



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

**OBJECTIONS TO THE LOWERING OF THE AGE
OF CRIMINAL LIABILITY**

An Advisory from the Commission on Human Rights

CHR (IV) – A2009-004

The Commission on Human Rights (CHR) welcomes any efforts to improve the legislative framework affording special protection to a child. One of the landmark laws of recent vintage that called for the adoption of a child-oriented system in the administration of juvenile justice is Republic Act 9344 or the Juvenile Justice and Welfare Act. A specific point of victory for child advocates and lobbyists for the passage of the Act was the increase in the age of criminal liability from nine (9) years to fifteen (15) years of age.

The CHR has a special affinity with the said Act as it further reinforced the role declared by the Philippine Constitution that the Commission is an independent institution tasked to monitor the compliance of the Government of its obligations under international human rights instruments. (Sec. 11, RA 9344)

Thus, as a monitor of international human rights treaties to which the Philippine Government is a State Party, the CHR is impelled to propound very strong objections to the recent move to lower the age of criminal liability.

The proposal to lower the age of criminal liability back to ten (10) years (i.e. House Bill No. 3370) or even lower, at nine (9) years of age (i.e. House Bill No. 3867), is **completely retrogressive and contrary to the best interests of the child**.

Under the UN Convention on the Rights of the Child (UNCRC), a State Party is urged to treat the child in conflict with the law in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and the desirability of promoting the child's reintegration and his or her assumption of a constructive role in society. (Article 40)

In line with the treatment of these children that are deemed in conflict

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with the law, the UNCRC is again informative when it reminds State actors and institutions that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

How will the best interests of the child be served if the age of criminal liability is lowered? The CHR cannot fathom any justifications for the same. Proponents of the amendment believe that due to the massive influence of modern communications, children have become more mature and more informed. Recall, however, that the age of criminal liability is hinged on the concept of discernment whereby the child can only be held accountable and responsible for his or her actions if he or she knows the difference between right and wrong and understands the consequence of said actions. Influx of information from whatever source does not equate to a child having discernment. Information must still be processed and CHR looks to parents, schools and other social institutions, like the religious, that can help the child acquire needed discernment.

The writers and solons that were responsible for defining the age of fifteen (15) as the age of discernment were guided by two studies: "Beyond Innocence: A Study on the Age of Discernment of Filipino Children" by the Council for the Welfare of Children and "Arrested Development: The Level of Discernment of Out-of-School Children and Youth" conducted by the Philippine Action for Youth Offenders (PAYO). In fact, the PAYO study revealed that at eighteen (18) years of age, the out-of-school children and youth tested were at a level of discernment comparable to that of the average 7-year-old. Therefore, if there be any legitimate cause for amendment of the age of criminal liability as it now stands at fifteen (15), it should not be to decrease the same, but even to increase it to age eighteen (18).

The legislative action of lowering the age of criminal liability must be justified using the principle of best interests of the child. It behooves, therefore, the proponents of the amendment to produce an objective and scientific study the age of discernment of Filipino children. In absence of such a study that can prove there is merit to treat nine (9) or ten (10) as the proper age of discernment, the CHR opines that the prevailing statutory rule should remain.

The Beijing Rules or the United Nations Minimum Rules for the Administration of Juvenile Justice further requires that the age of criminal liability "shall not be fixed too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." (Rule 4)

The CHR reminds that when the age of criminal liability was pegged at nine (9) years of age under the previous Philippine criminal law framework, the UN Committee on the Rights of the Child, in its Concluding Observations

on the second periodic report of the Philippines, recommended for Government to *"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."* Thus, to amend the current law fixing criminal liability at fifteen years, after the law has been lauded and celebrated as a positive step in the administration of juvenile justice, will unduly put the Government under critical light. Particularly so because the lowering of the age of criminal liability will necessarily and consequentially increase the number of children in detention, a phenomenon that has given much unfavorable international publicity to the Government.

The CHR urges the proponents of the amendment to revisit the essence and principle of restorative justice, the framework in which the Juvenile Justice and Welfare Act rests. To lower the age of criminal liability is punitive and not in sync with the ideals of restorative justice.

The CHR has regularly engaged children in conflict with the law and the latter resoundingly expressed comfort in the protective stance of the JJWA. In the conduct of legislative review, therefore, it is prudent also for the proponents of the amendment to consult meaningfully with children on the matter. The voices of children must find a platform to influence the direction of governance.

The CHR is concerned that the attention given to the lowering of the age of criminal liability removes the focus of the real need to assess and evaluate the implementation of the law. Efforts must instead be channeled into studying the difficulties, logistic or institutional, encountered by the front-line service providers. Other indicators for a meaningful implementation of the law is the existence of local comprehensive juvenile intervention programs and its appended budgetary allocation, if any, and subsequent liquidation.


Perhaps the most telling sign of the law not being properly implemented is the continuing presence of children in jail. While youth homes are slowly being built, some local governments still need to be prodded to allocate resources for the construction of the same. Another gray area in the implementation is a clarification on where individuals who have reached the age of majority, or eighteen (18), but were minors at the time of the commission of the crime, will be brought. Indeed, there might be some difficulties in putting these individuals with children in youth homes. Finally, there must be standardization of the process on how to deal with children criminally exempt but must have access to appropriate intervention programs.

Verily, much examination on the Juvenile Justice and Welfare Act is required. However, lowering the age of criminal liability is not the solution imagined. As State Actors and instrumentalities, much is expected from the

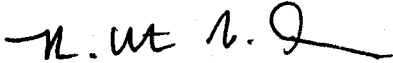
different branches of government to promote, protect and fulfill the human rights of everyone including children. A deep institutional introspection guided by the principle of the best interest of the child will undoubtedly fortify the position that maintaining the age of criminal liability at fifteen (15) years of age is more in consonance with the Constitutional directive that the "State shall defend 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." (Sec. 3, Art. XV, Constitution)

In view of the foregoing, the Commission on Human Rights strongly opposes any measure that will decrease the age of criminal liability contrary to what is provided for under the Juvenile Justice and Welfare Act.

Issued this 23rd day of February 2009 at Quezon City, Philippines.


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