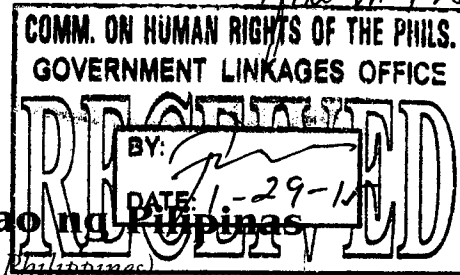




Republika ng Pilipinas

Komisyon ng Karapatang Pantao ng Pilipinas

(Commission on Human Rights of the Philippines)



**POSITION PAPER ON
ON SECTIONS 8 & 9 OF HOUSE BILL No. 2300¹ which lowers the
Minimum Age of Criminal Responsibility (MACR) and would try
children as adult if charged with a crime punishable by Level 4**

The Commission on Human Rights (CHR) has been consistent for over five years in opposing the lowering of the Minimum Age of Criminal Responsibility (MACR). It was only last year when an amendment to Republic Act 9344 or *the Juvenile Justice and Welfare Act 2006*, was signed and became effective.² The amendment maintained the MACR to 15 years old because most of the legislators and even the President were convinced that lowering the MACR is not the solution to the problems of juvenile offending. Despite this, another bill³ was filed in Congress which seeks again the lowering of the MACR even before the effectivity of the amendment to R.A. 9344. The Commission is of the opinion that too much time and government resources have been wasted debating on whether to lower the minimum age of criminal responsibility, when what should have been done is improve the implementation of our existing laws on juvenile offending.

The Commission strongly opposes the proposal to lower the MACR from 15 years old to 13 years old for the following reasons:

- It contravenes the 1987 Philippine Constitution wherein the State ensures and defends the right of children from all forms of conditions prejudicial to their development.⁴ Lowering the MACR oversimplifies the nature of juvenile offending. It violates the fundamental principles of child protection and welfare, and ignores the available scientific knowledge and research about child development. Above all, it is against the best interest of the child.

¹ entitled "An Act Instituting the Philippine Code of Crimes to Further Strengthen the Criminal Justice System, Repealing for the Purpose Book One of Act No. 3815, as amended, otherwise known as the Revised Penal Code of the Philippines and other Special Laws on Crimes." Authored by Cong. Niel C. Tupas, Jr.

² Signed October 3, 2013 and became effective last November 7, 2013

³ House Bill 2300 entitled "An Act Instituting the Philippine Code of Crimes to Further Strengthen the Criminal Justice System, Repealing for the Purpose Book One of Act No. 3815, as amended, otherwise known as the Revised Penal Code of the Philippines and other Special Laws on Crimes." Authored by Cong. Niel C. Tupas, Jr.

⁴ Art. XV, Section 3

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- The CHR believes that lowering the MACR will just punish the children while remaining oblivious to the root causes of youth offending and vulnerabilities arising from the lack of a protective and caring environment brought about by failures of individuals, systems and the larger society.
- The Commission is also concerned on the exploitation of children to commit crimes by syndicates. However, we cannot agree in lowering the MACR to punish children as a way to eradicate the practice of exploitation. The real perpetrators are the syndicates and the adults, not the children. The latter are the victims and should not bear the heavy penalty. We should go after the syndicates and the adults.
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice also known as "The Beijing Rules" states "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." In its Commentary on the Age of Criminal Responsibility it further stated that "The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behavior."⁵
- The Commission further reminds the government that we are a state party to the Convention of the Rights of the Child and the Committee for such Convention has in fact commended the Philippine government in 2009, for raising the MACR from 9 years old under the old Revised Penal Code to 15 years old under Republic Act 9344. The Committee also raised concerns on several initiatives to lower the age.⁶
- The Commission would like to clarify that General Comment No. 10⁷ issued by the Committee on the Rights of the Child states that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. State parties with MACR lower than 12 years are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age **AND TO CONTINUE TO INCREASE IT TO A HIGHER AGE LEVEL.**⁸ (emphasis ours). At the same time, the Committee urges State parties **NOT TO LOWER THEIR MACR**

⁵⁵ General Assembly Resolution 40/33 of 29 November 1985

⁶ CRC/C/PHL/CO/3-4, 22 October 2009, par 80

⁷ CRC/C/GC/10, 25 April 2007

⁸ Id at par 32

TO THE AGE OF 12⁹ (emphasis ours). Clearly, if the set MACR is already above 12 years old, it was not the intention of the Committee to give a justification for State Parties to lower their already increased minimum age. Without a doubt, once a higher MACR has been established, the State must not lower it but must only progressively increase the minimum age. Since under R.A. 9344 as amended, we have set the MACR to 15 years old, there is no justification to lower it as being attempted in the subject bill.

- It will be a shame to the Philippines if we lower MACR from 15 to 13 years old. It means that the Philippines is anti-poor. Most CICA come from poor and low-income families. As stated earlier, almost half of the reported crimes allegedly committed by children are petty crimes of theft, robbery and other crimes against property. The children are more likely motivated to commit a crime because of their desire to survive or were forced to engage to such activities. Being poor, they will not be able to afford and secure competent legal representation which would definitely result to their incarceration.

Scientific Basis

- Lowering of the MACR cannot be based on the assumption that children nowadays are more mature because of their exposure to technology and information. Behavioral immaturities of children have physiological basis. Recent advances in brain imaging have demonstrated that adolescent brain is structurally and functionally immature.¹⁰ Human brain continues to develop until the age of 21, and continues to mature as late as 25 years old.¹¹ The process of normal brain development suggests that full cognitive maturity may not occur until late in adolescence or perhaps not even until the early 20s. Scientific researches show that the frontal lobes of the brain, which are responsible for self-control and reasoning, mature at approximately fourteen (14) years of age.¹² These scientific proofs of the limitations of children cannot be ignored in determining the age of criminal responsibility.
- The correlation of brain development and regulation of one's behavior suggests that the "early onset" of offending may be caused by an impairment of brain structure and functioning due to significantly greater childhood adversity, poverty and abuse. Child psychologists and juvenile justice experts have explained the relative incapacity of children, and the dynamics that characterize their

⁹ Id at par 33

¹⁰ Juvenile Justice and Welfare Council Position Paper on the New Criminal Code citing US Supreme Court Terrance Jamar Graham vs. State of Florida (No. 08-7412, 08-7621), Brief for the American Medical Association and the American academy of Child and Adolescent Psychiatry as Amici Curiae in Support of Neither Party.

¹¹ United Nations Children's Fund (UNICEF), "The Implications of Lowering the Age of Criminal responsibility," citing the study of the Royal Society, "Brain Waves Module 4: Neuroscience and the law," December 2011, on page 13.

¹² United Nations Children's Fund (UNICEF), "The Implications of Lowering the Age of Criminal responsibility," citing the study of Elliot, C., "Criminal responsibility and children: A new defence required to acknowledge the absence of capacity and choice," 2011 Journal of Criminal Law, 75 JCL, 308.



decision-making processes. Psychologists agree that fifteen (15) years, as the earliest possibility of criminal responsibility, is consistent with scientific knowledge on brain maturation.¹³

- There are studies which have shown that it is not the age which motivates a child to commit offenses but the circumstances around him that is beyond his control.¹⁴ The direct and undeniable correlation between poverty and involvement of children in crime is evident in statistics indicating that almost 50% of crimes committed by children are theft or crimes against property.¹⁵

Lastly, the Commission strongly objects to Section 9 of the bill which states that children if charged with a crime punishable by Level 4 will be tried as an adult. This is unjust and violates the principle of non-discrimination in international law. All children who come in conflict with law have the right to all the standards provided in Article 40 of the Convention on the Rights of the Child which means that every person under the age of 18 at the time of the alleged commission of an offense must be treated in accordance with the rules of juvenile justice.¹⁶

In conclusion, the CHR strongly opposes the lowering of the minimum age of criminal responsibility under **Section 8**, and the trying of children as adults if charged with a crime punishable by Level 4 under **Section 9** of **House Bill 2300** entitled "*An Act Instituting the Philippine Code of Crimes to Further Strengthen the Criminal Justice System, Repealing for the Purpose Book One of Act No. 3815, as amended, otherwise known as the Revised Penal Code of the Philippines and other Special Laws on Crimes*" for the reasons clearly stated above.

Issued this 12th day of December 2014, Quezon City, Philippines.


LORETTA ANN P. ROSALES
Chairperson


MA. VICTORIA V. CARDONA
Commissioner


NORBERTO DELA CRUZ
Commissioner


JOSE MANUEL S. MAMAUAG
Commissioner

¹³ Position Papers (2012) of the Psychologists Association of the Philippines and Maria Lourdes A. Carandang (MLAC) Institute

¹⁴ Research on the Situation of Children in Conflict with the Law in Selected Metro Manila Cities by Save the Children (AKAP); Risk Factors and Causal Processes in Juvenile Delinquency: Research and Implication for Prevention by L.P. Alampay

¹⁵ PNP Statistics shows that 44% of the total reported crimes on children comprise theft between 2002 to 2011

¹⁶ CRC/C/GC/10, 25 April 2007, pars 36-39