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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Письменное представление Комиссии по правам человека Филиппин*

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Секретариат Совета по правам человека настоящим препровождает сообщение, представленное Комиссией по правам человека Филиппин** и воспроизводимое ниже в соответствии с правилом 7 b) правил процедуры, содержащихся в приложении к резолюции 5/1 Совета, согласно которому участие национальных правозащитных учреждений основывается на процедурах и практике, согласованных Комиссией по правам человека, включая резолюцию 2005/74 от 20 апреля 2005 года.

* Национальное правозащитное учреждение с аккредитационным статусом категории «А», присвоенным Глобальным альянсом национальных учреждений, занимающихся поощрением и защитой прав человека.

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Annex

Statement of the Commission on Human Rights of the Philippines on the lowering of minimum age of criminal responsibility

1. On 21 January 2019, the House of Representatives Committee on Justice released a report recommending that the minimum age of criminal responsibility should be lowered to nine (9) years old.¹ Rep. Doy Leachon, the Committee Chair, reasoned that it was to protect children from being used by syndicates.² Two days after, on 23 January 2019, the House approved the bill on second reading, but amended the age to twelve (12) years old.³ They also proposed to change the MACR to the term minimum age of social responsibility. On 28 January 2019, the House of Representatives approved on third and final reading its version of the bill.⁴ At the Senate, on 25 January 2019, after holding only two (2) hearings, Senate Justice Committee Chair Sen. Richard Gordon said he would recommend lowering the MACR to twelve (12) years old.⁵ The bill will be up for deliberations and amendments, before it gets approved on 2nd and then on 3rd and final reading. As of 30 January 2019, eleven (11) senators have already signed the joint panel report seeking to lower the minimum age of criminal responsibility (MACR) from 15 years old to 12 years old.⁶ When the respective chambers were asked why they are bent on passing a law that lowers the MACR, House Speaker Gloria Macapagal-Arroyo⁷ and Senate Justice Committee Chair Sen. Richard Gordon⁸ confirmed that the move was in support of a request from the President.

2. In response to the Congress' efforts to lower the MACR, the Commission on Human Rights of the Philippines issued an advisory dated 6 February 2019, where it stated the following:

On the Philippines' obligation to the UNCRC

3. The Commission wishes to remind our legislators that the Philippines, being a signatory to the United Nations Convention on the Rights of the Child (UNCRC) ratified on 21 August 1990, commits itself in recognizing the rights of every child, especially those accused of, alleged as, or adjudged as having violated the provisions of our Penal Laws, or those we refer to under R.A. No. 9344 as children in conflict with the law (CICL). We have committed to treat the CICL in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account their age and desirability of promoting his/her reintegration with the society.

¹ Gaea Katreena Cabico, *Groups, lawmakers hit House panel's approval of bill lowering age of criminal responsibility*, PHILSTAR, available at <https://www.philstar.com/headlines/2019/01/21/1886958/groups-lawmakers-hit-house-panels-approval-bill-lowering-age-criminal-responsibility> (last accessed 27 January 2019).

² Id.

³ *House changes proposed age of criminal responsibility to 12 years old*, PHILSTAR, available at <https://www.philstar.com/headlines/2019/01/23/1887527/house-changes-proposed-age-criminal-responsibility-12-years-old> (last accessed 27 January 2019).

⁴ Jose Cielito Reganit, House approves bill lowering age of 'social responsibility' to 12, Philippine News Agency (PNA), available at <http://www.pna.gov.ph/articles/1060324> (last 31 January 2019).

⁵ Joyce Ilas, *Gordon to recommend lowering age of criminal liability to 12*, CNN PHILIPPINES, available at <http://cnnphilippines.com/news/2019/01/25/dick-gordon-minimum-age-of-criminal-responsibility.html> (last accessed 27 January 2019).

⁶ Maila Ager, 11 senators sign report lowering age of criminal liability to 12, Philippine Daily Inquirer, available at <https://newsinfo.inquirer.net/1079539/11-senators-sign-report-lowering-age-of-criminal-liability-to-12> (last accessed 31 January 2019).

⁷ Jess Diaz, *GMA moves to lower age of criminal liability*, PHILSTAR, available at <https://www.philstar.com/headlines/2019/01/20/1886568/gma-moves-lower-age-criminal-liability> (last accessed 27 January 2019).

⁸ Amita Legaspi, *Gordon insists on lowering age of criminal responsibility to 12*, GMA NEWS, <https://www.gmanetwork.com/news/news/nation/682738/gordon-insists-on-lowering-age-of-criminal-responsibility-to-12/story/> (last accessed 31 January 2019).

4. The principle of protecting a child's well-being and development is always intertwined with that of their best interest. It should always be a primary consideration in the context of administration of juvenile justice.⁹ Best interest of the child refers to the totality of the circumstances and conditions that are most congenial to the survival, protection, and feelings of security of the child and most encouraging to the child's physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.¹⁰

5. The Philippines has already complied with the recommendation stated in General Comment No. 10 (2007) upon the enactment of RA 9344 increasing the MACR from nine (9) years to the present fifteen (15) years of age. Under the said General Comment, MACR should not be set at too low a level and encouraged States to increase the existing low minimum age to an internationally acceptable level of at least twelve (12) years of age.¹¹ In the same way, they encouraged that it is also good to increase the MACR, if possible, to fourteen (14) or sixteen (16). It was further recommended that State parties should under no circumstance reduce the minimum age of criminal responsibility.¹²

6. The Commission reiterates that, moving further from our international obligations, lowering the MACR, be it to 9 or 12 years old is a simplistic response that disregards the complexity of juvenile delinquency. The problem on juvenile delinquency, prefatorily, is rooted on socio-economic factors, such as poverty and lack of opportunities that lead to exploitation of minors, who, in view of their vulnerability, are victims of circumstance more than anything else and not perpetrators of crimes.¹³

Violation of the Philippines' Responsibilities to the UNCRC

7. We note that Article 41 of the UNCRC also states that if the laws of the country provide better protection of children's rights than the articles in the Convention, the laws of the country should apply.¹⁴ In this case, the Philippine government cannot cite the suggested minimum age of criminal responsibility at twelve (12) years old as recommended by the Committee on the Rights of the Child through General Comment No. 10.¹⁵ The Commission also wishes to emphasize that the same Comment urges the State not to lower the MACR if it is fixed at a higher age.

The Commission's Stand on the Proposal

8. The Commission, through the statement¹⁶ of Commissioner Leah Tanodra-Armamento, reminds our legislators of the realities on the ground, which will be worsened by their proposed bill. Our jails are overly congested. The Subcommittee on the Prevention of Torture by the United Nations even finds that detention in the Philippine detention facilities is torture by itself. To lower the age to nine (9) will be a nightmare not only to the child but also to the jail management. We also note further that the government has only set up 58 operational Bahay Pag-asa out of the 114 required by the law. We note further that the present Bahay Pag-asa does not meet the standards required by the law as it does not have enough budget.

⁹ Committee on the Rights of the Child, General Comment No. 10 (2007), CRC/G/GC/10, <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (25 April 2007).

¹⁰ UNICEF Fact Sheet: A summary of the rights under the Convention on the Rights of the Child, available at https://www.unicef.org/crc/files/Rights_overview.pdf (last accessed 28 January 2019).

¹¹ Id.

¹² Id.

¹³ Commissioner Gwendolyn Pimentel-Gana, Commissioner, Commission on Human Rights of the Philippines, *On the proposal to lower the [minimum age of criminal responsibility]*, (23 January 2019) available at <http://chr.gov.ph/commissioner-gwendolyn-pimentel-gana-on-the-proposal-to-lower-the-age-of-minimum-responsibility/> (last accessed 28 January 2019).

¹⁴ UNCRC, art. 41. See also note 10.

¹⁵ *Supra* note 9.

¹⁶ Commissioner Leah Tanodra-Armamento, Commissioner, Commission on Human Rights of the Philippines, *On the proposal to lower the minimum age of criminal responsibility*, (23 January 2019) available at <https://www.facebook.com/chr.gov.ph/videos/vb.784522714997609/230827801180003/?type=2&theater> (last accessed 29 January 2019).

9. The Commission supports the position of these experts on the matter. What the Philippines needs is an evidence-based measure to address the issue of criminality, as raised by the President, and our legislators. However, to propose the lowering of the MACR is not the proper solution. We echo the former DSWD Secretaries and officers, in saying that “the current law already employs a good, holistic strategy that involves a multi-disciplinary approach to helping [children] in conflict with the law... Instead of amending it and focusing on the ages of the children, we call on Congress to support the existing superb efforts of government – especially local government – to rehabilitate these children.”¹⁷

10. Moreover, the Commission believes that passing on the responsibility and penalty to children because of the abuses of syndicates and other people is contrary to the duty of the State to protect their welfare and promote their best interest. Aside from this, it has not been proven that jailing children will prevent them from committing crimes. Studies have shown that this will even have negative effects on their development, as indicated in the position papers released by social workers, psychologists and other child rights experts.¹⁸ According to the Psychological Association of the Philippines (PAP), the law needs to consider the developmental maturity of children, as “[a]lthough they may be able to discern right from wrong action, it is their capability to act in ways consistent with that discernment that is undermined.”¹⁹ Moreover, children and adolescents are vulnerable to coercion, and are more susceptible to peer influence than adults.²⁰ This sets them up to be easily exploited by syndicates.

11. On a final note, the Commission wishes to emphasize that adjusting the proposed age of criminal liability from nine (9) to [twelve (12)] is not an act of compassion nor is it aligned with the government’s responsibility to uphold its obligation to protect the rights of children, including the most vulnerable and marginalised. We must stop shifting the burden to children and start addressing lapses in the law’s implementation; providing better support and guidance to children; as well as stricter means to curb syndicates and individuals who feed on our children’s vulnerabilities.²¹

12. The Commission strongly urged the government to look into its obligations to the United Nations Convention on the Rights of the Child and ensure that the measures they propose do indeed put the best interests of children as a primary consideration, in addressing whatever concerns they are raising.

¹⁷ Joint Statement of former DSWD Secretaries and Officers on the Minimum Age of Criminal Responsibility, 24 January 2019, *available at* <https://www.facebook.com/photo.php?fbid=2475761122493830&set=pcb.2475761239160485&type=3&theater> (last accessed 28 January 2019).

¹⁸ See Margaret Claire Layug, GMA NEWS, UNICEF, Save the Children oppose lowering age of criminal responsibility, *available at* <https://www.gmanetwork.com/news/news/nation/682011/unicef-save-the-children-oppose-lowering-age-of-criminal-responsibility/story/> (last accessed 27 January 2019). See also Psychological Association of the Philippines Position Paper on Substitute Bill to Lower Minimum Age of Criminal Responsibility, *available at* <https://www.facebook.com/148851815387/photos/pcb.10155607428780388/10155607427770388/?type=3&theater> (last accessed 27 January 2019).

¹⁹ Kitty Elicay, *Psychologists Say a 9-Year-Old’s Immaturity Makes Him Powerless Against Criminal Behavior*, SMARTPARENTING.COM.PH, *available at* <https://www.smartparenting.com.ph/life/news/psychologists-statement-age-criminal-responsibility-a00228-20190123> (last accessed 28 January 2019) *citing* Psychological Association of the Philippines Position Paper on Substitute Bill to Lower Minimum Age of Criminal Responsibility, *available at* <https://www.facebook.com/148851815387/photos/pcb.10155607428780388/10155607427770388/?type=3&theater> (last accessed 27 January 2019).

²⁰ Psychological Association of the Philippines Position Paper on Substitute Bill to Lower Minimum Age of Criminal Responsibility, *available at* <https://www.facebook.com/148851815387/photos/pcb.10155607428780388/10155607427770388/?type=3&theater> (last accessed 27 January 2019).

²¹ Statement of CHR spokesperson on the House of Representatives’ revised minimum age of criminal responsibility to 12 years old, *available at* <https://www.facebook.com/notes/commission-on-human-rights-of-the-philippines/statement-of-chr-spokesperson-on-the-house-of-representatives-revised-minimum-ag/1936704133112789/> (last accessed 28 January 2019).