

REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

**HUMAN RIGHTS ADVISORY ON THE
LOWERING OF THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY
CHR (V) A2019-002**

The Commission on Human Rights of the Philippines (hereinafter the 'Commission'), as the country's national human rights institution (NHRI), issues this Advisory pursuant to its mandate under the 1987 Philippine Constitution to monitor the government's compliance with international treaty obligations on human rights, and particularly to advise the government that any proposal to lower the minimum age of criminal responsibility (MACR) shall be in contravention with its treaty obligations particularly under the United Nations Convention on the Rights of the Child (UNCRC).

On The Proposal to Lower the MACR

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. When asked why there was a need to lower the MACR, House Speaker Gloria Macapagal-Arroyo, stated that it is because the president wanted it.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 When asked why, he stated that it was because President Duterte requested it.

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.*

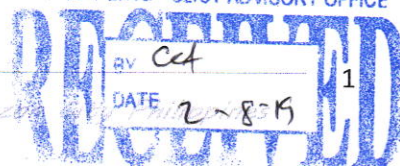
³ *House changes proposed age of criminal responsibility to 12 years old*, PHILSTAR, available at <https://www.philstar.com/headlines/2019/01/23/1887527/house-changes-proposed-age-criminal-responsibility-12-years-old> (last accessed 27 January 2019).

⁴ 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).

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).

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Commonwealth Avenue, U.P. Complex, Diliman 1101 Quezon City



The proposal to lower the minimum age of criminal responsibility has been recommended for approval by the Committees on Justice in both chambers of Congress. The Senate will subject such recommendation to a vote in the coming week.

This proposal to lower the MACR is not new. It began in 2016, as part of the campaign promise of President Duterte to wage war against illegal drugs. According to him, this measure was to prevent “the pampering of youthful offenders who commit crimes knowing they can get away with it.”⁶ He said, on his speech delivered in December 2016, that “[y]ou can ask any policeman or anyone connected with the law enforcement: We produce a generation of criminals,” as he pointed out that young children were becoming drug runners, thieves and rapists, and must be “taught to understand responsibility.”⁷

The Commission continues to be concerned with the adamant efforts of the government to lower the minimum age of criminal responsibility. As long as the State continues to push for this measure, the Commission will likewise continue to reiterate its position to oppose the same, for the reasons stated herein.

On the Philippines’ Obligations to the UNCRC

The Commission, along with other civil society organizations that focus on the promotion and protection of the rights of children, has been consistent with the stand to oppose the aforementioned proposal, reiterating, among others, that it violates the fundamental principles of child protection and welfare as provided for by laws, international commitments, as well as internationally-accepted standards and principles.⁸ 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.

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

⁶ Clare Baldin & Andrew Marshall, *Duterte targets Philippine children in bid to widen drug war*, REUTERS, available at <https://www.reuters.com/article/us-philippines-drugs-children-insight/duterte-targets-philippine-children-in-bid-to-widen-drug-war-idUSKBN15T1NB> (last accessed 28 January 2019).

⁷ *Id.*

⁸ Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the House of Representatives’ revised minimum age of criminal responsibility to 12 years old, available at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-house-of-representatives-revised-minimum-age-of-criminal-responsibility-to-12-years-old/> (last accessed 28 January 2019). See also Commissioner Gwendolyn Pimentel-Gana on the proposal to lower the [minimum age of criminal responsibility], 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).

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).

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

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

Violation of the Philippines' Responsibilities to the UNCRC

Lowering the MACR as proposed would constitute a clear violation of state responsibility to the UNCRC. Since the Philippines has already established a higher MACR through the enactment of R.A. No. 9344, we can no longer lower it as it will go against the progressive implementation of the CRC that requires state parties to continue to increase MACR to a higher age level. This proposed measure reverses the trajectory towards the fulfillment of children's rights to establish a minimum age below which children shall be presumed not to have capacity to infringe the criminal laws.¹³

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 encourages the State not to lower the MACR if it is fixed at a higher age.

Reasons stated below would also indicate that the proposed measure by the government is against the best interests of children in contravention with Article 3 of the UNCRC.¹⁶ Such proposal will ultimately be using children as scapegoats, blaming them for being used by syndicates.¹⁷ It does not address the root problems as to why children come into conflict with the law.

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 Convention on the Rights of the Child, art. 40, ¶ 3, 20 November 1989, 1577 U.N.T.S. 3 [hereafter UNCRC].

¹⁴ UNCRC, art. 41. See also note 10.

¹⁵ *Supra* note 9.

¹⁶ UNCRC, Art. 3.

¹⁷ Carlos Conde, *Children in the Philippines as Crime Scapegoats*, HRW, available at <https://www.hrw.org/news/2019/01/22/children-philippines-crime-scapegoats> (last accessed 28 January 2019).

The Commission's Stand on the Proposal

The Commission also 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.¹⁸

The Commission, through the statement¹⁹ 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.

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.²⁰ 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."²¹ Moreover, children and adolescents are vulnerable to coercion, and are more susceptible to peer influence than adults.²² This sets them up to be easily exploited by syndicates.

¹⁸ 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).

¹⁹ 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/chrgovph/videos/vb.784522714997609/230827801180003/?type=2&theater> (last accessed 29 January 2019).

²⁰ 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).

²¹ 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).

²² 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).

We also refer to the Joint Statement of former DSWD Secretaries and Officers on the matter, who stated that “[c]hildren commit crimes for a reason. Social workers are trained to determine these and these reasons are mostly rooted in poverty, lack of proper parental care and guidance, peer pressure, and other social factors. Children who commit crimes are victims. They are almost always, if not often, children who were abused (sexual, physical, psychological, mental, economic, etc.), exploited (commercially or sexually), abandoned or neglected.”²³ They also stated that they often come from dysfunctional families, out of school, living in the streets, or members of gangs.²⁴

We also wish to note that even the Juvenile Justice and Welfare Council, the foremost body monitoring the implementation of the law, has stated that the proper solution is to fully implement the law. Atty. Tricia Clare Oco, the executive director of the said council, has stated that some Bahay Pag-asa centers have “subhuman conditions” due to budget constraints.²⁵ She said that, “[t]hey lack the minimum staff requirement; they even lack food for children. Some of the Bahay Pag-asa that we saw are worse than prisons. They don’t have programs, beds and cabinets.” If we were to just focus on lowering the MACR, it will not solve the current problems of the system, and worsen the situation of children who have come into conflict with the law. We will be producing a generation of criminals, not because of the MACR, but because of the failure of the government to address the root problems faced everyday by our children.

The Commission supports the position of these experts on the matter. What we need 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.”

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.²⁶

²³ 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).

²⁴ *Id.*

²⁵ Gaea Katrina Cabico, *Juvenile Justice Welfare Council: Some Bahay Pag-asa centers ‘worse than prisons’*, INQUIRER, available at https://www.philstar.com/headlines/2019/01/22/1887224/juvenile-justice-and-welfare-council-some-bahay-pag-asa-centers-worse-prisons?fbclid=IwAR1lRVvFBwx-3WoZGXrFCY_8GXlmQmouT27SWxUjb7xmZ4r-9uZNx7ieAYQ (last accessed 28 January 2019).

²⁶ 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).

The Commission strongly urges 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.

ISSUED this 6th day of February 2019, Quezon City, Philippines.



JOSE LUIS MARTIN C. GASCON
Chairperson



KAREN S. GOMEZ-DUMPUT
Commissioner

(On Official Travel)
GWENDOLYN L.L. PIMENTEL-GANA
Commissioner



LEAH C. TANODRA-ARMAMENTO
Commissioner



ROBERTO EUGENIO T. CADIZ
Commissioner