



PHILIPPINE ACTION FOR YOUTH AND OFFENDERS

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POSITION PAPER OF THE PHILIPPINE ACTION FOR YOUTH AND OFFENDERS (PAYO) ON THE PROPOSED AMENDMENTS TO REPUBLIC ACT NO. 9344

26 January 2011

The Philippines took a major step towards the administration of juvenile justice in compliance with its international obligations when it enacted the Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344). This was a long-awaited development, especially after it had been criticized by the United Nations Committee on the Rights of the Child for having maintained the age of criminal responsibility at a very low age of nine (9) years and for having failed to pass the proposed bill on comprehensive juvenile justice system, which had then been pending for almost a decade:

The Committee notes with deep concern that adequate legislation governing juvenile justice is lacking and that a proposed bill on the Comprehensive Juvenile Justice System and Delinquency Prevention Programme has been pending in Congress since 1999. While noting that an Administrative Order issued in February 2000 designated Regional Trial Courts as Family Courts, the Committee is concerned about the lack of child-sensitive and adequately trained juvenile courts.

Furthermore, the Committee is concerned about the very low minimum age of criminal responsibility (9 years). Referring to the provisions on youth detention homes of the Child and Youth Welfare Code and the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (Presidential Decree No. 603), the Committee is concerned about the inadequate implementation of these provisions and the placement of persons below 18 years of age together with adults in detention. x x x

In this regard, the Committee recommended to the State party in particular that it:

(a) Adopt, as a matter of urgency, a proposed bill on Comprehensive Juvenile Justice System and Delinquency Prevention Programme and raise the minimum age of criminal responsibility to an internationally acceptable level;

(b) Ensure that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions, and that persons below 18 years of age are not detained with adults; x x x (Concluding Observations of the CRC on the Second Periodic Report of the Philippines, CRC/C/15/Add.259 21 September 2005)

The Concluding Observations of the Committee on the Rights of the Child (2009) have specifically lauded the adoption of 9344 “which raises the minimum age of criminal responsibility from nine (9) to fifteen (15) years and prohibits and criminalizes acts of torture and ill-treatment against children in conflict with the law.”¹ However, it is concerned at the

slow pace of implementation of RA 9344, the limited use of diversion, and the alleged widespread practice of pre-trial detention of children. The UN Committee recommends that the Philippine government likewise take into consideration General Comment No. 10 (2007) to guide it in its implementation of Juvenile Justice.

Only four years after R.A. 9344 took effect, four bills have been brought forward seeking to revert to the old regime where children over nine (9) years old may be held criminally liable: House Bill No. 467 by Rep. Salvador H. Escudero III, House Bill No. 2611 by Rep. Mary Mitzi L. Cajayon, House Bill No. 2894 by Rep. Pablo P. Garcia, and House Bill No. 3423 by Rep. Anthony Rolando T. Golez, Jr. Two other bills, House Bill No. 3073 by Rep. Karlo A.B. Nograles and House Bill No. 1495 by Rep. Mel Senen S. Sarmiento, have the better sense to propose other solutions that address the implementation gaps rather than attempt to demolish with a mere stroke of the pen one of the cornerstones of juvenile justice.

With due respect to our Honourable Members of Congress who push for the amendment of R.A. 9344, their justifications for the lowering of the age of criminal responsibility back to over nine (9) years do not solve the problems which they seek to address. The most common issue raised is the premise, the extent of which has not been supported with scientific research or statistics, that children are vulnerable to exploitation by syndicates and are being used by adults to commit crimes. Vulnerability to exploitation in the commission of a crime has never been a source of criminal liability. On the contrary, taking advantage of the vulnerability of minors should exonerate the child and should increase the liability of the adult offender.

That children are reportedly released without undergoing intervention programs and that law enforcers complain of their inability and helplessness in coping with the rising incidence of serious crimes committed by teenage offenders do not justify the lowering of the age of criminal responsibility. The obvious solution is to strengthen the implementation of the law.

But these are all beside the point. The crux of the matter is the capacity of a child to intentionally and wilfully commit a crime at 15 or younger but above 9 years of age.

Article 40 (3) of the Convention on the Rights of the Child (CRC) requires States parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. While the CRC does not mention a specific minimum age, Rule 4 of the Beijing Rules states that the beginning of the age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Researches have been conducted by the Council for the Welfare of Children and the Pamantasan ng Lungsod ng Maynila (Beyond Innocence Study- 1997), and the Philippine Action for Youth and Offenders (Arrested Development Study -2002), on the age of discernment (i.e. the ability to tell what is right from what is wrong and the consequences of actions) of Filipino children. The Beyond Innocence Study found that the age of discernment of children in school is 15 years old, while the PAYO Study showed that the age of discernment of out of school children is 18 years old. Hence, the present Minimum Age of Criminal Responsibility (MACR) adopted in RA 9344 was not capriciously set. It was borne out of consideration for these two scientific researches. Setting the MACR below the age of discernment of children, as what the abovementioned studies have shown, is unreasonable and has no basis.

¹ Concluding Observations of the UN Committee on the Rights of the Child (2009) p. 23.

General Comment No. 10 (2007) of the United Nations Committee on the Rights of the Child sets clear guidance on the minimum age of criminal responsibility. 12 years is considered by the Committee as not internationally acceptable. If the State has pegged it at a higher age, the Committee urges States parties not to lower it, thus:

33. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the MACR set in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above MACR.

34. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception. (CRC/C/GC/10 25 April 2007)

Should the Philippines lower the age of criminal responsibility back to over nine (9) years old? The question has been asked and answered when Congress enacted R.A. 9344. And the answer cannot be any different now for as long as we continue to adhere to the relevant international standards, namely the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113), and the Guidelines for Action on Children in the Criminal Justice System (annexed to Economic and Social Council resolution 1997/30 of 21 July 1997).

The Philippine Action for Youth and Offenders (PAYO) remains steadfast in its position at this time that rather than amend the MACR, the law should be fully implemented to gain the essence of juvenile justice.



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President

PAYO Member Organizations and Individuals:

ADVOCATES FOR CHILDREN AND ELDERS PHILIPPINES, INC.
(ACE INTERNATIONAL PHILIPPINES)

ATENEO HUMAN RIGHTS CENTER □ ADHIKAIN PARA SA KARAPATANG PAMBATA (AHRC-AKAP)

BISIG NI KRISTO COMMUNITY, INC

CHRISTIAN ACTION FOR RELIEF AND EMPOWERMENT (CARE, INC.)

CHILDHOPE ASIA □ PHILIPPINES

CHILD RIGHTS CENTER- COMMISSION ON HUMAN RIGHTS (CHR-CRC)

CHILDREN'S LEGAL RIGHTS AND DEVELOPMENT CENTER (CLRDC)

COUPLES FOR CHRIST- FOUNDATION FOR FAMILY AND LIFE (CFC-FFL)
RESTORATIVE JUSTICE MINISTRY

COUPLES FOR CHRIST- ISAIAH 61:1 PRISON MINISTRY

CATHOLIC BISHOPS CONFERENCE OF THE PHILIPPINES-
EPISCOPAL COMMISSION ON PRISON PASTORAL CARE (CBCP-ECPPC)

ERDA FOUNDATION, INC. □ TUKLASAN CENTER; BK-RESTORE

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MOLAVE YOUTH HOME-SOCIAL SERVICES DEVT. DEPT.

NATIONAL COUNCIL OF SOCIAL DEVELOPMENT FOUNDATION IN THE PHILIPPINES (NCSD)

PHILIPPINE JESUIT PRISON SERVICE, INC. (PJPS)

OPEN HEART FOUNDATION WORLDWIDE, INC.

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SAVE THE CHILDREN FUND (SCF) □ SWEDEN

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