

Case Studies and Analysis

CHILD-PROTECTIVE PROSECUTIONS

A Strength-Based, Child-Centered Approach To
Assess Prosecution Results



Center to End Online Sexual
Exploitation of Children

About International Justice Mission

International Justice Mission is a global organization that protects people in poverty from violence. IJM partners with local authorities in 27 program offices in 15 countries to combat slavery, violence against women and children, and police abuse of power against people who are poor. IJM works with local authorities and governments to rescue and restore survivors, hold perpetrators accountable, and help strengthen public justice systems.

IJM works with the Philippine government, international law enforcement, and relevant stakeholders to combat the trafficking of Filipino children for livestreamed sexual abuse. IJM Philippines seeks to protect children from online sexual exploitation by strengthening the capacity of the Philippine criminal justice system to enforce the law, increasing local and global collaboration, building trauma-informed networks of care, and empowering survivor and government leadership.

IJM's Center to End Online Sexual Exploitation of Children partners with governments, industry, NGOs, and other stakeholders to protect children from online sexual exploitation around the world. Leveraging effective practices from IJM's Philippines program, the Center (1) supports effective justice system responses in source and demand-side countries and (2) improves technology and financial sector detection and reporting of livestreamed child sexual exploitation, all resulting in sustainable protection for children and accountability for perpetrators.

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Disclaimer and Restrictions: The information in this document has been collected by IJM primarily through its work to combat online sexual exploitation of children in the Philippines.

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Introduction

This paper communicates the following:

1. A child rights framework in a clear, summary form
2. A strength-based criteria for prosecutions of online sexual exploitation of children
3. Case studies showing strong child-protective outcomes
4. Next steps

A Child Rights Framework

In most cases, what a child needs is not a mystery. We understand that children should be in school, have sufficient play time, and be surrounded by people who nurture and protect them.

It is when a child is in difficult and complicated environments that the right thing is harder to discern, and tools such as the Convention on the Rights of the Child (CRC) become more helpful.

Figure 1.0 below helps us see the rights of a child as a protective shield against harm. To be complete, the shield must have all four of the categories of child rights: Survival, Participation, Development, and Protection.

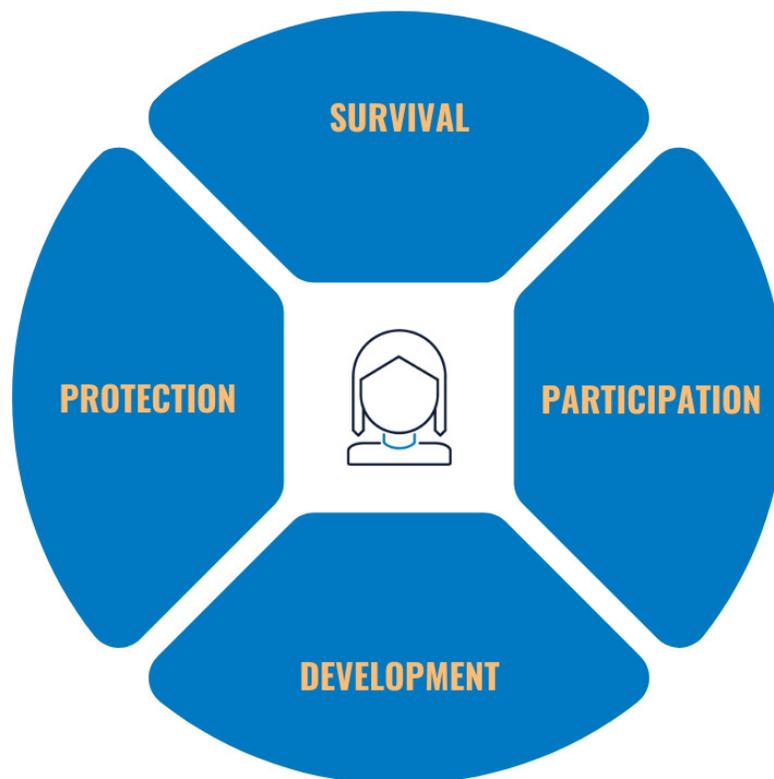


Fig. 1
Visualization of the Child Rights Framework

Rights in Real Cases

As a non-government organization working directly with survivors, IJM brings a unique voice to the discussion on online sexual exploitation of children.

Since 2011, IJM has partnered with the Philippine Government, international law enforcement, and NGOs to combat the trafficking of children by adults to create new child sexual exploitation materials, especially via livestream video, for paying sex offenders abroad.

As of October 2021, IJM has supported dedicated law enforcement partners in the Philippines in 253 operations, leading to the rescue of 886 victims or at-risk individuals, the arrest of 303 suspected traffickers, the conviction of 131 perpetrators, and only four acquittals. These efforts also led to 216 survivors reaching restoration (a place of healing and self-sufficiency).

According to an IJM-led online sexual exploitation of children study¹, released in May 2020, 64% of Philippine law enforcement operations from 2011-2017 were initiated by a foreign law enforcement referral, reflecting the global nature of the crime and the effectiveness of law enforcement collaboration and referral sharing between demand and source countries. In IJM Philippines' child protection casework, front-liners are presented with hard choices:

- What must law enforcers do when a child's own parents become their abusers?
- Where can social workers place a child of tender age when nearest cannot take them in?
- What can we, as well-meaning advocates, actually do for children when the most trusted adults in their lives have caused them harm?

These are unfair situations, but multitudes of children face these scenarios. Over time, the Philippines made the children's rights in the CRC available domestically through a network of laws, rules, and protocols. It's helpful to think of the specific recognition of child rights within

Philippine laws as the local guarantee that the shield created by the CRC is available for all children in the Philippines. Figure 2.0 below shows how different laws can support specific categories of rights, although for accuracy, we should state that many of the laws protecting children are cross-cutting in their coverage.

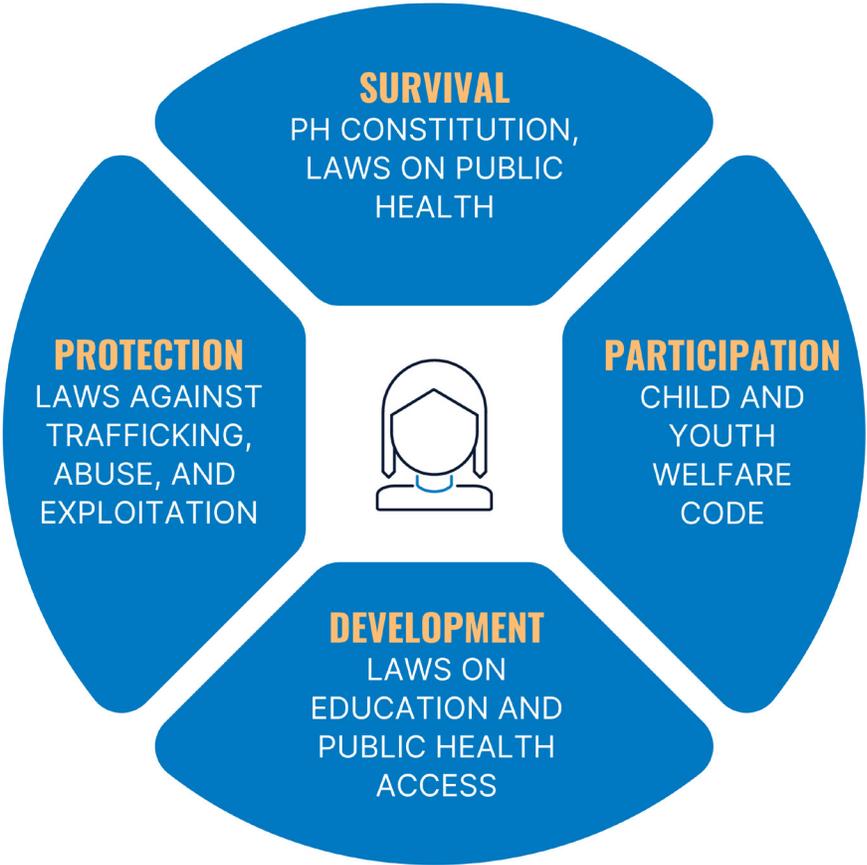


Fig. 2
Visualization of the Child Rights Framework
in the Philippine Context

Testing Pathways

Apart from establishing child rights as a protective shield, child protective laws, rules, and policies create pathways for rescue, accountability, and restoration.

At IJM, we test these pathways by walking through each of them alongside child survivors and government partners. Because perpetrators must be held legally accountable, IJM has worked with partners to ensure that victim-related evidence is obtained in a manner consistent with the child's best interests.

Recent Women of the Future Southeast Asia awardee, Ruby (pseudonym), was rescued from online sexual exploitation by the Philippine authorities. Now a survivor leader and advocate, she had this to say on behalf of victims and survivors:

“Protecting survivors is as important as rescuing them... [they have] to know that [they were] abused, and there is this law to protect them and will punish their perpetrators. There will be times also that the survivor may find it hard to cooperate and testify against their perpetrators because they are afraid to face them again.”

A STRENGTH-BASED CRITERIA FOR RESULTS

In IJM's current program in the Philippines, we can draw lessons from twenty years of child-protective casework and, using legal standards, derive a criteria or rubric to evaluate prosecution results.

When cases involve children, the importance of building victim-independent evidence is greater, as the policy of Philippine law is to uphold the best interests of the child. In online sexual exploitation of children

cases, advancing the best interest of the child means protecting children from retraumatization that is potentially triggered by court testimony or appearing in court, especially when the accused is a family member. Approaching cases with an eye to prevent retraumatization of children is collectively known as child-protective prosecution.

After a child's rescue, the case usually begins at inquest, where the prosecutor plays a quasi-judicial function of determining probable cause and assessing whether a child is required to appear and testify at the inquest. In some cases, a preliminary investigation is held instead of an inquest, and these can be child-protective when non-victim dependent evidence, or recorded victim interviews, are used in lieu of victim appearance.

IJM's believes that the duty of care for child victims co-exists with the responsibility to hold criminals accountable through proof beyond reasonable doubt.

When examined through legal requirements, this duty of care stands as a measure of success in every justice proceeding involving children. The duty of care we refer to in this paper is the requirement under law to uphold the best interests of the child in the journey from rescue to restoration. Just as the burden of proof beyond reasonable doubt protects the constitutional rights of the accused, the duty of care requires that the best interests of the child be the "paramount consideration in all actions concerning them." (Section 2, Republic Act 7610). IJM supports the legal obligation for justice actors to uphold the burden of proof and the duty of care for children.

An underlying principle is that the best interests of the child will always be a key consideration.

Few resources explicitly outline these co-existing duties, and there are limited efforts to celebrate this broader and deeper dimension of prosecution success. IJM contends through this paper that partners who uphold these twin duties should be recognized and honored.

Our proposed rubric categorizes conviction results from (a) **positive** to (b) **strong** to (c) **strongest**.

This is borne out by the CRC, and the network of laws, rules, and protocols that protect children in the Philippines. The core principle, or big idea,

behind our proposed rubric is this:

As justice systems combat online sexual exploitation of children, they must uphold:

- (1) The burden of proof required to convict the offender, and
- (2) The duty of care that must be exercised in protecting the child from retraumatization.

LAYING THE FOUNDATION FOR THE RUBRIC: A BRIEF EXPLORATION OF CHILD PROTECTIVE LAWS IN THE PHILIPPINES

General protections for children against online sexual exploitation of children spring from the Constitution, down to specific statutes, Rules of Court, and finally, to protocols that govern exploitation and abuse cases.

Under the Constitution, the State shall defend:

“(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;”²

Constitution-level principles such as the above may be understood as high-level guarantees requiring specific statutes to make them a reality in the community. Also at a high level, some statutes clarify the connection of our domestic laws to instruments such as the Convention on the Rights of the Child. The Special Protection of Children Against Abuse, Exploitation and Discrimination Act³, states in its policy section:

“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 principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for

a useful and happy life.” (Section 2, Republic Act 7610).

GROUND LEVEL TOOLS

Laws outlawing child abuse, child sexual abuse materials, and trafficking in persons make the above guarantees and protections real by (1) defining crimes and (2) creating pathways for victim rescue, restoration, and perpetrator accountability. For instance, Section 4 of the Anti-Trafficking in Persons Act⁴ defines the crimes that traffickers for online sexual exploitation of children are commonly charged with, while Section 17-A of the law provides guidance on how rescue operations should flow.

When armed with specific legislation and clearer guidance, law enforcement and child protection agencies are able to take action when trafficking for online sexual exploitation of children occurs.

Meanwhile, when cases progress through specific segments of the justice process, more detailed guidance may be necessary when caring for children. Here, the Rules of Court, the Rule on Examination of a Child Witness, and agency protocols become relevant. One of the most important guiding principles is the definition laid down by the Philippines Supreme Court for the best interests of the child:

“Best interests of the child” means the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.” (Section 4g, Rule on Examination of the Child Witness).

As mentioned earlier, the duty of care is the requirement under law to uphold the best interests of the child in the journey from rescue to restoration. The second sentence above provides excellent guidance on how to exercise the duty of care: when the least detrimental alternatives are used in a case, the best interests of the child are upheld (i.e., methods that reduce or eliminate further harm).

As countless survivors have told IJM—and as IJM social workers and lawyers

have witnessed in hundreds of cases—the risks of retraumatization are high when victims appear in court to testify against their abusers. This makes victim-independent prosecutions the least detrimental alternative, when such prosecutions are possible. When victim participation is necessary, the least detrimental option is to use child-protective measures allowed by the Rules. These include videotaped in-depth interviews (VIDIs), recorded depositions, live-link testimony, and videoconferencing under the most recent Supreme Court guidelines.

IJM and government partners have consistently utilized VIDIs to protect children at each opportunity. As of September 2021, IJM has supported 69 cases with 171 instances of video-captured child interviews. 69% of these (118 VIDIs) were used by prosecutors during inquest. Two VIDIs were used in court after having been recorded during processing post-rescue in a 2020 case. Through the use of VIDIs, a total of 120 children no longer had to appear during inquest proceedings, and thus were protected from potential retraumatization.

With the duty of care and the burden of proof clearly provided by law—and knowing firsthand that child protective measures work—we propose that convictions in online sexual exploitation of children cases be evaluated as:

Positive Result

When a conviction is achieved.

Strong Result

When a conviction is achieved with (a) the use of a child protective measure such as plea bargaining, or (b) a measure defined under the Rule on Examination of the Child Witness (videotaped in-depth interviews, videotaped depositions, live-link testimony, each of which provide a less detrimental alternative to testifying on the witness stand), or (c) the child was presented, but with the aid of child protective prosecutions.

Strongest Result

When a conviction is (a) achieved independent of victim testimony, such as plea agreements without need of victim presentation as a witness, or (b) convictions are achieved with the use of Videotaped In-Depth Interviews when a child is not required to appear in court as a witness, and (c) cases where a child was not presented as a witness at all.

Now that we have a method to analyze conviction results, our final step is to

apply the strength-based criteria to resolved cases and explore what we can learn.

CASE STUDIES OF STRONG OUTCOMES FOR CHILDREN FROM REAL CASES

APPLYING THE STRENGTH-BASED ANALYSIS TO CASE STUDIES.

We intend to use the strength-based analysis as a starting point to deepen our understanding of good outcomes in real cases. The measurement we propose combines the best interests of the child and the demands of justice (burden of proof). This method is a work in progress and is meant to be improved as the child protection community engages and dialogues through it.

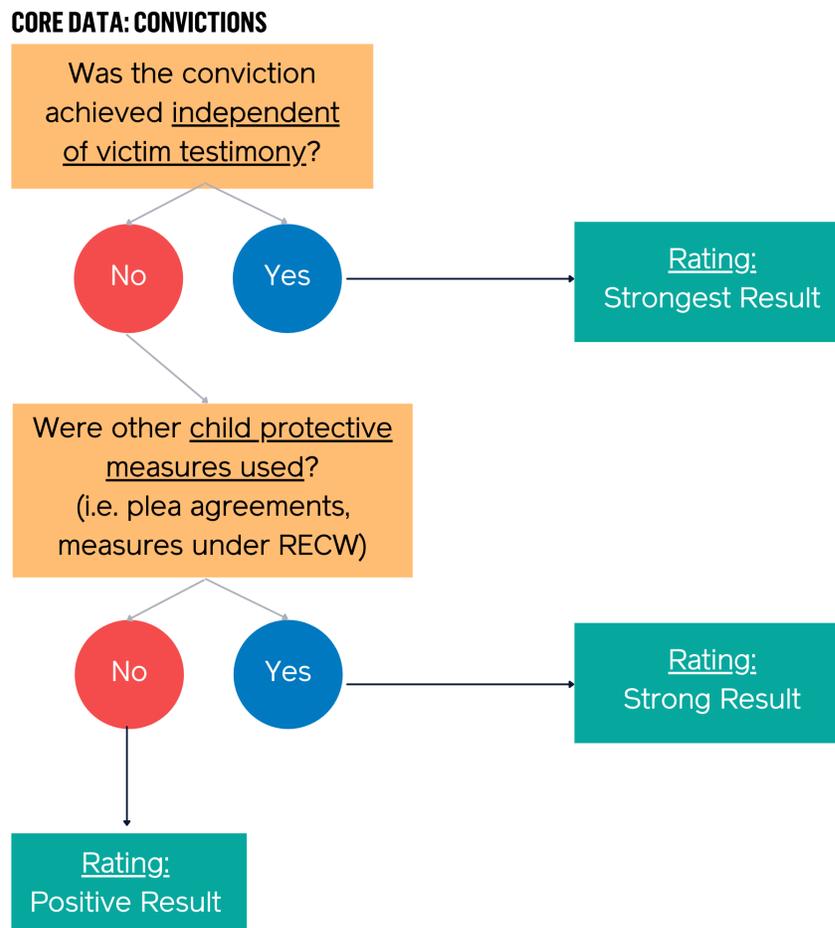


Fig. 3
Visualization of the Methodology

THREE POSSIBLE RESULTS

Our conviction analysis applies the strength-based criteria this way:

We will set up (Yes / No) filters as checkpoints for each conviction.

The resulting outcomes will always fall in one of three ratings: **Strongest Result**, **Strong Result**, and **Positive Result**.

The checkpoints funnel the cases toward an appropriate strength rating for child protection based on the premise that the least detrimental alternative for a child is to remain a safe distance from the court case.

For instance: if a conviction was secured with the use of victim-independent evidence (such as a combination of digital evidence, police affidavits, chat logs and financial records), one can conclude that the case produced the **Strongest Result** leading to the highest level of child protection.

If the conviction was secured with a form of victim testimony, but with the use of child protective measures such as a plea agreement (when allowed by law) or a measure defined under the Rule on Examination of the Child Witness (videotaped in-depth interviews, videotaped depositions, live-link testimony), then the case produced a **Strong Result**.

Finally, even if the conviction was secured through victim testimony and a full trial, it increases protection for the child through perpetrator accountability. Hence, the case would generate a **Positive Result**.

ACCOUNTING FOR CASES OF OLDER CHILDREN DESIRING TO TESTIFY

In certain cases, an older child may be ready to testify, and the act of testifying might be supportive of survivor recovery. In such instances, a strong case may be upgraded to strongest, when it is on record that the process was indeed beneficial for the survivor.

We will apply the criteria to eight cases⁵ from 2017 to 2020:

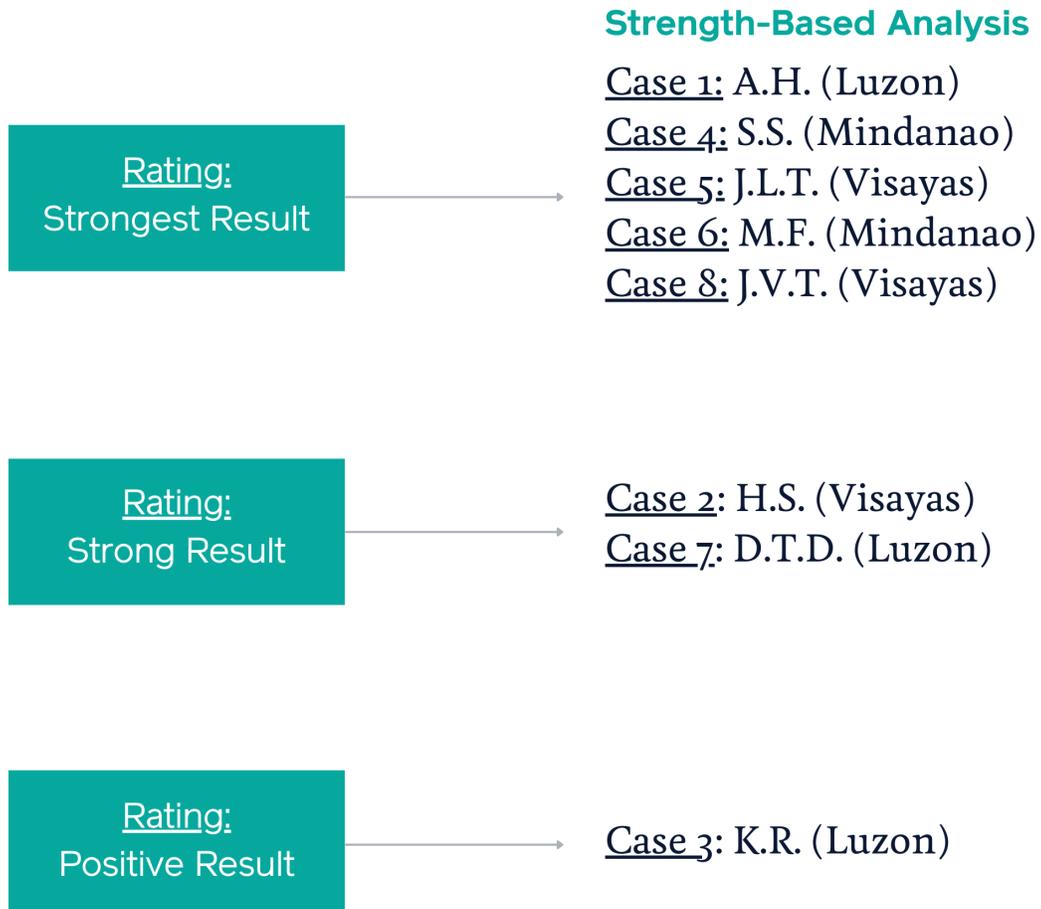


Fig. 4
Results of the Strength-Based Analysis

CASE STUDY 1: A.H. (LUZON)

In 2016, a rescue and arrest operation took place in Metro Manila. Three minors were rescued, and two suspects, family members of the survivors, were arrested.

Legal proceedings lasted one year and three months from the suspects' arrest to conviction. In 2017, the A.H. case resulted in two convictions through plea agreements. Each suspect was sentenced to 15 years' imprisonment. Because of this child-protective measure, the three survivors aged 3, 5 and 7 were spared from the likely retraumatization of testifying in court.

Justice was achieved while sparing children from recounting their story in open court. This illustrates the best-case scenario - the **strongest result** of child protection achieved by protecting survivors from potential retraumatization.

CASE STUDY 2: H.S. (VISAYAS)

Meanwhile, some cases may require victim testimony to corroborate facts or critical pieces of evidence. Fortunately, this may be done in less harmful ways than requiring them to take the witness stand.

In 2013, three minors, aged 14, 15, and 16, were rescued in Metro Cebu. In 2018, they gave their direct examination through a pre-executed Judicial Affidavit which they identified and confirmed in court during trial. The children did not have to recount their abuse against the perpetrator in open court. In this case the accused was not a family member, but an Australian citizen living in the Philippines.

The trial judge highlighted the impact of digital evidence, indicating that the elements of the crime were proven by pieces of evidence other than victim testimony:

“[Defense] miserably failed in the face of the computer forensic examinations conducted by experts which yielded several pornographic photographs of children posing in a lewd and sexually explicit manner. The photos speak for themselves.” - Trial Judge⁶

While convictions were secured through a nearly five-year long trial, the use of child-protective measures in H.S. – including the use of digital evidence - merit a **strong** level of child protection under the strength-based criteria.

CASE STUDY 3: K.R. (LUZON)

In 2016, five minors were rescued in Metro Manila, one of whom was a family member of the arrested suspect.

In 2018, the K.R. case concluded with the perpetrator sentenced to life imprisonment for human trafficking. All five children were presented as witnesses, in addition to the testimonies of the handling law enforcers. These legal proceedings were all conducted in open court.

While the case depended on victim testimony and lengthened through a two-year long, full-blown trial, perpetrator accountability was still achieved. The results are rated **positive** under our analysis.

CASE STUDY 4: S.S. (MINDANAO)

In 2018, eight children and one adult were rescued in Northern Mindanao. Some survivors were related to the arrested suspect as family members. Through a plea agreement, the survivors were spared the ordeal of testifying in court. Championed by a public prosecutor, this case achieved the **strongest** level of child protection under our strength-based criteria.

CASE STUDY 5: J.L.T. (VISAYAS)

In 2018, a seventeen-year-old was rescued in Metro Cebu. The case concluded in 2019, with the perpetrator entering a plea of guilt. As the child victim was not required to testify in court, delivering justice for the survivor sooner, the results are rated **strongest** under our analysis.

While this case achieved a conviction without reliance on the child's testimony, the same child was listed as a victim under another case. In the latter, she had to testify in court. Further qualitative analysis may be helpful in understanding why the second case required victim testimony.

CASE STUDY 6: M.F. (MINDANAO)

Innovations to uphold the best interests of the child continue to benefit collaborative casework. In 2019, casework teams advocated for and used videotaped in-depth interviews (VIDI).⁷ This prosecution measure, allowed by the law, captures the victim's testimony in a child-friendly environment and can be used subsequently in court.

In 2019, six children between 4 to 7 years old were rescued in Northern Mindanao. Law enforcers utilized VIDIs during inquest in this case. The inquest prosecutor agreed to receive and view the VIDI in lieu of in-person victim testimony. A conviction was later secured in court, also through a plea agreement. As a conviction achieved without reliance on victim testimony, the M.F. case produced the **strongest result**.

CASE STUDY 7: D.T.D. (LUZON)

In 2020, the pandemic rendered many physical restrictions and limitations on Philippine prosecutions. While legal proceedings migrated online, frontliners collaborated to ensure justice for children would remain a priority. The D.T.D. case commemorated the first IJM-supported conviction of an American national living in the Philippines, achieved through videoconferencing. This measure allows judgment to be promulgated in an online environment.

In 2017, four children and four adults, ages ranging from 9, 11, 16, 17, 17, 19, were rescued. Some survivors, adults at the time of trial, had to recall their story in open court. Assigned casework teams noted that they had become strong and empowered witnesses. The presence of a judge, who is aware of the potential retraumatization experienced by online sexual exploitation of children survivors, played a big role in the promulgation as well.

While the case depended on victim testimony and lengthened through a three year full trial, perpetrator accountability was still achieved through videoconferencing hearings, a child protective measure, generating a **strong result** for the D.T.D. case.

CASE STUDY 8: J.V.T. (VISAYAS)

In the 2020 J.V.T. case, the perpetrator's two younger sisters, aged 18 and 21, and their 6-year-old daughter were rescued during a Metro Cebu-based operation.

A conviction was obtained three months after the arrest of the accused, via plea agreement in a videoconferencing setting. These child-protective strategies were championed by a public prosecutor trained through the POSE (Prosecuting Online Sexual Exploitation) training program.⁸ The public prosecutor in charge of this case reflected:

“Justice was served. It was served swiftly without going through the rigors of trial. What was even more satisfying was seeing the parties reconcile – hearing the accused admit the wrong they committed, seeing their remorse, and hearing the victims, including the 8-year-old, accept their apology. More important than the penalty of imprisonment imposed in the court's judgment is the promise that this family will once again be reunited and, having learned the hard lessons from this case, will learn to uplift each other, instead of victimize a family member,” - Handling Public Prosecutor⁹

Throughout the duration of the proceedings, the child did not have to testify and appear physically in court. This equates to the **strongest** result in the analysis.

CONCLUSION

Upholding the best interests of the child is a duty imposed by the law and requires an understanding of the context and background of each survivor. Stakeholders from law enforcement, prosecution, judiciary, and aftercare, must comply with this duty of care in all stages of the case. In moments of uncertainty, the Rule on the Examination of a Child Witness gives permission to search for the least detrimental alternative to safeguard the growth and development of the child.

This analysis supports the advancement of trauma-informed, child-protective prosecution. It proposes a strength-based rubric for analyzing conviction results in cases of online sexual exploitation of children. The rubric pairs the duty of care mentioned above with the burden of proof required to convict an accused in court.

The eight cases in this analysis show that some cases will allow for the **strongest** possible results: A.H., S.S., J.L.T., M.F. and J.V.T., are examples of this. Meanwhile, other cases will require creativity to find the least detrimental alternative for the child. D.T.D. and H.S. are examples of cases where child-protective measures lessened potential retraumatization of survivors by using alternatives to in-court testimony or implementing measures to shorten the ordeal of the trial. K.R. demonstrated a **positive** result, that while there was reliance on victim testimony, justice was still served and the perpetrator was held accountable.

Most examined cases merited ratings above the baseline **positive** result of a conviction, indicating that the judiciary, national prosecution service, and law enforcers were each capable of meeting the burden of proof and dispensing the duty of care simultaneously.

As stated at the onset, the method for analysis is a work-in-progress, and is meant to be improved as the child protection community engages and dialogues through it. Comments and feedback are welcome through endosec@ijm.org.

NEXT STEPS

By applying the strength-based criteria to eight convictions, we were able to identify nuanced wins in eight cases of online sexual exploitation children.

The next steps are:

- (1) Apply the strength-based criteria to more cases, examining how the duty of care is upheld in a larger number of situations. By extending the analysis wider, we may discover helpful trends in child protective prosecution and learn how front-liners solve problems in difficult situations such as the pandemic.
- (2) For cases with strong or positive results, a deeper, qualitative exploration of why specific measures were not or could not be pursued could prove helpful.

ENDNOTES

1 International Justice Mission Philippines. (May 2020). Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society. Retrieved from <https://www.ijm.org/studies>

2 See The Constitution of the Republic of the Philippines (1987)

3 See Philippine Republic Act (R.A.) 7610

4 See Philippine Republic Act (R.A.) 9208

5 Case analyses have been titled with initials and abridged to protect survivor privacy. Luzon, Visayas, and Mindanao refer to the three main geographical divisions forming the Philippines. All case information on file with IJM.

6 International Justice Mission Philippines. (2020, November 19). Behind the Screens: A Compilation of Case Studies and Learnings about the Online Sexual Exploitation of Children. Retrieved from https://osec.ijm.org/documents/11/Behind_the_Screens_Fullspread_FINAL_Nov14.2020.pdf

7 As of September 2021, IJM has supported 69 cases with 171 instances of video-captured child interviews. 69% of these (118 VIDIs) were used by prosecutors during inquest. Two VIDIs used in court and recorded during processing post-rescue in a 2020 case. Through the use of VIDIs, a total of 120 children no longer had to appear during legal proceedings.

8 POSE, a training program spearheaded by IJM, became a platform to invest in prosecutorial capacity. POSE alumni have consistently generated convictions in IJM-supported OSEC cases. From March 2018 to September 2021, a total of 95 prosecutors and 51 law enforcers have been trained; with 48 convictions secured by POSE-trained prosecutors.

9 IJM. (2020, September 24). Two women convicted for online sexual exploitation of children in Cebu City [PRESS RELEASE]. Retrieved from <https://osec.ijm.org/news-and-insights/news-updates/two-women-convicted-online-sexual-exploitation-children-cebu-city/>

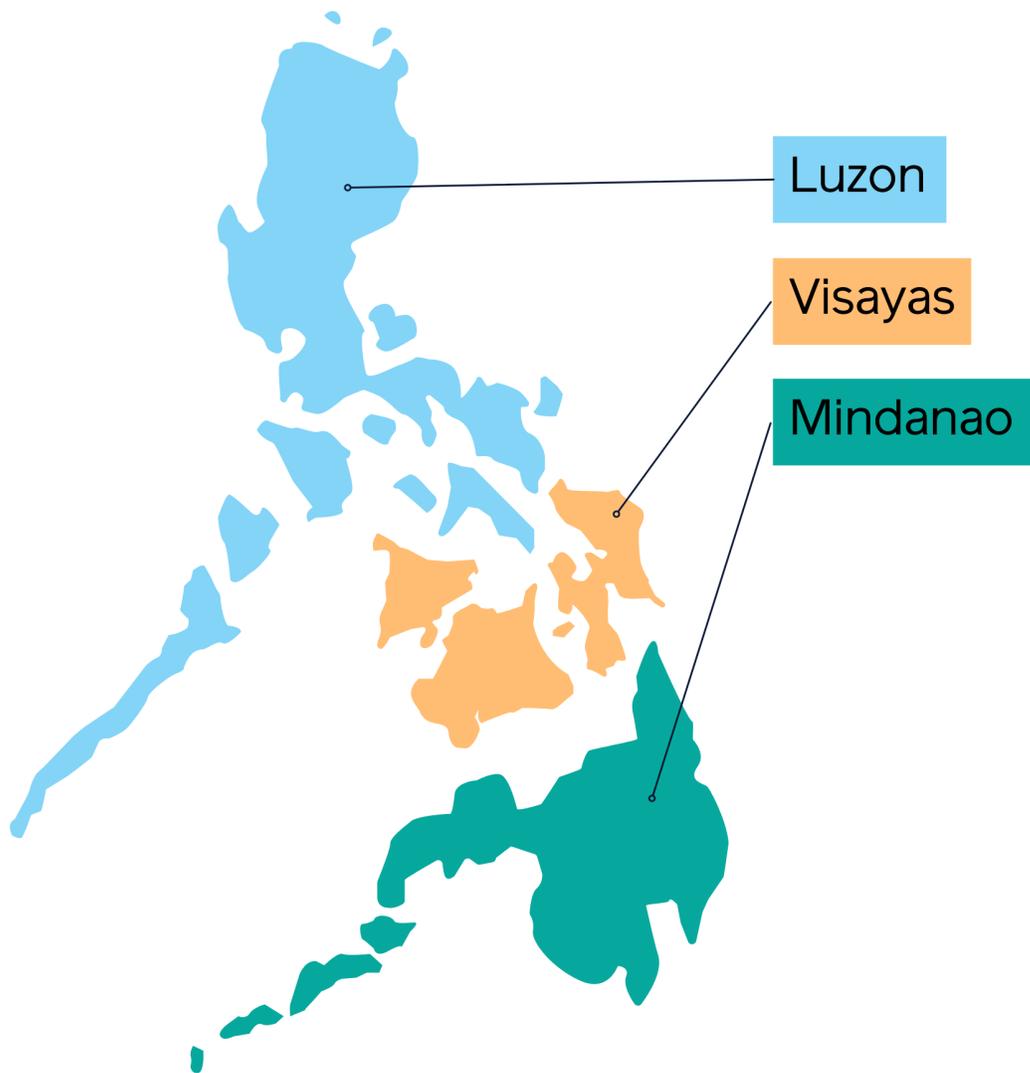


Fig. 5
Major Island Groups in the Philippines



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IJM'S CENTER TO END ONLINE SEXUAL EXPLOITATION OF CHILDREN partners with governments, industries, and NGOs to protect children from this crime around the world. By leveraging practices proven effective in IJM's program in the Philippines, the Center helps (1) improve technology and financial sector detection and reporting of livestreaming child sexual exploitation, (2) strengthen international collaboration in law enforcement and prosecution, and (3) support effective justice system.

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