014). [Disini v. The Secretary of Justice, G.R. No. 203335](#).

⁸⁴ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 17.

⁸⁵ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(c).

⁸⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 4(i) read with 3(j).

⁸⁷ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 3(k).

⁸⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 16(b).

⁸⁹ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 9.

⁹⁰ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 9.

⁹¹ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 9231\)](#), Section 31(b).

Currently, there is no legislation in the Philippines that provides for the establishment of a **national sex offenders registry**. Notwithstanding, one of the functions of IACACP, created under the Anti-Child Pornography Act,⁹² is to maintain a database of child sexual abuse material-related cases.⁹³ Additionally, in February 2019, a bill entitled "An Act Protecting Children From Traveling Sex Offenders and For Other Purposes" was filed in the Senate of the Philippines. The bill included, *inter alia*, a provision that would bar foreign sex offenders, including those whose names are listed in any sex offender registry, from traveling to the country.⁹⁴ The bill also directed the DOJ to establish a sex offender registry.⁹⁵ Based on country research, it appears that the bill has not been approved by the Senate yet.⁹⁶ Before this bill, a bill on a Sex Offender Registration Act was filed in 2015.⁹⁷ The 2015 Bill only covered offenders of offences like rape and crimes against chastity under the Revised Penal Code and the Anti-violence against women and their children Act of 2014.⁹⁸ This bill was not passed into law by the Senate.⁹⁹

With regard to **recidivism**, the Child Protection Act provides that if an offender has been previously convicted for committing an offence under this Act, for a subsequent offence the penalty shall be imposed in its maximum period.¹⁰⁰ This provision would apply for all OCSEA offences covered by this Act. Unfortunately, the Anti-Child Pornography Act and the Cybercrime Prevention Act, which cover OCSEA offences much more comprehensively, do not contain any specific provisions relating to recidivism.

Currently, there is no legal provision that explicitly prohibits convicted sex offenders from holding **positions involving or facilitating contact with children**. Nevertheless, for offences like rape, seduction, and acts of lasciviousness committed by teachers or other persons entrusted with "education and guidance of youth", the Revised Penal Code prescribes "the penalty of temporary special disqualification in its maximum period to perpetual special disqualification".¹⁰¹

In terms of **data retention and preservation**, the Anti-Child Pornography Act obligates ISPs and Internet content hosts to preserve evidence for investigation and prosecution by relevant authorities.¹⁰² The Act does not stipulate any time period for which the evidence has to be preserved. Similarly, the Cybercrime

⁹² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 20.

⁹³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 21(n).

⁹⁴ Senate of the Republic of Philippines. (2019). [Ban foreign sex offenders from traveling to PH -- Koko](#).

⁹⁵ Senate of the Republic of Philippines. (2019). [Ban foreign sex offenders from traveling to PH -- Koko](#)

⁹⁶ Information received via personal communication with ECPAT Philippines.

⁹⁷ The Philippine Star. (2015). [Creation of sex offender registry sought](#).

⁹⁸ Republic of the Philippines. (2015). [Sex Offenders Registration Act of 2015 \(House Bill No. 6301\)](#), Section 3(b).

⁹⁹ Information received via personal communication with ECPAT Philippines.

¹⁰⁰ [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(as amended by Republic Act No. 9231\)](#), Section 31(a).

¹⁰¹ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 346.

¹⁰² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Sections 9 and 11(c).

Prevention Act directs the service providers¹⁰³ to preserve computer data for at least six months and where such data is used as evidence in a case, to preserve it until the termination of the case.¹⁰⁴

In order to ensure adequate protection of child victims throughout the investigation and justice processes, data preservation and retention laws must be applied in strict conformity with **the principle of the best interests of the child**. Currently, there is no legal provision to ensure the same. Notwithstanding, according to the policy of the Philippine Government as enshrined in the Child Protection Act, “the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention on the Rights of the Children”.¹⁰⁵ Therefore, this principle could apply to data retention and preservation provisions.

¹⁰³ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 3(n): “Service provider” refers to: (1) Any public or private entity that provides to users of its service the ability to communicate by means of a computer system; and (2) Any other entity that processes or stores computer data on behalf of such communication service or users of such service.

¹⁰⁴ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#), Section 13.

¹⁰⁵ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Section 2.

Access to Justice and Remedies

National complaint mechanisms and reporting

In the Philippines, the national legislation imposes mandatory duties on certain **professionals working with children** to report suspected cases of OCSEA. Pursuant to the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, mandatory reporting duties related to all child abuse cases, including OCSEA offences, have been imposed on “the head of any public or private hospital, medical clinic and similar institution, as well as the attending physician and nurse”.¹⁰⁶ These persons are bound to report to the Department of Social Welfare and Development (DSWD) within 48 hours of obtaining knowledge about a child abuse case.¹⁰⁷ Besides these persons, these rules also impose reporting duties on government workers like “teachers and administrators in public schools, probation officers, government lawyers, law enforcement officers, barangay officials, corrections officers and other government officials and employees whose work involves dealing with children”.¹⁰⁸ Other citizens may also report cases of child abuse to the DSDW, however they do not have any mandatory duty to do so.¹⁰⁹

The Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009 impose mandatory reporting duties on **private citizens**. Accordingly, “any person who has direct knowledge of any form of child pornography activities shall have the duty to report any suspected child pornography materials to the proper authorities, including but not limited to the DSWD, to the LSWDO, to the police or other law enforcement agency, or to a Barangay Council for the Protection of Children”.¹¹⁰ Such persons, who report in good faith, would not have any administrative or civil liability.¹¹¹

Further, the Anti-Child Pornography Act imposes specific reporting duties on certain categories of individuals and organisations. Photo developers, credit card companies and banks, information technology professionals all have the duty to report child sexual abuse material related information to the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within 7 days of obtaining such knowledge.¹¹² Failure to comply with this duty entails a fine of 1-2 million pesos (approx. US\$20,602

¹⁰⁶ Republic of the Philippines. (1993). [Rules and Regulations on the Reporting and Investigation of Child Abuse Cases](#), Section 4.

¹⁰⁷ Republic of the Philippines. (1993). [Rules and Regulations on the Reporting and Investigation of Child Abuse Cases](#), Section 4.

¹⁰⁸ Republic of the Philippines. (1993). [Rules and Regulations on the Reporting and Investigation of Child Abuse Cases](#), Section 5.

¹⁰⁹ Republic of the Philippines. (1993). [Rules and Regulations on the Reporting and Investigation of Child Abuse Cases](#), Section 3.

¹¹⁰ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 10; Republic of the Philippines. (2009). [Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009](#), Section 34.

¹¹¹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 10; Republic of the Philippines. (2009). [Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009](#), Section 35.

¹¹² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 10; Republic of the Philippines. (2009). [Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009](#), Section 21.

to US\$41,204 as of April 2021) and for a subsequent offence, 2-3 million pesos (approx. US\$41,204 to US\$61,806 as of April 2021) and revocation of license to operate.¹¹³ In addition, certain reporting obligations have also been imposed on ISPs. Accordingly, an ISP should report to NBI or PNP any information about the use of its server or facility for the commission of child sexual abuse material within 7 days of receiving such information.¹¹⁴ Failure to comply with the requirements of this provision entails a civil penalty of 500,000-1 million pesos (approx. US\$10,301 to US\$20,602 as of April 2021) for the first offence and 1-2 million pesos (approx. US\$20,602 to US\$41,204 as of April 2021).¹¹⁵

The Anti-Child Pornography Act and the “Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009” together provide the framework for addressing complaints regarding child sexual abuse material-related offences. Accordingly, the following persons may file a complaint concerning any offence related to child sexual abuse material: (a) offended person; (b) parents or guardians; (c) relative (d) officer, social worker or representative of a licensed child-care institution (e) officer or social worker of the DSWD; (f) any law enforcement officer; (g) local social welfare development officer; (h) chairman of a *barangay* (smallest administrative unit in the Philippines)¹¹⁶ (i) at least 3 concerned responsible citizens residing in the place where the alleged offence was committed; or any other person who knows about the commission of the alleged offence.¹¹⁷ A similar provision is contained in the Child Protection Act.¹¹⁸

In addition, for prosecution and investigation of OCSEA offences, the Anti-Child Pornography Act authorises the DOJ to appoint or designate special prosecutors for offences under this Act.¹¹⁹ Similarly, under the Cybercrime Prevention Act, the National Bureau of Investigation (NBI) and PNP, the main agencies responsible for law enforcement of the provisions of this Act, have been authorised to organise a cybercrime unit consisting of special investigators to exclusively deal with the cases involving offences committed under this Act.¹²⁰ In July 2018, the DOJ issued an advisory clarifying that NBI and PNP do not have the sole authority to investigate offences under this Act and that cybercrime complaints can be filed directly with the prosecutor's office, without prior investigation by these agencies.¹²¹ Therefore, public prosecutors can receive and act on complaints or referrals, and initiate the investigation of cyber-related

¹¹³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(l).

¹¹⁴ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 9.

¹¹⁵ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(k).

¹¹⁶ A barangay captain or chairman is the highest elected official in a barangay, the smallest administrative division in Philippines. (Source: [Lexico](#); [Glosbe](#)).

¹¹⁷ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 6; Republic of the Philippines. (2009). [Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009](#), Section 37.

¹¹⁸ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Section 27.

¹¹⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 7.

¹²⁰ Republic of the Philippines. (2012). [The Cybercrime Prevention Act of 2012 \(Republic Act No. 10175\)](#) Section 10.

¹²¹ Department of Justice Office of Cybercrime of the Republic of Philippines. (2018). [Advisory on Institution of Cybercrime and Cyber-related cases \(Advisory Opinion no. 1 of s. 2018\)](#), P. 4.

offences, including child online abuse.¹²² Although public prosecutors do not have a binding **duty to investigate OCSEA offences *ex officio*** based on any information they receive, they are free to do so. It is not clear whether an **anonymous complaint** is considered enough to open an investigation.

The Revised Penal Code prescribes **limitation** periods for all crimes, including “child pornography” offences.¹²³ The limitation periods range from 5-20 years based on the severity of the offences. For OCSEA offences that carry the penalties of *reclusion perpetua* or *reclusion temporal* like the production, distribution, possession with the intent to distribute of “child pornography”; and knowingly permitting one’s child to participate in the making of “child pornography”, the limitation period is 20 years.¹²⁴ For OCSEA offences punishable by *prision mayor* like grooming and pandering in “child pornography” under the Anti-Child Pornography Act, and the use of a child in an obscene publication or show under the Special Protection of Children Act, the limitation period is 15 years.¹²⁵ Other OCSEA offences that are punishable by *prision correccional* and *arresto mayor* have a statute of limitations of 10 and 5 years respectively.¹²⁶

The abovementioned provisions apply equally to **boys and girls**.

It is not clear whether these provisions apply to **non-national victims** of OCSEA offences. Nevertheless, under the Anti-Child Pornography Act, one of the duties of IACACP is to “adopt measures and policies to protect rights and needs of victims of child pornography who are foreign nationals in the Philippines”.¹²⁷

Child-sensitive justice

The Anti-Child Pornography Act sets forth provisions to ensure child-sensitive justice. This Act establishes certain **child-friendly interview methods**, stating that the judge, prosecutor or any law officer to whom a complaint has been referred to, may conduct a closed-door investigation, prosecution or trial to safeguard the best interest of the child victim.¹²⁸

In addition, child victims of OCSEA offences must be provided with **counselling** and **free legal services** by the government.¹²⁹ These children are also entitled to receive information related to legal proceedings in a **child-friendly manner**.¹³⁰

¹²² Department of Justice Office of Cybercrime of the Republic of Philippines. (2018). [Advisory on Institution of Cybercrime and Cyber-related cases \(Advisory Opinion no. 1 of s. 2018\)](#), P. 4.

¹²³ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 90.

¹²⁴ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 90.

¹²⁵ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 90.

¹²⁶ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 90.

¹²⁷ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 21(m).

¹²⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13(a).

¹²⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18(b)-(c).

¹³⁰ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18(c).

The Anti-Child Pornography Act contains elaborate provisions to protect the **right to privacy** of the child victims of OCSEA offences at every stage of the investigation, prosecution and trial.¹³¹ This Act prohibits any form of **identification of child victims**.¹³² Furthermore, in case of closed-room trials, the media is prohibited from divulging names of the child victims.¹³³

Perhaps the most commendable aspect of the Anti-Child Pornography Act is that it acknowledges the sensitive nature of evidence in child sexual abuse material-related offences. Therefore, this Act provides that “any recording regarding a child shall be confidential and under seal. Except upon written request and order of the court, a record shall be released only to the following: (1) Members of the court staff for administrative use; (2) The prosecuting authority; (3) Defence counsel; (4) The guardian *ad litem* (5) Agents of the investigating law enforcement agencies and (6) Other persons as determined by the court”.¹³⁴ child sexual abuse material that forms part of court records can be viewed only by the parties, their counsel, their expert witnesses and guardian *ad litem*.¹³⁵ Other persons would need the special authorisation of the court to view the court record containing child sexual abuse material.¹³⁶

Violations of the abovementioned provisions relating to privacy are punishable by the penalty of *arresto mayor*¹³⁷ in its minimum period and a fine of at least 100,000-300,000 pesos (approx. US\$2,060 to US\$6,181 as of April 2021).¹³⁸

Furthermore, the Rules on Examination of a Child Witness and other existing rules of procedure shall be applicable to safeguard to a child’s privacy as well as the confidentiality of the proceedings, if these rules are consistent with the Anti-Child Pornography Act and the Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009.¹³⁹

Pursuant to the Anti-Child Pornography Act, child victims and their families are entitled to receive **protection**, rights, and benefits in accordance with the Witness Protection, Security and Benefit Act.¹⁴⁰

¹³¹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13.

¹³² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13(b).

¹³³ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13(e).

¹³⁴ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13(c).

¹³⁵ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13(d)(1).

¹³⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 13(d)(2)-(3).

¹³⁷ Republic of the Philippines. (1930). [The Revised Penal Code \(Act No. 3815 of 1930\)](#), Article 90: The penalty of *arresto mayor* entails imprisonment term of 5 years.

¹³⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 15(m).

¹³⁹ Republic of the Philippines. (2009). [Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009](#), Section 26.

¹⁴⁰ Republic of the Philippines. (1991). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 14.

The rights and benefits under the Witness Protection, Security and Benefit Act include secure housing,¹⁴¹ relocation to a safe place,¹⁴² free medical treatment, hospitalisation, and medicines¹⁴³ as well as travelling expenses and subsistence allowance.¹⁴⁴

Currently, there is no explicit provision that ensures that **non-governmental organisations** (NGOs) can assist/support victims, at their request, during the investigation and judicial proceedings.

These provisions apply equally to **boys and girls**.

It is not clear whether these provisions apply to **non-national victims** of OCSEA offences.

Access to recovery and reintegration

In the Philippines, the Anti-Child Pornography Act guarantees the **right to recovery and rehabilitation** to child victims of OCSEA offences. This Act entrusts the DSWD with the responsibility to ensure that child victims of OCSEA offences receive appropriate care, custody and support for their recovery and reintegration.¹⁴⁵

Additionally, this Act obligates the Philippine Government and its agencies to ensure that mandatory services are available to victims of child sexual abuse material related offences to enable their recovery, rehabilitation and reintegration into society.¹⁴⁶ These services include, among other things, emergency shelter or appropriate housing; livelihood and skills training and educational assistance.¹⁴⁷ Furthermore, this Act directs the Government to adopt mechanisms that track the progress of recovery, rehabilitation and reintegration of these children.¹⁴⁸

In addition, the Anti-Child Pornography Act provides IACACP with a mandate to develop and implement **programmes** to prevent child sexual abuse material related offences and to heal, protect and reintegrate the child victim into society.¹⁴⁹ Such programmes shall include the provision of mandatory services to child

¹⁴¹ Republic of the Philippines. (1991). [The Witness Protection, Security and Benefit Act \(Republic Act No. 6981\)](#), Section 8(a)

¹⁴² Republic of the Philippines. (1991). [The Witness Protection, Security and Benefit Act \(Republic Act No. 6981\)](#), Section 8(a)

¹⁴³ Republic of the Philippines. (1991). [The Witness Protection, Security and Benefit Act \(Republic Act No. 6981\)](#), Section 8(e)

¹⁴⁴ Republic of the Philippines. (1991). [The Witness Protection, Security and Benefit Act \(Republic Act No. 6981\)](#), Section 8(d).

¹⁴⁵ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 14.

¹⁴⁶ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18.

¹⁴⁷ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18.

¹⁴⁸ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18.

¹⁴⁹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18.

victims in accordance with the provisions of this Act.¹⁵⁰ One of the functions of IACACP is to train persons in identifying and providing necessary assistance and intervention to the child victims.¹⁵¹

These provisions apply equally to **boys and girls**. It is not clear whether these provisions apply to **non-national victims** of OCSEA offences.

Access to compensation

Pursuant to the provisions of the Anti-Child Pornography Act, a child victim of OCSEA is considered a victim of a violent crime under the Act creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes and hence, is eligible to seek **compensation**.¹⁵² Under this Act, a child victim of OCSEA can file a claim up to 10,000 pesos (approx. US\$206 as of April 2021) with the Board of Claims under the DOJ.¹⁵³ The hearing before the Board of Claims is like an independent administrative hearing.¹⁵⁴ Besides, a child victim can institute an **independent civil suit** to seek damages and they would be exempted from paying any filing fees for the same.¹⁵⁵ It is not clear if a child victim can be awarded compensation in the same **criminal proceeding**, instituted to prosecute the offender.

Besides, child victims of OCSEA offences can seek compensation through **country-managed funds**. In this regard, the Child Protection Act permits the courts to impose a fine on the offender which would be administered as a cash fund by the DSWD and disbursed for each child victim's rehabilitation.¹⁵⁶ It appears that **non-national victims** of OCSEA offences can also seek compensation through these funds.

¹⁵⁰ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 18(a).

¹⁵¹ Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 21(o).

¹⁵² Republic of the Philippines. (2009). [The Anti-Child Pornography Act of 2009 \(Republic Act No. 9775\)](#), Section 14.

¹⁵³ Republic of the Philippines. (1992). [The Act creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Vms of Violent Crimes and for Other Purposes \(Republic Act No. 7309\)](#), Section 4.

¹⁵⁴ Republic of the Philippines. (1992). [The Act creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes \(Republic Act No. 7309\)](#), Section 2(b).

¹⁵⁵ Republic of the Philippines. (2009). [Implementing Rules and Regulations of the Anti-Child Pornography Act of 2009](#), Section 40.

¹⁵⁶ Republic of the Philippines. (1992). [Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act \(Republic Act No. 7610 of 1992\)](#), Section 31(f).