



## PHILIPPINE ACTION FOR YOUTH OFFENDERS

c/o CBCP-ECPPC, 470 Gen. Luna St. , Intramuros, Manila  
Tel/Fax. (02)527-4059 ; Email: [payo1993@yahoo.com](mailto:payo1993@yahoo.com)

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### POSITION PAPER OF THE PHILIPPINE ACTION FOR YOUTH OFFENDERS ON SENATE RESOLUTION 280

The Philippine Action for Youth Offenders (PAYO) is a non-government organization established in 1993 to protect the rights and promote the welfare of Filipino children in conflict with the Law. It is composed of 24 child-focused organizations and 5 individual members namely:

Salinlahi Foundation, Inc. , Philippine Jesuit Prison Service , Childhope Asia Philippines, ERDA Foundation, Inc. – Tuklasan Center, Bisig ni Kristo Community, Inc., Caritas Manila, Inc., Episcopal Commission on Prison Pastoral Care – CBCP, National Council for Social Development Foundation , AKAP – Ateneo Human Rights Center, Amnesty International – Pilipinas, John J. Carroll Institute on Church & Social Issues, Virlanie Foundation, Inc., Albert Schweitzer Association Philippines, Inc., Commission on Human Rights – Child Rights Center, Molave Youth Home, DSWD Program Management Bureau, Save the Children – Sweden, Alalay ng Bayan Foundation, Inc., Open Heart Foundation Worldwide, Inc., CARE, Inc., Association Compassion Asian Youth, Humanitarian Legal Assistance Foundation, Children's Legal Rights & Development Center, Couples for Christ – Isaiah 61:1, Georgina Dolorfino-Arreza, Ma. Victoria Diaz, Finardo Cabilao, Gerard Ian Bernabe, Fr. Ray Holscher, S.J.

Herewith is the PAYO stand on Senate Resolution 280 resolved in a meeting conducted last April 17, 2008.

- **On Sec. 6: Minimum Age of Criminal Responsibility**

PAYO would like to reiterate that the setting of the age of criminal responsibility in RA 9344 to 15 years old was not arbitrarily decided on. It was based on two scientific researches conducted by the Pamantasan ng Lungsod ng Maynila (PLM) in 1997 and of the Philippine Action for Youth Offenders (PAYO) in 2002. PLM's *Beyond Innocence* study found that the age of discernment of In-school Filipino children is 15 years old. In 2002, PAYO conducted a similar study (*Arrested Development*), but now targeting out-of-school Filipino youth since most of them are the ones who figure in crimes. PAYO's study revealed that the age of discernment of out-of-school Filipino children is 18 years old. These studies were the basis for setting of the age of criminal responsibility in RA 9344 to 15 years old. PAYO believes that until another scientific study can clearly show why the age of criminal responsibility should be lower than 15 years old, Sec. 6 of RA 9344 should be maintained and implemented.

Moreover, we would also like to quote the Committee on the Rights of the Child on its General Comments on Juvenile Justice, specifically on the minimum age of criminal responsibility. We quote, "*From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be*

*internationally acceptable. States Parties are recommended to increase their low MACR (Minimum Age of Criminal Responsibility) to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. At the same time, the Committee urges States Parties not to lower their MACR to the age of 12. 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)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. "*

- **On the issue that criminal elements or syndicates make use of minors in the commission of crimes**

While there may be syndicates or criminal elements who take advantage of the provisions of RA 9344 by using children as accomplices to further their misdeeds, PAYO believes that all the more the children should be protected from these exploitations. The lowering of the age of criminal responsibility from 15 years old to 10 years old, for instance, is not the solution to this dilemma. Why should we punish children when it is clear that they are the ones being exploited? Shouldn't we punish the criminals or syndicates rather than the children? PAYO believes that the solution to this problem is to apprehend and to slap stiffer penalties on syndicates who use children in their crimes and not by punishing the children who are exploited.

- **On the effective implementation of the law**

The law was only passed in April 2006 and its proper implementation was not immediately facilitated since the Juvenile Justice and Welfare Council had to prepare guidelines for stakeholders in implementing the law. This took considerable time and effort since stakeholders had to be consulted also. It took more than a year for these guidelines (guidelines for social workers, the police, local government units, etc.) to be completed. In fact, the Guidelines for Social Workers in Assessing Discernment, a crucial tool in evaluating the criminal responsibility of minors, were just completed early this year. This being the case, one cannot truly say that the law has failed in its mandate to promote juvenile justice and welfare since it has not yet been implemented in full swing.

While several reports have attributed the reported increase in the crimes "allegedly committed by minors" to the passage of RA 9344, this allegation is unfair and is without scientific basis. There are no conclusive reports/ statistics that could claim that the reason why minors commit crimes is because of RA 9344. It must be noted that factors that drive children to commit offenses are many and for one to single out RA 9344 as the source of all problems is a generalization.

PAYO believes that the successful implementation of RA 9344 lies not only in the proper implementation of the provisions of the law, but more importantly on the realization of Restorative Justice Principles in promoting justice for children. Restorative Justice believes that equal importance should be provided to the concerns of the offender, the victim, and the community in resolving the impact of crimes. Crime is not just a violation of the law, but a violation of

relationships. It is therefore imperative that healing of relationships be facilitated to bring back order into a society. PAYO hopes that the principles of Restorative Justice may be truly accomplished in the implementation of RA 9344 --- that concerns of the victims may not just be relegated to the background, but truly given importance; that offenders may be rehabilitated and successfully reintegrated into their families and communities and; that communities may play a more active role in preventing juvenile crime and ensuring peace in their areas.

SIGNED IN BEHALF OF PAYO MEMBERS:



Melanie Ramos-Llana  
PAYO CORPORATE SECRETARY

Noted by:



Rodolfo D. Diamante  
PAYO PRESIDENT