FOREWORD

“In the child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored.” - Geneva Declaration on the Rights of the Child

In Consuelo Foundation’s work of prevention and treatment of the abuse of children, the promotion of the rights and welfare of the Filipino Child is of paramount importance. However, we find that those who are charged with the upbringing of children - from the biological family, surrogate parents, or caring institutions - have limited knowledge of the various laws and ordinances that impact on children and that are already in effect. To get a good understanding of the laws affecting children and a grasp on how their responsibilities have been affected by the numerous existing laws and international covenants is our aim in supporting the publication of this compendium.

As Consuelo Foundation focuses on the disadvantaged and as well as abused children, the abandoned and neglected, the prostituted and exploited, and equally important - those who come in conflict with the law - its first line of comfort and instrument for restoring hope to those who have lost it, are the laws that look after the Filipino child. We hope that through this compendium, an understanding of those laws will become less formidable and lead to more creative approaches to positive child development.

Consuelo Foundation Philippine Branch (CFPB) commends Professor Elizabeth Pangalangan and the lawyers and writers who helped produce this second edition of “Looking After Filipino Children.” I did not realize it would be this comprehensive as the first edition contains less than half of its number of pages. This only shows that the political infrastructure for the protection, caring, and nurturance of the Filipino child has been dynamic and enriching.

Ray Dean Salvosa
Managing Director
Foreword to the First Edition

Ah! What would the world be to us if the children were no more? We should dread the desert behind us worse than the dark before.

Longfellow, Children, St. 4

Everyone has a special niche in his heart for children. As aptly stated by Cicero, of all nature’s gifts to the human race, children are the sweetest. Consequently, the rights and welfare of children should be secure. However, this belief has not always been in consonance with reality, history being replete with instances of society’s indifference to the plight of children.

The advent of modern age has, however, led to the recognition that the youth, being the nation’s most valuable natural resource, need special care and protection. It is now undisputed that the State has an interest in the rights and welfare of children. With this recognition came a consequence shift in their treatment by the State. By way of illustration, before, the primary objective of adoption laws was to provide childless couples with children; now, the paramount consideration in adoption is the promotion of the welfare of the child, always taking into account his or her best interests.

Today, while parents remain primarily charged with the upbringing of children, this responsibility has been affected by numerous laws passed, not only by the State, but also by the international community, directly and indirectly affecting children. With the sheer number and diversity of these statutes and international covenants, particularly the Convention on the Rights of the Child which the Philippines ratified in July 1990, this compilation and commentaries on these various laws are a welcome development in the effort to promote the rights and welfare of children. While much remains to be done, this collaborative undertaking of Professor Elizabeth Pangalangan and the project team on the one hand, and the Children and Youth Foundation of the Philippines on the other, is a promising one whose significance needs no emphasis.

Moreover, the publication of this work is timely, considering the recent establishment by Republic Act 8369 of family courts having jurisdiction over civil and criminal cases involving children. This book will certainly be an indispensable reference in these proceedings for judges, law practitioners, social workers, psychologists and law students, as well as for those who are actively involved in promoting the rights and welfare of children, whether individuals or organizations.

Flerida Ruth P. Romero
Justice of the Supreme Court of the Philippines
Looking After Filipino Children was first published in 1998 and was soon out-of-print due to demand from students, lawyers, teachers and fellow advocates for children’s rights. Between then and now, there has been much progress in the relevant law. Significant legal measures have been enacted to advance the rights of children, but sadly there have also been new threats to their rights.

This edition updates the laws and explores these changes at the international and national levels. Readers will notice the new format. In the first edition, the compendium of laws was the main feature and there were short commentaries that followed. This edition, on the other hand, begins each chapter with a paper that explains the present state of the law and appends the collection of laws as supporting materials for the author’s assessment and recommendations.

Chapter I of the book starts with the Legal Framework on Child’s Rights and Welfare and looks at the international conventions, mainly the Convention on the Rights of the Child, and how these spurred the development of children’s rights as a special and separate field of study and advocacy in the Philippines and elsewhere. The chapter then discusses several specific situations where the child is particularly vulnerable. Part II on Children in Especially Difficult Circumstances examines the rights of children with disability, children in conflict with the law, children in armed conflict, children engaged in labor, and street children. The methodology and user’s guide in the chapter on Children with Disability sets the tone and explains how the author’s piece can be best understood in reference to the compendium that accompanies each chapter.

The book ends with a look at various situations where the “best interest of the child” has been invoked and by whom, and how the courts’ appreciation of facts has led to the shifting application of this standard. Part III thus looks at the rights of the child, the duties of parents and limits to their authority, and the controversial (at least in the Philippines) and timely issue of adolescent reproductive health, which is an arena where we see a clash between children’s rights and their parents’ authority.

I thank my co-authors University of the Philippines law professors Raul C. Pangalangan, Patricia Salvador-Daway, H. Harry L. Roque, Ibarra M. Gutierrez and Rowena Daroy-Morales and research associates, Sherwin Dwight O. Ebalo and Liway Czarina S. Ruizo. Our main financial support comes from the Consuelo Foundation, which surprised me with an email earlier this year, asking me to update this book. I would also like to acknowledge the help of Associate Dean Concepcion L. Jardeleza, Guiller-Kristoffer L. Lamug and Elizabeth Sy-Pamplona and the institutional support of the U.P Institute of Human Rights and ReproCen.

Elizabeth Aguiling-Pangalangan
Editor
August 2011
The Authors

Raul C. Pangalangan teaches Constitutional Law and Public International Law at the University of the Philippines (U.P.), where he has served as Law Dean (1998 -2005). He was Visiting Professor at the Harvard Law School, The Hague Academy of International Law, Melbourne University, Hong Kong University, the Irish Centre for Human Rights, and the University of Puerto Rico. He has also lectured before the Japan Society of International Law, the Thessaloniki Institute of International Public Law, and for the International Committee of the Red Cross. He sits in the governing council of the International Association of Constitutional Law and of the Asian Society of International Law. He also teaches at the Philippine Judicial Academy.

Dr. Pangalangan has appeared before the Supreme Court on leading constitutional issues. He comments on public issues through his Op-Ed column in the Philippine Daily Inquirer and as chair of Bantay Katarungan.

He received his A.B., cum laude, and LL.B. degrees from U.P. He obtained his LL.M. and S.J.D. degrees at the Harvard Law School, where he won the Laylin Prize for best thesis in international law and the Sumner Prize for best dissertation on issues relating to international peace.

Elizabeth Aguiling-Pangalangan is a professor at the University of the Philippines (U.P.) College of Law where she teaches Persons and Family Relations, Private International Law, Children’s Rights, and Legal Ethics, among others. She is the Director of the U.P. Institute of Human Rights and heads the Reproductive Health Rights and Ethics Center for Studies and Training (ReproCen). She is a lecturer at the Philippine Judicial Academy.

She obtained her A.B. and LL.B. degrees from U.P. and her LL.M. degree from Harvard Law School, Cambridge, MA. She was Visiting Scholar (1997-1998) and Research Fellow (2007) at East Asia Legal Studies of HLS, and in 2005 enjoyed a fellowship at the International Family Planning Leadership Program of the International Health Program and the University of California, where she won the Leadership in Gender Equity award.

Professor Aguiling-Pangalangan sits in the national matching committee for the Domestic Adoption Act, which she drafted in 1995. She was a member of the technical drafting committee for the implementing rules of the Magna Carta of Women in 2010 and of the committee for the 2006 and 2010 revisions of the National Ethical Guidelines on Health Research, with focus on research involving children. This year she was engaged as a national expert for the WHO-DOH Joint assessment of the national capacity to implement tobacco control policies in the Philippines.

Patricia Salvador-Daway is the former Associate Dean of the University of the Philippines (U.P.) College of Law and was concurrently Supervisor of the U.P. Law Center (2005-2011). Prior to her stint in the UP College of Law, where she also served as College Secretary and where she is presently an Associate Professor, she was a Labor Arbiter in the National Labor Relations Commission from 1986 until 1994.
A regular speaker in the Legal Forum for Filipino Migrant Workers in Tokyo, she has been a member of the Board of Directors of the Kapisanan ng Migrating Pilipino, Inc. since 2002. More recently, she was elected President of the Asian Society of Labor Law (Asian SLL) for a two-year term.

Professor Daway completed both her A.B. and LL.B. degrees from U.P. As a new lawyer, she served as a Technical Assistant of Supreme Court Justice Felix V. Makasiar before joining her parents in their law practice. Much later, she served as the alternate member of then Special Assistant to President C. C. Aquino, Justice FRP Romero to the Cabinet Assistance System.

Herminio Harry L. Roque, Jr. is an Associate Professor at the University of the Philippines (U.P.) College of Law where he teaches International Humanitarian Law, Public International Law, Constitutional Law, Media Law, and Criminal Law. He is the director of the UP Institute of International Legal Studies (U.P.I.L.I.S.) and chairperson of Center for International Law (Centerlaw).

He obtained his B.A. in Economics and Political Science from the University of Michigan Ann Arbor, Michigan, USA (1986), LL.B. degree from the U.P. College of Law (1990) and his LL.M. (Graduated with Merits) from the London School of Economics and Political Science University of London, United Kingdom (2006).

Prof. Roque was admitted to the Philippine Bar in May 1991 and to practice before the UN War Crimes Tribunal for Rwanda in 2004. He is the first Asian admitted to practice before the International Criminal Court in 2005. In 2006, he was a recipient of the Foreign Publication Award, U.P. He is a member of the board for the International Criminal Bar, The Hague Governing Council, and the Asian Society of International Law, Singapore.

Ibarra “Barry” M. Gutierrez III is an Assistant Professor at the University of the Philippines (U.P.) College of Law where he teaches Human Rights and Criminal Law. For 10 years, he was the Director of the U.P. Institute of Human Rights, the youngest ever to hold the position. In May 2011 he was appointed Undersecretary for the Office of the Political Adviser by the President of the Philippines.

Prof. Gutierrez holds Bachelor's Degrees in Economics and Law from the U.P. In 2004, he obtained his LL.M. in Public Service Law from New York University (N.Y.U.), where he studied under a joint scholarship grant from the Fulbright Foundation and the N.Y.U. Global Public Service Law Project.

He has been active in the Philippine human rights movement since his student days in U.P., where he was Chairperson of the University Student Council and Editor of the student paper, the Philippine Collegian. He has acted as legal counsel, consultant, and adviser on numerous initiatives undertaken by NGOs, people’s organizations, government agencies and legislative offices, principally in relation to human rights concerns.

Rowena Daroy-Morales is an Assistant Professor of the University of the Philippines (U.P.) College of Law, where she also obtained her LL.B. degree as a Dean’s Medalist in 1993. She graduated with a B.A. degree in Communications majoring in Broadcast Communication from the U.P. in 1973, and where she also earned her M.A. degree in Communications from the College of Mass Communication.

Professor Morales was a Law Associate in Sycip Salazar Gatmaitan Law Firm, a Labor Auditor of Verite, Inc. and the Lead Facilitator of the PHILJA-Supreme Court Project on Change Management and Case Management. She was also the Director of the Institute of Judicial Administration of the U.P. Law Center. She is currently the Director of the U.P. Office of Legal Aid, a lecturer in MCLE, an Executive
Committee member of the Gerry Roxas Foundation Inc., and a lawyer-on-call for the Reception and Study Center for Children of the Department of Social Welfare and Development.

Liway Czarina S. Ruizo is currently a Junior Faculty member of the Department of English and Comparative Literature of the College of Arts and Letters, University of the Philippines (U.P.) Diliman where she teaches English Language and Introductory Literature course works. She is a senior evening law student at the U.P. College of Law, with an undergraduate degree of B.A. in English Studies major in Language from the U.P. Diliman obtained in 2008.

She has been working with, and is continuously inspired by children as a former teacher of English as a Second Language to Korean exchange students, and a previous Sunday school teacher for the Preschool and Toddler classes at the ecumenical Church of the Risen Lord, a campus-based church.

Sherwin Dwight O. Ebalo recently obtained his Juris Doctor degree from the University of the Philippines (U.P.), College of Law in 2011, and his undergraduate degree in B.S. Management Engineering from the Ateneo de Manila University in 2006.

He worked as the academic research assistant of Prof. Elizabeth Aguiling-Pangalangan, and as a research associate for the University of the Philippines Center for Integrative Development Studies (U.P.C.I.D.S.). In 2009 to 2010, he worked on W.H.O-U.P.C.I.D.S. projects on tobacco control.

In 2010, he presented his paper on LGBT and women’s rights in the First Southeast Asian Human Rights Conference in Bangkok, Thailand, where his paper was selected for publication by the Southeast Asian Human Rights Network.
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A LEGAL FRAMEWORK FOR CHILDREN'S RIGHTS AND WELFARE

Elizabeth Aguiling-Pangalangan, LL. M.
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I. Background and Legal Context

Contemplating the role of the United Nations in the 21st century, Secretary General Koffi A. Anan, in his Millennium report, spoke of “freedom from want” and the need for governments to take action and achieve change by 2015 in the following areas:

1) **Poverty**: To halve the proportion of the world’s people (currently 22 per cent) whose income is less than one dollar a day;

2) **Water**: To halve the proportion of people who do not have access to safe drinking water (currently 20 per cent);

3) **Education**: To narrow the gender gap in primary and secondary education by 2005; and to ensure that, by 2015, all children complete a full course of primary education;

4) **HIV/AIDS**: To halt, and begin to reverse, the spread of HIV/AIDS by 2015;

5) **Clearing the Slums**: To endorse and act upon the ‘Cities Without Slums’ plan launched by the World Bank and United Nations to improve the lives of 100 million slum dwellers by 2020;

6) **Youth Employment**: To develop strategies to reduce joblessness among youth; and

7) **Building Digital Bridges**: To review their policies in order to remove regulatory and pricing impediments to Internet access, to make sure people are not denied the opportunities offered by the digital revolution.¹

The Millennium Development Goals (MDGs) comprise of eight anti-poverty targets derived from UN Millennium Declaration adopted in 2000 by 189 countries, including the Philippines. All of these goals are significant in protecting the welfare of children and advancing their rights: end extreme poverty and hunger (Goal 1), achieve universal primary education (Goal 2), reduce child mortality (Goal 4), improve maternal health (Goal 5), combat HIV/AIDS (Goal 6), ensure environmental sustainability (Goal 7) and develop a global public-private partnership for development (Goal 8). The UN has engaged governments and non-government organizations in its campaign against poverty and its horrendous impact on children.

The MDGs were integrated into the Medium-Term Philippine Development Plan (MTPDP) 2004-2010 to help government harmonize its plans and strategies with the MDG targets. According to the MTPD, achieving the MDGs “entails giving priority attention to the poor and other vulnerable groups and placing them in the mainstream of development by broadening their access to quality basic social services, livelihood and providing them a voice in decision making, eliminating their

vulnerability to adverse shocks, and improving their ability to cope with them.”

Children and the poor are among these vulnerable groups. Thus extraordinary challenges are faced by children living in poverty who are defined as children “deprived of nutrition, water and sanitation facilities, access to basic health-care services, shelter, education, participation and protection, and that while a severe lack of goods and services hurts every human being, it is most threatening and harmful to children, leaving them unable to enjoy their rights, to reach their full potential and to participate as dynamic full members of the society.”

Data from the National Statistics Office indicate that in 2007, 35.5% of the entire Philippine population was composed of children (0-14 years). The Global Study on Child Poverty and Disparities show that 44% or 12.8 million Filipino children are living in poverty and 9.2 million of them come from rural areas, mainly from the Visayas, Bicol and the CALABARZON areas. In 2006, 18.6% of children (5.4 million) were deprived of at least one of the three dimensions of well-being covered by the study, namely, shelter, sanitation, and water.

International and domestic laws are in place to protect the rights of children, in general and those living in poverty, in particular. The international instruments on children's rights have evolved from mere statements of recognition of the rights of the child, as exemplified by the Declaration of Geneva in 1924, to a legally binding document in the form of the Convention of the Rights of the Child. The need of children for special protection was recognized by nations of the world as early as 1924 when the assembly of the League of Nations (precursor of the United Nations) endorsed the Declaration of the Rights of the Child. Although called a “declaration of rights,” the document focused mainly on children's welfare specifically their economic, psychological and social needs. Moreover, it was not intended to bind states to do positive acts for the protection of children, the matter being considered a duty of “men and women of all nations.” It was not until later in the century that a universal code for the rights of the child was adopted. In the interim, children's rights were protected, albeit impliedly, by international human rights covenants.

The Convention on the Rights of the Child (CRC) is founded on rights intrinsic to everyone and also builds on concerns for the specific needs and vulnerabilities of children. It entered into force in 1990 and is the most widely ratified human rights treaty in history. The Philippines signed the CRC on 26 January 1990 and ratified it on 21 August 1990.

The CRC brings together rights enunciated in extant international instruments that guarantee the rights of all human beings, like the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Civil and Political Rights (ICCPR), as well as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) that specially safeguards the rights of women. Key principles and rights articulated in the CRC find resonance in these conventions. Among these are the freedom from discrimination enunciated in Article 2 of the CRC, Article 2(2) of the UDHR, Article 2(2) of the ICESCR, Article 2, (1) of ICCPR and Article 1 of the CEDAW; the right to life is found in Article 6 of both the CRC and the ICCPR and Article 2 of the UDHR, the right to

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5 This refers to the provinces of Cavite, Laguna, Batangas, Romblon and Quezon.

health and health services are emphasized in Article 24 of the CRC and Article 12 of the ICESCR; and the right to education is found in Article 28 of the CRC, Article 26 of UDHR and Article 13 of the ICESCR. The preamble of the CRC along with Articles 5 and 18 focus on the family as the natural environment for the growth and well-being of all its members. They recognize that parents have both the right and the responsibility to bring up their children. These provisions echo other international covenants like Article 16 of the UDHR, Article 23 of the ICCPR, and Article 10 of the ICESCR that acknowledge the family as the natural and fundamental unit of society entitled to protection and assistance, and whose well-being is inexorably linked to the survival of the child.

What is distinctive about the CRC is that it brings together in one treaty the full range of human rights. The Convention sets minimum legal and moral standards for the protection of children’s rights. Article 41 of the CRC sets a higher standard clause which provides that nothing in the Convention shall be interpreted to diminish the protection given to children by the individual country’s domestic laws. It is thus considered a charter of the rights of the child.

The basic framework for government action and citizens’ rights is determined by the Constitution. The state explicitly acknowledges the role the youth plays in nation-building and their right to an education that is relevant to their needs.

Foremost among the special bodies created to give teeth to laws upholding children rights are the Early Childhood Care and Development Council, previously called the Council for the Welfare of Children, which coordinates “the implementation and enforcement of all laws relative to the promotion of child and youth welfare.” In 1995, a Special Committee for Children was created which reported directly to the President on actions taken to address issues on child abuse, neglect and exploitation. The Philippine Congress later enacted Republic Act No. 8044, also known as the Youth in Nation-Building Act, which created the National Youth Commission and clearly fixed who were members of the youth sector. The comprehensive campaign against child exploitation and abuse also led to the creation of Philippine National Police Task Force Zebra, as well as a Children and Youth Relations Section in all police stations of the National Capital Region and other highly urbanized areas.

**II. Fundamental Rights of the Child**

The Convention spells out the fundamental rights of the child under four categories: survival, development, protection and participation.

**II. A. Right to Survival**

The most basic right to survival is the inherent right to life. States parties to the Convention must ensure children’s survival and development through the implementation of appropriate measures to protect life, establish a standard of living adequate for the child’s full development, clarify parental responsibilities, grant children the benefits of social security, and provide adequate nutrition. States parties must, likewise, promote a way of life consistent with the human dignity of all children including refugees, minorities and children with disability.

Upholding their right to survive means that children must be adequately nourished and cared for. While recognizing the right of parents to be primarily responsible for their children’s health, the CRC similarly makes it a duty of the state to provide for children’s health care and

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physical development. Article 24 requires state policies to recognize the rights of the child to the highest attainable standard of health. Article 18 binds the state to render appropriate assistance to parents in child-rearing. Article 23 highlights the right of a child with physical or mental disability to a full and decent life.

Data from the MDG Watch of the National Statistics Coordination Board confirm that our target for MDG 1 is to decrease the prevalence of underweight children less than 5 years of age from 34.5% in 1990 to 17.3% in 2015. By 2008, the country had reduced it to only 26.2%. However, the proportion of population below the national subsistence threshold has decreased from 16.5% in 1991 to 10.8 in 2006. Using this indicator and considering programs already in place, we are likely to reach our MDG target of 8.25% by 2015. As regards MDG 4, reduction of under-5 years old mortality rate, our target was to reduce it from 80% in 1990 to 26.7% by 2015. Auspiciously, as of 2008, the Philippines has brought it down to 33.5%. Still, there is need to increase the proportion of 1 year old children immunized against measles. Although our goal was a 100% immunization rate by 2015, the country has hardly budged from the 77.9% rate in 1990 to the 79.2% in 2008.8

Article 24 of the CRC puts premium on the right of the child to the enjoyment of the highest attainable standard of health. The Framework Convention on Tobacco Control (FCTC) does this exactly by underscoring the dangers of tobacco use and the need for urgent concerted efforts to take action against the “tobacco epidemic” given that “(d)eveloping countries are set to bear the brunt of the problem in the future.” Its Preamble lays as basis for the convention “clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions for children.” It articulates its concern about the “escalation in smoking and other forms of tobacco consumption by children and adolescents.”

The Philippines signed the FCTC on 23 September 2003 and ratified it on 6 June 2005. Even prior to signing the FCTC, the Congress enacted Republic Act 9211, otherwise known as the Tobacco Regulation Act.9 The passage of this law is testament to government’s policy “to protect the populace from hazardous products and promote the right to health and instill health consciousness among them” as well as “to promote the general welfare,” consistent with the Constitution. RA 9211 explicitly aims to “inform the public of the health risks associated with cigarette smoking and tobacco use” and protect young people from “being initiated to cigarette smoking and tobacco use by prohibiting the advertising and sale of tobacco products to minors.” Moreover, the law acknowledges the dangers of secondhand smoke and the reality that children are the helpless and innocent bystanders exposed to the same health hazards when adults in their surroundings, most especially their parents, smoke.

However, the principled objectives of the law can be met only if government does a better job at implementing it and enforcing penalties for violation of point of sale and advertising provisions. Amendment of RA 2211 is necessary to conform to national standards, specifically on graphic health warnings on cigarette packs and ensuring a 100% smoke free environment.

Survival rights further include the right of children to social security, either directly or through persons having responsibility for their maintenance, as stated in Article 16 of the CRC. The child is entitled to the benefits of social security programs that may be availed of by his or her

9 R.A. 9211 was enacted on June 2003.
parents or legal guardians. In cases where the parents/guardians are unable to provide for the child’s basic needs, the state may assist with material help or support programs.

In addition, Article 22(1) focuses on the special protection that a state should grant a child refugee or asylum seeker whether or not accompanied by his or her parents. Government and non-government organizations and the UN are encouraged to assist the child in getting reunited with his or her family.

## II.B. Right to Protection

The second category of rights under the Convention pertains to protection. These include the right to a name and to protection from abuse, neglect, violence, and exploitation. Provisions also cover the matters of adoption, child labor, drug addiction, administration of juvenile justice and the need for rehabilitative care.

The right to a name is part of the child’s right to an identity that, in effect, guarantees other rights. The Civil Code provides for the mandatory recording in the civil register of all events concerning the civil status of persons, registration of birth, and change of name.\(^\text{10}\)

However, birth registration involves payment of fees and is not easily accessible to all parents particularly those in remote areas, those among ethnic communities and in cases where the mother is assisted at a home birth, not by a skilled medical practitioner but by a traditional birth attendant (hilot).

There are 2.6 million unregistered children in the country, many of whom are Muslims and members of indigenous communities.\(^\text{11}\) Government has taken some measures to address this problem such as through the passage of Republic Act 9048, which authorizes the city/municipal civil registrar or consul general to correct a clerical or typographical error in an entry and/or change the first name in the civil registry through an administrative process that is quicker and less expensive than a judicial procedure; Administrative Order No. 3 Series 2004, on the rules and regulations governing registration of acts and events concerning civil status of indigenous peoples; and Memorandum Circular 2004-01 concerning birth registration for children in need of special protection.\(^\text{12}\)

In furtherance of the right of a child to name and nationality, the Department of Social Welfare and Development (DSWD), National Statistics Office (NSO), and Department of the Interior and Local Government (DILG) signed an agreement to hold a one-month birth registration program in May 2011. The program waived fees for the late registration of birth of families identified through the National Household Targeting System for Poverty Reduction (NHTS-PR) and school-aged children. This is laudable but it would have left a greater impact had the program ran for a longer period.

The Filipino Child of the Millennium National Plan of Action points out that “since 1998, the country has been able to improve birth registration rate by a mere 0.17% per year” instead of 2.5%

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\(^{10}\) Arts. 407 and 408, Act No. 386, Civil Code.


It suggests that active involvement of a “roving birth registration team” that will go the rounds in various local government units. This will solve the problem of parents who live in remote places where there are no available means of transportation for travel to the municipal hall.

The Committee on the Rights of the Child observed that there is need for improvement of the registration of newborn deaths and stillbirths by engaging more than 5,500 trained barangay civil registration agents and the local civil registrars (LCRs) in all the 132 cities and 1,496 municipalities around the country.

Births in hospitals are usually registered since hospitals forward, as a matter of course, pertinent documentation to the civil registrar’s office. Delays in birth registration regularly occur in births that take place at home. Mothers who are less educated and have meager resources often resort to this. Yet, at present, registration of a person below 18 years of age requires the submission of the following documents:

“i) four copies of the Certificate of Live Birth duly accomplished and signed by the proper parties;

“ii) accomplished Affidavit for Delayed Registration at the back of Certificate of Live Birth by the father, mother, or guardian, declaring therein, among other things, the following: name of child; date and place of birth; name of the father if the child is illegitimate and has been acknowledged by him; if legitimate, the date and place of marriage of parents; and reason for not registering the birth within thirty (30) days after the date of birth.

“In case the party seeking late registration of the birth of an illegitimate child is not the mother, the party shall, in addition to the foregoing facts, declare in a sworn statement the recent whereabouts of the mother.

“iii) any two of the following documentary evidences which may show the name of the child, date and place of birth, and name of mother (and name of father, if the child has been acknowledged): baptismal certificate; school records (nursery, kindergarten, or preparatory); income tax return of parent/s; insurance policy; medical records; and others, such as barangay captain’s certification.

“iv) affidavits of two disinterested persons who might have witnessed or known the birth of the child.”

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14 Id., p. 68.


16 The only exception is the practice in some hospitals managed by religious orders which do not automatically send to the civil registrar’s office information on children born to unwed mothers.

If the person to be registered is 18 years old or above and is married, an additional requirement is the certificate of marriage. Delayed registration of birth, like registration made at the time of birth, must be filed at the Office of the Civil Registrar of the place of birth.

The requirements for delayed registration of birth should be simplified. Compelling late registrants to submit too many documents and to register in the same place where the birth occurred, which could have been several years back and after many changes of residence, would be a disincentive to registration, late as it already is.

The Migrant Workers and Overseas Filipinos Act as amended by RA 10022, created an inter-agency committee composed of the Department of Foreign Affairs, Commission on Filipinos Overseas, and National Statistical and Coordination Board, among others. Its goal is to establish a shared government information system for the purpose of “tracking past and present gender disaggregated cases involving male and female migrant workers, including minors.” The minors referred to here would include children of migrant workers born abroad, which the tracking system can help identify and document.

A related problem is the registration of simulated births. The term “simulation of birth” means “tampering with the civil registry making it appear in the birth records that a certain child was born to a person who is not his/her biological mother, causing such child to lose his/her true identity and status.” Data from the Program Management Bureau of the Department of Social Welfare and Development show that since 1998 when the Domestic Adoption Law was passed, 237 parents who simulated the birth certificates of their children applied for amnesty. Simulation of birth is a route taken to avoid the expense and delay associated with legal adoption, which requires a judicial process.

Adoption, which aims mainly to give the child the same rights as a legitimate biological child, is an important cornerstone in the effort to protect children’s rights. The court, in In Re: Petition for Adoption of Michelle P. Lim, characterized the role of adoption, as follows:

“We are mindful of the fact that adoption statutes, being humane and salutary, hold the interests and welfare of the child to be of paramount consideration. They are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family, as well as to allow childless couples or persons to experience the joys of parenthood and give them legally a child in the person of the adopted for the manifestation of their natural parental instincts. Every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law.”

However, when another woman’s child is registered in the name of another, the child’s birth certificate issued by the civil registrar’s office will have entries that are all spurious. Though the child grows up with the people she considers her parents, without a judicial decree of adoption, a lifetime spent with them has no legal significance. In the case of Lazatin v. Campos, the court held that:

18 Sec. 20, R.A. 8042.
19 Sec. 3(j), R.A. 8552, Domestic Adoption Act (1998).
20 R.A. 8552.
“The absence of proof of such order of adoption by the court, as provided by the statute, cannot be substituted by parol evidence that a child has lived with a person, not his parent, and has been treated as a child to establish such adoption. Even evidence of declaration of the deceased, made in his lifetime, that he intended to adopt a child as his heir, and that he had adopted him, and of the fact that the child resided with the deceased, as a member of his family, from infancy until he attained his majority, is not sufficient to establish the fact of adoption. Nor does the fact that the deceased spouses fed, clothed, educated, recognized and referred to one like petitioner as an adopted child, necessarily establish adoption of the child. Withal, the attempts of petitioner to prove his adoption by acts and declarations of the deceased do not discharge the mandatory presentation of the judicial decree of adoption...”

Simulating the birth of child robs that child of his/her true identity. It likewise leaves the child vulnerable given that without the judicial decree of adoption, he/she receives nothing by way of inheritance and the other rights of legitimate children.

The right of the child to protection includes his right to a status. Status is defined as “the legal and juridical position of the individual in society or with regard to the rest of the community... A person’s status serves to determine the nature and number of his rights and obligations.”23 In the case of Silverio v Republic24 the Supreme Court referred to “status” as the circumstances affecting the legal situation (that is, the sum total of capacities and incapacities) of a person in view of his age, nationality and his family membership. The court said further that “the status of a person in law includes all his personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being legitimate or illegitimate, or his being married or not.”

In the Philippines, laws still distinguish between the rights of legitimate and illegitimate children in terms of succession, source of support and use of the father’s surname.25 This has been partially addressed by RA 9255, which allows illegitimate children to use the surname of their father. The law, however, leaves much to be desired since it gives the father the sole prerogative of deciding whether or not to give his child his surname. Even when he does, he is not barred from retracting and later questioning the paternity of the child.

Statute laws have clearly lagged behind international standards. Case law has recognized this and made meaningful strides in protecting the rights of illegitimate children. In deciding the issue of how an illegitimate child can prove filiation, the Court held that:

“For too long, illegitimate children have been marginalized by fathers who choose to deny their existence. The growing sophistication of DNA testing technology finally provides a much-needed equalizer for such ostracized and abandoned progeny. We have long believed in the merits of DNA testing and have repeatedly expressed as much in the past. This case comes at a perfect time when DNA testing has finally evolved into a dependable and authoritative form of evidence gathering. We therefore take this opportunity to forcefully reiterate our stand that DNA testing is a valid means of determining paternity.”26

25 Arts. 174(1) and 176, E.O. 209, Family Code.
The CRC provides for the protection of children from all forms of physical and mental violence, injury, neglect and abuse while in the care of their parents. It stresses the duty of the state to take all the necessary steps to protect children from being sexually abused (as in rape, molestation and incest) or exploited (forced or induced into prostitution, pornographic performances and others). Laws have been passed to protect children from abuse and exploitation: Presidential Decree No. 603, known as the "Child and Youth Welfare Code," penalizes any person who will inflict cruel and unusual punishment upon the child or will deliberately subject him to indignities and other excessive chastisement that embarrass or humiliate him. Republic Act No. 7610, enacted in 1992, declares as the policy of the state to provide special protection from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. It provides sanctions for their commission and carries out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination.

The natural right and duty of parents to rear their children is recognized not only in the 1987 Constitution but also in the two previous Charters of 1935 and 1973. The framers of the 1987 Constitution, in order to stress the importance of the family as a social unit, introduced a new article (Article XV) concerned entirely with the family. It also has a specific provision, Section 3(2), recognizing the right of children to special protection. The family is regarded as the foundation of the nation and the repository of the values and morals closely held by society. Hence, what strengthens the family also strengthens the nation. From this point of view, it is easy to understand why it is critical for the state to protect the family and promote its total development.

It is a fundamental policy of the state to charge parents with the upbringing of their children. As has been stated, it is the natural right, as well as legal obligation of parents to care for, support, teach and discipline their children. In the absence of clear signs of parental abuse or neglect, the courts cannot interfere with parental control. With such evidence, however, the state as parens patriae may restrict parental authority in order to guard the interest and welfare of the child. In this instance, courts can pierce the veil of family privacy and autonomy to aid the family member whose rights are being violated.

However, in the case of People v Silvano the court was faced with quite a bizarre issue: whether it was within the right of the parent to sexually abuse one’s child as a form of discipline. The Court held:

“It is clear from the provisions of Article 209 of the Family Code that from the mere status of being a parent flows one’s "natural right and duty" not only of the "caring for" and the "rearing of" their unemancipated children but above all "the development of their moral, mental, and physical character and well-being." Although the Family Code recognizes the parents’ rights and duties to "impose discipline" on their unemancipated children; "supervise their activities, recreation and association with others . . .; and prevent them from acquiring habits detrimental to their . . . morals"; it does not authorize them to force their offspring to copulate with them under the mask of discipline, or invade their honor and violate their dignity nor does it give them the license to ravish the product of their marital union. Appellant’s way of punishment comes not in the form of correction but of an insane sexual gratification. Sex with one’s own child is per se abhorrent and can never be

27Art. 59 (8).
28Sec. 2, R.A. 7610, Special Protection of Children Against Abuse, Exploitation and Discrimination Act.
29G.R. No. 127356 (29 June 1999).
justified as a form of parental punishment. The practice of sexual exploitation of the youth in the guise of disciplinary action is not a solution to juvenile curiosity, which is part of growing up. His gratification instills an unnamed trauma in the child's innocent mind when she still cannot understand the meaning of sexual behavior."

The Court affirmed the conviction of the father for his perverse and distorted notion of "moral and spiritual guidance."

Another issue that remains is the acceptability of corporal punishment as a means of disciplining a child. There is no law which prohibits parents from physically punishing a child for as long as it does not constitute acts that are considered abusive and negligent under RA 7610. However, the Family Code\(^{30}\) has a clear provision that forbids school administrators, teachers or individuals engaged in child care exercising special parental authority from inflict corporal punishment upon the child.

It is interesting to note that there were bills on corporal punishment filed in the 14\(^{th}\) Congress. A Senate bill defines corporal punishment as "infliction of physical or mental violence or blows upon a child as a form of punishment or chastisement including public humiliation, verbal abuse, and other forms of punishment that is considered physical and mental immaturity." If passed into law, any parent, ascendant, guardian or teacher who inflicts corporal punishment shall suffer the penalty of imprisonment.\(^{31}\) The House of Representatives version gives examples of corporal punishment including, beating, kicking, slapping with or without the use of an instrument, pinching, pulling of ears or hair, deliberate neglect of a child’s need use of hazardous task as punishment including those beyond the child’s strength and confinement in one place for an extended period.\(^{32}\)

The Commission on Human Rights issued an advisory to remind all government offices and individuals concerned to strictly comply with these laws prohibiting corporal punishment of children and to report any incident of corporal punishment of children to the Commission or any law enforcement agency for appropriate action.\(^{33}\)

Observations were made by the Committee on the Rights of the Child on the alleged sexual abuse of children in religious institutions. The report pointed out that the Catholic Bishops Conference of the Philippines (CBCP) estimated that "as of 2002, there were 200 of the country's priests who could be guilty of sexual misconduct and abuse occurring over the last 20 years." The Report says that this "could be interpreted as a confession by and apology from the CBCP as regards cases of grave sexual misconduct by clerics and religious in the Philippines."\(^{34}\)

The CBCP is not indifferent to this problem. In 2003, it issued Pastoral Guideline on Sexual Abuse and Misconduct by the clergy, where the CBCP recognizes that this problem is not new.\(^{35}\) It

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\(^{30}\) Art. 233, E.O. 209, Family Code.

\(^{31}\) Senate Bill 1812, 14\(^{th}\) Congress (2009).

\(^{32}\) House Bill 6699, 14\(^{th}\) Congress (2009).


\(^{35}\) Likhaan, Child Justice League, and Catholics for a Free Choice, The Holy See and the Convention on the Rights of the Child
reiterated that “clergy who engage in any form of sexual misconduct are violating their vows and the ministerial relationship. They are misusing their authority and power and are taking advantage of the vulnerability of those who are seeking spiritual guidance.” Yet, the Church’s predilection for secrecy and the absence of compulsory reporting of incidents of sexual abuse by the clergy violates the reporting requirement in Art 44 of the CRC.

II.C. Right to Development

The development rights of children consist of freedom of thought, conscience and religion, as well as access to appropriate information, education and leisure, recreation and cultural activities. The Convention highlights the freedom of thought, conscience and religion as among the human rights of children.

Under Articles 13 and 28, states parties are required to ensure that children are not deprived of education. Education is considered more than the accumulation of knowledge but as a means to achieve the "full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms." States parties are also asked to make educational and vocational information accessible to the youth, and to undertake measures that would promote regular school attendance and prevent dropouts.

Consider 2004 data from the National Economic Development Authority that show more girls (45.99%) starting school than boys (41.88%). Girls also have a higher survival rate (63.13 % versus 59.50 %), as well as high school completion rate (63.7 % versus 47.88 %) than boys.

Juxtapose this with the Reproductive Health, Rights and Ethics Center (ReproCen) study on the content analysis of stories and pictures in 10 textbooks used in elementary schools that illustrate persistent gender stereotyping. In these books, women were depicted in stories and pictures as wives and mothers, while men were described in terms of their productive roles as scientists, astronauts and professionals. Male characters were portrayed as heads of their family while most of the women characters were submissive and dependent housewives and mothers.

This situation might explain why although more girls than boys complete high-school, it does not translate into better employment for them. Filipina girls are socialized at home and indoctrinated in school (through these books) that the measure for success and being "good" is spending time at home and being adept in housework.

The Universal Declaration of Human Rights and the ICESCR envisioned a kind of education that will lead to the “full development of the human personality and to the strengthening

36 Id.
38 The Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen) is based at the University of the Philippines.
41 Art. 26.2.
of respect for human rights and fundamental freedoms.” The kind of education that the CRC speaks of is one that will instill principles of justice and non-discrimination, tolerance and fair play. Likewise, the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples categorically states that instruction and information are “intended for the young should foster among them the ideals of peace, humanity, liberty and international solidarity and all other ideals which help to bring peoples closer together.” These goals cannot be achieved for as long as the books and other reading materials our children are exposed to impart the complete opposite, whether by overt directives or covert messages by way of gender stereotyping. Article 17 of the CRC enjoins states to encourage the mass media and book publishers to produce and disseminate information and materials that are of social and cultural benefit to children, recognizing the influence of the mass media in the formation of values and opinions among children.

Measures have been undertaken in the legislative and executive branches of government to ensure the right to education of children. Congress passed the Fair and Equitable Access to Education Act, which requires legislative districts to allot money for building classrooms in order to ensure the citizenry “fair and equitable access to infrastructure and tools necessary for quality education.” The law considers the ratio of 45 students per classroom as the goal. This still seems like a big number for maximum learning effectiveness, but is a far cry from the present condition in some public elementary schools, which have as many as 65 students per class.

Much of this responsibility falls on the Department of Education. Some of its recent programs are the Open High School Program (OHSP) and the Internet-based Distance Education Program (IDEP). The OHSP is planned for students who cannot attend regular classes due to the “rigid requirement of regular class schedule.” The IDEP is “intended for students who are unable go to regular schools and whose only way of getting a formal Philippine-accredited secondary education is through the internet.” The DepEd should also introduce changes in the curricula of all private and private elementary and schools to include instruction on the hazardous effects of smoking, in compliance with RA 9211.

The CRC addresses the need to protect the rights of children of minorities and indigenous populations. Article 30 of the Convention states that “a child belonging to such a minority who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.” This article should be read in relation to the principle of non-discrimination, and the rights of the child to education and access to health care that are articulated in a number of other CRC provisions.

Pursuant to Article XIV of the Constitution, the state is duty-bound to “encourage non-

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42 Art. 13.
43 Sec. 2, R.A. 7880.
formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs.”  

A significant provision of law affecting the children of indigenous cultural communities is found in RA 7610 that states that these children shall be “entitled to protection, survival and development consistent with the customs and traditions of their respective communities.” The provision was intended to harmonize Philippine law with the policy embodied in Article 30 of the Convention on the Rights of the Child. In general, RA 7610 provides for culture-specific programs of action that will ensure the development and well being of indigenous groups. In particular, it assures the institution of alternative systems of education that are aimed at increasing literacy among indigenous children while preserving their ethnic heritage. The Act likewise gives priority to the delivery of basic services in health and nutrition to these children while respecting the traditional health practices in their communities.

The Indigenous People’s Rights Act reinforces this by mandating government to provide to indigenous communities equal access to cultural opportunities through the educational system. It categorically provides indigenous children and youth the right to all levels and forms of education of the State. The Committee is also concerned with the lack of information in the State party report and during the dialogue with the delegation of the actual impact of the application of the 1997 Indigenous People’s Rights Act (IPRA) on children.

However, the Committee on the Rights of the Child recommends that “the State party take the necessary steps to ensure that indigenous children and children belonging to minorities fully enjoy all of their human rights equally and without discrimination.” Furthermore, the Committee recommends that the Philippines “strengthen its efforts to implement the IPRA and develop and implement policies and programmes in order to ensure equal access for indigenous and minority children to culturally appropriate services, including social and health services and education.” It is thus important to “strengthen its mechanisms for data collection on minority and indigenous children so as to identify existing gaps and barriers to the enjoyment of their human rights and with a view to developing legislation, policies and programmes to address such gaps and barriers.” The Committee points out that more effort should be exerted in raising the awareness of the “communities and schools of the multicultural nature of the Filipino society and the need for education to be sensitive to traditions, languages and views by different ethnic groups.”

The Philippine government has yet to resolve continuing problems pertaining to customary practices of pre-arranged, forced and early marriages common in Muslim and IP communities. The recent passage of the Magna Carta of Women underscore State recognition of the rights of “Moro and indigenous women to practice, promote, protect, and preserve their own culture, traditions, and institutions” but it is emphatic that “these cultural systems and practices [must] not [be] discriminatory to women.” Government must address these concerns that have serious and long

48 Art. XIV, Sec. 2, 1987 Constitution.
50 Sec. 30. Educational Systems.- The State shall provide equal access to various cultural opportunities to the ICCs/IPs public or cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning.
52 Sec. 28, R.A. 9710, Magna Carta of Women.
term repercussions on girl-children, considering that any change in their laws and entrenched practices will likely meet strong resistance from other members of their community.

The CRC discusses the right to leisure, recreation and cultural activities. Play is assumed to be the main preoccupation of children but in the light of the increasing number of children driven or compelled by circumstances to join the labor force, the CRC reiterates this basic right. The right to recreation should also be viewed together with the right to education, both of which are necessary for the child’s physical, emotional and intellectual development.

II.D. Right to Participation

The child’s participation rights consist of his or her right to an opinion, to freedom of expression, and to freedom of association.

Pursuant to Article 12 of the Convention, states parties must recognize the right to an opinion of a child who is capable of forming his or her own views. The right to freedom of expression, guaranteed in Article 13, includes the freedom to seek, receive and impart information. It is preconditioned on the right of the child to hold an opinion based on information he or she acquires.

States parties to the CRC likewise commit to recognize the right of the child to freedom of association and of peaceful assembly. These rights may not be restricted unless necessary in the interest of national security and public order, to protect public health or morals, or to protect the rights of others.

The participation of children and young people has already been institutionalized at the local level through the Sangguniang Kabataan (SK). Members of the SK must be 15 – 18 years old. Among the powers and functions of the SK are to “promulgate resolutions necessary to carry out the objectives of the youth in the barangay,” “initiate programs designed to enhance the social, political, economic, cultural, intellectual, moral, spiritual, and physical development of the members,” “consult and coordinate with all youth organizations in the barangay for policy formulation and program implementation,” and “coordinate with the appropriate national agency for the implementation of youth development projects and programs at the national level.”

In 1994, the Youth in Nation-Building Act was enacted in recognition of the State’s “responsibility to enable the youth to fulfill their vital role in nation-building” and inspire “youth involvement in character-building and development activities for civic efficiency... to reduce the incidence of poverty and accelerate socioeconomic development.” It likewise created the National Youth Commission. Its objectives are the following:

“(a) To provide the leadership in the formulation of policies and in the setting of priorities and direction of all youth promotion and development programs and activities;

“(b) To encourage wide and active participation of the youth in all government and nongovernmental programs, projects and activities affecting them;

54 Sec. 426, id.
55 Sec. 2, R.A. 8044.
“(c) To harness and develop the full potential of the youth as partners in nation-building; and

“(d) To supplement government appropriations for youth promotion and development with funds from other sources.”\(^{56}\)

These are concrete ways by which participation of young people in the life of the nation is encouraged and sustained. However, caution should be taken so that though immersed in leadership opportunities, young leaders are not ensnared by the wheeling, dealing and corruption that are rampant in public office.

### III. Standard setting and Institution building

In the international instruments and national legislation, the “best interests of the child” is the standard by which issues or cases involving children are decided. Thus in both lawmaking and adjudication involving or affecting the rights of the child, the primary consideration is his/her welfare and anything prejudicial to the child’s well-being will be struck down.

Upholding the best interests of the child is already well established in our legal and judicial systems. To illustrate, the court applied the best interest of the child standard in determining custody cases. In *Gualberto v Gualberto*,\(^{57}\) Crisanto Gualberto filed a petition for declaration of nullity of his marriage to Joycelyn Gualberto, with a prayer for custody of their 4-year-old child. The lower court judge awarded custody to Crisanto, taking into consideration Joycelyn’s lesbian relations.

On appeal, the Supreme Court held:

“The Convention on the Rights of the Child provides that “[i]n 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.

“The principle of “best interest of the child” pervades Philippine cases involving adoption, guardianship, support, personal status, minors in conflict with the law, and child custody. In these cases, it has long been recognized that in choosing the parent to whom custody is given, the welfare of the minors should always be the paramount consideration. Courts are mandated to take into account all relevant circumstances that would have a bearing on the children’s well-being and development. Aside from the material resources and the moral and social situations of each parent, other factors may also be considered to ascertain which one has the capability to attend to the physical, educational, social and moral welfare of the children. Among these factors are the previous care and devotion shown by each of the parents; their religious background, moral uprightness, home environment and time availability; as well as the children’s emotional and educational needs.”

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\(^{56}\) Id., Sec. 8.
\(^{57}\)G.R. No. 156254 (2005).
Following the general rule that no child below 7 years of age should be separated from his/her mother unless there are compelling reasons, the court concluded that there was “no evidence that the son was exposed to the mother’s alleged sexual proclivities or that his proper moral and psychological development suffered as a result.”

In the case of Republic v Court of Appeals, the court ruled that:

“The welfare of a child is of paramount consideration in proceedings involving its custody and the propriety of its adoption by another, and the courts to which the application for adoption is made is charged with the duty of protecting the child and its interests and, to bring those interests fully before it, it has authority to make rules to accomplish that end. Ordinarily, the approval of the adoption rests in the sound discretion of the court. This discretion should be exercised in accordance with the best interests of the child, as long as the natural rights of the parents over the child are not disregarded. In the absence of a showing of grave abuse, the exercise of this discretion by the approving official will not be disturbed.”

Before the enactment of BP 129 (The Judiciary Reorganization Act of 1980), civil actions and special proceedings involving children were within the jurisdiction of the Juvenile and Domestic Relations Courts (JDRCs). BP 129, however, abolished the JDRC and transferred jurisdiction over said cases to the Regional Trial Courts. This change spawned several problems. Mainly, due to the lack of training and orientation programs for court personnel and judges, some child offenders were not treated differently from adult offenders. Court proceedings were conducted with very little regard for children’s welfare and protection.

With the passage of the RA 8369, Family Courts similar to the JDCR now have exclusive jurisdiction over all criminal and civil cases as well as special proceedings involving minors. In particular, such special courts have authority to try violations of RA 7610 (also known as the Child Abuse Act) and cases based on PD 603 (Child and Youth Welfare Code), among others. However, the court in a recent decision, explained that RA 8369 did not divest the Court of Appeals and the Supreme Court of their jurisdiction over habeas corpus cases involving the custody of minors.

In Madran v Madran, petitioner and respondent were married and had four children. After a bitter quarrel, petitioner left the conjugal abode and took their three sons with him. Respondent filed a petition for habeas corpus on the ground that petitioner’s act of leaving the conjugal dwelling and going out of town disrupted the education of their children and deprived them of their mother’s care. She prayed that petitioner be ordered to appear and produce their sons before the court and to explain why they should not be returned to her custody.

Petitioner countered that respondent was unfit to take custody of their children because she was habitually drunk, frequently out at night and is a neglectful mother. He also questioned the jurisdiction of the Court of Appeals claiming that under Section 5(b) of RA 8369 (Family Courts Act of 1997) family courts have exclusive original jurisdiction to hear and decide the petition for habeas corpus filed by respondent. The Court reiterated its decision in Thornton v Thornton and said that:

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60 G.R. No. 159374 (2007).
“There is no doubt that the Court of Appeals and Supreme Court have concurrent jurisdiction with family courts in habeas corpus cases where the custody of minors is involved.

“We note that after petitioner moved out of their Parañaque residence on May 18, 2002, he twice transferred his sons to provinces covered by different judicial regions. This situation is what the Thornton interpretation of RA 8369's provision on jurisdiction precisely addressed:

“[The reasoning that by giving family courts exclusive jurisdiction over habeas corpus cases, the lawmakers intended them to be the sole courts which can issue writs of habeas corpus] will result in an iniquitous situation, leaving individuals like [respondent] without legal recourse in obtaining custody of their children. Individuals who do not know the whereabouts of minors they are looking for would be helpless since they cannot seek redress from family courts whose writs are enforceable only in their respective territorial jurisdictions. Thus, if a minor is being transferred from one place to another, which seems to be the case here, the petitioner in a habeas corpus case will be left without legal remedy. This lack of recourse could not have been the intention of the lawmakers when they passed (RA 8369)[emphasis supplied].”

Even before the adoption of the CRC, special bodies to look after the welfare of children and protect them from abuse and neglect were already created by law. As early as 1949, the Civil Code had provided the establishment of the Council for the Protection of Children in each municipality.

In its concluding report, the Committee on the Rights of Children cites the following measures as positive steps taken by the Philippines in upholding the rights of children and young people: (a) the Council for the Welfare of Children (CWC) as amended by the ECCD Law (RA 8980), provides for a child representative to sit in its National Board; and (b) the National Anti-Poverty Commission-
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Children Basic Sector (NAPC-CBS) pursuant to the Implementing Rules and Regulations of the Social Reform and Poverty Alleviation Act (RA 8425) officially recognizes children as a sector and requires 15 representatives who constitute the NAPC-CBS Sectoral Council.  

The Committee however calls attention to the insufficient budget of the CWC, which from 2004-2006 amounted only to Php 69.7 million. It laments that "given its mandate and the continuing challenges in inter-agency and inter-sectoral coordination and monitoring of all efforts directed to the implementation of the CR,... the level of budgetary allocations for CWC has still remained inadequate" and that a bigger budget is "a critical factor in making CWC stronger and more effective in its policy advocacy, coordination and monitoring functions as the country’s lead agency for children."  

Continuing monitoring and assessment of Philippine compliance with the country’s treaty obligations is crucial, a function best carried out by the Commission on Human Rights. The Philippine Constitution provides for a fairly broad mandate for the CHR to monitor compliance of the State’s treaty obligations. However, in Brigido Simon, Jr. et. al. v Commission on Human Rights et. al., the Supreme Court ruled that the CHR is not a court or quasi-judicial body. As such, it cannot issue cease and desist orders or writs of injunction or restraining orders to stop an actual or impending human rights violation but merely provide preventive measure to victims by applying with the proper court for an order or writ. Second, the Simon ruling held that the CHR has investigative and fact-finding powers on alleged violations of civil and political rights but it has no adjudicatory powers. Third, the Court held that the intent of the framers of the Constitution is for the term “human rights” to extend only to civil and political rights as defined in the Constitution and international human rights instruments.  

The CHR asserts that while it cannot issue a restraining order or injunction to prevent violation of human rights it is the only institution “constitutionally mandated to monitor the government’s compliance with international treaty obligations on human rights, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and other international treaties and conventions.”  

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63 Id., par. 34.
64 Art. XIII, Secs. 17 and 18, 1987 Constitution.
65 G.R. No. 73521 (5 January 1994).
In sum, states parties to the CRC have a legal and moral obligation to advance the cause of children’s rights through legislative, judicial, administrative and other measures.

Government has made progress in complying with our obligations but in order to reinforce and sustain the institutional mechanisms and processes for implementation of the CRC, government must increase its budgetary allocations to these institutions.

The unremitting challenge lies in the effective and consistent enforcement of laws, policies, rules and procedures, programs and interventions in a manner that the best interests of children are given primary consideration under any and all circumstances. This calls for a continuing sensitization of families, communities, local government units, national agencies and institutions, and the public at large on the Convention on the Rights of the Child, a task that the State party must continue doing. It also calls for continuing capacity, the building of the pillars of the justice system and all service providers particularly those at the grassroots level in order to protect, promote, and fulfill the rights of children. The participation of NGOs, the mass media and the academe, in preventing and responding to violations of the rights of children should be cultivated. Finally, to safeguard respect, protection and fulfillment of the rights of children, the commitment of an empowered community is indispensable.

By the present Declaration of the Rights of the Child, commonly known as "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

I. The child must be given the means requisite for its normal development, both materially and spiritually;

II. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;

III. The child must be the first to receive relief in times of distress;

IV. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;

V. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

Universal Declaration of Human Rights (adopted in 1948).

Article 1
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
Article 3
Everyone has the right to life, liberty and the security of person.

Article 4
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6
Everyone has the right to recognition everywhere as a person before the law.

Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9
No one shall be subjected to arbitrary arrest, detention or exile.

xxx

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

xxx

Article 16
1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17
1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20
1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

xxx

Article 24
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same
looking after filipino children

Article 26
1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27
1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29
1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

General Assembly Resolution 2037 (XX), Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples(1965).

The General Assembly,

Recalling that under the terms of the Charter of the United Nations the peoples have declared themselves determined to save succeeding generations from the scourge of war,

Recalling further that in the Charter the United Nations has affirmed its faith in fundamental human rights, in the dignity of the human person and in the equal rights of men and nations,

Reaffirming the principles embodied in the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 110 (II) of 3 November 1947 condemning all forms of propaganda designed or likely to provoke or encourage any threat to the peace, the Declaration of the Rights of the Child, and General Assembly resolution 1572 (XV) of 18 December 1960, which have a particular bearing upon the upbringing of young people in a spirit of peace, mutual respect and understanding among peoples,

Recalling that the purpose of the United Nations Educational, Scientific and Cultural Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture, and

Recollecting the role and contributions of that organization towards the education of young people in the spirit of international understanding, co-operation and peace, Taking into consideration the fact that in the conflagrations which have afflicted mankind it is the young people who have had to suffer most
and who have had the greatest number of victims,

Convinced that young people wish to have an assured future and that peace, freedom and justice are among the chief guarantees that their desire for happiness will be fulfilled,

Bearing in mind the important part being played by young people in every field of human endeavour and the fact that they are destined to guide the fortunes of mankind,

Bearing in mind furthermore that, in this age of great scientific, technological and cultural achievements, the energies, enthusiasm and creative abilities of the young should be devoted to the material and spiritual advancement of all peoples,

Convinced that the young should know, respect and develop the cultural heritage of their own country and that of all mankind,

Convinced furthermore that the education of the young and exchanges of young people and of ideas in a spirit of peace, mutual respect and understanding between peoples can help to improve international relations and to strengthen peace and security,

Proclaims this Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples and calls upon Governments, non-governmental organizations and youth movements to recognize the principles set forth therein and to ensure their observance by means of appropriate measures:

**Principle I**

Young people shall be brought up in the spirit of peace, justice, freedom, mutual respect and understanding in order to promote equal rights for all human beings and all nations, economic and social progress, disarmament and the maintenance of international peace and security.

**Principle II**

All means of education, including as of major importance the guidance given by parents or family, instruction and information intended for the young should foster among them the ideals of peace, humanity, liberty and international solidarity and all other ideals which help to bring peoples closer together, and acquaint them with the role entrusted to the United Nations as a means of preserving and maintaining peace and promoting international understanding and cooperation.

**Principle III**

Young people shall be brought up in the knowledge of the dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the right of peoples to self-determination.

**Principle IV**

Exchanges, travel, tourism, meetings, the study of foreign languages, the twinning of towns and universities without discrimination and similar activities should be encouraged and facilitated among young people of all countries in order to bring them together in educational, cultural and sporting activities in the spirit of this Declaration.

**Principle V**

National and international associations of young people should be encouraged to promote the purposes of the United Nations, particularly international peace and security, friendly relations among nations based on respect for the equal sovereignty of States, the final abolition of colonialism and of racial discrimination and other violations of human rights. Youth organizations in accordance with this Declaration should take all appropriate measures within their respective fields of activity in order to make their contribution without any discrimination to the work of educating the young generation in accordance with these ideals. Such organizations, in conformity with the principle of freedom of association, should promote the free exchange of ideas in the spirit
of the principles of this Declaration and of the purposes of the United Nations set forth in the Charter. All youth organizations should conform to the principles set forth in this Declaration.

**Principle VI**

A major aim in educating the young shall be to develop all their faculties and to train them to acquire higher moral qualities, to be deeply attached to be noble ideals of peace, liberty, the dignity and equality of all men, and imbued with respect and love for humanity and its creative achievements. To this end the family has an important role to play. Young people must become conscious of their responsibilities in the world they will be called upon to manage and should be inspired with confidence in a future of happiness for mankind.

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**General Assembly Resolution 2200A (XXI), International Convention on Economic, Social and Cultural Rights**

(signed 1966; ratified 1974; entry into force 1976).

**Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

**Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

**Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   
   (b) The improvement of all aspects of environmental and industrial hygiene;
   
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

**Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to
the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

**Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.
**General Assembly resolution 2200A (XXI), International Convention on Civil and Political Rights (signed 1966; ratified 1986; entry into force 1976).**

**Article 6**
1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

**Article 7**
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**Article 10**
1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**Article 15**
1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

**Article 18**
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19**
1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

xxx

Article 21
The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

xxx

Article 23
1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24
1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

xxx

Article 26
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

G.A. res. 1386 (XIV), Declaration on the Rights of the Child (proclaimed 1959).

PREAMBLE
Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly
Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

**Article 1**
The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

**Article 2**
The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

**Article 3**
The child shall be entitled from his birth to a name and a nationality.

**Article 4**
The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate prenatal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

**Article 5**
The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

**Article 6**
The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

**Article 7**
The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

**Article 8**
The child shall in all circumstances be among the first to receive protection and relief.

**Article 9**
The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

**Article 10**
The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship
among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

**Convention on the Rights of the Child (signed and ratified 1990; entry into force 1990).**

**Preamble**

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1
For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3
1. 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6
1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.
Article 9
1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10
1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11
1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children’s books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

**Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational
measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20
1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

Article 21
States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.
Article 23
1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25
States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.
Article 26
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28
1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29
1. States Parties agree that the education of the child shall be directed to:

   (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

   (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of...
the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30
In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Article 31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32
1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33
States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35
States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36
States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.
Article 37
States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40
1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate
assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41
Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or
(b) International law in force for that State.

PART II

Article 42
States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43
1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have
nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

**Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

**Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children’s Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within
the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children’s Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children’s Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children’s Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee’s observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46
The present Convention shall be open for signature by all States.

Article 47
The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48
The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49
1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50
1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51
1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
LOOKING AFTER FILIPINO CHILDREN

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52
A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53
The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54
The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.


Preamble
The Parties to this Convention,

Determined to give priority to their right to protect public health,

Recognizing that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response,

Reflecting the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke,

Seriously concerned about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on families, on the poor, and on national health systems,

Recognizing that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases,

Recognizing also that cigarettes and some other products containing tobacco are highly engineered so as to create and maintain dependence, and that many of the compounds they contain and the smoke they produce are pharmacologically active, toxic, mutagenic and carcinogenic, and that tobacco dependence is separately classified as a disorder in major international classifications of diseases,

Acknowledging that there is clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions for children,

Deeply concerned about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide, particularly smoking at increasingly early ages,

Alarmed by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and keeping in mind the need for full participation of women at all levels of policy-making and implementation and the need for gender-specific tobacco control strategies,

Deeply concerned about the high levels of smoking and other forms of tobacco consumption by indigenous peoples,

Seriously concerned about the impact of all forms of advertising, promotion and sponsorship aimed
at encouraging the use of tobacco products,

**Recognizing** that cooperative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting,

**Acknowledging** that tobacco control at all levels and particularly in developing countries and in countries with economies in transition requires sufficient financial and technical resources commensurate with the current and projected need for tobacco control activities,

**Recognizing** the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies,

**Mindful** of the social and economic difficulties that tobacco control programmes may engender in the medium and long term in some developing countries and countries with economies in transition, and recognizing their need for technical and financial assistance in the context of nationally developed strategies for sustainable development,

**Conscious** of the valuable work being conducted by many States on tobacco control and commending the leadership of the World Health Organization as well as the efforts of other organizations and bodies of the United Nations system and other international and regional intergovernmental organizations in developing measures on tobacco control,

**Emphasizing** the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women’s, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,

**Recognizing** the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts,

**Recalling** Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

Have agreed, as follows:

xxx

**Article 16. Sales to and by minors**

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include:
   (a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;
   (b) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;
   (c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and
   (d) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.

2. Each Party shall prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.

3. Each Party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.

4. The Parties recognize that in order to increase their effectiveness, measures to prevent tobacco product sales to minors should, where appropriate, be implemented in conjunction with other provisions contained in this Convention.

5. When signing, ratifying, accepting,
approving or acceding to the Convention or at any time thereafter, a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines. The declaration made pursuant to this Article shall be circulated by the Depositary to all Parties to the Convention.

6. Each Party shall adopt and implement effective legislative, executive, administrative or other measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations contained in paragraphs 1-5 of this Article.

7. Each Party should, as appropriate, adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen.


1. We have gathered at the World Summit for Children to undertake a joint commitment and to make an urgent universal appeal - to give every child a better future.

2. The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences.

3. But for many children, the reality of childhood is altogether different.

The challenge

4. Each day, countless children around the world are exposed to dangers that hamper their growth and development. They suffer immensely as casualties of war and violence; as victims of racial discrimination, apartheid, aggression, foreign occupation and annexation; as refugees and displaced children, forced to abandon their homes and their roots; as disabled; or as victims of neglect, cruelty and exploitation.

5. Each day, millions of children suffer from the scourges of poverty and economic crisis - from hunger and homelessness, from epidemics and illiteracy, from degradation of the environment. They suffer from the grave effects of the problems of external indebtedness and also from the lack of sustained and sustainable growth in many developing countries, particularly the least developed ones.

6. Each day, 40,000 children die from malnutrition and disease, including acquired immunodeficiency syndrome (AIDS), from the lack of clean water and inadequate sanitation and from the effects of the drug problem.

7. These are challenges that we, as political leaders, must meet.

The opportunity

8. Together, our nations have the means and the knowledge to protect the lives and to diminish enormously the suffering of children, to promote the full development of their human potential and to make them aware of their needs, rights and opportunities. The Convention on the Rights of the Child provides a new opportunity to make respect for children’s rights and welfare truly universal.

9. Recent improvements in the international political climate can facilitate this task. Through international co-operation and solidarity it should now be possible to achieve concrete results in many fields - to revitalize economic growth and development, to protect the environment, to prevent the spread of fatal and crippling diseases and to achieve greater social and economic justice. The current moves towards disarmament also mean that significant resources could be released for purposes other than military ones. Improving the well-being of children must be a very high priority when these resources are reallocated.

The task

10. Enhancement of children’s health and nutrition is a first duty, and also a task for which solutions are now within reach. The lives of tens of
thousands of boys and girls can be saved every day, because the causes of their death are readily preventable. Child and infant mortality is unacceptably high in many parts of the world, but can be lowered dramatically with means that are already known and easily accessible.

11. Further attention, care and support should be accorded to disabled children, as well as to other children in very difficult circumstances.

12. Strengthening the role of women in general and ensuring their equal rights will be to the advantage of the world’s children. Girls must be given equal treatment and opportunities from the very beginning.

13. At present, over 100 million children are without basic schooling, and two-thirds of them are girls. The provision of basic education and literacy for all are among the most important contributions that can be made to the development of the world’s children.

14. Half a million mothers die each year from causes related to childbirth. Safe motherhood must be promoted in all possible ways. Emphasis must be placed on responsible planning of family size and on child spacing. The family, as a fundamental group and natural environment for the growth and well-being of children, should be given all necessary protection and assistance.

15. All children must be given the chance to find their identity and realize their worth in a safe and supportive environment, through families and other care-givers committed to their welfare. They must be prepared for responsible life in a free society. They should, from their early years, be encouraged to participate in the cultural life of their societies.

16. Economic conditions will continue to influence greatly the fate of children, especially in developing nations. For the sake of the future of all children, it is urgently necessary to ensure or reactivate sustained and sustainable economic growth and development in all countries and also to continue to give urgent attention to an early, broad and durable solution to the external debt problems facing developing debtor countries.

17. These tasks require a continued and concerted effort by all nations, through national action and international co-operation.

The commitment

18. The well-being of children requires political action at the highest level. We are determined to take that action.

19. We ourselves hereby make a solemn commitment to give high priority to the rights of children, to their survival and to their protection and development. This will also ensure the well-being of all societies.

20. We have agreed that we will act together, in international co-operation, as well as in our respective countries. We now commit ourselves to the following 10-point programme to protect the rights of children and to improve their lives:

(1) We will work to promote earliest possible ratification and implementation of the Convention on the Rights of the Child. Programmes to encourage information about children’s rights should be launched world-wide, taking into account the distinct cultural and social values in different countries.

(2) We will work for a solid effort of national and international action to enhance children’s health, to promote pre-natal care and to lower infant and child mortality in all countries and among all peoples. We will promote the provision of clean water in all communities for all their children, as well as universal access to sanitation.

(3) We will work for optimal growth and development in childhood, through measures to eradicate hunger, malnutrition and famine, and thus to relieve millions of children of tragic sufferings in a world that has the means to feed all its citizens.

(4) We will work to strengthen the role and status of women. We will promote responsible planning of family size, child spacing, breastfeeding and safe motherhood.

(5) We will work for respect for the role of the family in providing for children and will support the efforts of parents, other care-givers and communities to nurture and care for children, from the earliest stages of childhood through adolescence. We also recognize the special needs of children who are separated from their families.

(6) We will work for programmes that reduce illiteracy and provide educational opportunities for all children, irrespective of their background and gender; that prepare children for productive employment and lifelong learning opportunities,
Looking after Filipino Children

i.e. through vocational training; and that enable children to grow to adulthood within a supportive and nurturing cultural and social context.

(7) We will work to ameliorate the plight of millions of children who live under especially difficult circumstances - as victims of apartheid and foreign occupation; orphans and street children and children of migrant workers; the displaced children and victims of natural and man-made disasters; the disabled and the abused, the socially disadvantaged and the exploited. Refugee children must be helped to find new roots in life. We will work for special protection of the working child and for the abolition of illegal child labour. We will do our best to ensure that children are not drawn into becoming victims of the scourge of illicit drugs.

(8) We will work carefully to protect children from the scourge of war and to take measures to prevent further armed conflicts, in order to give children everywhere a peaceful and secure future. We will promote the values of peace, understanding and dialogue in the education of children. The essential needs of children and families must be protected even in times of war and in violence-ridden areas. We ask that periods of tranquillity and special relief corridors be observed for the benefit of children, where war and violence are still taking place.

(9) We will work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future.

(10) We will work for a global attack on poverty, which would have immediate benefits for children's welfare. The vulnerability and special needs of the children of the developing countries, and in particular the least developed ones, deserve priority. But growth and development need promotion in all States, through national action and international cooperation. That calls for transfers of appropriate additional resources to developing countries as well as improved terms of trade, further trade liberalization and measures for debt relief. It also implies structural adjustments that promote world economic growth, particularly in developing countries, while ensuring the well-being of the most vulnerable sectors of the populations, in particular the children.

The next steps

21. The World Summit for Children has presented us with a challenge to take action. We have agreed to take up that challenge.

22. Among the partnerships we seek, we turn especially to children themselves. We appeal to them to participate in this effort.

23. We also seek the support of the United Nations system, as well as other international and regional organizations, in the universal effort to promote the well-being of children. We ask for greater involvement on the part of non-governmental organizations, in complementing national efforts and joint international action in this field.

24. We have decided to adopt and implement a Plan of Action, as a framework for more specific national and international undertakings. We appeal to all our colleagues to endorse that Plan. We are prepared to make available the resources to meet these commitments, as part of the priorities of our national plans.

25. We do this not only for the present generation, but for all generations to come. There can be no task nobler than giving every child a better future.

New York, 30 September 1990

II. Domestic Law

II.A. Constitutional Law


Article II

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.
the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

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Article XIII

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

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Article XIV

Section 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

Section 2. The State shall:

(1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;

(2) Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the under-privileged;

(4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and

(5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

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Article XV

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3. The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) 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;

(3) The right of the family to a family living wage and income; and

(4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.
Republic Act No. 9255, An Act Allowing Illegitimate Children to Use the Surname of Their Father (2004).

SECTION 1. Article 176 of Executive Order No. 209, otherwise known as the Family Code of the Philippines, is hereby amended to read as follows:

"Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child."


Art. 174. Legitimate children shall have the right:

(1) To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;

(2) To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and

(3) To be entitled to the legitimate and other successional rights granted to them by the Civil Code. (264a)

Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.


Art. 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register. (325a)

Art. 408. The following shall be entered in the civil register:

(1) Births;

(2) marriages;

(3) deaths;

(4) legal separations;

(5) annulments of marriage;

(6) judgments declaring marriages void from the beginning;

(7) legitimations;

(8) adoptions;

(9) acknowledgments of natural children;

(10) naturalization;

(11) loss, or (12) recovery of citizenship;

(13) civil interdiction;
(14) judicial determination of filiation;

(15) voluntary emancipation of a minor; and

(16) changes of name. (326a)

Art. 409. In cases of legal separation, adoption, naturalization and other judicial orders mentioned in the preceding article, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to send a copy of said decree to the civil registry of the city or municipality where the court is functioning. (n)

Art. 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein contained. (n)

Art. 411. Every civil registrar shall be civilly responsible for any unauthorized alteration made in any civil register, to any person suffering damage thereby. However, the civil registrar may exempt himself from such liability if he proves that he has taken every reasonable precaution to prevent the unlawful alteration. (n)

Art. 412. No entry in a civil register shall be changed or corrected, without a judicial order. (n)

Art. 413. All other matters pertaining to the registration of civil status shall be governed by special laws. (n)

Republic Act No. 3753, Law on Registry of Civil Status (1930).

Sec. 1. Civil Register. — A civil register is established for recording the civil status of persons, in which shall be entered:

(a) births;

(b) deaths;

(c) marriages;

(d) annulments of marriages;

(e) divorces;

(f) legitimations;

(g) adoptions;

(h) acknowledgment of natural children;

(i) naturalization; and

(j) changes of name.

Sec. 2. Civil Registrar-General his duties and powers. — The director of the National Library shall be Civil Registrar-General and shall enforce the provisions of this Act. The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized to prepare and issue, with the approval of the Secretary of Justice, regulations for carrying out the purposes of this Act, and to prepare and order printed the necessary forms for its proper compliance. In the exercise of his functions as Civil Registrar-General, the Director of the National Library shall have the power to give orders and instructions to the local Civil registrars with reference to the performance of their duties as such. It shall be the duty of the Director of the National Library to report any violation of the provisions of this Act and all irregularities, negligence or incompetency on the part of the officers designated as local civil registrars to the (Chief of the Executive Bureau or the Director of the Non-Christian Tribes) Secretary of the Interior, as the case may be, who shall take the proper disciplinary action against the offenders.

Sec. 3. Local Civil Registrars. — Except in the City of Manila, where the duties of local civil registrar shall be performed by the officer of the Philippine Health Service designated by the Director of said service, the Treasurers of the regular municipalities, municipal districts and cities shall be local civil registrars of the respective municipalities, municipal districts or cities and shall perform the duties imposed upon them by this Act without extra compensation, in addition to their ordinary duties. In his capacity as local civil registrar, the officer designated by
the Director of the Health Service as local civil registrar of Manila and the treasurers above mentioned shall be under the direction and supervision of the Civil Registrar-General.

Sec. 4. Civil Register Books. — The local registrars shall keep and preserve in their offices the following books, in which they shall, respectively make the proper entries concerning the civil status of persons:

(1) Birth and death register;

(2) Marriage register, in which shall be entered not only the marriages solemnized but also divorces and dissolved marriages.

(3) Legitimation, acknowledgment, adoption, change of name and naturalization register.

Sec. 5. Registration and Certification of Birth. — The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts:

(a) date and hour of birth;

(b) sex and nationality of infant;

(c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone;

(d) civil status of parents;

(e) place where the infant was born;

(f) and such other data may be required in the regulation to be issued.

In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.

In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.

Any foetus having human features which dies after twenty four hours of existence completely disengaged from the maternal womb shall be entered in the proper registers as having been born and having died.

Sec. 9. Registration of acknowledgment by public instrument. — Any voluntary acknowledgment by the natural parents or by only one of them by public instrument, shall be recorded in the acknowledgment register of the civil registrar of the municipality where the decree was issued. The names of the interested parties and such other data as may be required by the regulations to be issued shall be entered in register.

It shall be the duty of the natural parents whose voluntary acknowledgment was may be means of a public instrument to send a certified copy thereof to the local civil registrar of the municipality in the civil register whereof the birth of the acknowledged child was recorded, not later than twenty days after the execution of such instrument, for the registration thereof.

Sec. 10. Registrations of adoptions, changes of name, and naturalization. — In cases of adoptions, changes of name, and naturalization, it shall be the duty of the interested parties or petitioners to register the same in the local civil registrar of the municipality where the birth of the acknowledged child was registered setting forth the following data:

(a) full name of the natural child acknowledged;

(b) age;
(c) date and place of birth;

(d) status as to marriage, and residence of the child acknowledged;

(e) full name of the natural father or mother who makes the acknowledgment;

(f) full name of the notary public before whom the document was acknowledged;

(g) full names of witnesses to document;

(h) date and place of acknowledgment of said document and entry and page number of the notarial register in which the name was recorded.

Sec. 13. Documents registered are public documents. — The books making up the civil register and all documents relating thereto shall be considered public documents and be prima facie evidence of the truth of the facts therein contained. They shall be open to the public during office hours and shall be kept in a suitable safe which shall be furnished to the local civil registrar at the expense of the general fund of the municipality concerned. The local registrar shall not under any circumstances permit any document entrusted to his care to be removed from his office, except by order of a court, in which case the proper receipt shall be taken. The local civil registrar may issue certified copies of any document filed, upon payment of the proper fees required in this Act.

Sec. 16. False statement. — Any person who shall knowingly make false statement in the forms furnished and shall present the same for entry in the civil register, shall be punished by imprisonment for not less than one month nor more than six months, or by a fine of not less than two hundred pesos nor more than five hundred or both, in the discretion of the court.


Article I. General Provisions

Section 1. Short Title. — This Act shall be known as the "Domestic Adoption Act of 1998."

Section 2. Declaration of Policies. —

(a) It is hereby declared the policy of the State to ensure that every child remains under the care and custody of his/her parent(s) and be provided with love, care, understanding and security towards the full and harmonious development of his/her personality. Only when such efforts prove insufficient and no appropriate placement or adoption within the child’s extended family is available shall adoption by an unrelated person be considered.

(b) In all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of the Child; UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally; and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Toward this end, the State shall provide alternative protection and assistance through foster care or adoption for every child who is neglected, orphaned, or abandoned.

(c) It shall also be a State policy to:

(i) Safeguard the biological parent(s) from making hurried decisions to relinquish his/her parental authority over his/her child;

(ii) Prevent the child from unnecessary separation from his/her biological parent(s);

(iii) Protect adoptive parent(s) from attempts to disturb his/her parental authority and custody over his/her adopted child.
Any voluntary or involuntary termination of parental authority shall be administratively or judicially declared so as to establish the status of the child as "legally available for adoption" and his/her custody transferred to the Department of Social Welfare and Development or to any duly licensed and accredited child-placing or child-caring agency, which entity shall be authorized to take steps for the permanent placement of the child;

(iv) Conduct public information and educational campaigns to promote a positive environment for adoption;

(v) Ensure that sufficient capacity exists within government and private sector agencies to handle adoption inquiries, process domestic adoption applications, and offer adoption-related services including, but not limited to, parent preparation and post-adoption education and counseling; and

(vi) Encourage domestic adoption so as to preserve the child’s identity and culture in his/her native land, and only when this is not available shall intercountry adoption be considered as a last resort.

Section 3. Definition of terms— For purposes of this Act, the following terms shall be defined as:

(j) "Simulation of birth" is the tampering of the civil registry making it appear in the birth records that a certain child was born to a person who is not his/her biological mother, causing such child to lose his/her true identity and status.

Section 13. Decree of Adoption. — If, after the publication of the order of hearing has been complied with, and no opposition has been interposed to the petition, and after consideration of the case studies, the qualifications of the adopter(s), trial custody report and the evidence submitted, the court is convinced that the petitioners are qualified to adopt, and that the adoption would redound to the best interest of the adoptee, a decree of adoption shall be entered which shall be effective as of the date the original petition was filed. This provision shall also apply in case the petitioner(s) dies before the issuance of the decree of adoption to protect the interest of the adoptee. The decree shall state the name by which the child is to be known.

Section 14. Civil Registry Record. — An amended certificate of birth shall be issued by the Civil Registry, as required by the Rules of Court, attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname. The original certificate of birth shall be stamped "cancelled" with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue.

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Article V. Effects of Adoption

Section 16. Parental Authority. — Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

Section 17. Legitimacy. — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

Section 18. Succession. — In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

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Article VII. Violations and penalties

Sec. 21. Violations and Penalties. —
(a) The penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine not less than Fifty thousand pesos (P50,000.00), but not more than Two hundred thousand pesos (P200,000.00) at the discretion of the court shall be imposed on any person who shall commit any of the following acts:

(i) obtaining consent for an adoption through coercion, undue influence, fraud, improper material inducement, or other similar acts;

(ii) non-compliance with the procedures and safeguards provided by the law for adoption; or

(iii) subjecting or exposing the child to be adopted to danger, abuse, or exploitation.

(b) Any person who shall cause the fictitious registration of the birth of a child under the name(s) of a person(s) who is not his/her biological parent(s) shall be guilty of simulation of birth, and shall be punished by prision mayor in its medium period and a fine not exceeding Fifty thousand pesos (P50,000.00).

Any physician or nurse or hospital personnel who, in violation of his/her oath of office, shall cooperate in the execution of the abovementioned crime shall suffer the penalties herein prescribed and also the penalty of permanent disqualification.

Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents, and communications of adoption applications, cases, and processes shall suffer the penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years, and/or a fine of not less than Five thousand pesos (P5,000.00) but not more than Ten thousand pesos (P10,000.00), at the discretion of the court.

A penalty lower by two (2) degrees than that prescribed for the consummated offense under this Article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated. Acts punishable under this Article, when committed by a syndicate or where it involves two (2) or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of reclusion perpetua.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided, shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

When the offender is an alien, he/she shall be deported immediately after service of sentence and perpetually excluded from entry to the country.

.Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: Provided, That upon the filing of a case, either administrative or criminal, said government official, employee, or functionary concerned shall automatically suffer suspension until the resolution of the case.

Sec. 22. Rectification of Simulated Births. — A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act: Provided, That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter: Provided, further, That the application for correction of the birth registration and petition for adoption shall be filed within five (5) years from the effectivity of this Act and completed thereafter: Provided, finally, That such person complies with the procedure as specified in Article IV of this Act and other requirements as determined by the Department.
A.M. No. 02-6-02-SC 2002-08-02, Rule on Adoption (2002).

A. DOMESTIC ADOPTION

Section 1. Applicability of the Rule. – This Rule covers the domestic adoption of Filipino children.

Section 2. Objectives. – (a) The best interests of the child shall be the paramount consideration in all matters relating to his care, custody and adoption, in accordance with Philippine laws, the United Nations (UN) Convention on the Rights of the Child, UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally, and the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption.

(b) The State shall provide alternative protection and assistance through foster care or adoption for every child who is a foundling, neglected, orphaned, or abandoned. To this end, the State shall:

(i) ensure that every child remains under the care and custody of his parents and is provided with love, care, understanding and security for the full and harmonious development of his personality. Only when such efforts prove insufficient and no appropriate placement or adoption within the child’s extended family is available shall adoption by an unrelated person be considered.

(ii) safeguard the biological parents from making hasty decisions in relinquishing their parental authority over their child;

(iii) prevent the child from unnecessary separation from his biological parents;

(iv) conduct public information and educational campaigns to promote a positive environment for adoption;

(v) ensure that government and private sector agencies have the capacity to handle adoption inquiries, process domestic adoption applications and offer adoption-related services including, but not limited to, parent preparation and post-adoption education and counseling;

(vi) encourage domestic adoption so as to preserve the child’s identity and culture in his native land, and only when this is not available shall inter-country adoption be considered as a last resort; and

(vii) protect adoptive parents from attempts to disturb their parental authority and custody over their adopted child.


Section 1. Declaration of Policy. – It is hereby declared the policy of the State that alternative protection and assistance shall be afforded to every child who is abandoned, surrendered, or neglected. In this regard, the State shall extend such assistance in the most expeditious manner in the interest of full emotional and social development of the abandoned, surrendered, or neglected child.

It is hereby recognized that administrative processes under the jurisdiction of the Department of Social Welfare and Development for the declaration of a child legally available for adoption of abandoned, surrendered, or neglected children are the most expeditious proceedings for the best interest and welfare of the child.
LOOKING AFTER FILIPINO CHILDREN


Article I
GENERAL PROVISIONS

Section 1. Short Title. — This Act shall be known as the “Inter-Country Adoption Act of 1995.”

Section 2. Declaration of Policy. — It is hereby declared the policy of the State to provide every neglected and abandoned child with a family that will provide such child with love and care as well as opportunities for growth and development. Towards this end, efforts shall be exerted to place the child with an adoptive family in the Philippines. However, recognizing that inter-country adoption may be considered as allowing aliens not presently allowed by law to adopt Filipino children if such children cannot be adopted by qualified Filipino citizens or aliens, the State shall take measures to ensure that inter-country adoptions are allowed when the same shall prove beneficial to the child’s best interests, and shall serve and protect his/her fundamental rights.

Article III
PROCEDURE

Section 7. Inter-Country Adoption as the Last Resort. — The Board shall ensure that all possibilities for adoption of the child under the Family Code have been exhausted and that inter-country adoption is in the best interest of the child. Towards this end, the Board shall set up the guidelines to ensure that steps will be taken to place the child in the Philippines before the child is placed for inter-country adoption: Provided, however, That the maximum number that may be allowed for foreign adoption shall not exceed six hundred (600) a year for the first five (5) years.

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Section 11. Family Selection/Matching. — No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally. The clearance, as issued by the Board, with the copy of the minutes of the meetings, shall form part of the records of the child to be adopted. When the Board is ready to transmit the Placement Authority to the authorized and accredited inter-country adoption agency and all the travel documents of the child are ready, the adoptive parents, or any one of them, shall personally fetch the child in the Philippines.


CHAPTER I GENERAL PROVISIONS

SEC. 1. Short Title. — This Act shall be known as “The Magna Carta of Women”.

SEC. 2. Declaration of Policy. — Recognizing that the economic, political, and sociocultural realities affect women’s current condition, the State affirms the role of women in nation building and ensures the substantive equality of women and men. It shall promote empowerment of women and pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome.

Further, the State realizes that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality. To realize this, the State shall endeavor to develop plans, policies, programs, measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men.

The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law. The State shall accord women the rights, protection, and opportunities available to every member of society. The State affirms women’s rights as
human rights and shall intensify its efforts to fulfill its duties under international and domestic law to recognize, respect, protect, fulfill, and promote all human rights and fundamental freedoms of women, especially marginalized women, in the economic, social, political, cultural, and other fields without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status.

The State shall provide the necessary mechanisms to enforce women's rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms.

The State, in ensuring the full integration of women’s concerns in the mainstream of development, shall provide ample opportunities to enhance and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their capabilities.

In pursuance of this policy, the State reaffirms the right of women in all sectors to participate in policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development.

SEC. 3. Principles of Human Rights of Women. – Human rights are universal and inalienable. All people in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights, which states that all human beings are free and equal in dignity and rights.

Human rights are indivisible. Human rights are inherent to the dignity of every human being whether they relate to civil, cultural, economic, political, or social issues.

Human rights are interdependent and interrelated. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others.

All individuals are equal as human beings by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples, and other identified groups.

States and other duty-bearers are answerable for the observance of human rights. They have to comply with the legal norms and standards enshrined in international human rights instruments in accordance with the Philippine Constitution. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

SEC. 28. Recognition and Preservation of Cultural Identity and Integrity. – The State shall recognize and respect the rights of Moro and indigenous women to practice, promote, protect, and preserve their own culture, traditions, and institutions and to consider these rights in the formulation and implementation of national policies and programs. To this end, the State shall adopt measures in consultation with the sectors concerned to protect their rights to their indigenous knowledge systems and practices, traditional livelihood, and other manifestations of their cultures and ways of life: Provided, That these cultural systems and practices are not discriminatory to women.

SEC. 32. Protection of Girl-Children. – (a) The State shall pursue measures to eliminate all forms of discrimination against girl-children in education, health and nutrition, and skills development.
(b) Girl-children shall be protected from all forms of abuse and exploitation.

(c) Equal access of Moro and indigenous girl-children in the Madaris, schools of living culture and traditions, and the regular schools shall be ensured.

(d) Gender-sensitive curriculum, including legal literacy, books, and curriculum in the Madaris and schools of living culture and traditions shall be developed.

(e) Sensitivity of regular schools to particular Moro and indigenous practices, such as fasting in the month of Ramadan, choice of clothing (including the wearing of Hijab), and availability of halal food shall be ensured.


Section 1. Short Title - This Act shall be known as the "Tobacco Regulation Act of 2003."

Section 2. Policy - It is the policy of the State to protect the populace from hazardous products and promote the right to health and instill health consciousness among them. It is also the policy of the State, consistent with the Constitutional ideal to promote the general welfare, to safeguard the interests of the workers and other stakeholders in the tobacco industry. For these purposes, the government shall institute a balanced policy whereby the use, sale, and advertisements of tobacco products shall be regulated in order to promote a healthful environment and protect the citizens from the hazards of tobacco smoke, and at the same time ensure that the interest of tobacco farmers, growers, workers and stakeholders are not adversely compromised.

HEALTHFUL ENVIRONMENT

Section 5. Smoking in Public Places - Smoking shall be absolutely prohibited in the following public places:

a. Centers of youth activity such as playschools, preparatory schools, elementary schools, high schools, colleges and universities, youth hostels, and recreational facilities for persons under eighteen (18) years old;

b. Elevator and stairwells;

c. Location in which fire hazards are present, including gas stations and storage areas for flammable liquids, gas, explosives or combustible materials;

d. Within the buildings and premises of public and private hospitals. Medical, dental, and optical clinics, health centers, nursing homes, dispensaries and laboratories;

e. Public conveyance and public facilities including airport and ship terminals and train and bus stations, restaurant and conference halls, except for separate smoking areas; and

f. Food preparation areas.

Section 6. Designated Smoking And Non-Smoking Areas - In all enclosed places that are open to the general public, private workplaces, and other places not covered under the preceding Section, where smoking may expose a person to the other than the smoker to tobacco smoke, the owner, proprietor, possessor, manager or administrator of such places shall establish smoking areas. Such areas may include a designated smoking area within the building, which may be in an open space or separate area with proper ventilation, but shall not be located within the same room that has been designated as a non-smoking area.

All designated smoking areas shall at least one (1) legible and visible sign posted, namely "SMOKING AREA" for the Information and guidance of all concerned. In addition, the sign or not posted shall include a warning about the health effects of direct or secondhand exposure
to tobacco smoke. Non-smoking areas shall likewise have at least one (1) legible and visible sign, namely: "NO SMOKING AREA" or "NO SMOKING".

**ACCES RESTRICTIONS**

**Section 7.** Vending Machines, Self-Service Facilities - unless the vending machine has a mechanism for age verification, the sale or distribution of tobacco products to minors by means of a vending machine or any self-service facility or similar contraption or device is prohibited, except at point-of-sale establishments.

**Section 8.** Retailer Compliance With Respect To Self-Service Facilities. - Each retailer shall ensure that all tobacco-related self-service displays or facilities, advertising, labeling and other items that are located in the establishment of the retailer and that do not comply with the requirements of this Act are removed or are brought into compliance with the requirements of this Act.

**Section 9.** Minimum Age Sales - Under this Act, it shall be unlawful:

a. For any retailer or tobacco products to sell or distribute tobacco products to any minor;

b. For any person to purchase cigarettes or tobacco products from a minor;

c. For a minor to sell or buy cigarettes or any tobacco products; and

d. For a minor to smoke cigarettes or any other tobacco products.

It shall not be a defense for the person selling or distributing that he/she did not know or was aware of the real age of the minor. Neither shall it be a defense that he/she did not know nor had any reason to believe that the cigarette or any other tobacco product was for the consumption of the minor to whom it was sold.

**Section 10.** Sale of Tobacco Products Within School Perimeters - The sale or distribution of tobacco products is prohibited within one hundred (100) meters from any point of the perimeter of a school, public playground or other facility frequented particularly by minors.

**Section 11.** Signage - Point-of-Sale establishments offering, distributing or selling tobacco products to consumers, shall post the following statement in a clear and conspicuous manner: "SALE/DISTRIBUTION TO OUR PURCHASE BY MINORS OF TOBACCO PRODUCTS IS UNLAWFUL" or "IT IS LAWFUL FOR TOBACCO PRODUCTS TO BE SOLD/DISTRIBUTED TO OR PURCHASED BY PERSONS UNDER 18 YEARS OF AGE".

**Section 12.** Proof Of Age Verification - In case of doubt as to the age of the buyer, retailers shall verify, by means of any valid from of photographic identification containing the date of birth of the bearer, that no individual purchasing a tobacco is below eighteen (18) years of age.

**Section 15.** Restrictions On Advertising - The following restrictions shall apply to all tobacco advertising:

a. Advertisement shall not be aimed at or particularly appeal to persons under eighteen (18) years of age.

**Section 16.** Restrictions on Print Media Advertising - The following restrictions shall apply to all print media tobacco advertisements:

a. Advertisements shall not be placed in any printed publication unless there is a reasonable basis to believe that at least seventy-five percent (75%) of the readers of such publication are eighteen (18) years of age and above, and the number of youth who read it constitutes less than ten percent (10%) of all youth in the Philippines.

b. Advertisements shall not be placed on the packaging or outside covers (front and back) of a magazine, newspaper, journal or other publication printed for general circulation.
Section 18. Restrictions on Advertising In Cinemas - Tobacco advertisements are prohibited in connection with the showing of any film where persons below eighteen (18) years old are permitted admission.

Section 19. Restrictions on Television - Advertisements shall not be broadcast on television, cable television, and radio between seven o’clock in the morning and seven o’clock at night.

Section 20. Restriction on Advertising In Audio, Video And Computer Cassettes/discs And Similar Medium - No electronic advertisements shall be incorporated within any video or audio cassette, videogame machine, optical disc or any similar medium, unless access to the item is restricted to persons eighteen (18) years of age or older. For the purpose of this Section, video game includes any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own cathode ray tube, or is designed to be used with a television set or monitor that interacts with the user of the device.

Section 21. Restrictions on Advertising On The Internet And Similar Medium - Advertisement are prohibited on the internet and other similar medium unless that Internet site is restricted to persons eighteen (18) years of age or older. A site will be deemed restricted if a person cannot obtain access beyond the first page of the website unless the person has established that he or she is at least eighteen (18) years old. This limitation applies to commercial communications and shall not prevent the use of company Internet websites to provide information regarding a company, its products and smoking and health related information. This Section shall prohibit business-to-business transactions conducted on the Internet, and other similar medium between tobacco manufactures, retailers and distributors.

INFORMATION PROGRAM

Section 35. Instructions on the Hazardous Effect of Smoking as Part of School Curricula - Instruction on the adverse effects of cigarette tobacco smoking, including their health, environmental and economic implications, shall be integrated into the existing curricula of all public and private elementary and high schools.

The DepEd Secretary shall promulgate such rules and regulations as may be necessary to carry out the abovestated policy hereof, and, with, the assistance of the Secretary of Health, and with the approval of the IAC-Tobacco, shall cause the publication and distribution of materials on the unhealthy effects of smoking to students and the general public.


SEC. 1. Title.- This Act shall be known and cited as the “Fair and Equitable Access to Education Act.”

SEC. 2. Declaration of Policy.- It is hereby declared the policy of the State to uphold the primacy of education, to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development. Accordingly, the State shall provide for the development of its citizenry as represented by all legislative districts by ensuring them fair and equitable access to the infrastructure and tools necessary for quality education. Towards this end, the State shall provide all legislative districts a minimum and continuing level of educational development by establishing an objective mechanism that would make equitable the allocation of the Department of Education, Culture and Sports’ (DECS) budget for capital outlay.

SEC. 3. Definition of Terms.- As used in this act, the following terms are hereby defined as follows:
a) **Capital outlay** – refers to the provisions of the General Appropriations Act, particularly those pertaining to the budget of the DECS for elementary and secondary education for (i) the acquisition and improvement of sites; (ii) the construction, replacement, rehabilitation and repair of buildings, classrooms, libraries, workshops, toilets and other structures; and (iii) furniture, fixtures, and equipment such as, but not limited to, desks, chairs, laboratory and workshop implements, computers, books, and the other basic and essential tools for learning whose beneficial use shall exceed one (1) year; and

(b) **Classroom shortage** – refers to the number of classrooms whose construction, in considering the number of students divided by the existing number of classrooms, shall result in a student-classroom ratio of 45:1; classrooms shall mean those exclusively used for instructional purposes and shall exclude offices, libraries, laboratories, workshops and the like.

**SEC. 4. Allocation of Appropriation.**—Notwithstanding any provision of the law to the contrary, the annual DECS budget for capital outlay, as defined in Section 3(a), shall be allocated among the legislative districts in the following manner:

a) On the first year of the effectivity of this Act:

1) thirty percent (30%) of the total capital outlay to be allocated pro-rata according to each legislative district’s student population in relation to the total student population of the country;

2) sixty percent (60%) of the total capital outlay to be allocated only among those legislative districts with classroom shortages as defined in Section 3(b), pro-rata to the total classroom shortage of the country pursuant to Section 3(b) as determined by the DECS; and

3) ten percent (10%) to be allocated in accordance with the implementation of the policy of this Act as may be determined by the DECS.

b) On the second year and every year thereafter:

1) fifty percent (50%) of total capital outlay to be allocated pro-rata according to each legislative district’s student population in relation to the total student population of the country;

2) forty percent (40%) of the total capital outlay allocated only among those legislative districts with classroom shortages, as defined in Section 3(b), pro-rata to the total classroom shortage of the country pursuant to Section 3(b) as determined by the DECS; and

3) ten percent (10%) to be allocated in accordance with the implementation of the policy of this Act as may be determined by the DECS.

**SEC. 5. Use of Allocation.**—The total amount allocated herein shall be used exclusively for capital outlay pursuant to the educational priorities of the legislative district, as determined by the DECS upon prior consultation with the representative of each legislative district: Provided, That the primary objective in the use of any allocation shall be to eliminate classroom shortages if any: Provided, further, That any amounts allocated in accordance with subparagraph (1) of paragraphs (a) and (b) of the preceding Section shall be used only for the acquisition or improvement of school sites, construction of school buildings, classrooms and the purchase of material or equipment that directly aid in education: Provided, furthermore, That the amount so appropriated in accordance with subparagraph (2) of paragraphs (a) and (b) of the same Section shall be used exclusively for the construction of new school buildings: Provided, finally, That if the amount so appropriated in subparagraph (2) of paragraphs (a) and (b) of the same Section shall exceed the amount required to meet classroom shortage, the excess shall be integrated with subparagraph (1) of paragraphs (a) and (b) of the same Section excluding capital outlays of division offices, regional and central offices.

Article 149. The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect. (216a, 218a)

Article 174. Legitimate children shall have the right:
(1) To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;
(2) To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and
(3) To be entitled to the legitime and other successional rights granted to them by the Civil Code. (264a)

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.
The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent. (289a)

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. (287a)

Article 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of a child over seven years of age, unless the parent chose is unfit.

Article 233. The person exercising substitute parental authority shall have the same authority over the person of the child as the parents. In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.


Article 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression.

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Article 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.

Article 408. The following shall be entered in the civil register:
(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name.

Article 412. No entry in the civil register shall be changed or corrected without a judicial order.
Executive Order 778, Transforming the Council for the Welfare of Children into the Early Childhood Care and Development Council (2009).

WHEREAS, Republic Act (RA) No. 8980, also known as the Early Childhood Care and Development (ECCD) Act, promulgated a comprehensive policy and a national system for early ECCD, and provided funds therefor and for other purposes;

WHEREAS, the functions of the Council for the Welfare of Children have expanded to include not only its original functions under Presidential Decree No. 603 and Executive Order No. 233, series of 1988, but also that as National ECCD Coordinating Council, pursuant to Section 8 of RA 8980;

WHEREAS, there is a necessity to promote the welfare and benefits of young children aged 0 to 6 years, who are the principal beneficiaries of the ECCD Act, as well as to ensure that the objectives of the National ECCD System as defined by RA No. 9080 are achieved;

WHEREAS, Section 31, Chapter 10, Book III of the Administrative Code of 1987 grants the President the continuing authority to reorganize the Executive Branch of government;

NOW, THEREFORE I, GLORIA M. ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Section 1. Transforming the Council for the Welfare of Children (CWC) into the Early Childhood Care and Development (ECCD) Council. — The Council for the Welfare of Children is hereby transformed into the ECCD Council, attached to the Office of the President, which will support the implementation of the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six (6) and to promote their optimum growth and development.

Section 2. Composition of the Council. — The ECCD shall be composed of the Government Board and its Secretariat. The Governing Board shall be headed by a Chairperson (with the salary grade and emoluments of a Cabinet-rank Secretary) to be appointed by the President.

The following shall be members of the Governing Board:

Department of Social Welfare and Development (DSWD)
Department of Education
Department of Health and the National Nutrition Council
Union of Local Authorities of the Philippines

The heads of the concerned departments, agencies and institutions shall as much as possible attend the meetings of the Council. In their absence, department, agency, and/or institution head shall designate senior permanent representatives who may attend and participate at meetings of the Council for them.

The President shall also appoint an Executive Director who shall head the ECCD Secretariat.

Section 3. Secretariat. — The Secretariat of the CWC shall be transformed into the ECCD Secretariat. Moreover, technical staff may be seconded from various departments or agencies as necessary.

Section 4. Transfer of Other Functions of CWC to DSWD. — The functions and staff of the CWC now ECCD Council which are not part of ECCD are hereby transferred to the DSWD.
Art. 205. Creation of the Council for the Welfare of Children. - A Council for the Welfare of Children is hereby established under the Office of President. The Council shall be composed of the Secretary of Social Welfare as Chairman, and seven members, namely: The Secretary of Justice, the Secretary of Labor, the Secretary of Education and Culture, the Secretary of Health, the Presiding Judge of the Juvenile and Domestic Relations Court, City of Manila, and two representatives of voluntary welfare associations to be appointed by the President of the Philippines, each of whom shall hold office for a term two years.

There shall be a permanent Secretariat for the Council headed by an Executive Director, to be appointed by the Chairman and approved by a majority of the members of the Council.

For actual attendance at regular meetings, the Chairman and each member of the Council shall receive a per diem of one hundred pesos for every meeting actually attended, but the total amount of per diem that the Chairman and a member may receive in a month shall in no case exceed five hundred pesos.

Art. 206. Appropriation. - The sum of five million pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, for the operation and maintenance of the Council for the Welfare of Children and Youth during the fiscal year. Thereafter, such sums as may be necessary for its operation and maintenance shall be included in the General Appropriations Decree.

Chapter 2
POWERS AND RESPONSIBILITIES

Art. 207. Powers and Functions. - The Council for the Welfare of Children and Youth shall have the following powers and functions:

1. To coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;

2. To prepare, submit to the President and circulate copies of long-range programs and goals for the physical, intellectual, emotional, moral, spiritual, and social development of children and youth, and to submit to him an annual report of the progress thereof;

3. To formulate policies and devise, introduce, develop and evaluate programs and services for the general welfare of children and youth;

4. To call upon and utilize any department, bureau, office, agency, or instrumentality, public, private or voluntary, for such assistance as it may require in the performance of its functions;

5. To perform such other functions as provided by law.

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Chapter 3
IMPLEMENTATION OF CODE AND RULE-MAKING AUTHORITY

Art. 209. Implementation of this Code and Rule-Making Authority. - The enforcement and implementation of this Code shall be the primary responsibility of the Council for the Welfare of Children. Said Council shall have authority to promulgate the necessary rules and regulations for the purpose of carrying into effect the provisions of this Code.
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YOUTH WELFARE CODE with primary functions, among others, to coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare so as to formulate and evaluate policies, programs and services relative to the development of the general welfare and protection of the best interests of children and youth;

WHEREAS, it is necessary to revise the composition of and enlarge the membership and organizational structure of the Council to enable the Council to more effectively carry out its responsibilities under the law and to ensure the assistance and cooperation of government agencies concerned with child and youth welfare and development;

WHEREAS, to provide better focus and perspective, it becomes imperative to redefine the roles and functions of the Council;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the sovereign will of the Filipino people and the Constitution, do hereby order:

Section 1. Title. This Executive Order shall otherwise be known as the Reorganization Act of the Council for the Welfare of Children.

Section 2. Attachment to the DSWD. The Council shall continue to be an attached agency of the Department of Social Welfare and Development (DSWD).

Section 4. Powers and Responsibilities. The Council for the Welfare of Children shall have the following powers and responsibilities:

a. Coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;

Formulate an integrated national policy and long-range programs, monitor and evaluate the implementation of this policy, and all programs and services relative to the development of the general welfare and protection of the best interests of children and youth;

Advocate and recommend to the President and other appropriate agencies for implementation on a nationwide scale when appropriate, innovative, pilot programs and services for the general welfare of children;

Mobilize resource assistance and call upon and utilize any department, bureau, office agency, or instrumentalities, public, private, or voluntary, for such assistance as it may require in the performance of its functions;

Submit annually to the President, through the Secretary of Social Welfare and Development, a comprehensive report on its activities and accomplishments; and

Perform such other functions as provided by law.

Section 5. Executive Director. The Executive Director of the Council shall be appointed by the President upon recommendation of the Chairman, and shall have the rank, privileges and emoluments of a Career Executive Service Officer I, and shall receive such other allowances and benefits as may be provided by law.

The Executive Director of the Council for the Welfare of Children shall be an ex-officio member of the National Nutrition Council.

Section 6. Division. The Council Secretariat, which is the executive arm of the Council headed by its Executive Director, shall have the following divisions:

a. Office of the Executive Director;

Administration and Finance Division;

Planning and Programming Division;

Legal and Technical Services Division; and,

b. Information, Education and Communications Division.

Section 7. Technical Management Committee. A Technical Management Committee shall be created under the Council which will be composed of various Bureau and Service Heads of each government department and heads of non-government organizations as appropriate.

Section 8. Sectoral Panels. Five (5) Sectoral Panels are hereby created corresponding to the five (5) major concerns of children and youth; Health and Nutrition; Population and Social Welfare; Education; Livelihood and Shelter; and Legal Protection and Welfare.
WHEREAS, the Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government;

WHEREAS, 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 discrimination, and other conditions prejudicial to their development;

WHEREAS, there is a need to consolidate in one body the assessment, monitoring and implementation of the aforecited policy on a continuing basis;

NOW, THEREFORE, I, FIDEL V. RAMOS President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. There is hereby created a Special Committee for Children to be composed of:
1. The Secretary of Justice C Chairman
2. The Secretary of Social Welfare and Development C Co-Chairman
3. The Chairman of the Commission on Human Rights C Member
4. Commissioner of the Bureau of Immigration C Member
5. Department of Labor and Employment C Member
6. Department of Tourism C Member
7. Department of the Interior and Local Government C Member
8. Department of Foreign Affairs C Member
9. Three representatives of private organizations to be nominated by said groups and appointed by the President C Member

SEC. 2. The Committee shall exercise the following functions and duties:

a. To report to the President acts taken to address specific issues on child abuse and exploitation brought to the Committee's attention.

b. To direct other agencies to immediately respond to the problems brought to their attention and to report to the Committee on action taken.

c. To perform such other functions and duties as may be necessary to meet the objectives of the Committee.


CHAPTER 8 - SANGGUNIANG KABATAAN

SEC. 423. Creation and Election. - (a) There shall be in every barangay a sangguniang kabataan to be composed of a chairman, seven (7) members, a secretary, and a treasurer.

(b) A sangguniang kabataan official who, during his term of office, shall have passed the age of twenty-one (21) years shall be allowed to serve the remaining portion of the term for which he was elected.

SEC. 424. Katipunan ng Kabataan. - The katipunan ng kabataan shall be composed of all citizens of the Philippines actually residing in the barangay for at least six (6) months, who are fifteen (15) but not more than twenty-one (21) years of age, and who are duly registered in the list of the sangguniang kabataan or in the official barangay list in the custody of the barangay secretary.
(a) Promulgate resolutions necessary to carry out the objectives of the youth in the barangay in accordance with the applicable provisions of this Code;

(b) Initiate programs designed to enhance the social, political, economic, cultural, intellectual, moral, spiritual, and physical development of the members;

(c) Hold fund-raising activities, the proceeds of which shall be tax-exempt and shall accrue to the general fund of the sangguniang kabataan: Provided, however, That in the appropriation thereof, the specific purpose for which such activity has been held shall be first satisfied;

(d) Create such bodies or committees as it may deem necessary to effectively carry out its programs and activities;

(e) Submit annual and end-of-term reports to the sangguniang barangay on their projects and activities for the survival and development of the youth in the barangay;

(f) Consult and coordinate with all youth organizations in the barangay for policy formulation and program implementation;

(g) Coordinate with the appropriate national agency for the implementation of youth development projects and programs at the national level;

(h) Exercise such other powers and perform such other duties and functions as the sangguniang barangay may determine or delegate; and

(i) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

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SEC. 428. Qualifications. - An elective official of the sangguniang kabataan must be a citizen of the Philippines, a qualified voter of the katipunan ng kabataan, a resident of the barangay for at least one (1) year immediately prior to election, at least fifteen (15) years but not more than twenty-one (21) years of age on the day of his election, able to read and write Filipino, English, or the local dialect, and must not have been convicted of any crime involving moral turpitude.

SEC. 429. Term of Office. - The sangguniang kabataan chairman and members shall hold office for a period of three (3) years, unless sooner removed for cause as provided by law, permanently incapacitated, die or resign from office.

SEC. 430. Sangguniang Kabataan Chairman. - The registered voters of the katipunan ng kabataan shall elect the chairman of the sangguniang kabataan who shall automatically serve as an ex-officio member of the sangguniang barangay upon his assumption to office. As such, he shall exercise the same powers, discharge the same duties and functions, and enjoy the same privileges as the regular sangguniang barangay members, and shall be the chairman of the committee on youth and sports development in the said sanggunian.

SEC. 431. Powers and Duties of the Sangguniang Kabataan Chairman. - In addition to the duties which may be assigned to him by the sangguniang kabataan chairman shall:

(a) Call and preside over all meetings of the katipunan ng kabataan and the sangguniang kabataan;

(b) Implement policies, programs, and projects within his jurisdiction in coordination with the sangguniang barangay ;

(c) Exercise general supervision over the affairs and activities of the sangguniang kabataan and the official conduct of its members, and such other officers of the sangguniang kabataan within his jurisdiction;

(d) With the concurrence of the sangguniang kabataan, appoint from among the members of the sangguniang kabataan, the secretary and treasurer, and such other officers as may be deemed necessary; and

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.
**SEC. 434. Privileges of Sangguniang Kabataan Officials.** - The sangguniang kabataan chairman shall have the same privileges enjoyed by other sangguniang barangay officials under this Code subject to such requirements and limitations provided herein. During their incumbency, sangguniang kabataan officials shall be exempt from payment of tuition and matriculation fees while enrolled in public tertiary schools, including state colleges and universities. The national government shall reimburse said college or university the amount of the tuition and matriculation fees: Provided, That, to qualify for the privilege, the said officials shall enroll in the state college or university within or nearest their area of jurisdiction.

**SEC. 435. Succession and Filling of Vacancies.** - (a) In case a sangguniang kabataan chairman refuses to assume office, fails to qualify, is convicted of a felony, voluntarily resigns, dies, is permanently incapacitated, is removed from office, or has been absent without leave for more than three (3) consecutive months, the sangguniang kabataan member who obtained the next highest number of votes in the election immediately preceding shall assume the office of the chairman for the unexpired portion of the term, and shall discharge the powers and duties, and enjoy the rights and privileges appurtenant to the office. In case the said member refuses to assume the position or fails to qualify, the sanggunian member obtaining the next highest number of votes shall assume the position of the chairman for the unexpired portion of the term.

(b) Where two (2) or more sangguniang kabataan members obtained the same next highest number of votes, the other sangguniang kabataan members shall conduct an election to choose the successor to the chairman from among the said members.

(c) After the vacancy shall have been filled, the sangguniang kabataan chairman shall call a special election to complete the membership of said sanggunian. Such sangguniang kabataan member shall hold office for the unexpired portion of the term of the vacant seat.

(d) In case of suspension of the sangguniang kabataan chairman, the successor, as determined in subSections (a) and (b) of this Section shall assume the position during the period of such suspension.

**CHAPTER 9 - PEDERASYON NG MGA SANGGUNIANG KABATAAN**

**SEC. 436. Pederasyon ng mga Sangguniang Kabataan.** - (a) There shall be an organization of all the pederasyon ng mga sangguniang kabataan to be known as follows:

1. (1) in municipalities, pambayang pederasyon ng mga sangguniang kabataan;
2. (2) in cities, panlungsod na pederasyon ng mga sangguniang kabataan;
3. (3) in provinces, panlalawigang pederasyon ng mga sangguniang kabataan;
4. (4) in special metropolitan political subdivisions, pangmetropolitang pederasyon ng mga sangguniang kabataan; and
5. (5) on the national level, pambansang pederasyon ng mga sangguniang kabataan.

(b) The pederasyon ng mga sangguniang kabataan shall, at all levels, elect from among themselves the president, vice-president and such other officers as may be necessary and shall be organized in the following manner:

1. The panlungsod and pambayang pederasyon shall be composed of the sangguniang kabataan chairmen of barangays in the city or municipality, respectively;
2. The panlalawigang pederasyon shall be composed of presidents of the panlungsod and pambayang pederasyon;
3. The pangmetropolitang pederasyon shall be composed of presidents of the panlungsod and pambayang pederasyon;
4. The elected presidents of the pederasyon at the provincial, highly urbanized city, and metropolitan political subdivision levels shall constitute the pambansang katipunan ng mga sangguniang kabataan.
SEC. 437. Constitution and By-Laws. - The term of office, manner of election, removal and suspension of the officers of the pederasyon ng mga sangguniang kabataan at all levels shall be governed by the constitution and by-laws of the pederasyon in conformity with the provisions of this Code and national policies on youth.

SEC. 438. Membership in the Sanggunian. - (a) A sangguniang kabataan chairman shall, upon certification of his election by the Comelec and during his tenure of office is elected as pederasyon president, serve as an ex-officio member of the sanggunian panlalawigan, sangguniang panlungsod, and sangguniang bayan, as the case may be, without need of further appointment.

(b) The vice-president of the pederasyon whose president has been elected as president of a higher pederasyon shall serve as ex-officio member of the sanggunian concerned without need of further appointment.

(c) The pederasyon president or vice-president, as the case may be, shall be the chairman of the committee on youth and sports development of the sanggunian concerned.

CHAPTER 10 - LINGGO NG KABATAAN

SEC. 439. Observance of Linggo ng Kabataan. - (a) Every barangay, municipality, city and province shall, in coordination with the pederasyon ng mga sangguniang kabataan at all levels, conduct an annual activity to be known as the Linggo ng Kabataan on such date as shall be determined by the Office of the President.

(b) The observance of the Linggo ng Kabataan shall include the election of the counterparts of all local elective and appointive officials, as well as heads of national offices or agencies stationed or assigned in the territorial jurisdiction of the local government unit, among in-school and community youth residing in the local government unit concerned from ages thirteen (13) to seventeen (17). During said week, they shall hold office as boy and girl officials and shall perform such duties and conduct such activities as may be provided in the ordinance enacted pursuant to this Chapter.


Sec. 1. Title. — This Act shall be known as the "Youth in Nation-Building Act."

Sec. 2. Policy. — The State recognizes its responsibility to enable the youth to fulfill their vital role in nation-building and hereby establishes the National Comprehensive and Coordinated Program on Youth Development, creates the structures to implement the same and appropriates adequate funds to provide support for the program and implementing structures on a continuing sustained basis.

The State hereby declares that "Youth" is the critical period in a person’s growth and development from the onset of adolescence towards the peak of mature, self-reliant and responsible adulthood comprising the considerable sector of the population from the age of fifteen (15) to thirty (30) years.

The State further declares the National Comprehensive and Coordinated Program on Youth Development shall be based on the following principles:

(a) Promotion and protection of the physical, moral, spiritual, intellectual and social well-being of the youth to the end that the youth realize their potential for improving the quality of life;

(b) Inculcation in the youth of patriotism, nationalism and other basic desirable values to infuse in them faith in the Creator, belief in the sanctity of life and dignity of the human person, conviction for the strength and unity of the family and adherence to truth and justice;

(c) Encouragement of youth involvement in character-building and development activities for civic efficiency, stewardship of natural resources, agricultural and industrial productivity, and an understanding of world economic commitments on tariffs and trade and participation in structures of policy-making and program implementation to reduce the incidence
of poverty and accelerate socioeconomic development; and

(d) Mobilization of youth’s abilities, talents and skills and redirecting their creativity, inventive genius and wellspring of enthusiasm and hope for the freedom of our people from fear, hunger and injustice.

Sec. 3. Development Program. — In order to attain the declared national policy, there is hereby established the "National Comprehensive and Coordinated Program on Youth Development", hereinafter referred to as the "Development Program."
The components of the development program are the following:

(a) Formulation, approval and implementation of the Medium-Term Youth Development Program for four (4) years following the approval of this Act and every three (3) years thereafter, which shall be aligned to and shall complement the Medium-Term Philippine Development Plan for the corresponding period, taking into account the existing National Youth Development Plan as provided for in Executive Order No. 176, series of 1994;

(b) A national study on the "Situation of Youth in the Philippines", for the period up to the approval of this Act, and every three (3) years thereafter which identifies priority needs, prevailing attitudes and values of youth, the existing services, and the gaps in services delivery of the basic needs of youth;

(c) A "National Review, Evaluation and Reform" of all organizations delivering services to youth for the period up to the approval of this Act and every three (3) years thereafter;

(d) Activities to operationalize the implementing structures of the Development Program, preparations and participation in activities of youth of global significance including World Youth Day, and provide leadership and support therefor on a continuing sustained basis:

(e) The comprehensive, coordinated nationwide service delivery system comprising (i) existing public and civic services for youth which after review and reform or realignment fully support the policy and program framework under this Act; and (ii) innovative services and delivery systems institutionalized in areas without or with inadequate services and which are responsive to needs, following pilot demonstration projects to test the validity and feasibility of the services; and

(f) The participation of Filipino youth in the Biennial World Youth Day starting 1997 in Paris, France and every two (2) years thereafter.

Sec. 4. Definition of Terms. — For purposes of this Act, the following terms are hereby defined:

(a) "Youth" shall refer to those persons whose ages range from fifteen (15) to thirty (30) years old;

(b) "Youth Organizations" shall refer to those organizations whose membership/composition are youth;

(c) "Youth-Serving Organizations" shall refer to those registered organizations or institutions whose principal programs, projects and activities are youth-oriented and youth-related; and

(d) "Commission" shall refer to the National Youth Commission.

Sec. 5. National Youth Commission. — There is hereby created the "National Youth Commission," hereinafter referred to as the "Commission".

It shall be composed of the following:

(a) A chairman;

(b) One commissioner representing Luzon;

(c) One commissioner representing Visayas;

(d) One commissioner representing Mindanao;

(e) Two (2) commissioners to be chosen at large; and

(f) The President of the Pambansang Katipunan ng mga Sangguniang Kabataan, as commissioner, who shall serve in an ex officio capacity.

The first set of chairman and commissioners, which shall have a term of four (4) years, shall be constituted by the President of the Philippines from among the list of nominees submitted by youth organizations or institutions with national or regional constituencies and which have been in existence for at least three (3) years as of the
approval of this Act. The succeeding chairman and the two (2) commissioners to be chosen at large shall be appointed by the President from a list of at least three (3) but not more than five (5) nominees for each position, submitted by youth and youth-serving organizations or institutions with national constituencies duly registered with the Commission.

The succeeding commissioners representing Luzon, Visayas and Mindanao, respectively, shall be appointed by the President from a list of at least three (3) but not more than five (5) nominees for each position, submitted by youth and youth-serving organizations or institutions in their respective areas duly registered with the Commission.

The chairman and the appointive commissioners shall serve for a term of three (3) years, with reappointment for another term. The chairman shall have the rank and privileges of a department undersecretary, and the appointive commissioner shall have the rank and privileges of assistant secretaries of a department. The ex officio commissioner shall also have the rank and privileges of assistant secretary of a department.

Sec. 6. Status and Nature of the Commission. — The Commission shall be independent and autonomous and shall have the same status as that of national government agency attached to the Office of the President.

The Commission shall exercise corporate powers. It shall have a seal, may sue and be sued, and shall be the sole policy-making coordinating body of all youth-related institutions, programs, projects and activities of the government.

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Sec. 8. Objectives of the Commission. — The objectives of the Commission are:

(a) To provide the leadership in the formulation of policies and in the setting of priorities and direction of all youth promotion and development programs and activities;

(b) To encourage wide and active participation of the youth in all government and nongovernmental programs, projects and activities affecting them;

(c) To harness and develop the full potential of the youth as partners in nation-building; and

(d) To supplement government appropriations for youth promotion and development with funds from other sources.

Sec. 9. Powers of the Commission. — The Commission shall have the following powers:

(a) To appoint the officers and other personnel of the Commission and fix their compensation, allowances and other emoluments, subject to the civil service and other existing applicable laws, rules and regulations;

(b) To suspend, dismiss, or otherwise discipline for cause, any employee, and/or to approve or disapprove the appointment, transfer or detail of employees, subject to the provisions of existing laws and regulations;

(c) To enter into contracts;

(d) To acquire, use and control any land, building, facilities, equipment, instrument, tools, and rights required or otherwise necessary for the accomplishment of the objectives of the Commission;

(e) To acquire, own, possess and dispose of any real or personal property;

(f) To accept donations, gifts, bequests, and grants;

(g) To ensure the implementation by various government departments and agencies of their youth developmental projects and activities as indicated in their respective annual budgets;

(h) To issue rules and regulations in pursuance of the provisions of this Act; and

(i) To perform any and all other acts incident to or required by virtue of its creation.

Sec. 10. Functions of the Commission. — The Commission shall have the following functions:

(a) To formulate and initiate the national policy or policies on youth;

(b) To plan, implement, and oversee a national integrated youth promotion and development program;
(c) To establish a consultative mechanism which shall provide a forum for continuing dialogue between the government and the youth sector on the proper planning and evaluation of policies, programs and projects affecting the youth, convening for the purpose, representatives of all youth organizations and institutions, including the sangguniang kabataan from barangay, municipal, city, provincial and national levels;

(d) To assist and coordinate with governmental and nongovernmental organizations or institutions in the implementation of all laws, policies, programs and projects relative to youth promotion and development;

(e) To seek or request the assistance and support of any government agency, office or instrumentality including government-owned or -controlled corporations, local government units as well as nongovernmental organizations or institutions in pursuance of its policies, programs and projects;

(f) To conduct scientific interdisciplinary and policy-oriented researches and studies on youth-related matters, as well as trainings, seminars and workshops that will enhance the skills and leadership potentials of the youth, instilling in them nationalism and patriotism, with particular emphasis on Filipino culture and values;

(g) To establish and maintain linkages with international youth and youth-serving organizations or institutions and counterpart agencies of foreign governments in order to facilitate and ensure the participation of Filipino youth in international functions and affairs;

(h) To administer youth exchange programs as well as monitor and coordinate all foreign-sponsored youth programs and projects such as the Ship for Southeast Asia Youth Program and other similar exchanges and goodwill missions;

(i) To establish such organizational structures including regional offices, as may be required to effectively carry out its functions;

(j) To conduct promotion and fund-raising campaigns in accordance with existing laws;

(k) To allocate resources for the implementation of youth programs and projects;

(l) To extend and provide support or assistance to deserving youth and youth organizations including scholarship grants;

(m) To register, establish and/or facilitate and help in the establishment of the youth organizations and youth-serving organizations;

(n) To participate in international youth fora, symposia and organizations such as the International Youth Forum, Asian Youth Council, ASEAN Youth Forum, United Nations Commission for International Youth Year (IYY) and other similar bodies;

(o) To provide training and a national secretariat for the Sangguniang Kabataan National Federation pursuant to R. A. No. 7160, otherwise known as the Local Government Code;

(p) To submit an annual report on the implementation of this Act to the President and to Congress; and

(q) To perform such other functions as may be necessary to effectively and efficiently carry out the provisions of this Act.

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Sec. 13. Parliament of Youth Leaders. — There is hereby constituted the "Youth Parliament." The "Youth Parliament" shall be initially convened not later than six (6) months upon the full constitution of the Commission, and shall meet at the call of the National Commission, and thereafter be convened every two (2) years. The Youth Parliament shall have a regular session from two (2) to three (3) days every time it is convened, but may form task forces which may meet during the period between the convening thereof.

Delegates to the Youth Parliament shall be chosen by the Commission taking into consideration equal and geographical representation among men and women. All delegates shall be of good moral character, able to read and write, has not been convicted of any crime involving mortal turpitude, and shall not be more than thirty (30) years of age on the day of election to the position by virtue of which he qualifies as a delegate and on the day the Parliament is convened. The delegates shall elect the President of the Youth Parliament who shall preside during the session of the Youth Parliament.

The Youth Parliament at the end of each regular session shall present its proceedings, declarations and resolutions to the Commission.
Sec. 14. Advisory Council. — There shall be an Advisory Council which shall be composed of the Secretary of the Department of Education, Culture and Sports (DECS), as chairman, and the Secretaries of the Department of Budget and Management (DBM), the Department of Social Welfare and the Development (DSWD), the Department of the Interior and Local Government (DILG), the Department of Agriculture (DA), the Department of Foreign Affairs (DFA), Department of Labor and Employment (DOLE), the Department of Environment and Natural Resources (DENR), Director-General of the National Economic and Development Authority (NEDA), the Chairman of the Philippine Charity Sweepstake Office (PCSO), and the chairman of both Senate and House committees dealing with youth and sports development, and the Philippine Sports Commission (PSC), as members.

The Council shall meet once every three (3) months, or as often as may be necessary upon call of its chairman, advise and be consulted by the Commission on important matters relating to youth affairs, welfare and development.

The Council may form task forces which shall convene between the meetings of the Council. The Commission shall provide the technical support and the secretariat required by the Council to function according to this Act.


BOOK V

Title XVI

SOCIAL WELFARE AND DEVELOPMENT

CHAPTER 1

GENERAL PROVISIONS

Section 1.Declaration of Policy. - The State is committed to the care, protection, and rehabilitation of individuals, families and communities which have the least in life and need social welfare assistance and social work intervention to restore their normal functioning and enable them to participate in community affairs.

Section 2.Mandate. - The Department shall provide a balanced approach to welfare whereby the needs and interests of the population are addressed not only at the outbreak of crisis but more importantly at the stage which would inexorably lead to such crisis. Following such strategy, the Department’s objectives shall be to:

(1) Care for, protect and rehabilitate the physically and mentally handicapped and socially disabled constituents, for effective social functioning;

(2) Provide an integrated welfare package to its constituents on the basis of their needs and coordinate the service facilities required from such departments or agencies, governmental and non-governmental, which can best provide them;

(3) Arrest the further deterioration of the socially disabling or dehumanizing conditions of the disadvantaged segment of the population at the community level; and

(4) Advocate for policies and measures addressing social welfare concerns.

Section 3.Powers and Functions. - To accomplish its mandate and objectives, the Department shall:

(1) Formulate, develop and implement plans, programs and projects in the field of social welfare and development;

(2) Adopt policies to ensure effective implementation of programs for public and private social welfare services;

(3) Promote, support and coordinate the establishment, expansion and maintenance of non-government social welfare facilities, projects and services;

(4) Establish, operate, maintain and otherwise support institutional facilities, projects and services for its constituents;

(5) Promote, build and strengthen people’s organizations for a self-directing welfare system at the grassroots level;

(6) Promote, support and coordinate networks and facilities for the identification and delivery of appropriate interventions to its welfare constituents;

(7) Accredit institutions and organizations engaged in social welfare activities and provide consultative and information services to them;
(8) Undertake researches and studies on matters pertaining to its constituency;

(9) Initiate, promote and maintain bilateral and multi-lateral linkages for technical cooperation, in coordination with the Department of Foreign Affairs;

(10) Provide advisory services and develop and implement training standard and programs for personnel, social workers and students and third-country participants for career and staff development in social welfare activities;

(11) Disseminate information and publish technical bulletins on social welfare and development;

(12) Deputize law enforcement agencies to assist in the implementation of laws, rules and regulations for the protection of the rights of the exploited, abused and disadvantaged;

(13) Regulate fund drives, public solicitations and donations for charitable or welfare purposes;

(14) Set standards, accredit and monitor performance of all social welfare activities in both public and private sectors;

(15) Exercise functional and technical supervision over social workers in other government settings or agencies like courts, hospitals, schools and housing projects;

(16) Deputize local government units and other agencies of government as are necessary in providing disaster relief;

(17) Coordinate all activities pertaining to the implementation of programs and services for the disabled, the aging and other socially disadvantaged; and

(18) Perform such other functions as may be provided by law.

Section 4. Organizational Structure. - The Department, aside from the Department Proper comprising the Office of the Secretary, the Offices of the Undersecretaries and Assistant Secretaries and the Services, shall consist of the Bureaus, Regional Offices, Provincial/City Offices and Municipal/District Offices.

CHAPTER 2

DEPARTMENT PROPER

Section 5. Office of the Secretary. - The Office of the Secretary shall consist of the Secretary and the Secretary’s immediate staff, and the Public Affairs and Liaison Service.

Section 6. Undersecretaries. - The Secretary shall be assisted by two (2) Undersecretaries, at least one of whom must belong to the career executive service. One Undersecretary shall supervise internal operations while the other Undersecretary shall handle the liaison between the Secretary and the attached agencies of the Department.

Section 7. Assistant Secretaries. - The Secretary shall also be assisted by three (3) career Assistant Secretaries who shall respectively perform the following functions:

(1) Supervise the Personnel Development Service; Administrative Service and Financial Service;

(2) Supervise the Bureau of Child and Youth Welfare; Bureau of Women’s Welfare; Bureau of Family Community Welfare; Bureau of Emergency Assistance; and Bureau of Disable Person’s Welfare;

(3) Supervise the Planning and Monitoring Service and the Legal Service, and assist the Undersecretary and the Secretary in matters pertaining to regional or field operations.

CHAPTER 3

DEPARTMENT SERVICES

Section 8. Services of the Department. - The Services listed in Section 7 (1) and (3) hereof and the public Affairs and Liaison Service shall respectively have the following functions:

(1) The Personnel Development Service shall provide the Department with services relating to manpower, career planning and development, personnel transactions, and employee welfare;

(2) The Financial Service shall provide the Department with services relating to budget, collection, disbursement, and other financial matters;

(3) The Administrative Service shall provide the Department with services relating to records, correspondence, supplies, property and equipment, security and general services;

(4) The Planning and Monitoring Service shall provide technical services to the Department in the areas or overall policy formulation, strategic and operational planning, management systems or procedures, and the evaluation and
monitoring of Department programs, projects and internal operations;

(5) The Legal Service shall provide the Department with services on legal matters, especially on proposed legislations;

(6) The Public Affairs and Liaison Service in the Office of the Secretary shall provide public information services and publications as well as coordinate and mobilize volunteers, non-governmental organizations and cause-oriented groups in partnership with the Department.

Each of the Services shall be headed by a Staff Director and may have divisions whenever necessary for the performance of its functions.

CHAPTER 4
BUREAUS AND OFFICES

Section 9. Composition. - The Staff bureaus listed in Section 7 (2) hereof shall be essentially staff in character and as such shall exercise technical supervision over the Regional Offices; shall be primarily involved in the development of policies and programs within their respective functional specializations; and shall formulate and develop related policies, guidelines and standards necessary in guiding the Regional Offices in the proper implementation of such policies and programs.

Section 10. Functions. - Each of the staff bureaus shall:

(1) Formulate programs, policies, rules, regulations and standards relative to the implementation of their respective functional specialization;

(2) Initiate and administer pilot or special projects for demonstration of the corresponding policies, programs, services, strategies, methods, procedures and guidelines prior to nationwide implementation;

(3) Audit, evaluate, and provide technical assistance and consultative services to operating units and field offices and local government welfare departments on program implementation;

(4) Develop standards and assess agencies for licensing and accreditation;

(5) Review applications for regulatory purposes including tax exemptions for foreign donations;

(6) Provide advisory services to non-governmental agencies implementing programs and services for welfare and development;

(7) Formulate the substantive content of, and assist in the orientation and training on, the bureaus’ programs, services, strategies, procedures, methods and guidelines;

(8) Develop indigenous literature and other media materials for clients, volunteers and other audiences;

(9) Promote and develop a system of networking and coordination with relevant welfare councils;

(10) Undertake studies and action researches on matters pertaining to client welfare and development and propose relevant policies and amendments for legislation;

(11) Maintain linkages relative to welfare programs or projects for national, regional and interregional cooperation.

Section 11. Areas of Specialization. - The substantive/functional areas of specialization of the staff bureaus shall be:

(1) Bureau of Emergency Assistance - relief and rehabilitation of victims of natural calamities and social disorganization and of cultural communities and other distressed and displaced persons;

(2) Bureau of Family and Community Welfare - assistance to socially disadvantaged families and communities including family planning, planning outreach programs to develop their capability in defining needs and formulating solutions as well as setting up viable community structures which bring about desired social changes;

(3) Bureau of the Disabled Person’s Welfare - disability prevention and rehabilitation of the physically, mentally and socially disabled persons;

(4) Bureau of Women’s Welfare - promoting women’s welfare, with specific attention to the prevention or eradication of exploitation of women in any form, such as but not limited to prostitution and illegal recruitment; as well as the promotion of skills for employment and self-actualization;

(5) Bureau of Child and Youth Welfare - care and protection of abandoned, neglected, abused or exploited children and youth, delinquents, offenders, the disturbed, street children, victims of prostitution and others, for
their social adjustment and economic self-sufficiency.

CHAPTER 5
REGIONAL OFFICES

Section 12. Regional Office. - The Department is hereby authorized to establish, operate and maintain a Regional Office in each of the administrative regions of the country.

Section 13. Functions. - A Regional Office shall:

1. Provide within the region efficient and effective services to its constituents; and for such purposes, establish, operate, promote and support, at the minimum, the following welfare facilities:
   a. Vocational Rehabilitation and Special Education Center for the Handicapped;
   b. Reception and Study Center;
   c. Rehabilitation Center for Youth Offenders;
   d. Day Care Centers;
2. Ensure the implementation of laws, policies, programs, rules, and regulations regarding social welfare and development within the region;
3. Secure effective coordination with other departments, agencies, institutions and organizations, especially local government units within the region;
4. Conduct continuing studies and planning, to improve its services to its constituents.

Section 14. Welfare Facilities. - The Regional Offices are hereby authorized to establish, operate and maintain the following, insofar as necessary and authorized by the Secretary:

1. Other Vocational Rehabilitation and Special Education Centers for the Handicapped;
2. "Street Children" Centers;
3. Centers for Youth with Special Needs;
4. Other Centers for Youth Offenders;
5. Homes for the Aged;
6. Homes for Unwed Mothers;
7. Drug Abuse Centers;
8. Other Reception and Study Centers; and
9. Such other facilities as may be necessary to assist the socially disadvantaged.

Section 15. Regional Director. - The Regional Office shall be headed by a Regional Director who shall be responsible for efficiently and effectively carrying out its functions. Toward this end, and in line with the policy of decentralization, the Regional Director shall be vested with the authority to exercise functional and administrative supervision over Department provincial operations as delegated by the Secretary including the authority to contribute resources and personnel to integrated region and province-wide development thrusts.

The Regional Director shall be assisted by two (2) Assistant Regional Directors, one for programs and one for administration.

CHAPTER 6
PROVINCIAL/CITY OFFICES

Section 16. Provincial/City Office. - The Department is hereby authorized to establish, operate and maintain Provincial/City Offices throughout the country with jurisdiction over all municipalities/districts within the province. The Provincial/City Offices shall have the following functions:

1. Formulate and coordinate the implementation of operational, field-level plans/programs of the Department;
2. Provide specialized services and comprehensive assistance to other department/agency units whenever necessary;
3. Secure all pertinent feedback and information from field units as well as appropriate department/agency units, particularly local government units, and communicate the same regularly to the Regional Office;
4. Establish and maintain a vocational rehabilitation and special education program for the handicapped in the form and magnitude appropriate for the needs of the province.

Section 17. Provincial/City Welfare Office. - The Provincial/City Office shall be headed by a Provincial/City Social Welfare Officer who shall be accountable for the efficient and effective performance of its functions and implementation of programs of the Department, within the province. The Provincial/City Social Welfare Officer shall exercise functional administrative supervision over field operations of the
Department, including the authority to recommend that field resources and personnel be contributed to integrated, municipality-wide development efforts.

CHAPTER 7
MUNICIPAL/DISTRICT OFFICES
Section 18. Municipal/District Office. - The Department is hereby authorized to establish, operate and maintain a Municipal/District Office to service a municipality or city district which shall be headed by the Supervising Social Welfare Officer and shall be primarily responsible for the efficient and effective implementation of the Department’s field programs in the municipality or city, under the supervision of the Provincial/City Office.

CHAPTER 8
ATTACHED AGENCIES
Section 19. Agencies Under Administrative Supervision and Attached Agencies. - The Population Commission Council for the Welfare of Children, National Nutrition Council and the National Council for the Welfare of Disabled Person and the agencies attached to the Department shall continue to operate and function in accordance with their respective charters or laws creating them, except as otherwise provided in this Code.

CHAPTER 9
FUND DRIVES
Section 20. Solicitation. - Any person, corporation, organization, or association desiring to solicit or receive contribution for charitable or public welfare purposes shall first secure a permit from the Regional Offices of the Department. Upon the filing of a written application for a permit in the form prescribed by the Regional Offices of the Department, the Regional Director or his duly authorized representative may, in his discretion, issue a permanent or temporary permit or disapprove the application. In the interest of the public, he may in his discretion renew or revoke any permit issued under Act 4075.

Section 21. Requirements. - The Regional Director of the Department may require the person, corporation, organization or association duly authorized to solicit contributions for the above mentioned purposes to submit from time to time a verified report or information regarding their activities, the period covered by the report, the collection and expenditures made and the names and addresses of the contributors and persons to whom assistance was rendered from the funds obtained. This reports or information shall be open for inspection of the general public. The Regional Director or his duly authorized representative may, for the protection of the public, likewise investigate the books, papers, affairs and activities related to the aforesaid purposes of any such person, corporation, organization, or association: Provided, however, That the provisions of the preceding Section shall not apply to any organization or institution established for charitable or public welfare purposes in its campaign for raising funds or soliciting public subscriptions or any means for collecting funds which has been authorized by Executive Proclamation.

Section 22. Fees. - Upon approval of the application for a solicitation permit, a fee of Twenty-Five Pesos (P25.00) shall be paid to the cashier of the Department. The money collected as fee for the issuance of solicitation permits shall accrue to the Department as aid for the maintenance of its institutions and social services for its clientele.

CHAPTER 10
SOCIAL WELFARE AGENCIES AND SERVICES
Section 23. Social Welfare Services by Others. - Social welfare services by the Department shall be without prejudice to similar efforts by any local government unit or private agency, institution or group. All Department units shall actively promote and extend maximum assistance, including the provision of counterpart or supplementary funds and resources, upon approval by the Secretary, to such efforts.

Section 24. Social Work Agency. -
(1) No social work agency shall operate and be accredited as such unless it is registered with the Department which shall issue the corresponding certificate of registration.

(2) Before any social work agency shall be duly registered, the following requirements must have been complied with:
(a) The applicant must be engaged mainly or generally in social work activity or social services;
(b) The applicant has employed a sufficient number of duly qualified and registered social workers to supervise and take charge of its social service functions in accordance with accepted social work standards;
(c) The applicant must show, in a duly certified financial statement that at least sixty (60) percent of its funds are disbursed for direct social work services; and
(d) The applicant keeps a social work record of all cases and welfare activities handled by it.

(3) A certificate of registration may be revoked if after due investigation, the Department finds that the social work agency has failed to perform its function or has violated existing laws, rules and regulations.

Section 25. Child Welfare Agency. -
(1) No person, natural or juridical, shall establish any child welfare agency without first securing a license from the Department. Such license shall not be transferable and shall be used only by the person or institution to which it was issued at the place stated therein. No license shall be granted unless the purpose or function of the agency is clearly defined and stated in writing. Such definition shall include the geographical area to be served, the children to be accepted for care, and the services to be provided.

If the applicant is a juridical person, it must be registered in accordance with Philippine laws.

(2) The work of all registered and licensed child welfare agencies shall be supervised and coordinated by the Department.

(3) The Department may, after notice and hearing, suspend or revoke the license of a child welfare agency on any of the following grounds:

(a) That the agency is being used for immoral purposes;
(b) That agency is insolvent or is not in a financial position to support and maintain the children therein or to perform the functions for which it was granted;
(c) That the children therein are being neglected or are undernourished;
(d) That the place is so unsanitary as to make it unfit for children;
(e) That said agency is located in a place or community where children should not be, or is physically dangerous to children or would unduly expose children to crime, vice, immorality, corruption or severe cruelty; or
(f) That said agency has by any act or commission shown its incompetence or unworthiness to continue acting as a child welfare agency. During the period of suspension, the agency concerned shall not accept or admit any additional children. In any case, the Department shall make such order as to the custody of the children under the care of such agency as the circumstances may warrant. The suspension may last for as long as the agency has not complied with any order of the Department to remove or remedy the conditions which have given rise to the suspension. The aggrieved agency may appeal the suspension or revocation in a proper court action. In such a case, the court shall within fifteen (15) days from the filing of the Department's answer, conduct a hearing and decide the case, either by lifting the suspension, or continuing it for such period of time as it may order, or by revoking the license of the agency where the Department has proven the revocation to be justified.

Section 26. Foster Homes. - No foster home, day care center and other substitute parental arrangement shall operate unless it is first registered with and licensed by the Department.


Article Thirteen. - The Social Welfare and Development Officer
SEC. 483. Qualifications, Powers and Duties. - (a) No person shall be appointed social welfare and development officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a duly licensed social worker or a holder of a college degree preferably in sociology or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in the practice of social work for at
least five (5) years in the case of the provincial or city social welfare and development officer, and three (3) years in the case of the municipal social welfare and development officer. The appointment of a social welfare and development officer is mandatory for provincial and city governments, and optional for municipal government.

(b) The social welfare and development officer shall take charge of the office on social welfare and development services and shall:

(1) Formulate measures for the approval of the sanggunian and provide technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and provision of adequate facilities relative to social welfare and development services as provided for under Section 17 of this Code;

(2) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with social welfare programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(3) In addition to the foregoing duties, the social welfare and development officer shall:

(i) Identify the basic needs of the needy, the disadvantaged and the impoverished and develop and implement appropriate measures to alleviate their problems and improve their living conditions;

(ii) Provide relief and appropriate crisis intervention for victims of abuse and exploitation and recommend appropriate measures to deter further abuse and exploitation;

(iii) Assist the governor or mayor, as the case may be, in implementing the barangay level program for the total development and protection of children up to six (6) years of age;

(iv) Facilitate the implementation of welfare programs for the disabled, elderly, and victims of drug addiction, the rehabilitation of prisoners and parolees, the prevention of juvenile delinquency and such other activities which would eliminate or minimize the ill-effects of poverty;

(v) Initiate and support youth welfare programs that will enhance the role of the youth in nation-building;

(vi) Coordinate with government agencies and non-governmental organizations which have for their purpose the promotion and the protection of all needy, disadvantaged, underprivileged or impoverished groups or individuals, particularly those identified to be vulnerable and high-risk to exploitation, abuse and neglect;

(4) Be in the frontline of service delivery, particularly those which have to do with immediate relief during and assistance in the aftermath of man-made and natural disaster and natural calamities;

(5) Recommend to the sanggunian and advise the governor or mayor, as the case may be, on all other matters related to social welfare and development services which will improve the livelihood and living conditions of the inhabitants; and

(c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.


SEC. 8. Juvenile Justice and Welfare Council (JJWC). - A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

(a) Council for the Welfare of Children (CWC);

(b) Department of Education (DepEd);

(c) Department of the Interior and Local Government (DILG);

(d) Public Attorney’s Office (PAO);
(e) Bureau of Corrections (BUCOR);
(f) Parole and Probation Administration (PPA);
(g) National Bureau of Investigation (NBI);
(h) Philippine National Police (PNP);
(i) Bureau of Jail Management and Penology (BJMP);
(j) Commission on Human Rights (CHR);
(k) Technical Education and Skills Development Authority (TESDA);
(l) National Youth Commission (NYC); and
(m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

(a) Department of Justice (DOJ);
(b) Department of Social Welfare and Development (DSWD);
(c) Council for the Welfare of Children (CWC)
(d) Department of Education (DepEd);
(e) Department of the Interior and Local Government (DILG)
(f) Commission on Human Rights (CHR);
(g) National Youth Commission (NYC); and
(h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

SEC. 9. Duties and Functions of the JJWC. - The JJWC shall have the following duties and functions:

(a) To oversee the implementation of this Act;
(b) To advise the President on all matters and policies relating to juvenile justice and welfare;
(c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;
(d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;
(e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;
(f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;
(g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as but not limited to:

(1) the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;
(2) the periodic trends, problems and causes of juvenile delinquency and crimes; and
(3) the particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

(h) Through duly designated persons and with the assistance of the agencies provided in the preceding Section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;

(i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

(j) To submit an annual report to the President on the implementation of this Act; and

(k) To perform such other functions as may be necessary to implement the provisions of this Act.

SEC. 10. Policies and Procedures on Juvenile Justice and Welfare. - All government agencies enumerated in Section 8 shall, with the assistance of the JJWC and within one (1) year from the effectivity of this Act, draft policies and procedures consistent with the standards set in the law. These policies and procedures shall be modified accordingly in consultation with the JJWC upon the completion of the national juvenile intervention program as provided under Section 9 (d).

SEC. 11. Child Rights Center (CRC). - The existing Child Rights Center of the Commission on Human Rights shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.


Section 20. Inter - Agency Council against Child Pornography. - There is hereby established an Inter-Agency Council against Child Pornography to be composed of the Secretary of the DSWD as chairperson and the following as members:

(a) Secretary of the Department of Justice;

(b) Secretary of the Department of Labor and Employment

(c) Secretary of the Department of Science and Technology

(d) Chief of the Philippine National Police;

(e) Chairperson of the Commission on Information and Communications Technology;

(g) Commissioner of the National Telecommunications Commission;

(h) Executive Director of the Council for the Welfare of Children;

(i) Executive Director of the Philippine Center for Transnational Crimes;

(j) Executive Director of the Optical Media Board;

(k) Director of the National Bureau of Investigation; and

(l) Three (3) representatives from children's nongovernmental organizations. These representatives shall be nominated by the government agency representatives of the Council for appointment by the President for a
term of three (3) years and may be renewed upon renomination and reappointment by the Council and the President respectively.

The members of the Council may designate their permanent representatives, who shall have a rank not lower than assistant secretary or its equivalent, to meetings and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

The DSWD shall establish the necessary Secretariat for the Council.

Section 21. Functions of the Council. - The Council shall have the following powers and functions:

(a) Formulate comprehensive and integrated plans and programs to prevent and suppress any form of child pornography;

(b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;

(c) Monitor and oversee the strict implementation of this Act;

(d) Coordinate the programs and projects of the various members agencies effectively address the issues and problems attendant to child pornography;

(e) Conduct and coordinate massive information disseminations and campaign on the existence of the law and the various issues and problems attendant to child pornography;

(f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on the action taken;

(g) Assist in the filling of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;

(h) Formulate a program for the reintegration of victims of child pornography;

(i) Secure from any department, bureau, office, agency or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;

(j) Complement the shared government information system relative to child abuse and exploitation and ensure that the proper agencies conduct a continuing research and study on the patterns and schemes of any form of child pornography which form basis for policy formulation and program direction;

(k) develop the mechanism to ensure the timely, coordinated and effective response to cases of child pornography;

(l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress any form of child pornography;

(m) Adopt measures and policies to protect the rights and needs of the victims of child pornography who are foreign nationals in the Philippines;

(n) maintain a database of cases of child pornography;

(o) Initiate training programs in identifying and providing the necessary intervention or assistance to victims of child pornography.

(p) Submit to the President and the Congressional Oversight committee credited herein the annual report on the policies, plans, programs and activities of the Council relative to the implementation of this Act; and

(q) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.
SECTION 39. Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC). In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their children, hereinafter known as the Council, which shall be composed of the following agencies:

(a) Department of Social Welfare and Development (DSWD);

(b) National Commission on the Role of Filipino Women (NCRFW);

(c) Civil Service Commission (CSC);

(d) Commission on Human rights (CHR);

(e) Council for the Welfare of Children (CWC);

(f) Department of Justice (DOJ);

(g) Department of the Interior and Local Government (DILG);

(h) Philippine National Police (PNP);

(i) Department of Health (DOH);

(j) Department of Education (DepEd);

(k) Department of Labor and Employment (DOLE); and

(l) National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

Section 20. Inter-Agency Council Against Trafficking. - There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

(a) Secretary, Department of Foreign Affairs;

(b) Secretary, Department of Labor and Employment;

(c) Administrator, Philippine Overseas Employment Administration;

(d) Commissioner, Bureau of Immigration;

(e) Director-General, Philippine National Police;

(f) Chairperson, National Commission on the Role of Filipino Women; and

(g) Three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive
emoluments as may be determined by the Council in accordance with existing budget and accounting, rules and regulations.

Section 21. Functions of the Council. - The Council shall have the following powers and functions:

(a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;

(b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;

(c) Monitor and oversee the strict implementation of this Act;

(d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;

(e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;

(f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;

(g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;

(h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;

(i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;

(j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

(k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;

(l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;

(m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;

(n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;

(o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons;

(p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.


TO: THE CHIEF, PHILIPPINE NATIONAL POLICE (PNP)

SUBJECT: Guidelines on the Establishment of a Children and Youth Relations Section (CYRS) in All NCR and Highly Urbanized City Police Stations and/or Designation of a Children and Youth Relations Officer (CYRO) in Other Police Stations, and the Adoption of a Handbook for
Police Officers on the Management of Children in Especially Difficult Circumstances (CEDC).

Pursuant to the provisions of Presidential Decree No. 603, as amended, otherwise known as the Child and Youth Welfare Code, and in accordance with NAPOLCOM Memorandum Circular No. 13 dated 27 December 1968, organizing the Juvenile Delinquency Units in Cities and Municipalities, and MPF-CAPCOM Memorandum No. 60 dated 26 October 1987, Establishing Guidelines for the Creation of Children and Youth Relations Section (CYRS) in All Police Sta-tions, all police stations in the NCR and highly urbanized cities are hereby directed to create a CYRS, and all other police sta-tions to designate a Children and Youth Relations Officer (CYRO) based on the following guidelines and rules:

I. Children and Youth Relations Section (CYRS)

A. Rationale:

The United Nations Standard Minimum Rules for the Adminis-tration of Juvenile Justice, otherwise known as the Beijing Rules, specifically stipulates that special police units shall be established to exclusively deal with juveniles. In line with these rules, former President Corazon C. Aquino issued on August 12, 1986 Proclamation No. 20 emphasizing the policy of the state to promote the well-being and total develop-ment of the Filipino youth and children and to protect them from exploitation, abuse, improper influences, hazards, and other conditions or circumstances prejudicial to their physical, men-tal, emotional, social and moral development.

The proclamation created an inter-agency task force for the protection of children of which the defunct Philippine Constab-u-lary-Integrated National Police (the present Philippine National Police (PNP) pursuant to Republic Act No. 6975) is a member.

Specifically, the PNP Law delineates powers and functions of the police, among which are to:

(1) Enforce all laws and ordinances relative to the protec-tion of lives and properties;

(2) Maintain peace and order and take all necessary steps to ensure public safety; and

(3) Investigate and prevent crimes, effect the arrest of criminal offenders to justice and assist in their prosecution.

Consonant with these powers and functions is the duty of the police, in coordination with the other components of the criminal justice system, to endeavor in bringing about a peaceful and orderly environment conducive to the promotion of a wholesome growth for children.

The creation of the CYRS and/or designation of CYRO in every police station will ensure the efficiency and effectiveness in the application of appropriate techniques, approaches and proce-dures in the processing of cases of CEDC which are designed to aid in the protection and rehabilitation of the CEDC.

B. Structure and Composition:

(1) The CYRS shall replace the erstwhile Juvenile Control Unit/Section or Youth Aid Section of the Patrol Division in the police districts and stations.

(2) At the station level, the CYRS shall operate directly under the Chief, Operations Branch, who shall be the principal action officer-on-case involving children and youth offenders, their management and rehabilitation.

The Station Commander, through his Operations and Policy Community Relations Officer, shall implement the CEDC programs/projects and oversee referrals and inter-agency coordi-nation relative to CEDC.

(3) At the provincial level, CEDC and other related reports shall be submitted to the CYRS of the Provincial Headquarters. These shall be submitted to the Assistant Regional Director for Operations (ARDO)/ARD for Police Relations, and then forwarded to DO/DPR, who shall in turn submit the same to the General Head-quarters of the PNP.

(4) The Creation of the CYRS shall be compulsory in every police district/station in the National Capital Region and in highly urbanized areas in the country.

(5) The standard organizational structure of the CYRS shall be outlined in the new PNP Manual. The number of personnel to be assigned in the Section shall vary depending upon the need/situation in the area.

(6) The officers, men and women who shall comprise the CYRS must preferably be those trained on the management of cases of CEDC, and those whose character is imbued with compassion, care and dedication to the cause and welfare of children and youth. The CYRO shall be selected from among the regular
members of the police force.

The selection of the CYRO shall be based on the criteria provided in Part II of this Memo Circular.

C. Functions:

(1) The CYRS is a separate functional unit within the station which shall be responsible for all matters relating to CEDC. It shall be guided by the philosophy that children should be handled differently from adults.

(2) The CYRS shall perform the following tasks:

a. Enforce laws and ordinances relating to the exploitation of CEDC.

b. Investigate cases of CEDC and provide proper disposition geared toward the best interest and welfare of children.

c. Prepare a plan of action to assist the CEDC in direct support of, and in coordination with, the other agencies concerned.

d. Implement programs designed to detect and prevent conditions that may result in the following: child neglect, abuse toward children, deviant behavior among children, or such circumstances that are detrimental to the total development of the youth.

e. Operate a separate detention facility for youth offenders and determine and implement integrated programs for their welfare and rehabilitation.

f. Keep a separate record of cases of CEDC and youth offenders handled, including those referred to the DSWD rehabilitation centers and other institutions.

g. Monitor detained youth offenders in jail who are made to share cells with adult offenders and recidivists, and report/refer their cases to the DSWD.

h. Maintain close coordination and collaboration with the other pillars of the juvenile justice system.

D. Operationalization:

(1) The CYRS shall be the focal point in liaison and coordination among the police stations, the regional/provincial offices of the DSWD, and other concerned government agencies and private institutions toward the protection and rehabilitation of CEDC and the youth.

(2) Specifically, members of the Section shall form part of the Child Protection Team (CPT), a coordinating team composed of a CYRO, a Senior Social Work Specialist and a medical practitioner. The CPT shall facilitate the handling of cases of CEDC and youth offenders, particularly during interview and in the referral of minors to detention or rehabilitation center as the case may be.

(3) All CYRS personnel shall necessarily be trained in children and youth management, control and rehabilitation to make them more responsive to the demands of the job. Toward this end, the PNP Regional and Provincial Directors shall initiate the training of their respective personnel in direct coordination with the Bureau of Child and Youth Welfare (BCYW) of the DSWD.

x x x

II. Children and Youth Relations Officer (CYRO)

In cases where the police station is Type A, B or C and the situation in its area of jurisdiction does not require the creation of a CYRS, the Station Commander/Chief of Police shall designate a Children and Youth Relations Officer (CYRO).

Following are the criteria in the selection of the CYRO:

(1) He must be a regular member of the police station.

(2) He must have special training on the management of children in especially difficult circumstances.

(3) He must possess the aptitude and temperament suited for handling problems of children.

(4) He must have sufficient knowledge on the dynamics of CEDC and how to handle them.

(5) He must be able to project an image which the youth can identify with.

(6) His moral background must be above reproach, which will provide the means to cultivate an effective working relationship with the community.

The police assigned in the CYRS shall automatically become a member of the Child Protection Team (CPT) existing in the area.

x x x

Sec. 3. Establishment of Family Courts. - There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.

Sec. 5. Jurisdiction of Family Courts. - The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age or where one or more of the victims is a minor at the time of the commission of the offense: Provided, That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred.

The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the "Child and Youth Welfare Code";

b) Petitions for guardianship, custody of children, habeas corpus in relation to the latter;

c) Petitions for adoption of children and the revocation thereof;

d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;

e) Petitions for support and/or acknowledgment;

f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "Family Code of the Philippines";

g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree No. 603, Executive Order No. 56, (Series of 1986), and other related laws;

h) Petitions for the constitution of the family home;

i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;

j) Violations of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," as amended by Republic Act No. 7658; and

k) Cases of domestic violence against:

2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.

If any question involving any of the above matters should arise as an incident in any case pending in the regular courts, said incident shall be determined in that court.

Section 9. The same Act is hereby further amended by adding new Sections to Section 16 to be denominated as Sections 16-A, 16-B and 16-C to read as follows:

"Sec. 16-A. Jurisdiction - The family courts shall have original jurisdiction over all cases involving offenses punishable under this Act: Provided, That in cities or provinces where there are no family courts yet, the regional trial courts and the municipal trial courts shall have concurrent jurisdiction depending on the penalties prescribed for the offense charged.

"The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of filing.

"If the preliminary investigation establishes a prima facie case, then the corresponding information shall be filed in court within forty eight (48) hours from the termination of the investigation.

"Trial of cases under this Act shall be terminated by the court not later than ninety (90) days from the date of filing of information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case.

"Sec. 15. Exemptions from Filing Fees. - When the victim of child labor institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from payment of filing fees.

"Sec. 16-C. Access to Immediate Legal, Medical and Psycho-Social Services - The working child shall have the right to free legal, medical and psycho-social services to be provided by the State."


Section 8. Jurisdiction. - Jurisdiction over cases for the violation of this Act shall be vested in the Family Court which has territorial jurisdiction over the place where the offense or any of its essential elements was committed pursuant to Republic Act No. 8369, otherwise known as "Family Courts Act of 1997".


SECTION 7. Venue.- The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the compliant.

IV.B. RULES OF PROCEDURE


Rule 3: Parties to a Civil Action

SEC. 5. Minor or incompetent persons.—A minor or a person alleged to be incompetent, may sue or be sued, with the assistance of his father, mother, guardian, or if he has none, a guardian ad litem. (5a)

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Rule 14: Summons

SEC. 10. Service upon minors and incompetents—
When the defendant is a minor, insane or otherwise an incompetent, service shall be made upon him personally and on his legal guardian if he has one, or if none, upon his guardian ad litem whose appointment shall be applied for by the plaintiff. In the case of a minor, service may also be made on his father or mother. (10a, 11a)

**Rule 130: Rules of Admissibility**

**SEC. 25. Parental and filial privilege.**—No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.


**Art. 215.** No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other. (315a)


**Sec. 7. Special Provisional Remedies.** - In cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused of defendant upon verified application by the complainant or the victim for relief from abuse.

The court may order the temporary custody of children in all civil actions for their custody. The court may also order support pendente lite, including deduction from the salary and use of conjugal home and other properties in all civil actions for support.

**Sec. 8. Supervision of Youth Detention Homes.** - The judge of the Family Court shall have direct control and supervision of the youth detention home which the local government unit shall establish to separate the youth offenders from adult criminals: Provided, however, That alternatives to detention and institutional care shall be made available to the accused including counseling, recognizance, bail, community continuum, or diversions from the justice system: Provided, further, That the human rights of the accused are fully respected in a manner appropriate to their well-being.

**Sec. 9. Social Services and Counseling Division.** - Under the guidance of the Department of Social Welfare and Development (DSWD), a Social Services and Counseling Division (SSCD) shall be established in each judicial region as the Supreme Court shall deem necessary based on the number of juvenile and family cases existing in such jurisdiction. It shall provide appropriate social services to all juvenile and family cases filed with the court and recommend the proper social action. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

**Sec. 10. Social Services and Counseling Division Staff.** - The SSCD shall have a staff composed of qualified social workers and other personnel with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and othersocial services that may be needed in connection with cases filed with the court: Provided, however, That in adoption cases and in petitions for declaration of abandonment, the case studies may be prepared by social workers of duly licensed child caring or child placement agencies, or the DSWD. When warranted, the division shall recommend that the court avail itself of consultative services of psychiatrists, psychologists, and other qualified specialists presently employed in other departments of the government in connection with its cases. The position of Social Work Adviser shall be created under the Office of the Court Administrator, who shall monitor and supervise the SSCD of the Regional Trial Court.
LOOKING AFTER FILIPINO CHILDREN

Sec. 11. Alternative Social Services. - In accordance with Sec. 17 of this Act, in areas where no Family Court has been established or no Regional Trial Court was designated by the Supreme Court due to the limited number of cases, the DSWD shall designate and assign qualified, trained, and DSWD accredited social workers of the local government units to handle juvenile and family cases filed in the designated Regional Trial Court of the place.

Sec. 12. Privacy and Confidentiality of Proceedings. - All hearings and conciliation of the child and family cases shall be treated in a manner consistent with the promotion of the child’s and the family’s dignity and worth, and shall respect their privacy at all stages of the proceedings. Records of the cases shall be dealt with utmost confidentiality and the identity of parties shall not be divulged unless necessary and with authority of the judge.

Sec. 13. Special Rules of Procedure. - The Supreme Court shall promulgate special rules of procedure for the transfer of cases to the new courts during the transition period and for the disposition of family cases with the best interests of the child and the protection of the family as primary consideration taking into account the United Nations Convention on the Rights of the Child.

Sec. 14. Appeals. - Decisions and orders of the court shall be appealed in the same manner and subject to the same conditions as appeals from the ordinary Regional Trial Courts.


SEC. 5. Guardian ad litem.—

(a) The court may appoint a guardian ad litem for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child. In making the appointment, the court shall consider the background of the guardian ad litem and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of the Philippine Bar. A person who is a witness in any proceeding involving the child cannot be appointed as a guardian ad litem.

(b) The guardian ad litem:
(1) Shall attend all interviews, depositions, hearings, and trial proceedings in which a child participates;
(2) Shall make recommendations to the court concerning the welfare of the child;
(3) Shall have access to all reports, evaluations, and records necessary to effectively advocate for the child, except privileged communications;
(4) Shall marshal and coordinate the delivery of resources and special services to the child;
(5) Shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which the child is involved;
(6) Shall assist the child and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;
(7) May remain with the child while the child waits to testify;
(8) May interview witnesses; and
(9) May request additional examinations by medical or mental health professionals if there is a compelling need therefor.

(c) The guardian ad litem shall be notified of all proceedings but shall not participate in the trial. However, he may file motions pursuant to Sections 9, 10, 25, 26, 27 and 31(c). If the guardian ad litem is a lawyer, he may object during trial that questions asked of the child are not appropriate to his developmental level.

(d) The guardian ad litem may communicate concerns regarding the child to the court through...
an officer of the court designated for that purpose.

(e) The guardian ad litem shall not testify in any proceeding concerning any information, statement, or opinion received from the child in the course of serving as a guardian ad litem, unless the court finds it necessary to promote the best interests of the child.

(f) The guardian ad litem shall be presumed to have acted in good faith in compliance with his duties described in sub-Section (b).

SEC. 6. Competency.— Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, motu proprio or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.

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SEC. 8. Examination of a child witness.— The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The party who presents a child witness or the guardian ad litem of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule.

SEC. 9. Interpreter for child.—

(a) When a child does not understand the English or Filipino language or is unable to communicate in said languages due to his developmental level, fear, shyness, disability, or other similar reason, an interpreter whom the child can understand and who understands the child may be appointed by the court, motu proprio or upon motion, to interpret for the child.

(b) If a witness or member of the family of the child is the only person who can serve as an interpreter for the child, he shall not be disqualified and may serve as the interpreter of the child. The interpreter, however, who is also a witness, shall testify ahead of the child.

(c) An interpreter shall take an oath or affirmation to make a true and accurate interpretation.

SEC. 10. Facilitator to pose questions to child.—

(a) The court may, motu proprio or upon motion, appoint a facilitator if it determines that the child is unable to understand or respond to questions asked. The facilitator may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative.

(b) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the child only through the facilitator. The questions shall either be in the words used by counsel or, if the child is not likely to understand the same, in words that are comprehensible to the child and which convey the meaning intended by counsel.

(c) The facilitator shall take an oath or affirmation to pose questions to the child according to the meaning intended by counsel.

SEC. 11. Support persons.—

(a) A child testifying at a judicial proceeding or making a deposition shall have the right to be accompanied by one or two persons of his own choosing to provide him emotional support.

(1) Both support persons shall remain within the view of the child during his testimony.

(2) One of the support persons may accompany the child to the witness stand, provided the support person does not completely obscure the child from the view of the opposing party, judge, or hearing officer.

(3) The court may allow the support person to hold the hand of the child or take other appropriate steps to provide emotional support to the child in the course of the proceedings.

(4) The court shall instruct the support persons not to prompt, sway, or influence the child during his testimony.
LOOKING AFTER FILIPINO CHILDREN

(b) If the support person chosen by the child is also a witness, the court may disapprove the choice if it is sufficiently established that the attendance of the support person during the testimony of the child would pose a substantial risk of influencing or affecting the content of the testimony of the child.

(c) If the support person who is also a witness is allowed by the court, his testimony shall be presented ahead of the testimony of the child.

SEC. 12. Waiting area for child witnesses.— The courts are encouraged to provide a waiting area for children that is separate from waiting areas used by other persons. The waiting area for children should be furnished so as to make a child comfortable.

SEC. 13. Courtroom environment.— To create a more comfortable environment for the child, the court may, in its discretion, direct and supervise the location, movement and deportment of all persons in the courtroom including the parties, their counsel, child, witnesses, support persons, guardian ad litem, facilitator, and court personnel. The child may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the child testifies may be turned to facilitate his testimony but the opposing party and his counsel must have a frontal or profile view of the child during the testimony of the child. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his counsel, if he chooses to look at them, without turning his body or leaving the witness stand. The judge need not wear his judicial robe.

Nothing in this Section or any other provision of law, except official in-court identification provisions, shall be construed to require a child to look at the accused.

Accommodations for the child under this Section need not be supported by a finding of trauma to the child.

SEC. 14. Testimony during appropriate hours.— The court may order that the testimony of the child should be taken during a time of day when the child is well-rested.

SEC. 15. Recess during testimony.— The child may be allowed reasonable periods of relief while undergoing direct, cross, re-direct, and re-cross examinations as often as necessary depending on his developmental level.

SEC. 16. Testimonial aids.— The court shall permit a child to use dolls, anatomically-correct dolls, puppets, drawings, mannequins, or any other appropriate demonstrative device to assist him in his testimony.

SEC. 17. Emotional security item.— While testifying, a child shall be allowed to have an item of his own choosing such as a blanket, toy, or doll.

SEC. 18. Approaching the witness.— The court may prohibit a counsel from approaching a child if it appears that the child is fearful of or intimidated by the counsel.

SEC. 19. Mode of questioning.— The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

SEC. 20. Leading questions.— The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

SEC. 21. Objections to questions.— Objections to questions should be couched in a manner so as not to mislead, confuse, frighten, or intimidate the child.

SEC. 22. Corroboration.— Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

SEC. 23. Excluding the public.— When a child testifies, the court may order the exclusion from...
the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made to protect the right to privacy of the child or if the court determines on the record that requiring the child to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity. In making its order, the court shall consider the developmental level of the child, the nature of the crime, the nature of his testimony regarding the crime, his relationship to the accused and to persons attending the trial, his desires, and the interests of his parents or legal guardian. The court may, motu proprio, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be offensive to decency or public morals. The court may also, on motion of the accused, exclude the public from trial, except court personnel and the counsel of the parties.

SEC. 24. Persons prohibited from entering and leaving courtroom.—The court may order that persons attending the trial shall not enter or leave the courtroom during the testimony of the child.

SEC. 25. Live-link television testimony in criminal cases where the child is a victim or a witness.—

(a) The prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian ad litem applies for an order under this Section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian ad litem is convinced that the decision of the prosecutor or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.

The person seeking such an order shall apply at least five (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(b) The court may motu proprio hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.

(c) The judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

(e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefor. It shall consider the following factors:

(1) The age and level of development of the child;

(2) His physical and mental health, including any mental or physical disability;

(3) Any physical, emotional, or psychological injury experienced by him;

(4) The nature of the alleged abuse;

(5) Any threats against the child;

(6) His relationship with the accused or adverse party;

(7) His reaction to any prior encounters with the accused in court or elsewhere;

(8) His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;

(9) Specific symptoms of stress exhibited by the child in the days prior to testifying;

(10) Testimony of expert or lay witnesses;

(11) The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and

(12) Other relevant factors, such as court atmosphere and formalities of court procedure.
LOOKING AFTER FILIPINO CHILDREN

(f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.

(g) If the court orders the taking of testimony by live-link television:

1. The child shall testify in a room separate from the courtroom in the presence of the guardian ad litem; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;

2. The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.

3. If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.

(4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.

(h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in Section 31(b).

SEC. 26. Screens, one-way mirrors, and other devices to shield child from accused.—
(a) The prosecutor or the guardian ad litem may apply for an order that the chair of the child or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. Before the guardian ad litem applies for an order under this Section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of Section 25(a) of this Rule. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

(b) If the court grants an application to shield the child from the accused while testifying in the courtroom, the courtroom shall be arranged to enable the accused to view the child.


Sec. 3. Where to file petition. — A petition for guardianship over the person or property, or both, of a minor may be filed in the Family Court of the province or city where the minor actually resides. If he resides in a foreign country, the petition shall be filed with the Family Court of the province or city where his property or any part thereof is situated.

V. DISPOSITION OF CASES INVOLVING CHILDREN

Convention on the Rights of the Child (signed and ratified 1990; entry into force 1990)

Article 3

1. 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.

**Republic Act 386, Civil Code (1949).**

*Art. 363*. In all questions on the care, custody, education and property of children the latter’s welfare shall be paramount. No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure.

**Presidential Decree 603, Child and Youth Welfare Code (1974).**

*Art. 8*. Child’s Welfare Paramount. - In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.
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Definitions: Scope of Protection
Basic Principles
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Rights of the Disabled Child
Specific Areas of Protection
I. Introduction

Children with disabilities suffer from two sources of vulnerability: first from being young, and second from being disabled. Because of the first, they are incapacitated to perform legal acts. Because of the second, they are incapacitated to perform physical or intellectual acts.

To remedy the first, the law insinuates the parent between the child and the state; it usurps the will of the child and installs the parent in the role of guardian who will substitute his/her will in behalf of that child. Thus national and international rules enshrine the “rights of the child” but these rights may be enjoyed mainly through the intercession of parents or in the context of family. But to remedy the second problem of discrimination against persons with disabilities (PWDs) in general, the law goes out of its way to secure the will of the disabled person, and to separate the physical disability that impairs one’s movements and faculties, from the fullness of humanity that lies at the core of one’s inherent dignity as a human being.

Both solutions converge on the disabled child, for whom each solution negates the other. The person with disabilities is empowered by the law of equality and non-discrimination, yet when that person is a child, that power is shifted away from him as rights-bearer to the parent or guardian as rights-guarantor.

I.A. Methodology

This is the accompanying essay for the compendium of laws protecting the disabled child. Its purpose is to structure for the reader the relevant rules, surface how the rules evolved, and also identify patterns or directions in the progressive development of these rules.

In relation to each legal instrument or type of instrument, this essay will thus examine the norms of equality and non-discrimination generically as they protect PWDs, that is to say, protecting the PWD as a child. It will therefore examine treaty rules and Philippine national laws that codify and implement these norms. Conversely, it will also look at how these norms apply specifically to the disabled child, that is to say, protecting the child as a PWD. The reader will note that there are areas of regulation where the two approaches, protecting the PWD as a child and
protecting the child as a PWD, are mutually reinforcing. Conversely, there are areas of regulation where the disabled child can benefit on his/her own from generic PWD protection.

I.B. User’s Guide

For the guidance of the user, note that equality and non-discrimination are the central, most powerful norms that can be invoked to protect the disabled child. These two norms will be cited interchangeably in this essay. However, disability is not always listed as a specific ground for impermissible discrimination. That is not necessarily the end of the story. In such cases (“lacunae”), non-discrimination can still be invoked using preambular clauses and authoritative interpretations. These are thus included in the compendium.

Historically in Philippine law, anti-discrimination law is rooted in the Equal Protection Clause that can be traced back to the early Organic Acts under American colonial rule and which is now codified in the Bill of Rights of the 1987 Constitution all the way to the Magna Carta for Disabled Persons. However, the application of non-discrimination to persons with disabilities and even more specifically to disabled children is more fully elaborated in international law. Accordingly, this study will first present the relevant international treaties and declarations, and then proceed to the relevant national laws.

Moreover, international treaties can be invoked in Philippine law through several modes.

1. If an international law obligation is contained in a treaty that has been ratified by the Philippines, and is specific enough or is on-its-face clearly intended to be directly enforced, it can be invoked directly before Philippine courts and or by executive agencies under the Incorporation Clause, the treaty-ratification clause, and Supreme Court rulings.

2. If the obligation is contained in a treaty that has not been ratified by the Philippines, it can still be invoked as part of customary international law that has been incorporated as part of the “law of the land.”

3. A signed treaty can also be invoked to interpret provisions of the Philippine constitution, statutes or administrative issuances.

4. Fourth, a “declaration” (e.g., the Universal Declaration of Human Rights), in contrast to a treaty, is not a binding instrument. However, it can be cited authoritatively if a specific clause has crystallized into custom or, it can be used to interpret domestic standards. The declaration can also characterize its legal effect. For instance, the

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1 Art. II, Sec. 2, 1987 Constitution.
2 Art. VII, Sec. 21, id.
3 e.g., G.R. L-49112, Agustin v Edu (1979).
4 Art. 38.1.b, ICJ Statute.
6 See e.g. Tecson v COMELEC, G.R. 161434 (2004).
7 Borovsky v Commissioner, 90 PHIL. 107; Meijoff v Director of Prisons, 90 PHIL. 70; but see Ichong v Hernandez, 101 PHIL. 1156.
Declaration on the Rights of Disabled Persons\(^8\) states that it should be “used as a common basis and frame of reference for the protection of these rights.”

Finally, some rights are meant to create affirmative obligations by states, e.g., to provide assistance to the disabled child. The government’s ability to provide this assistance will depend on the availability of resources (“resource-contingent” obligations). For instance, the PWD Declaration, affirms the need to “assist[] disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,” but, in the same breath, also recognizes that “certain countries, at their present stage of development, can devote only limited efforts to this end.”\(^9\) In such cases, the government will be deemed to have satisfied that obligation if it “progressively achieves” compliance or, stated plainly, if it is moving forward toward that objective (assistance programs for the disabled child) even if the objective itself is not yet fully met.

II. International Law Framework
II.A. Non-Discrimination as a Human Right in General

*Universal Declaration of Human Rights.*\(^10\) The UDHR adopts the principle of non-discrimination but does not identify disability as an impermissible ground or suspect criterion for discrimination.

“Art. 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

“Art. 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, ....

“Art. 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”\(^11\)

It mentions disability not in relation to non-discrimination but only in a very limited way pertaining only to social rights (e.g., social security). Significantly for our purposes, in the same article, the UDHR extends protection to another vulnerable group, namely, children, and similarly limits its protection to social rights.

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\(^8\) 1975, hereinafter *PWD Declaration.*
\(^9\) Preamble, *PWD Declaration.*
\(^10\) 1948, hereinafter *UDHR.*
\(^11\) *UDHR.*
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.\(^{12}\) (UDHR, art. 25) (emphases supplied)

Moreover, the UDHR secures one social right, namely, the right to education, but may be exercised by children only through the child’s parents.

“1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. ....

“2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. ....

“3. Parents have a prior right to choose the kind of education that shall be given to their children(emphasis supplied).”

The Two International Human Rights Covenants. The same pattern is replicated in the International Covenant on Civil and Political Rights\(^ {13}\) and the International Covenant on Economic, Social and Cultural Rights.\(^ {14}\)

Both the ICCPR and the ICESCR codify the norm of non-discrimination but fail conspicuously to list disability as an impermissible ground or suspect criterion for classification.

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\(^ {15}\)

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status(emphasis supplied).”\(^ {16}\)

However, the Committee on Economic, Social and Cultural Rights has interpreted the phrase “or other status” to include disability. The Committee acknowledged that there is still no internationally accepted definition of the term "disability"\(^ {17}\) and that the ICESCR “does not refer

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\(^{12}\) Art. 26, UDHR.

\(^{13}\) 1966, hereinafter ICCPR.

\(^{14}\) 1966, hereinafter the ICESCR.

\(^{15}\) Art. 26, ICCPR.

\(^{16}\) Art. 2.1, ICESCR.

\(^{17}\) General Comment No. 5, hereinafter GC5, par. 3.
explicitly to persons with disabilities.” The Committee nonetheless concluded that the equality clause applies as well to disability-based discrimination, and extended that claim to specific rights, namely: the right to work, social security, protection of the family and of mothers and children, to an adequate standard of living, to physical and mental health, to education, and to take part in cultural life. These obligations can be “programmatic” in nature, captured in the language of Art. 2, wherein states “undertake to take steps” to carry out their obligations.

II.B. Protection against Discrimination as a PWD

The term “disability” was first defined in an international instrument in the PWD Declaration.

“The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.”

The Convention on the Rights of Persons with Disabilities recognized the broad and evolving scope of the term disability in its Preamble, saying:

“[T]hat disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others ....”

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities also explained the use of the terms “disability” and “handicap.”

“17. The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

“18. The term "handicap" means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and

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18 Par. 5, GC5.
19 Arts. 6-8, ICESCR.
20 Art. 9, id.
21 Art. 10, id.
22 Art. 11, id.
23 Art. 12, id.
24 Arts. 12-13, id.
25 Art. 15, id.
26 Art. 1, PWD Declaration.
27 2006, hereinafter PWD Convention, as contrasted to the Declaration.
28 Preamble, par. 3, PWD Convention.
in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.

“19. The use of the two terms "disability" and "handicap" ... should be seen in the light of modern disability history. During the 1970s there was a strong reaction among representatives of organizations of persons with disabilities and professionals in the field of disability against the terminology of the time. The terms "disability" and "handicap" were often used in an unclear and confusing way, which gave poor guidance for policy-making and for political action. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society.”

The U.N. Standard Rules concludes that "current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).” It also classifies the remedies in terms of prevention, rehabilitation, and equalization of opportunities.

The PWD Declaration affirms the principle of equality on the basis of inherent dignity.

"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.”

The PWD Convention likewise affirms the equality principle and applies them to disability-based discrimination.

“1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

“2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

....

“5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.”

At the same time, the PWD Convention recognizes the constraints on disabled persons in the exercise of certain rights.

“4. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies

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30 U.N. Standard Rules.
31 Id.
32 Art. 3, PWD Declaration.
33 PWD Convention.
to any possible limitation or suppression of those rights for mentally disabled persons (emphasis supplied).”

II.C. Specific Protection for the Disabled Child

The final step is to extend the general standards of protection to children with disabilities. This is achieved from two directions:

(a) to consider children as a sub-category of PWDs, one that calls for special kinds of protection in addition to that provided for PWDs in general; and

(b) to consider the disabled child as a sub-category of children, and one that calls for special kinds of protection in addition to that provided for children in general.

The PWD Convention states in its Preamble the basic principle that PWD protection for children is a human right –

“Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,”

It contains a separate article on discrimination against children with disabilities, and specifically entitled “Children with disabilities.”

“1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

“2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

“3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

It also provides the affirmative obligation of the state to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”

Acknowledging the role of parents and guardians, the PWD Convention adopts the “best interests of the child” test.

34 Id.
35 Preamble, par. 5, id.
36 Art. 7, id.
37 Art. 7.1, id.
38 Art. 7.2, id.
The Convention on the Rights of the Child (1989, hereinafter CRC) begins with the fundamental protection for the child in general. Note however that for the disabled child, these are precisely the rights effectively diminished by their disability.

“1. States Parties recognize that every child has the inherent right to life.

“12 (1). States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

“(2). For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

“Art. 23 (1). States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.”

Accordingly, the Declaration of the Rights of the Child recognizes that the “child who is physically, mentally or socially handicapped” is entitled “special treatment, education and care required by his particular condition.”

The PWD Convention recognizes the right of the disabled child to “special care” which can be contingent on “available resources,” depending on the assistance which is “appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.”

III. National Law Framework

1987 Constitution. The 1987 Constitution affirms the fundamental norm of equality. It begins with the grand declaration of principles, the separate article entitled Declaration of Principles and State Policies, which recognizes the intrinsic “dignity of every human person and guarantees full respect for human rights.”

Next it guarantees equality under the Equal Protection Clause: “... nor shall any ... person be denied the equal protection of the laws.” Note that this provision in the Bill of Rights must be read in conjunction with the social justice clause: “The State shall promote social justice in all phases of national development.” This lays down the basis for affirmative action, or benign discrimination in favor of disadvantaged groups, and allows not just curative measures to correct discrimination but likewise positive or preventive measures to remedy or equalize disadvantages.

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39 CRC.
40 Principle 5.
42 Art. II, Sec. 11., id.
43 Art. III, Sec. 1., id.
44 Art. II, Sec. 10, id.
Note that up until this point in the analysis, we have not singled out disability as an impermissible ground or suspect criterion of classification. The Constitution expressly mentions disability only in relation to specific rights or claims:

a. The right to "a procedure for the disabled and the illiterate to vote without the assistance of other persons ... to protect the secrecy of the ballot", to be implemented by the Commission on Elections; 45

b. Priority “for the needs of the underprivileged sick, elderly, disabled, women and children” in having access to “essential goods, health and other social services;” 46

c. Still with regard to the right to health, the duty of the State to establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.”47 The “right to health” is guaranteed in the Declaration of Principles and State Policies: “Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.”48

d. The duty of the State to provide “adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.”49

The Constitution also provides special protection for children. It recognizes the “natural and primary right and duty of parents in the rearing of the youth for civic efficiency” and impliedly in the “development of moral character.”50 It affirms the duty of the State to “protect their physical, moral, spiritual, intellectual, and social well-being.”51

Magna Carta for Disabled Persons (RA. 7277, hereinafter Magna Carta). These clauses of the Constitution are in turn implemented by the Philippine Congress via the Magna Carta for Disabled Persons. The Philippine definition of “disability” parallels that found in international treaties.

“a) Disabled persons are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being;

“(b) Impairment is any loss, diminution or aberration of psychological, physiological, or anatomical structure or function;

“(c) Disability shall mean 1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an
individual or activities of such individual; 2) a record of such an impairment; or 3) being regarded as having such an impairment;

“(d) Handicap refers to a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the function or activity, that is considered normal given the age and sex of the individual;”

The Magna Carta implements the duty of the state not just to end discrimination but likewise to take remedial measures to ensure equality. It affirms the norm of non-discrimination: “[T]he State shall advocate for and encourage respect for disabled persons.”

“The State shall exert all efforts to remove all social, cultural, economic, environmental and attitudinal barriers that are prejudicial to disabled persons(emphasis supplied).”

At the same time, it creates the obligation of the state to take affirmative measures to the “improvement of the total well-being of disabled persons and their integration into the mainstream of society.”

“Toward this end, the State shall adopt policies ensuring the rehabilitation, self-development and self-reliance of disabled persons. It shall develop their skills and potentials to enable them to compete favorably for available opportunities(emphasis supplied).”

For instance, the Magna Carta refers to “social barriers” as the –

“characteristics of institutions, whether legal, economic, cultural, recreational or other, any human group, community, or society which limit the fullest possible participation of disabled persons in the life of the group. Social barriers include negative attitudes which tend to single out and exclude disabled persons and which distort roles and inter-personal relationships (emphasizes supplied).”

The Magna Carta, for instance, lays the basis for these affirmative measures by referring to “Auxiliary Aids and Services” as the duty to provide:

“(1) qualified interpreters or other effective methods of delivering materials to individuals with hearing impairments;

“(2) qualified readers, taped tests, or other effective methods of delivering materials to individuals with visual impairments;

“(3) acquisition or modification of equipment or devices; and

“(4) other similar services and actions or all types of aids and services that facilitate the learning process of people with mental disability.”
The Magna Carta also requires the State to ensure “auxiliary social services” that will “restore their social functioning and participation in community affairs.” This includes the acquisition of prosthetic devices and medical intervention of specialty services; specialized training activities in communication skills; developing a positive self-image; family care services; continued rehabilitation in a community-based setting; day care services for disabled children of pre-school age.

The access of PWDs to “quality education” is extended to “disabled students” and to “special education for the visually impaired, hearing impaired, mentally retarded persons and other types of exceptional children.”

The Magna Carta in fact confronts the “resource-contingent” nature of these equalizing measures, or as explained earlier, the fact that a developing country like the Philippines may not immediately have the resources to afford such assistance in their fullness.

“The National Government shall allocate funds necessary for the effective implementation of the special education program nationwide. Local government units may likewise appropriate counterpart funds to supplement national funds.”

Thus the international law notion of “progressive achievement” is carried out by the Magna Carta by contrasting these to the notion of “readily achievable means.”

“Readily Achievable means a goal can be easily attained and carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include —

“(1) the nature and cost of the action;

“(2) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

“(3) the overall financial resources of the covered entity with respect to the number of its employees; the number, type and location of its facilities; and

“(4) the type of operation or operations of the covered entity, including the composition, structure and functions of the work force of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.”

Finally, the Magna Carta confronts the fact the rights of PWDs are violated not just by the State but likewise by private or non-state actors.

57 Sec. 21, id.
58 Secs. 12 and 13, id.
59 Sec. 14, id.
60 Sec. 14, id.
61 Sec. 4, id.
“The State also recognizes the role of the private sector in promoting the welfare of disabled persons and shall encourage partnership in programs that address their needs and concerns.”\textsuperscript{62}

Thus the Magna Carta defines “covered entity” to include “an employer, employment agency, labor organization or joint-labor management committee,”\textsuperscript{63} and applies non-discrimination to “public transport” and “commerce.”\textsuperscript{64}

The Magna Carta also provides “incentives for employers” who employ disabled persons, tax write-offs amounting to 25\% of the total amount paid as salaries and wages to disabled persons.\textsuperscript{65} It provides similar incentives to private entities that “improve or modify their physical facilities in order to provide reasonable accommodation for disabled persons,” amounting to 50\% deduction from their net taxable income of the direct costs of the improvements.\textsuperscript{66}

A related PWD law is the Accessibility Law (B.P. 344, 1983) (hereinafter Accessibility Law) which would withhold government permits for non-compliant “for the construction, repair or renovation of public and private buildings for public use.”\textsuperscript{67} It also declared unlawful “discriminating against disabled persons in the carriage or transportation of passengers.”\textsuperscript{68}

Conversely, the Magna Carta also recognizes the place of private donations in supporting these protective measures for disabled children.

“Donations. - Donations to agencies and organizations engaged in programs and services for disabled children shall be [tax]-deductible....”\textsuperscript{69}

*Child and Youth Welfare Code* (P.D. 603, hereinafter PD 603). The Child Welfare Code extends protection against the special vulnerabilities of four types of disabilities suffered by children:

“Mentally Retarded Children. - Mentally retarded children are (1) socially incompetent, that is, socially inadequate and occupationally incompetent and unable to manage their own affairs; (2) mentally subnormal; (3) retarded intellectually from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin, through hereditary or disease, and (6) essentially incurable.”\textsuperscript{70}

“Physically Handicapped Children. - Physically handicapped children are those who are crippled, deaf-mute, blind, or otherwise defective which restricts their means of action on communication with others.”\textsuperscript{71}

“Emotionally Disturbed Children. - Emotionally disturbed children are those who, although not afflicted with insanity or mental defect, are unable to maintain normal

\begin{footnotes}
\item[62]Sec. 2.d, id.
\item[63]Sec. 4.o, id.
\item[64]Sec. 4.n and Sec. 4.p, id.
\item[65]Sec. 8.a-b, id.
\item[66]Sec. 8.c, id.
\item[67]Sec. 1, *Accessibility Law*.
\item[68]Sec. 2, id.
\item[69]Art. 176, *P.D. 603*, infra.
\item[70]Art. 168, id.
\item[71]Art. 170, id.
\end{footnotes}
social relations with others and the community in general due to emotional problems or complexes.”72

“Mentally Ill Children. - Mentally ill children are those with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.”73

Finally, PD 603 provides for “specialized educational opportunities” for disabled children (PD 603, Art. 174-75), and for the power of the state, through the Department of Social Welfare and Development to refer the disabled child to “any public or private institution providing the proper care, training and rehabilitation.”74

Rule on Commitment of Children (Supreme Court A.M. NO. 02-1-19-SC 2002-04-15, 2002) (hereinafter, Child Commitment). The Child and Youth Welfare Code (PD 603) provides that when a disabled child needs institutional care but his/her parents oppose it, a petition for commitment may be filed by the state or private parties.75

The Supreme Court has now issued rules to govern child commitment specifically to protect children from "neglect, abuse, cruelty, exploitation.”76 The legal mechanism is called “commitment” that transfers custody of a child to a court-appointed guardian.

"Commitment" or "surrender of a child" is the legal act of entrusting a child to the care of the Department or any duly licensed child-placement or child-caring agency or individual by the court, parent or guardian or any interested party.77

The Child Commitment rules apply expressly to disabled children, following the classification under the Magna Carta: "mentally retarded child", "physically handicapped child; "emotionally disturbed child”; and the “mentally ill child.”78

IV. Implementing Agencies

Internationally, the human rights treaties contain their own treaty-based implementing committees, namely, the Committee on Human Rights under the ICCPR; the Committee on Economic, Social and Cultural Rights (though not created directly by virtue of the ICESCR); and the Committee on the Convention on the Rights of the Child.

Domestically, the Commission on Human Rights is the independent constitutional commission created to address human rights complaints.79 It has the power to investigate violations of civil and political rights80 and to monitor compliance with international treaties.81

72 Art. 171, id.
73 Art. 172, id.
74 Art. 173, id.
75 Art. 177, id., et seq.
77 Sec. 3.m., id.
78 Sec. 3.i-l, id.
79 Art. XIII, Sec. 17, 1987 Constitution.
81 Art. XIII, Sec. 18(7), 1987 Constitution.
Within the judiciary, the Family Courts of the place where the parent or guardian resides or where the child is found have jurisdiction over commitment petitions.\textsuperscript{82}

Within the executive branch, the following government agencies have been vested with monitoring and enforcement powers:

a. National Council on Disability Affairs, under the Office of the President (Magna Carta, E.O. 709, amending E.O. 676 and 232) and also implementing Community-Based Rehabilitation (E.O. 437);

b. Department of Labor and Employment (DOLE) (Magna Carta);

c. Department of Social Welfare and Development (DSWD) (Magna Carta);

d. Department of Health (DOH), in coordination with the Philippine Health Insurance Corporation (PHILHEALTH) (R.A. 7277, amending the Magna Carta for Disabled Persons);

e. Department of Public Works and Highways (Accessibility Law);

f. Department of Transportation and Communication (Accessibility Law);

g. Department of Education (Magna Carta); the Philippine National School for the Blind (R.A. 3562, An Act to Promote the Education of the Blind); Philippine School for the Deaf and the Blind (R.A. 5250).

Finally, local government units (LGUs) likewise have monitoring and enforcement powers under the Magna Carta. In addition, the Magna Carta has been revised by Congress to create a “Persons with Disability Affairs Office” (hereinafter PDAO), to be headed typically by a qualified PWD.\textsuperscript{83}

\textsuperscript{82}Sec. 6.b, Child Commitment.

\textsuperscript{83}Sec. 1, amending Sec. 40, R.A. 7277.
I. DEFINITIONS: SCOPE OF PROTECTION

I.A. PERSONS WITH DISABILITIES

Convention on the Rights of Disabled Persons (1975)

The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.


Disability and handicap

17. The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

18. The term "handicap" means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.

19. The use of the two terms "disability" and "handicap", as defined in paragraphs 17 and 18 above, should be seen in the light of modern disability history. During the 1970s there was a strong reaction among representatives of organizations of persons with disabilities and professionals in the field of disability against the
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The terminology of the time. The terms "disability" and "handicap" were often used in an unclear and confusing way, which gave poor guidance for policy-making and for political action. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society.

20. In 1980, the World Health Organization adopted an international classification of impairments, disabilities and handicaps, which suggested a more precise and at the same time relativistic approach. The International Classification of Impairments, Disabilities, and Handicaps 11 [World Health Organization, International Classification of Impairments, Disabilities, and Handicaps: A manual of classification relating to the consequences of disease (Geneva, 1980)] makes a clear distinction between "impairment", "disability" and "handicap". It has been extensively used in areas such as rehabilitation, education, statistics, policy, legislation, demography, sociology, economics and anthropology. Some users have expressed concern that the Classification, in its definition of the term "handicap", may still be considered too medical and too centred on the individual, and may not adequately clarify the interaction between societal conditions or expectations and the abilities of the individual. Those concerns, and others expressed by users during the 12 years since its publication, will be addressed in forthcoming revisions of the Classification.

21. As a result of experience gained in the implementation of the World Programme of Action and of the general discussion that took place during the United Nations Decade of Disabled Persons, there was a deepening of knowledge and extension of understanding concerning disability issues and the terminology used. Current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).


Sec. 4. Definition of Terms. — For purposes of this Act, these terms are defined as follows:

(a) Disabled persons are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being;

(b) Impairment is any loss, diminution or aberration of psychological, physiological, or anatomical structure or function;

(c) Disability shall mean 1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; 2) a record of such an impairment; or 3) being regarded as having such an impairment;

(d) Handicap refers to a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the function or activity, that is considered normal given the age and sex of the individual;

(k) Marginalized Disabled Persons refer to disabled persons who lack access to rehabilitative services and opportunities to be able to participate fully in socioeconomic activities and who have no means of livelihood and whose incomes fall below the poverty threshold;

(l) Qualified Individual with a Disability shall mean an individual with a disability who, with or without reasonable accommodations, can perform the essential functions of the employment position that such individual holds or desires. However, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

Art. 168. Mentally Retarded Children. - Mentally retarded children are (1) socially incompetent, that is, socially inadequate and occupationally incompetent and unable to manage their own affairs; (2) mentally subnormal; (3) retarded intellectually from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin, through hereditary or disease, and (6) essentially incurable.

Art. 169. Classification of Mental Retardation. - Mental Retardation is divided into four classifications:

(1) Custodial Group. The members of this classification are severely or profoundly retarded, hence, the least capable group. This includes those with I.Q.s to 25.
(2) Trainable Group. The members of this group consist of those with I.Q.s from about 25 to about 50; one who belongs to this group shows a mental level and rate of development which is 1/4 to 1/2 that of the average child, is unable to acquire higher academic skills, but can usually acquire the basic skills for living to a reasonable degree. He can likewise attain a primary grade level of education if he receives effective instruction.
(3) Educable Group. This group’s I.Q. ranges from about 50 to about 75, and the intellectual development is approximately 1/2 to 3/4 of that expected of a normal child of the same chronological age. The degree of success or accomplishment that they will reach in life depends very much on the quality and type of education they receive, as well as on the treatment at home and in the community. Many of the educable retardates may reach 5th or 6th grade educational level and can develop occupational skills which may result in partial or complete economic independence in adulthood.
(4) Borderline or Low Normal Group. This is the highest group of mentally retarded, with I.Q.s from about 75 to about 89. The members of this classification are only slightly retarded and they can usually get by in regular classes if they receive some extra help, guidance and consideration. They have to spend much more time with their studies than do most children in order to pass. Those who cannot make it are usually handicapped by one or more other conditions aside from that of intelligence.

Art. 170. Physically Handicapped Children. - Physically handicapped children are those who are crippled, deaf-mute, blind, or otherwise defective which restricts their means of action on communication with others.

Art. 171. Emotionally Disturbed Children. - Emotionally disturbed children are those who, although not afflicted with insanity or mental defect, are unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.

Art. 172. Mentally Ill Children. - Mentally ill children are those with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.


Sec. 3. Definition of Terms. -

(h) "Disabled child" includes mentally retarded, physically handicapped, emotionally disturbed and mentally ill children, children with cerebral palsy and those with similar afflictions.

(i) "Mentally retarded child" is one who is (1) socially incompetent, that is, socially inadequate, occupationally incompetent and unable to
manage his own affairs; (2) mentally subnormal; (3) intellectually retarded from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin through heredity or diseases or (6) essentially incurable.

(k) "Emotionally disturbed child" is one who, although not afflicted with insanity or mental defect, is unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.

(l) "Mentally ill child" is one with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.

**II. BASIC PRINCIPLES**

**II.A. EQUALITY AND NON-DISCRIMINATION**

*Universal Declaration of Human Rights (adopted 1948).*

**Art. 1.** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Art. 2.** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Art. 7.** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Art. 25.1.** Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. (UDHR, art. 25) (emphases supplied)

*International Covenant on Civil and Political Rights (signed 1966; ratified 1986; entry into force 1976).*

**Art. 26.** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*International Covenant on Economic, Social and Cultural Rights (signed 1966; ratified 1974; entry into force 1976).*
Art. 2.1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.


Art. 2(1). States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Declaration on the Rights of Disabled Persons (proclaimed 1975).

Reaffirming its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter, …

Recalling also Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,


3. Present disability policy is the result of developments over the past 200 years. In many ways it reflects the general living conditions and social and economic policies of different times. In the disability field, however, there are also many specific circumstances that have influenced the living conditions of persons with disabilities. Ignorance, neglect, superstition and fear are social factors that throughout the history of disability have isolated persons with disabilities and delayed their development.

4. Over the years disability policy developed from elementary care at institutions to education for children with disabilities and rehabilitation for persons who became disabled during adult life. Through education and rehabilitation, persons with disabilities became more active and a driving force in the further development of disability policy. Organizations of persons with disabilities, their families and advocates were formed, which advocated better conditions for persons with disabilities. After the Second World War the concepts of integration and normalization were introduced, which reflected a growing awareness of the capabilities of persons with disabilities.

5. Towards the end of the 1960s organizations of persons with disabilities in some countries started to formulate a new concept of disability. That new concept indicated the close connection between the limitation experienced by individuals with disabilities, the design and structure of their environments and the attitude of the general population. At the same time the problems of disability in developing countries were more and more highlighted. In some of those countries the percentage of the population with disabilities was estimated to be very high and, for the most part, persons with disabilities were extremely poor.
15. The purpose of the Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others. In all societies of the world there are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles. Persons with disabilities and their organizations should play an active role as partners in this process. The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. In addition, there are a large number of refugees with disabilities who have special needs requiring attention.

25. The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.

26. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.

27. As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.

1987 Constitution.

Art. II, Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.


Sec. 2. Declaration of Policy — The grant of the rights and privileges for disabled persons shall be guided by the following principles:
(a) Disabled persons are part of Philippine society, thus the State shall give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society. Toward this end, the State shall adopt policies ensuring the rehabilitation, self-development and self-reliance of disabled persons. It shall develop their skills and potentials to enable them to compete favorably for available opportunities.
(b) Disabled persons have the same rights as other people to take their proper place in society. They should be able to live freely and as independently as possible. This must be the concern of everyone — the family, community and all government and nongovernment organizations. Disabled persons’ rights must never be perceived as welfare services by the Government.
(c) The rehabilitation of the disabled persons shall be the concern of the Government in order to foster their capacity to attain a more meaningful, productive and satisfying life. To reach out to a greater number of disabled persons, the rehabilitation services and benefits shall be expanded beyond the traditional urban-based centers to community based programs, that will ensure full participation of different sectors as supported by national and local government agencies.
(d) The State also recognizes the role of the private sector in promoting the welfare of disabled persons and shall encourage partnership in programs that address their needs and concerns.
(e) To facilitate integration of disabled persons into the mainstream of society, the State shall advocate for and encourage respect for disabled persons. The State shall exert all efforts to remove all social, cultural, economic, environmental and attitudinal barriers that are prejudicial to disabled persons.

II.B. AFFIRMATIVE ACTION

1987 Constitution.

Art. II, Sec. 10. The State shall promote social justice in all phases of national development.”

Art. II, Sec. 2. .... The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Declaration on the Rights of Disabled Persons (1975).

8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.


Art. 5. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.


(g) Auxiliary Aids and Services include:

(1) qualified interpreters or other effective methods of delivering materials to individuals with hearing impairments;

(2) qualified readers, taped tests, or other effective methods of delivering materials to individuals with visual impairments;

(3) acquisition or modification of equipment or devices; and

(4) other similar services and actions or all types of aids and services that facilitate the learning process of people with mental disability.

(h) Reasonable Accommodation include 1) improvement of existing facilities used by employees in order to render these readily accessible to and usable by disabled persons; and 2) modification of work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or company policies, rules and regulations, the provision of auxiliary aids and services, and other similar accommodations for disabled persons;
(i) Sheltered Employment refers to the provision of productive work for disabled persons through workshops providing special facilities, income-producing projects or homework schemes with a view to giving them the opportunity to earn a living thus enabling them to acquire a working capacity required in open industry;

(jj) Auxiliary Social Services are the supportive activities in the delivery of social services to the marginalized sectors of society;


CHAPTER IV: AUXILIARY SOCIAL SERVICES
Sec. 21. Auxiliary Social Services.—The State shall ensure that marginalized persons are provided with the necessary auxiliary services that will restore their social functioning and participation in community affairs. Towards this end, the Department of Social Welfare and Development shall develop and implement programs on auxiliary social services that respond to the needs of marginalized disabled persons. The components of such a program shall be as follows:
(a) assistance in the acquisition of prosthetic devices and medical intervention of specialty services;
(b) provision of specialized training activities designed to improve functional limitations of disabled persons related to communication skills;
(c) development among disabled persons of a positive self-image through the provision of counseling, orientation and mobility and strengthening daily living capability;
(d) provision of family care services geared towards developing the capability of families to respond to the needs of the disabled members of the family;
(e) provision of substitute family care services and the facilities therefor for abandoned, neglected, abused and unattached disabled persons who need custodial care;
(f) provision of after care and follow-up services for the continued rehabilitation in a community-based setting of disabled persons who were released from residential care or rehabilitation centers; and
(g) provision of day care services for disabled children of pre-school age.


Rule 4. Support services

States should ensure the development and supply of support services, including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights.

1. States should ensure the provision of assistive devices and equipment, personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.

2. States should support the development, production, distribution and servicing of assistive devices and equipment and the dissemination of knowledge about them.

3. To achieve this, generally available technical know-how should be utilized. In States where high-technology industry is available, it should be fully utilized to improve the standard and effectiveness of assistive devices and equipment. It is important to stimulate the development and production of simple and inexpensive devices, using local material and local production facilities when possible. Persons with disabilities themselves could be involved in the production of those devices.

4. States should recognize that all persons with disabilities who need assistive devices should have access to them as appropriate, including financial accessibility. This may mean that assistive devices and equipment should be provided free of charge or at such a low price that persons with disabilities or their families can afford to buy them.
5. In rehabilitation programmes for the provision of assistive devices and equipment, States should consider the special requirements of girls and boys with disabilities concerning the design, durability and age-appropriateness of assistive devices and equipment.

6. States should support the development and provision of personal assistance programmes and interpretation services, especially for persons with severe and/or multiple disabilities. Such programmes would increase the level of participation of persons with disabilities in everyday life at home, at work, in school and during leisure-time activities.

7. Personal assistance programmes should be designed in such a way that the persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered.

III. GENERAL APPROACHES

III.A. NATURE OF THE OBLIGATION


**Art. 2.1.** Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.


**Preamble**

[That disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others ....

*Declaration on the Rights of Disabled Persons (1975).*

**Preamble**

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

**Declaration on the Rights of Mentally Retarded Persons (1971).**

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

(d) To provide models for the political decision-making process required for the attainment of equal opportunities, bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities in it;

14. Although the Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. Important principles for responsibility, action and cooperation are indicated. Areas of decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. The Rules offer an instrument for policy-making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations.


(m) Readily Achievable means a goal can be easily attained and carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include —

(1) the nature and cost of the action;

(2) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) the overall financial resources of the covered entity with respect to the number of its employees; the number, type and location of its facilities; and

(4) the type of operation or operations of the covered entity, including the composition, structure and functions of the work force of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

III.B. PREVENTION, REHABILITATION, EQUALIZATION


Prevention

22. The term "prevention" means action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments (primary prevention) or at preventing impairments from causing a permanent functional limitation or disability (secondary prevention). Prevention may include many different types of action, such as primary health care, prenatal and postnatal care, education in nutrition, immunization campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict.

Rehabilitation
23. The term "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.

Equalization of opportunities

24. The term "equalization of opportunities" means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.


Sec. 4. Definition of Terms

(e) Rehabilitation is an integrated approach to physical, social, cultural, spiritual, educational and vocational measures that create conditions for the individual to attain the highest possible level of functional ability;


Rule 3. Rehabilitation

States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning.

1. States should develop national rehabilitation programmes for all groups of persons with disabilities. Such programmes should be based on the actual individual needs of persons with disabilities and on the principles of full participation and equality.

2. Such programmes should include a wide range of activities, such as basic skills training to improve or compensate for an affected function, counselling of persons with disabilities and their families, developing self-reliance, and occasional services such as assessment and guidance.

3. All persons with disabilities, including persons with severe and/or multiple disabilities, who require rehabilitation should have access to it.

4. Persons with disabilities and their families should be able to participate in the design and organization of rehabilitation services concerning themselves.

5. All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.

6. Persons with disabilities and their families should be encouraged to involve themselves in rehabilitation, for instance as trained teachers, instructors or counsellors.

7. States should draw upon the expertise of organizations of persons with disabilities when formulating or evaluating rehabilitation programmes.
Art. 177. Petition for Commitment. - Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, or mentally ill, and needs institutional care but his parents or guardians are opposed thereto, the Department of Social Welfare, or any duly licensed child placement agency or individual shall have the authority to file a petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.

The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when the welfare and interest of the child is at stake.

Art. 178. Venue. - The petition for commitment of a disabled child shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court where the parent or guardian resides or where the child is found.

Art. 179. Contents of Petition. - The petition for commitment must state so far as known to the petitioner:

1) The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed or mentally ill and needs institutional care;
2) The fact that the parents or guardians or any duly licensed disabled child placement agency, as the case may be, has opposed the commitment of such child;
3) The name of the parents and their residence, if known or if the child has no parents or parent living, the names and residence of the guardian, if any; and
4) The name of the institution where the child is to be committed.

The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.

Art. 180. Order of Hearing. - If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date for the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, or physically handicapped, or emotionally disturbed, or mentally ill, and on the person having charge of him or any of his relatives residing in the province or city as the judge may deem proper. The court shall furthermore order the sheriff to produce, if possible, the alleged disabled child on the date of the hearing.

Art. 181. Hearing and Judgment. - Upon satisfactory proof that the institutional care of the child is for him or the public welfare and that his parents, or guardian or relatives are unable for any reason to take proper care of him, the Court shall order his commitment to the proper institution for disabled children.

Art. 182. Disposition of Property or Money. - The Court, in its order of commitment, shall make proper provisions for the custody of property or money belonging to the committed child.

Art. 183. Findings and Other Data. - The Court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the social and other data pertinent to the case.

Art. 184. Expenses. - The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the next preceding paragraph, the same, or such part thereof as may remain unpaid, shall be borne by the Department of Social Welfare.

Art. 185. Children With Cerebral Palsy. - Children afflicted with cerebral palsy shall be committed to the institution which under the circumstances of the particular child concerned is best equipped to treat and care for him.
Art. 186. Discharge of Child Judicially Committed. - The Court shall order the discharge of any child judicially committed to an institution for disabled children if it is certified by the Department of Social Welfare that:

1. He has been certified by the duly licensed disabled child placement agency to be no longer a hazard to himself or to the community;
2. He has been sufficiently rehabilitated from his physical handicap or, if of work age, is already fit to engage in a gainful occupation; or
3. He has been relieved of his emotional problems and complexes and is ready to assume normal social relations.

Art. 187. Discharge of Child Voluntarily Committed. - Any child voluntarily committed to an institution for disabled children may be discharged by the Department of Social Welfare motu proprio or upon the request of his parents or guardian on any of the grounds specified in the preceding article. In the latter case, the Department of Social Welfare may refuse to discharge the child if, in its opinion, his release would be prejudicial to him or to the community.

Art. 188. Assistance of Fiscal. - The provincial or city fiscal shall represent the Department of Social Welfare or any recognized legal association in all judicial matters arising under the provisions of this Chapter.


Sec. 1. Objective, -The objective of this Rule is to ensure that every effort is exerted to promote the child's welfare and enhance his opportunities for a useful and happy life. Toward this end, this Rule seeks to protect the child from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to his development.

Sec. 3. Definition of Terms.

(m) "Commitment" or "surrender of a child" is the legal act of entrusting a child to the care of the Department or any duly licensed child-placement or child-caring agency or individual by the court, parent or guardian or any interested party.

Sec. 6. Petition for Commitment of a Disabled Child. -

(a) Who may file. - Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care but his parents or guardians are opposed thereto, the Department, or any duly licensed child-placement or child-caring agency or individual may file a verified petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.

The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when his welfare and interests are at stake.

(b) Venue. - The petition for commitment of a disabled child shall be filed with the Family Court of the place where the parent or guardian resides or where the child is found.

(c) Contents of Verified Petition. - The petition for commitment must state the following:

1. The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care;
2. The name of the parents and their residence, if known, or if the child has no living parent, the name and residence of the guardian, if any; and
3. The fact that the parents or guardian or any duly licensed disabled child-placement or child-caring agency, as the case may be, has opposed the commitment of such child;
4. The name and written conformity of the institution where the child is to be committed.
5. An estimate of the costs and other expenses of maintaining the child in the institution.
The verified petition shall be sufficient if based upon the personal knowledge of the petitioner.

(d) Order of Hearing; Notice. - If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date of the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and on the person having charge of him or any of his relatives residing in the province or city as the court may deem proper.

The order shall also direct the sheriff or any other officer of the court to produce, if necessary, the alleged disabled child on the date of the hearing.

(e) Hearing and Judgment. - If the court finds that the allegations of the petition have been established and that institutional care of the child is for his best interests or the public welfare and that his parents, or guardian or relatives are unable for any reason whatsoever to take proper care of him, the court shall order his commitment to the proper institution for disabled children. The court shall likewise make proper provisions for the custody of the property or money belonging to the committed child.

The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the immediately preceding paragraph, the Department shall bear the expenses, or such part thereof as may remain unpaid.

The court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the reports and other data pertinent to the case.

(f) Discharge of Judicially Committed Disabled Child. - Upon motion of the parent, guardian or institution to which the child has been judicially committed under this Rule, the court, after hearing, shall order the discharge of such child if it is established and certified by the Department that:

1. He is no longer a danger to himself and the community;
2. He has been sufficiently rehabilitated from his physical handicap or if of working age, is already fit to engage in gainful occupation; or
3. He has been sufficiently relieved of his psychological, mental and emotional problems and is ready to assume normal social relations.


The General Assembly

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

III.D. COMMUNITY-BASED REHABILITATION


WHEREAS, Republic Act No. 7160 known as the Local Government Code of 1991 mandates the devolution of services to the local government units (LGUs);
WHEREAS, there is a need at the community level for an effective approach in providing comprehensive rehabilitation services and in promoting the rights and empowerment of person with disabilities;

WHEREAS, the Community-Based approach has been successfully demonstrated as an appropriate way of providing comprehensive rehabilitation services to persons with disabilities nationwide.

NOW, THEREFORE, …

Sec. 1. All Local Government Units (LGU) are hereby encouraged to:

- Adopt the Community-Based Rehabilitation (CBR) Program in delivering services to their constituents with disabilities and to allocate funds to support the program.
- Designate a unit under the office of the local executive to be responsible for the implementation of the Community-Based Rehabilitation program in accordance with the police and implementing guidelines set by the National Council for the Welfare of Disabled Persons to include the promotion and capability building of the LGUs on CBR.

IV. RIGHTS OF THE DISABLED CHILD

Universal Declaration of Human Rights (1948).

Art. 25 (1). Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.


Art. 6 (1). States Parties recognize that every child has the inherent right to life.

(2). States Parties shall ensure to the maximum extent possible the survival and development of the child.

….

Art. 12 (1). States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2). For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

….

Art. 23 (1). States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

(2). States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

(3). Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall
be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

**Declaration on the Rights of Disabled Persons (1975).**

2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

4. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

9. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

12. Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.

13. Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration.
1987 Constitution.

Art. V. SUFFRAGE

Sec. 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year, and in the place wherein they propose to vote, for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

Sec. 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.


CHAPTER VII: POLITICAL AND CIVIL RIGHTS

Sec. 29. System of Voting. — Disabled persons shall be allowed to be assisted by a person of his choice in voting in the national or local elections. The person thus chosen shall prepare the ballot for the disabled voter inside the voting booth. The person assisting shall bind himself in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense. Polling places should be made accessible to disabled persons during national or local elections.

Sec. 30. Right to Assemble. — Consistent with the provisions of the Constitution, the State shall recognize the right of disabled persons to participate in processions, rallies, parades, demonstrations, public meetings, and assemblages or other forms of mass or concerned action held in public.

Sec. 31. Right to Organize. — The State recognizes the right of disabled persons to form organizations or associations that promote their welfare and advance or safeguard their interests. The National Government, through its agencies, instrumentalities and subdivisions, shall assist disabled persons in establishing self-help organizations by providing them with necessary technical and financial assistance.

Concerned government agencies and offices shall establish close linkages with organizations of the disabled persons in order to respond expeditiously to the needs of disabled persons. National line agencies and local government units shall assist disabled persons in setting up specific projects that will be managed like business propositions.

To ensure the active participation of disabled persons in the social and economic development of the country, their organizations shall be encouraged to participate in the planning, organization and management of government programs and projects for disabled persons. Organizations of disabled persons shall participate in the identification and preparation of programs that shall serve to develop employment opportunities for the disabled persons.
Universal Declaration of Human Rights (1948).

Art. 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.


Art. 28(1). States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

(2). States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.


Art. 24. Education. (1). States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

(2). In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities
are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

(3). States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

(4). In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

(5). States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.


Rule 6. Education

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

1. General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization.

2. Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.

3. Parent groups and organizations of persons with disabilities should be involved in the education process at all levels.
4. In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe.

5. Special attention should be given in the following areas:

(a) Very young children with disabilities;

(b) Pre-school children with disabilities;

(c) Adults with disabilities, particularly women.

6. To accommodate educational provisions for persons with disabilities in the mainstream, States should:

(a) Have a clearly stated policy, understood and accepted at the school level and by the wider community;

(b) Allow for curriculum flexibility, addition and adaptation;

(c) Provide for quality materials, ongoing teacher training and support teachers.

7. Integrated education and community-based programmes should be seen as complementary approaches in providing cost-effective education and training for persons with disabilities. National community-based programmes should encourage communities to use and develop their resources to provide local education to persons with disabilities.

8. In situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system. The quality of such education should reflect the same standards and ambitions as general education and should be closely linked to it. At a minimum, students with disabilities should be afforded the same portion of educational resources as students without disabilities. States should aim for the gradual integration of special education services into mainstream education. It is acknowledged that in some instances special education may currently be considered to be the most appropriate form of education for some students with disabilities.

9. Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in schools for such persons or special classes and units in mainstream schools. At the initial stage, in particular, special attention needs to be focused on culturally sensitive instruction that will result in effective communication skills and maximum independence for people who are deaf or deaf/blind.

1987 Constitution.

Art. XIV, Education, Science and Technology, Arts, Culture And Sports

Sec. 2.5. The State shall [p]rovide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.


CHAPTER II: EDUCATION

Sec. 12. Access to Quality Education. — The State shall ensure that disabled persons are provided with access to quality education and ample opportunities to develop their skills. It shall take appropriate steps to make such education accessible to all disabled persons. It shall be unlawful for any learning institution to deny a disabled person admission to any course it offers by reason of handicap or disability. The State shall take into consideration the special requirements of disabled persons in the formulation of educational policies and programs. It shall encourage learning institutions to take into account the special needs of
disabled persons with respect to the use of school facilities, class schedules, physical education requirements, and other pertinent consideration. The State shall also promote the provision by learning institutions, especially higher learning institutions of auxiliary services that will facilitate the learning process for disabled persons.

Sec. 13. Assistance to Disabled Students. — The State shall provide financial assistance to economically marginalized but deserving disabled students pursuing post secondary or tertiary education. Such assistance may be in the form of scholarship grants, student loan programs, subsidies, and other incentives to qualified disabled students in both public and private schools. At least five percent (5%) of the allocation for the Private Education Student Financial Assistance Program created by virtue of R.A. 6725 shall be set aside for disabled students pursuing vocational or technical and degree courses.

Sec. 14. Special Education. — The State shall establish, maintain and support complete, adequate and integrated system of special education for the visually impaired, hearing impaired, mentally retarded persons and other types of exceptional children in all regions of the country. Toward this end, the Department of Education, Culture and Sports shall establish, special education classes in public schools in cities, or municipalities. It shall also establish, where viable, Braille and Record Libraries in provinces, cities or municipalities.

The National Government shall allocate funds necessary for the effective implementation of the special education program nationwide. Local government units may likewise appropriate counterpart funds to supplement national funds.

Sec. 15. Vocational or Technical and Other Training Programs. — The State shall provide disabled persons with training in civics, vocational efficiency, sports and physical fitness, and other skills. The Department of Education, Culture and Sports shall establish in at least one government-owned vocational and technical school in every province a special vocational and technical training program for disabled persons. It shall develop and implement sports and physical fitness programs specifically designed for disabled persons taking into consideration the nature of their handicap.

Sec. 16. Non-Formal Education. — The State shall develop non-formal education programs intended for the total human development of disabled persons. It shall provide adequate resources for non-formal education programs and projects that cater to the special needs of disabled persons.

Sec. 17. State Universities and Colleges. — If viable and needed, the State University or State College in each region or province shall be responsible for (a) the development of material appliances and technical aids for disabled persons; (b) the development of training materials for vocational rehabilitation and special education instructions; (c) the research on special problems, particularly of the visually-impaired, hearing-impaired, speech-impaired, and orthopedically-impaired students, mentally retarded, and multi-handicapped and others, and the elimination of social barriers and discrimination against disabled persons; and (d) inclusion of the Special Education for Disabled (SPED) course in the curriculum. The National Government shall provide these state universities and colleges with necessary special facilities for visually-impaired, hearing-impaired, speech-impaired, and orthopedically-impaired students. It shall likewise allocate the necessary funds in support of the above.


Art. 174. Training and Opportunities for Disabled Children. - Specialized educational services shall be expanded and improved to provide appropriate opportunities for disabled children. Vocational rehabilitation and manpower conservation agencies shall train disabled children for specialized types of jobs, services and business which could be learned only by them and shall help provide opportunities for their future occupational placement. That the agencies and organizations engaged in programs and services for the
disabled need not be limited to minors. Persons of legal age may be admitted whenever facilities are available for them.

Art. 175. Planning of Programs and Services. - Selected pilot demonstration projects needed by the disabled children shall be developed and shall be the basis for planning expanded programs and services throughout the nation. There shall be established area centers designed to bring together an aggregate of services to serve all ages of the disabled within a specified geographical area.

Art. 176. Donations. - Donations to agencies and organizations engaged in programs and services for disabled children shall be deductible in accordance with the provision of Presidential Decree No. 507.


Sec. 1. There shall be established, under the supervision of the Director of Public Schools, a residential school for the blind near the City of Manila, which shall known as the Philippine National School for the Blind. Said school shall furnish instruction to the blind in the elementary level.

Sec. 2. Upon the establishment of the Philippine National School for the Blind, the School for the Deaf and the Blind in Pasay City shall cease to give instruction to the blind, and all its blind students, its equipment and facilities being used in the instruction of the blind, and members of the faculty teaching the blind shall be transferred to the Philippine National School for the Blind.

Sec. 3. There shall be established, under the supervision and control of the Director of Public Schools a Teacher-Training Center to train teachers for the blind. The Philippine Normal College shall provide room and other facilities for the said Center.

Sec. 4. The Secretary of Education shall issue such rules and regulations as may be necessary to implement the provisions of this Act.

Sec. 5. There is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, the sum of five hundred thousand pesos to carry out the provisions of this Act for the fiscal year nineteen hundred and sixty-four, including the purchase of site and the construction of buildings for the Philippine National School for the Blind. Thereafter, the amount necessary for the operation and maintenance of the said school and center shall be included in the annual General Appropriation Acts.

Declaration on the Rights of Disabled Persons (1975).

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

1987 Constitution.

Art. XIII, HEALTH

Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be
priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

Sec. 13. The State shall establish a special agency for disabled persons for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.


Sec. 18. National Health Program. — The Department of Health in coordination with the National Council for the Welfare of Disabled Persons, shall institute a national health program which shall aim to attain the following:
(a) prevention of disability, whether occurring prenatally or postnatally;
(b) recognition and early diagnosis of disability; and
(c) early rehabilitation of the disabled.

Sec. 19. Rehabilitation Centers. — The Department of Health shall establish medical rehabilitation centers in government provincial hospitals, and shall include in its annual appropriation the necessary funds for the operation of such centers.
The Department of Health shall formulate and implement a program to enable marginalized disabled persons to avail of free rehabilitation services in government hospitals.

Sec. 20. Health Services. — The State shall protect and promote the right to health of disabled persons and shall adopt an integrated

and comprehensive approach to their health development which shall make essential health services available to them at affordable cost.

The National Government shall provide an integrated health service for disabled persons which shall include, but not limited to, the following:
(a) prevention of disability through immunization, nutrition, environmental protection and preservation, and genetic counseling; and early detection of disability and timely intervention to arrest disabling condition; and
(b) medical treatment and rehabilitation.
The Department of Health shall field medical personnel specializing in the treatment and rehabilitation of disabled persons to provincial hospitals and, when viable, to municipal health centers. It shall also train its field health personnel in the provision of medical attention to disabled persons. It shall further ensure that its field health units have the necessary capabilities to fit prosthetic and orthotic appliances on disabled persons.


Rule 2. Medical care

States should ensure the provision of effective medical care to persons with disabilities.

1. States should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programmes should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level.

2. Local community workers should be trained to participate in areas such as early detection of impairments, the provision of primary assistance and referral to appropriate services.

3. States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society.

4. States should ensure that all medical and paramedical personnel are adequately trained
and equipped to give medical care to persons with disabilities and that they have access to relevant treatment methods and technology.

5. States should ensure that medical, paramedical and related personnel are adequately trained so that they do not give inappropriate advice to parents, thus restricting options for their children. This training should be an ongoing process and should be based on the latest information available.

6. States should ensure that persons with disabilities are provided with any regular treatment and medicines they may need to preserve or improve their level of functioning.

V.D. ACCESSIBILITY


II. TARGET AREAS FOR EQUAL PARTICIPATION

Rule 5. Accessibility

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

(a) Access to the physical environment

1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards and guidelines and to consider enacting legislation to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments.

2. States should ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment have access to adequate information on disability policy and measures to achieve accessibility.

3. Accessibility requirements should be included in the design and construction of the physical environment from the beginning of the designing process.

4. Organizations of persons with disabilities should be consulted when standards and norms for accessibility are being developed. They should also be involved locally from the initial planning stage when public construction projects are being designed, thus ensuring maximum accessibility.


CHAPTER VI: ACCESSIBILITY

Sec. 25. Barrier-Free Environment. — The State shall ensure the attainment of a barrier-free environment that will enable disabled persons to have access in public and private buildings and establishments and such other places mentioned in Batas Pambansa Bilang 344, otherwise known as the "Accessibility Law".

The national and local governments shall allocate funds for the provision of architectural facilities or structural features for disabled persons in government buildings and facilities.

Sec. 26. Mobility. — The State shall promote the mobility of disabled persons. Disabled persons shall be allowed to drive motor vehicles, subject to the rules and regulations issued by the Land Transportation Office pertinent to the nature of their disability and the appropriate adaptations or modifications made on such vehicles.
Sec. 27. Access to Public Transport Facilities. —
The Department of Social Welfare and Development shall develop a program to assist marginalized disabled persons gain access in the use of public transport facilities. Such assistance may be in the form of subsidized transportation fare.

The said department shall also allocate such funds as may be necessary for the effective implementation of the public transport program for the disabled persons.

The "Accessibility Law", as amended, shall be made suppletory to this Act.

Sec. 28. Implementing Rules and Regulations. —
The Department of Transportation and Communications shall formulate the rules and regulations necessary to implement the provisions of this Chapter.


Sec. 1. In order to promote the realization of the rights of disabled persons to participate fully in the social life and the development of the societies in which they live and the enjoyment of the opportunities available to other citizens, no license or permit for the construction, repair or renovation of public and private buildings for public use. Educational institutions, airports, sports and recreation centers and complexes, shopping centers or establishments, public parking places, work-places, public utilities, shall be granted or issued unless the owner or operator thereof shall install and incorporate in such building, establishment, institution or public utility, such architectural facilities or structural features as shall reasonably enhance the mobility of disabled persons such as sidewalks, ramps, railings and the like. If feasible, all such existing buildings, institutions, establishments, or public utilities to be constructed or established for which licenses or permits had already been issued may comply with the requirements of this law: Provided, further, That in case of government buildings, street and highways, the Ministry of Public Works and Highways shall see to it that the same shall be provided with architectural facilities or structural features for disabled persons. In the case of the parking place of any of the above institutions, buildings, or establishment, or public utilities, the owner or operator shall reserve sufficient and suitable space for the use of disabled persons.

Sec. 2. In case of public conveyance, devices such as the prominent display of posters or stickers shall be used to generate public awareness of the rights of the disabled and foster understanding of their special needs. Special bus stops shall be designed for disabled persons. Discriminating against disabled persons in the carriage or transportation of passengers is hereby declared unlawful.

Sec. 3. The Minister of Public Works and Highways and the Minister of Transportation and Communication, in coordination with the National Commission Concerning Disabled Persons, shall prepare the necessary rules and regulations to implement the provisions of this Act.

Sec. 4. Any person violating any provision of this Act or of the rules and regulations promulgated hereunder shall, upon conviction by a court of competent jurisdiction, suffer the penalty of imprisonment of not less than one month but not more than one year or a fine of P2,000 to P5,000 or both, at the discretion of the court: Provided, That in the case of corporations, partnerships, cooperatives or associations, the president, manager or administrator, or the person who has charge of the construction, repair or renovation of the buildings, space or utilities shall be criminally responsible for any violation of this Act and/or rules and regulations promulgated pursuant thereto.

Sec. 5. All laws, executive and administrative orders, rules and regulations inconsistent with the foregoing provisions are hereby repealed or amended accordingly.
**Magna Carta on Disabled Persons (1992).**

**CHAPTER III**
**DISCRIMINATION ON THE USE OF PUBLIC ACCOMMODATIONS AND SERVICES**

**Sec. 35.** Public Accommodations and Services. — For purposes of this Chapter, public accommodations and services shall include the following:
(a) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five (5) rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
(b) a restaurant, bar, or other establishment serving food or drink;
(c) a motion picture, theater, concert hall, stadium, or other place of exhibition or entertainment;
(d) an auditorium, convention center, lecture hall, or other place of public gathering;
(e) a bakery, grocery store, hardware store, shopping center, or other sales or rental establishment;
(f) a bank, barber shop, beauty shop, travel service, funeral parlor, gas station, office of a lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment;
(g) a terminal, depot, or other station used for specified public transportation;
(h) a museum, gallery, library or other place of public display or collection;
(i) a park, zoo, amusement park, or other place of recreation;
(j) a nursery, elementary, secondary, undergraduate, or post-graduate private school, or other place of education;
(k) a gymnasium, health spa, bowling alley, golf course; or
(l) other place of exercise or recreation.

**Sec. 36.** Discrimination on the Use of Public Accommodations. — (a) No disabled person shall be discriminated on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation. The following constitute acts of discrimination:
(1) denying a disabled person, directly or through contractual, licensing, or other arrangement, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity by reason of his disability;
(2) affording a disabled person, on the basis of his disability, directly or through contractual, licensing, or other arrangement, with the opportunity to participate in or benefit from a good service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other able-bodied persons; and
(3) providing a disabled person, on the basis of his disability, directly or through contractual, licensing, or other arrangement, with a good, service, facility, advantage, privilege, or accommodation that is different or separate form that provided to other able-bodied persons unless such action is necessary to provide the disabled person with a good, service, facility, advantage, privilege, or accommodation that is as effective as that provided to others;

For purposes of this Section, the term "individuals or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(b) Integrated Settings — Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to individual with a disability in the most integrated setting appropriate to the needs of the individual.
(c) Opportunity to Participate — Notwithstanding the existence of separate or different programs or activities provided in accordance with this Section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.
(d) Association — It shall be discriminatory to exclude or otherwise deny equal goods, services,
facilities, advantages, privileges, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(e) Prohibitions — For purposes of this Section, the following shall be considered as discriminatory:

(1) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class or individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, or accommodations being offered;

(2) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(3) failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or would result in undue burden;

(4) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, where such removal is readily achievable; and

(5) where an entity can demonstrate that the removal of a barrier under clause (4) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

Sec. 37. Use of Government Recreational or Sports Centers Free of Charge. — Recreational or sports centers owned or operated by the Government shall be used, free of charge, by marginalized disabled persons during their social, sports or recreational activities.

Sec. 38. Implementing Rules and Regulations. — The Department of Public Works and Highways shall formulate the rules and regulations necessary to implement the provisions of this Chapter.


TITLE II
RIGHTS AND PRIVILEGES OF DISABLED PERSONS
CHAPTER I: EMPLOYMENT

Sec. 5. Equal Opportunity for Employment. — No disabled person shall be denied access to opportunities for suitable employment. A qualified disabled employee shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able bodied person.

Five percent (5%) of all casual emergency and contractual positions in the Departments of Social Welfare and Development; Health; Education, Culture and Sports; and other government agencies, offices or corporations engaged in social development shall be reserved for disabled persons.

Sec. 6. Sheltered Employment — If suitable employment for disabled persons cannot be found through open employment as provided in the immediately preceding Section, the State shall endeavor to provide it by means of sheltered employment. In the placement of disabled persons in sheltered employment, it shall accord due regard to the individual qualities, vocational goals and inclinations to ensure a good working atmosphere and efficient production.

Sec. 7. Apprenticeship. — Subject to the provisions of the Labor Code as amended, disabled persons shall be eligible as apprentices or learners: Provided, That their handicap is not
as much as to effectively impede the performance of job operations in the particular occupation for which they are hired; Provided, further, That after the lapse of the period of apprenticeship, if found satisfactory in the job performance, they shall be eligible for employment.

Sec. 8. Incentives for Employers. — (a) To encourage the active participation of the private sector in promoting the welfare of disabled persons and to ensure gainful employment for qualified disabled persons, adequate incentives shall be provided to private entities which employ disabled persons.

(b) Private entities that employ disabled persons who meet the required skills or qualifications, either as regular employee, apprentice or learner, shall be entitled to an additional deduction, from their gross income, equivalent to twenty-five percent (25%) of the total amount paid as salaries and wages to disabled persons: Provided, however, That such entities present proof as certified by the Department of Labor and Employment that disabled persons are under their employ: Provided, further, That the disabled employee is accredited with the Department of Labor and Employment and the Department of Health as to his disability, skills and qualifications.

(c) Private entities that improve or modify their physical facilities in order to provide reasonable accommodation for disabled persons shall also be entitled to an additional deduction from their net taxable income, equivalent to fifty percent (50%) of the direct costs of the improvements or modifications. This Section, however, does not apply to improvements or modifications of facilities required under Batas Pambansa Bilang 344.

Sec. 9. Vocational Rehabilitation. — Consistent with the principle of equal opportunity for disabled workers and workers in general, the State shall take appropriate vocational rehabilitation measures that shall serve to develop the skills and potentials of disabled persons and enable them to compete favorably for available productive and remunerative employment opportunities in the labor market.

The State shall also take measures to ensure the provision of vocational rehabilitation and livelihood services for disabled persons in the rural areas. In addition, it shall promote cooperation and coordination between the government and nongovernmental organizations and other private entities engaged in vocational rehabilitation activities.

The Department of Social Welfare and Development shall design and implement training programs that will provide disabled persons with vocational skills to enable them to engage in livelihood activities or obtain gainful employment. The Department of Labor and Employment shall likewise design and conduct training programs geared towards providing disabled persons with skills for livelihood.

Sec. 10. Vocational Guidance and Counseling. — The Department of Social and Welfare and Development, shall implement measures providing and evaluating vocational guidance and counseling to enable disabled persons to secure, retain and advance in employment. It shall ensure the availability and training of counselors and other suitably qualified staff responsible for the vocational guidance and counseling of disabled persons.

Sec. 11. Implementing Rules and Regulations. — The Department of Labor and Employment shall in coordination with the Department of Social Welfare and Development (DSWD) and National Council for the Welfare of the Disabled Persons (NCWDP) shall promulgate the rules and regulations necessary to implement the provisions under this Chapter.

TITLE III PROHIBITION AGAINST DISABLED PERSONS

CHAPTER I DISCRIMINATION ON EMPLOYMENT

Sec. 32. Discrimination on Employment. — No entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. The following constitute acts of discrimination:

(a) Limiting, segregating or classifying a disabled job applicant in such a manner that adversely affects his work opportunities;

(b) Using qualification standards, employment tests or other selection criteria that screen out or
tend to screen out a disabled person unless such standards, tests or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity;
(c) Utilizing standards, criteria, or methods of administration that:
(1) have the effect of discrimination on the basis of disability; or
(2) perpetuate the discrimination of others who are subject to common administrative control.
(d) Providing less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to a qualified disabled employee, by reason of his disability, than the amount to which a non-disabled person performing the same work is entitled;
(e) Favoring a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;
(f) Re-assigning or transferring a disabled employee to a job or position he cannot perform by reason of his disability;
(g) Dismissing or terminating the services of a disabled employee by reason of his disability unless the employer can prove that he impairs the satisfactory performance of the work involved to the prejudice of the business entity: Provided, however, That the employer first sought to provide reasonable accommodations for disabled persons;
(h) Failing to select or administer in the most effective manner employment tests which accurately reflect the skills, aptitude or other factor of the disabled applicant or employee that such tests purports to measure, rather than the impaired sensory, manual or speaking skills of such applicant or employee, if any; and
(i) Excluding disabled persons from membership in labor unions or similar organizations.

Sec. 33. Employment Entrance Examination. --- Upon an offer of employment, a disabled applicant may be subjected to medical examination, on the following occasions:
(a) all entering employees are subjected to such an examination regardless of disability;
(b) information obtained during the medical examination or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record; Provided, however, That:
(1) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employees and necessary accommodations;
(2) first aid and safety personnel may be informed, when appropriate, if the disability may require emergency treatment;
(3) government officials investigating compliance with this Act shall be provided relevant information on request; and
(4) the results of such examination are used only in accordance with this Act.


Rule 7. Employment

States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market.

1. Laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment.

2. States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.

3. States' action programmes should include:
(a) Measures to design and adapt workplaces and work premises in such a way that they become accessible to persons with different disabilities;

(b) Support for the use of new technologies and the development and production of assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for persons with disabilities to enable them to gain and maintain employment;

(c) Provision of appropriate training and placement and ongoing support such as personal assistance and interpreter services.

4. States should initiate and support public awareness-raising campaigns designed to overcome negative attitudes and prejudices concerning workers with disabilities.

5. In their capacity as employers, States should create favourable conditions for the employment of persons with disabilities in the public sector.

6. States, workers’ organizations and employers should cooperate to ensure equitable recruitment and promotion policies, employment conditions, rates of pay, measures to improve the work environment in order to prevent injuries and impairments and measures for the rehabilitation of employees who have sustained employment-related injuries.

7. The aim should always be for persons with disabilities to obtain employment in the open labour market. For persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency in providing opportunities for persons with disabilities to gain employment in the labour market.

8. Measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sectors.

9. States, workers’ organizations and employers should cooperate with organizations of persons with disabilities concerning all measures to create training and employment opportunities, including flexible hours, part-time work, job-sharing, self-employment and attendant care for persons with disabilities.


CHAPTER II
DISCRIMINATION ON TRANSPORTATION

Sec. 34. Public Transportation. — It shall be considered discrimination for the franchisees or operators and personnel of sea, land, and air transportation facilities to charge higher fare or to refuse to convey a passenger, his orthopedic devices, personal effects, and merchandise by reason of his disability.


1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

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[T]he State shall advocate for and encourage respect for disabled persons.

The State shall exert all efforts to remove all social, cultural, economic, environmental and attitudinal barriers that are prejudicial to disabled persons.

Toward this end, the State shall adopt policies ensuring the rehabilitation, self-development and self-reliance of disabled persons. It shall develop their skills and potentials to enable them to compete favorably for available opportunities. (Magna Carta) (emphasis supplied)

4.(f) Social Barriers refer to the characteristics of institutions, whether legal, economic, cultural, recreational or other, any human group, community, or society which limit the fullest possible participation of disabled persons in the life of the group. Social barriers include negative attitudes which tend to single out and exclude disabled persons and which distort roles and inter-personal relationships;

CHAPTER V: TELECOMMUNICATIONS

Sec. 22. Broadcast Media. — Television stations shall be encouraged to provide a sign—language inset or subtitles in at least one (1) newscast program a day and special programs covering events of national significance.

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Sec. 2. Republic Act No. 7277 is hereby amended by inserting a new title, chapter and section after Section 38 to be denominated as Title 4, chapters 1 and 2 and Sections 39, 40, 41 and 42 to read as follows:

"Title Four
Prohibitions on Verbal, Non-verbal Ridicule and Vilification Against Persons with Disability

"CHAPTER 1. Deliverance from Public Ridicule.

"Sec. 39. Public Ridicule. - For purposes of this Chapter, public ridicule shall be defined as an act of making fun or contemptuous initiating or making mockery of persons with disability whether in writing or in words, or in action due to their impairment/s.

"Sec. 40. No individual, group or community shall execute any of these acts of ridicule against persons with disability in any time and place which could intimidate or result in loss of self-esteem of the latter.

"CHAPTER 2. Deliverance from Vilification

"Sec. 41. Vilification. - For purposes of this chapter, vilification shall be defined as:

(a) the utterance of slanderous and abusive statements against a person with disability; and/or

(b) An activity in public which incites hatred towards serious contempt for, or severe ridicule of persons with disability.

"SEC. 42. Any individual, group or community is hereby prohibited from vilifying any person with disability which could result into loss of self-esteem of the latter.


I. PRECONDITIONS FOR EQUAL PARTICIPATION

Rule 1. Awareness-raising

States should take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution.

1. States should ensure that responsible authorities distribute up-to-date information on available programmes and services to persons with disabilities, their families, professionals in the field and the general public. Information to persons with disabilities should be presented in accessible form.

2. States should initiate and support information campaigns concerning persons with disabilities and disability policies, conveying the message that persons with disabilities are citizens with the same rights and obligations as others, thus justifying measures to remove all obstacles to full participation.

3. States should encourage the portrayal of persons with disabilities by the mass media in a positive way; organizations of persons with disabilities should be consulted on this matter.

4. States should ensure that public education programmes reflect in all their aspects the principle of full participation and equality.

5. States should invite persons with disabilities and their families and organizations to participate in public education programmes concerning disability matters.

6. States should encourage enterprises in the private sector to include disability issues in all aspects of their activity.

7. States should initiate and promote programmes aimed at raising the level of awareness of persons with disabilities concerning their rights and potential. Increased self-reliance and empowerment will assist persons with disabilities to take advantage of the opportunities available to them.

8. Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes. Persons with disabilities could also assist one another in awareness-raising through the activities of their own organizations.

9. Awareness-raising should be part of the education of all children and should be a component of teacher-training courses and training of all professionals.

Rule 9. Family life and personal integrity

3. States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an
important role in removing such negative attitudes.

**Convention on the Rights of the Child (1989).**

(3). States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

(4) States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Convention on the Rights of the Child (1990).**

**Art. 32. International cooperation.** (1) States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(d) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(e) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(f) Facilitating cooperation in research and access to scientific and technical knowledge;

(g) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

(2). The provisions of this article are without prejudice to the obligations of each State Party to fulfill its obligations under the present Convention.

**UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities ("Standard Rules") (1993).**

**Rule 22. International cooperation**

States will participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities.

1. Within the United Nations, the specialized agencies and other concerned intergovernmental organizations, States should participate in the development of disability policy.

2. Whenever appropriate, States should introduce disability aspects in general
negotiations concerning standards, information exchange, development programmes, etc.

3. States should encourage and support the exchange of knowledge and experience among:
   
   (a) Non-governmental organizations concerned with disability issues;
   
   (b) Research institutions and individual researchers involved in disability issues;
   
   (c) Representatives of field programmes and of professional groups in the disability field;
   
   (d) Organizations of persons with disabilities;
   
   (e) National coordinating committees.

4. States should ensure that the United Nations and the specialized agencies, as well as all intergovernmental and interparliamentary bodies, at global and regional levels, include in their work the global and regional organizations of persons with disabilities.
CHILDREN IN CONFLICT WITH THE LAW
The Challenges of a Shifting Paradigm

Ibarra M. Gutierrez, LL.M.
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I. Introduction

The term “children in conflict with the law” is understood to refer to any person less than 18 years of age who comes into contact with the justice system as a result of being suspected or accused of committing a crime. Under both international treaties and Philippine domestic law, children in conflict with the law are entitled to differentiated treatment under penal statutes – as compared to that accorded to adult offenders – with regard to both the extent of criminal responsibility and the steps to be followed within the criminal justice process.

This chapter aims to discuss the current legal framework applicable to children in conflict with the law under the Philippine criminal justice system. It will start with a discussion of the applicability of standards established under international law in the Philippine setting. It will then go into the general framework established by the Philippine Constitution.

A more in depth discussion of the current prescribed statutory framework for treating children in conflict with the law will then follow, with some emphasis on the development and evolution of this framework through various statutory enactments of both the Philippine legislature and the Executive branch of the past three decades. Decisions of the Philippine Supreme Court applying and interpreting key concepts of this framework will also be discussed.

I.A. Background and Context

The issue of children in conflict with the law is particularly severe in the Philippines. In September 2005, a few months before the passage in the Philippine Senate of the bill that would eventually become Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, the United Nations Children’s Fund (UNICEF) Philippine Office estimated that there were over 4,000 children confined in jails and detention centers all throughout the country, some of them as young as 9 years old, and many of them mixed with adults. In the same article, then UNICEF Senior Advisor, Social Welfare and Justice Systems, Alexandra Yuster, was quoted as saying that –

2 Secs. 37 and 40, Convention on the Rights of the Child.
"We also know that many, many children end up in prison for quite a long time without having had their cases heard. In one study that we did together with the Council and Welfare of the Children in the Philippines, we found that almost three-fourths of the kids in prison had not had their cases heard yet and we also know that these kids end up in prison often for six months or longer. And given that many have committed petty crimes it means that they spend more time in jail then they might have, even based on the sentence they received for what they’re accused of.”

More recent data from the Philippine Council for the Welfare of Children (CWC) peg the number of children in conflict with the law at 4,706 as of the second quarter of 2009. Of these, 1,453 are in jails or detention centers, with the remainder in the custody of the Department of Social Welfare and Development (DSWD), local government youth centers, or non-government organizations.

The Philippines is a state party to the Convention on the Rights of the Child (CRC), having ratified the instrument on 21 August 1990. It also has a full range of statutes that prescribe differentiated treatment for children in conflict with law as compared to adults charged with violations of penal laws. The Philippine Supreme Court has also issued clear and specific rules to govern cases involving situations where the accused in criminal cases are children in conflict with the law.

II. International Law Framework

As a state party to the CRC, the Philippines is bound to adhere to its provisions governing the rights of children in conflict with the law, particularly those articulated in Section 37 and 40 of the Convention.

Article 37 of the CRC provides –

"States Parties shall ensure that –

“(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

“(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

“(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty

4 Id.
shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

“(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Article 40 of the CRC further provides that –

“(1) States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

“(2) To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.
“(3) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

“(4) A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmers and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

The CRC is a treaty to which the Philippines is a state party and which therefore forms part of the law of the land by virtue of the Philippine Constitution’s incorporation clause7 and treaty clause.8 These provisions thus have direct application within the Philippine jurisdiction and have the force and strength of statute.

RA 9344, The Juvenile Justice and Welfare Act of 2006, also explicitly adopts by reference the standards prescribed in the CRC. In its Declaration of State Policy it expressly provides that –

“The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party.”9

It further provides even more explicitly in the same section that –

“Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the child’s age and desirability of promoting his/her reintegration.”10

Thus, pursuant to both a general policy under the Philippine Constitution, and express adoption through statute, the framework governing the treatment of children in conflict with the law prescribed under international treaties, such as the CRC, are fully effective in the Philippine jurisdiction.

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7Art. II, Sec. 2, 1987 Constitution; see also US v Guinto, 182 SCRA 644, Tanada v Angara, 272 SCRA 18, Secretary of Justice v Lantion, 322 SCRA 160.
9Sec. 2(b), R.A. 9344.
10Sec. 2(d), id.
III. Constitutional Policy

The Philippine Constitution does not contain any express provision that directly governs the issue of children in conflict with the law. Instead, it has several general statements of state policy on the rights and entitlements of children and the youth.

Apart from the above-mentioned incorporation and treaty clauses of the Constitution, several other provisions have an indirect bearing on the issue. For instance in its enumeration of State Policies, the Constitution provides that –

“The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being.”

Similarly, in its Article on The Family, the Constitution declares that –

“The State shall defend x x x 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.”

In an even more general vein, the Philippine Constitution adopts a general policy of adherence to human rights. Thus –

“The State values the dignity of every human person and guarantees full respect for human rights.”

Likewise, it adopts broad guarantees that apply to all persons charged with a crime in its Bill of Rights. So, for instance –

“(1) No person shall be held to answer for a criminal offense without due process of law.

“(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.”

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11 See Notes 7 and 8.
13 Art. XV, Sec. 3(2).
14 Art. II, Sec. 11.
Or more particularly –

“(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

“(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

“(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.”

These rights apply generally to all criminal defendants under Philippine law. However, when applied to children in conflict with the law, they are also consistent with some of the rights and standards prescribed in Articles 37 and 40 of the CRC.

**IV. Statutory Framework**

**IV.A. Age of Criminal Responsibility**

At present, the principal statute that governs the issue of children in conflict with law in the Philippine legal system is RA 9344, the Juvenile Justice and Welfare Act of 2006. Enacted on 28 April 2006, RA 9344 superseded provisions of older laws such as those in Presidential Decree No. 603, or the Child and Youth Welfare Code, as well as certain sections of Revised Penal Code.

One of the major changes introduced by RA 9344 is the raising of the age of criminal responsibility under Philippine penal law. Previously, the statutory provision that governed this matter was found in Article 12, paragraphs (2) and (3), of the Revised Penal Code. This provides that –

“Circumstances which exempt from criminal liability - The following are exempt from criminal liability: x x x

- A person under nine years of age.

- A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of article 80 of this Code. x x x”

Thus, under the previous rule, only children below nine (9) years of age were completely exempt from criminal responsibility. A child above nine (9) but below fifteen (15) was within what was referred to as the age of "conditional responsibility," that is, they could be held criminally

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15 Art. III, Sec. 14.
16 Art. III, Sec. 12.
17 Enacted on 10 December 1974 under the law-making powers of then President, Ferdinand E. Marcos.
18 Act No. 3815, which took effect on 1 January 1932.
responsible if it could be proven that they “acted with discernment” in committing the crime. A child fifteen (15) years of age or above was meted full criminal responsibility, subject only to the appreciation of the privileged mitigating circumstance of minority, which reduced the penalty somewhat.\footnote{Article 68 of the \textit{Revised Penal Code} provided that “When the offender is a minor under eighteen years x x x the following rules shall be observed: x x x Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.”}

R.A. 9344, however, changed this fundamental rule by providing that –

\emph{“Minimum Age of Criminal Responsibility.”} - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

“A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act. x x x”\footnote{Sec. 6, R.A. 9344,}

The prevailing rule under Philippine law, therefore, completely exempts all children fifteen (15) years of age and below from criminal responsibility, and resets the age of “conditional responsibility” from 9-15 years of age, to 15-18 years of age. Only adults, or those eighteen (18) years of age or above at the time the crime is committed are meted full, unconditional criminal responsibility.

The rule on proving “discernment,” however, is not explicitly spelled out in the law. In one decision, the Philippine Supreme Court implied that whether or not a child acted with discernment need not be sought to be explicitly and specifically proven by the prosecution in a criminal case, but may rather be deduced from other facts established by evidence during the trial.\footnote{Remiendo v. People of the Philippines, G.R. No. 184874 (9 October 2009).} This decision will be presented later in this article.

Apart from raising the minimum age for criminal responsibility, RA 9344 also establishes a presumption of minority. That is, a person charged with a crime must be proven to be eighteen (18) years old or above, otherwise she/he will be considered a child in conflict with the law.\footnote{Sec. 7, R.A. 9344.}

This addresses a common difficulty that many children encountered before where, because of problems in establishing their age – usually due to lack of a birth certificate or other legal documents – they were unable to avail of the benefits granted by law to children, and were instead treated as adult criminal defendants.

\textbf{IV. B. Prescribed Procedure for Children in Conflict with the Law}

For children that are completely exempt from criminal responsibility, that is, those that are fifteen (15) years of age or below, RA 9344 provides that –
"Children Below the Age of Criminal Responsibility. - If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise, known as "The Child and Youth Welfare Code."\(^{23}\)

This makes it clear that the authority "which will have initial contact" is already obligated to immediately release the child to her/his parents, relative, or responsible organization or person. This changes the rule under PD 603, which implied that it was the court that was empowered to effect the release of a child exempt from criminal responsibility.\(^{24}\) The rule also provides for the procedure in situations where parents, guardians, and/or relatives cannot be found or refuse to accept custody, an issue which the previous law left completely up to the courts.

RA 9344 also provides for a system of "diversion," whereby a child in conflict with the law who is charged with a crime with a penalty not exceeding six (6) years imprisonment will not be made to undergo court proceedings but will instead be subjected to meetings, mediation, family conferencing, or conciliation with the Local Council for the Protection of Children (LCPC) or the Barangay (Village) Council for the Protection of Children (BCPC), as an alternative to court proceedings.\(^{25}\) This diversion can be conducted at the level of Katarungang Pambarangay (village-level conciliation), the police investigation, or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including the judicial level.\(^{26}\)

Children in conflict with the law charged with crimes whose penalty does not exceed twelve (12) years imprisonment may also be subjected to a diversion program as may be determined by the court.\(^{27}\)

RA 9344 also provides for explicit procedures that must be followed, and specific duties that must be adhered to by law enforcement officers in arresting and conducting initial investigation of children in conflict with the law.\(^{28}\) These include, for instance, a prohibition against the display of

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\(^{23}\) Sec. 20, Id.
\(^{24}\) Art. 189, P.D. 603: "A child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and underfifteen years of age at the time of the commission of the offense, unless he acted with discernment x x x" [emphasis supplied].
\(^{25}\) Secs. 23-31, R.A. 9344.
\(^{26}\) Sec. 24, Id.
\(^{27}\) Sec. 37, Id.
\(^{28}\) Secs. 21-22, Id.
weapons or use of handcuffs or other restraints, unless absolutely necessary, and a prescription to avoid the use of violence or even vulgar or profane words. Under the old PD 603, the sole duty expressly reposed in law enforcement officers was to take the child in conflict with the law to a medical officer for a physical and mental examination. This is also retained in RA 9344.

Similarly, prosecutors are given express duties when dealing with children in conflict with the law. In fact, RA 9344 requires that specially trained prosecutors should be the ones to conduct inquest, preliminary investigation, and prosecution of children in conflict with the law.

IV. C. Court proceedings

Under RA 9344, a child in conflict with the law who is not subjected to a diversion program and instead goes through the court process shall, as a rule, not be detained pending trial. The applicable provision provides that –

"Release on Recognizance. - Where a child is detained, the court shall order:

(a) the release of the minor on recognizance to his/her parents and other suitable person;
(b) the release of the child in conflict with the law on bail; or
(c) the transfer of the minor to a youth detention home/youth rehabilitation center.

"The court shall not order the detention of a child in a jail pending trial or hearing of his/her case."

Under PD 603, there was no general policy against detention pending trial. Instead, if the child in conflict with the law was unable to post bail, she/he would be confined to the care of the DSWD, a local rehabilitation center, or a detention home.

After trial, and upon a judgment of conviction, a child in conflict with the law shall be entitled to an automatic suspension of sentence. RA 9344 provides that –

"Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That

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29 Sec. 21(e), Id.  
30 Sec. 21(g), Id.  
31 Sec. 21(d), Id.  
32 Sec. 190, P.D. 603.  
33 Sec. 21(j), R.A. 9344.  
34 Sec. 32, Id.  
35 Sec. 35, Id.  
36 Sec. 191, P.D. 603.
suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

“Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.”

However, in one decision, the Philippine Supreme Court has declared that this provision must be read in conjunction with Section 192 of PD 603, the provision in the old law that provides for suspension of sentence, but which limits the application of such suspension by providing that –

“x x x The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment x x x”

Hence, according to this decision, a child in conflict with the law “who is convicted of an offense punishable by death, life imprisonment, or reclusion perpetua is disqualified from availing the benefits of a suspended sentence.”

After suspension of sentence, and upon implementation of such disposition measures as may be ordered by the court, the final discharge of the child in conflict with the law, and consequently, the dismissal of the case, may be ordered by the court upon recommendation of the social worker who has custody of the child. If the disposition measures are not fulfilled, or the child in conflict with the law willfully fails to comply with the conditions of her/his disposition program, she/he shall be brought back to court for execution of judgment.

If the child in conflict with the law should turn eighteen (18) while under suspended sentence, RA 9344 provides that –

“x x x If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.”

In any event, even upon execution of judgment, the court retains an option to place the child in conflict with the law on probation in lieu of ordering her/him to serve sentence. Application for this probation may be done at any time, and for this purpose, the pertinent portions of the existing Probation Law were amended explicitly.

Again, however, a decision of the Philippine Supreme Court limits the application of these provisions. In Padua v People of the Philippines the Court declared that the limitation in Section 24 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, that prohibited any

37 Sec. 38, R.A. 9344.
38 Declarador v Gubaton, G.R. No. 159208 (18 August 2006).
39 Id.
40 Sec. 39, R.A. 9344.
41 Sec. 40, Par. 1, id.
42 Sec. 40, Par. 2, Id.
43 P.D. No. 968.
44 Sec. 42, R.A. 9344.
45 G.R. No. 168546 (23 July 2008).
LOOKING AFTER FILIPINO CHILDREN

person convicted of drug trafficking or pushing also applied to children in conflict with the law, the provisions of RA 9344 notwithstanding. The Court even made the rather sweeping conclusion, in this decision, that as soon as a person reaches twenty-one (21) years of age, she/he “could no longer be considered a child for purposes of applying RA 9344,” even if she/he was below eighteen (18) at the time the crime was committed.

V. Relevant Cases

1) Robert Remiendo v. People of the Philippines
G.R. No. 184874, 9 October 2009

Facts:

Accused Remiendo was charged with two informations for statutory rape. At the time of the commission of the alleged crimes, Remiendo was fifteen (15) years, two (2) months of age. He contends that pursuant to Section 6 of RA 9344, he could only be convicted if the prosecution established that he acted with discernment.

Ruling:

Discernment is the mental capacity to understand the difference between right and wrong. The prosecution is burdened to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial. The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.

Culled from the records of this case, it is manifest that Remiendo acted with discernment, being able to distinguish between right and wrong and knowing fully well the consequences of his acts against AAA. During the rape that occurred in March 1997, Remiendo waited for AAA to be left alone at her house before he came, and, while doing his dastardly act, threatened to kick her should she shout for help. In May 1997, Remiendo again ravished AAA in the room of his house when the latter passed by and, thereafter, threatened to kill her if she told anybody about what had just happened. Per his own testimony, he knew that committing rape was wrong because he claimed to have been enraged when he was asked by AAA's playmates if he indeed raped AAA, to the point of slapping her and revving up the engine of a jitney and directing the smoke from the exhaust pipe towards her.

Remiendo, being above 15 and under 18 years of age at the time of the rape, and having acted with discernment, but having already reached 21 years of age at the time of the imposition of his sentence by the trial court, his claim for the benefits of RA 9344 is rendered moot and academic.

2) Rennie Declarador v. Hon. Salvador S. Gubaton
G.R. No. 159208, 18 August 2006

Facts:
Accused Frank Bansales was seventeen (17) years, one (1) month old when he allegedly stabbed and killed his teacher, Yvonne Declarador. The trial court found Bansales guilty of murder, but, in view of his age at the time of the crime was committed, suspended his sentence and instead ordered his commitment to a Regional Rehabilitation Center for Youth. Rennie Declarador, surviving spouse of the deceased, assails this judgment.

Ruling:

It is clear that a person who is convicted of an offense punishable by death, life imprisonment, or reclusion perpetua is disqualified from availing the benefits of a suspended sentence. "Punishable" is defined as "deserving of, or capable, or liable to punishment; liable to be punished; may be punished; liable to punishment." The word "punishable" does not mean "must be punished," but "liable to be punished" as specified. In U.S. v. Villalon, the Court defined punishable as "deserving of, or liable for, punishment." Thus, the term refers to the possible, not to the actual sentence. It is concerned with the penalty which may be, and not which is imposed.

The disqualification is based on the nature of the crime charged and the imposable penalty therefor, and not on the penalty imposed by the court after trial. It is not the actual penalty imposed but the possible one which determines the disqualification of a juvenile. Despite the disqualification of Bansales, respondent Judge, nevertheless, ordered the suspension of the sentence meted against him. By this act, respondent Judge committed grave abuse of discretion amounting to excess of jurisdiction.

We note that, in the meantime, RA 9344 took effect on May 20, 2006. Section 38 of the law reads:

SEC. 38. Automatic Suspension of Sentence. — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court on Juveniles in Conflict with the Law.

The law merely amended Article 192 of P.D. No. 603, as amended by A.M. No. 02-1-18-SC, in that the suspension of sentence shall be enjoyed by the juvenile even if he is already 18 years of age or more at the time of the pronouncement of his/her guilt. The other disqualifications in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC have not been deleted from Section 38 of Rep. Act No. 9344. Evidently, the intention of Congress was to maintain the other disqualifications as provided in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC. Hence, juveniles who have been convicted of a crime the imposable penalty for which is reclusion perpetua, life imprisonment or reclusion perpetua to death or death, are disqualified from having their sentences suspended.
3) *Michael Padua v. People of the Philippines*
G.R. No. 168546, 23 July 2008

**Facts:**

Accused Padua and Edgar Allan Ubalde were charged with the crime of selling dangerous drugs under RA 9165. Padua was seventeen (17) years old at the time the crime was allegedly committed. Padua entered a plea of guilty and was convicted by the trial court. He subsequently filed a Petition for Probation, which, though initially granted by the court, was subsequently withdrawn and denied on the ground that he was disqualified under Section 24 of RA 9165, having been convicted of drug trafficking. Padua assails this order.

**Ruling:**

The law is clear and leaves no room for interpretation. Any person convicted for drug trafficking or pushing, regardless of the penalty imposed, cannot avail of the privilege granted by the Probation Law or P.D. No. 968. The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, index *animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.

As for the second and third issues, Padua cannot argue that his right under Rep. Act No. 9344, the "Juvenile Justice and Welfare Act of 2006" was violated. Nor can he argue that Section 32 of A.M. No. 02-1-18-SC otherwise known as the "Rule on Juveniles in Conflict with the Law" has application in this case. Section 6836 of Rep. Act No. 9344 and Section 32 of A.M. No. 02-1-18-SC both pertain to suspension of sentence and not probation.

Furthermore, suspension of sentence under Section 38 of Rep. Act No. 9344 could no longer be retroactively applied for petitioner’s benefit. Section 38 of Rep. Act No. 9344 provides that once a child under 18 years of age is found guilty of the offense charged, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence. Section 40 of Rep. Act No. 9344, however, provides that once the child reaches 18 years of age, the court shall determine whether to discharge the child, order execution of sentence, or extend the suspended sentence for a certain specified period or until the child reaches the maximum age of 21 years.

Petitioner has already reached 21 years of age or over and thus, could no longer be considered a child for purposes of applying Rep. Act 9344. Thus, the application of Sections 38 and 40 appears moot and academic as far as his case is concerned.
Declaration of the Rights of the Child (proclaimed 1959).

Preamble

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.
Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

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Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.


Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

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Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,
Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3

1. 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6
1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 9**

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmers to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other
international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

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**Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

**Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial
setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

   (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

   (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

   (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES
A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood.

Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In
order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

   (a) Information on the identity of the juvenile;

   (b) The fact of and reasons for commitment and the authority therefor;

   (c) The day and hour of admission, transfer and release;

   (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

   (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance.

For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity.

Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of
their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably
prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.
G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel.

These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event
of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent
with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

(a) Conduct constituting a disciplinary offence;

(b) Type and duration of disciplinary sanctions that may be inflicted;

(c) The authority competent to impose such sanctions;

(d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

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N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community. XXX


1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed
by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.


I. Fundamental principles

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

   (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

   (b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

   (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;
(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. Scope of the Guidelines

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. General prevention

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(g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

IV. Socialization processes

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care
and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child’s own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child’s own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at
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Social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to “drop-outs”.

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at or who do not have s to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for less or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.
D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. Social policy

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. Legislation and juvenile justice administration
52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. Research, policy development and coordination

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in cooperation with interested institutions, should play an active role.
in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.


Part one. General principles

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all of proceedings.

8. Protection of privacy

8.1 The juvenile’s right to privacy shall be respected at all stages in order to avoid harm
being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal of the juvenile, promote the well-being of the juvenile and harm to her or him, with due regard to the circumstances of case.

Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid
institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

(a) Care, guidance and supervision orders;
(b) Probation;
(c) Community service orders;
(d) Financial penalties, compensation and restitution;
(e) Intermediate treatment and other treatment orders;
(f) Orders to participate in group counselling and similar activities;
(g) Orders concerning foster care, living communities or other educational settings;
(h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

II. DOMESTIC LAWS

1987 Constitution.

Article II

Declaration of Principles and State Policies

Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Article XIII

Social Justice and Human Rights

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage.
They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children. The State shall endeavor to provide free medical care to paupers.

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Section 1. Short Title and Scope. - This Act shall be known as the "Juvenile Justice and Welfare Act of 2006." It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

SEC. 2. Declaration of State Policy. - The following State policies shall be observed at all times:

(a) The State recognizes the vital role of children and youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

(b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.

(c) The State likewise recognizes the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty and exploitation, and other conditions prejudicial to their development.

(d) Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the child’s age and desirability of promoting his/her reintegration. Whenever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.

(e) The administration of the juvenile justice and welfare system shall take into consideration the cultural and religious
perspectives of the Filipino people, particularly the indigenous peoples and the Muslims, consistent with the protection of the rights of children belonging to these communities.

(f) The State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law.

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CHAPTER 2

PRINCIPLES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SEC. 5. Rights of the Child in Conflict with the Law.
- Every child in conflict with the law shall have the following rights, including but not limited to:

(a) the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;

(b) the right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;

(c) the right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;

(d) the right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/She shall be conveyed separately to or from court. He/She shall await hearing of his/her own case in a separate holding area. A child in conflict with the law shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;

(e) the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;

(f) the right to bail and recognizance, in appropriate cases;

(g) the right to testify as a witness in his/her own behalf under the rule on examination of a child witness;

(h) the right to have his/her privacy respected fully at all stages of the proceedings;

(i) the right to diversion if he/she is qualified and voluntarily avails of the same;

(j) the right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;

(k) the right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;

(l) in general, the right to automatic suspension of sentence;

(m) the right to probation as an alternative to imprisonment, if qualified under the Probation Law;

(n) the right to be free from liability for perjury, concealment or misrepresentation; and

(o) other rights as provided for under existing laws, rules and regulations.

SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 7. Determination of Age. - The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child’s birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.

SEC. 10. Policies and Procedures on Juvenile Justice and Welfare. - All government agencies enumerated in Section 8 shall, with the assistance of the JJWC and within one (1) year from the effectivity of this Act, draft policies and procedures consistent with the standards set in the law. These policies and procedures shall be modified accordingly in consultation with the JJWC upon the completion of the national juvenile intervention program as provided under Section 9 (d).

SEC. 11. Child Rights Center (CRC). - The existing Child Rights Center of the Commission on Human Rights shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.

TITLE III

PREVENTION OF JUVENILE DELINQUENCY

CHAPTER 1

THE ROLE OF THE DIFFERENT SECTORS

SEC. 12. The Family. - The family shall be responsible for the primary nurturing and rearing of children which is critical in delinquency prevention. As far as practicable and in accordance with the procedures of this Act, a child in conflict with the law shall be maintained in his/her family.

SEC. 13. The Educational System. - Educational institutions shall work together with families, community organizations and agencies in the prevention of juvenile delinquency and in the rehabilitation and reintegration of child in conflict with the law. Schools shall provide
adequate, necessary and individualized educational schemes for children manifesting difficult behavior and children in conflict with the law. In cases where children in conflict with the law are taken into custody or detained in rehabilitation centers, they should be provided the opportunity to continue learning under an alternative learning system with basic literacy program or non-formal education accreditation equivalency system.

SEC. 14. The Role of the Mass Media. - The mass media shall play an active role in the promotion of child rights, and delinquency prevention by relaying consistent messages through a balanced approach. Media practitioners shall, therefore, have the duty to maintain the highest critical and professional standards in reporting and covering cases of children in conflict with the law. In all publicity concerning children, the best interest of the child should be the primordial and paramount concern. Any undue, inappropriate and sensationalized publicity of any case involving a child in conflict with the law is hereby declared a violation of the child’s rights.

SEC. 15. Establishment and Strengthening of Local Councils for the Protection of Children. - Local Councils for the Protection of Children (LCPC) shall be established in all levels of local government, and where they have already been established, they shall be strengthened within one (1) year from the effectivity of this Act. Membership in the LCPC shall be chosen from among the responsible members of the community, including a representative from the youth sector, as well as representatives from government and private agencies concerned with the welfare of children.

The local council shall serve as the primary agency to coordinate with and assist the LGU concerned for the adoption of a comprehensive plan on delinquency prevention, and to oversee its proper implementation.

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TITLE IV

TREATMENT OF CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY

SEC. 20. Children Below the Age of Criminal Responsibility. - If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child’s nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code".

TITLE V

JUVENILE JUSTICE AND WELFARE SYSTEM

CHAPTER I

INITIAL CONTACT WITH THE CHILD

SEC. 21. Procedure for Taking the Child into Custody. - From the moment a child is taken into custody, the law enforcement officer shall:

(a) Explain to the child in simple language and in a dialect that he/she can understand why he/she is being placed under custody and the offense that he/she allegedly committed;

(b) Inform the child of the reason for such custody and advise the child of his/her constitutional rights in a language or dialect understood by him/her;
(e) Properly identify himself/herself and present proper identification to the child;

(d) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child in conflict with the law;

(e) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;

(f) Refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;

(g) Avoid violence or unnecessary force;

(h) Determine the age of the child pursuant to Section 7 of this Act;

(i) Immediately but not later than eight (8) hours after apprehension, turn over custody of the child to the Social Welfare and Development Office or other accredited NGOs, and notify the child's apprehension. The social welfare and development officer shall explain to the child and the child's parents/guardians the consequences of the child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate;

(j) Take the child immediately to the proper medical and health officer for a thorough physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever the medical treatment is required, steps shall be immediately undertaken to provide the same;

(k) Ensure that should detention of the child in conflict with the law be necessary, the child shall be secured in quarters separate from that of the opposite sex and adult offenders;

(l) Record the following in the initial investigation:

1. Whether handcuffs or other instruments of restraint were used, and if so, the reason for such;

2. That the parents or guardian of a child, the DSWD, and the PAO have been informed of the apprehension and the details thereof; and

3. The exhaustion of measures to determine the age of a child and the precise details of the physical and medical examination or the failure to submit a child to such examination; and

(m) Ensure that all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.

A child in conflict with the law shall only be searched by a law enforcement officer of the same gender and shall not be locked up in a detention cell.

SEC. 22. Duties During Initial Investigation. - The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

After the initial investigation, the local social worker conducting the same may do either of the following:

(a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and
(b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.

CHAPTER 2
DIVERSION

SEC. 23. System of Diversion. - Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the conditions herein provided:

(a) Where the imposable penalty for the crime committed is not more than six (6) years imprisonment, the law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.

(b) In victimless crimes where the imposable penalty is not more than six (6) years imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC;

(c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court.

SEC. 24. Stages Where Diversion May be Conducted. - Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level.

SEC. 25. Conferencing, Mediation and Conciliation. - A child in conflict with law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings.

SEC. 26. Contract of Diversion. - If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within forty-five (45) days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed forty-five (45) days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two (2) years.

SEC. 27. Duty of the Punong Barangay When There is No Diversion. - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Punong Barangay handling the case shall, within three (3) days from determination of the absence of jurisdiction over the case or termination of the diversion proceedings, as the case may be, forward the records of the case of the child to the law enforcement officer, prosecutor or the appropriate court, as the case may be. Upon the issuance of the corresponding document, certifying to the fact that no agreement has been
reached by the parties, the case shall be filed according to the regular process.

SEC. 28. Duty of the Law Enforcement Officer When There is No Diversion. - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Women and Children Protection Desk of the PNP, or other law enforcement officer handling the case of the child under custody, to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation to determine whether or not the child should remain under custody and correspondingly charged in court. The document transmitting said records shall display the word "CHILD" in bold letters.

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SEC. 30. Formulation of the Diversion Program. - In formulating a diversion program, the individual characteristics and the peculiar circumstances of the child in conflict with the law shall be used to formulate an individualized treatment.

The following factors shall be considered in formulating a diversion program for the child:

(a) The child's feelings of remorse for the offense he/she committed;

(b) The parents' or legal guardians' ability to guide and supervise the child;

(c) The victim's view about the propriety of the measures to be imposed; and

(d) The availability of community-based programs for rehabilitation and reintegration of the child.

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CHAPTER 3
PROSECUTION

SEC. 32. Duty of the Prosecutor's Office. - There shall be a specially trained prosecutor to conduct inquest, preliminary investigation and prosecution of cases involving a child in conflict with the law. If there is an allegation of torture or ill-treatment of a child in conflict with the law during arrest or detention, it shall be the duty of the prosecutor to investigate the same.

SEC. 33. Preliminary Investigation and Filing of Information. - The prosecutor shall conduct a preliminary investigation in the following instances: (a) when the child in conflict with the law does not qualify for diversion; (b) when the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and (c) when considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney's Office of such service, as well as the personal information, and place of detention of the child in conflict with the law.

Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within forty-five (45) days from the start of the preliminary investigation.

CHAPTER 4
COURT PROCEEDINGS

SEC. 34. Bail. - For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

SEC. 35. Release on Recognizance. - Where a child is detained, the court shall order:

(a) the release of the minor on recognizance to his/her parents and other suitable person;

(b) the release of the child in conflict with the law on bail; or

(c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.

SEC. 36. Detention of the Child Pending Trial. - Children detained pending trial may be released on bail or recognizance as provided
for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required.

SEC. 37. Diversion Measures. - Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate.

SEC. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

SEC. 39. Discharge of the Child in Conflict with the Law. - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

SEC. 40. Return of the Child in Conflict with the Law to Court. - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

SEC. 41. Credit in Service of Sentence. - The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

SEC. 42. Probation as an Alternative to Imprisonment. - The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.
CHAPTER 5
CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

SEC. 43. Confidentiality of Records and Proceedings. - All records and proceedings involving children in conflict with the law from initial contact until final disposition of the case shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child in conflict with the law may have his/hers sentence suspended or if he/she may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child’s identity. Records of a child in conflict with the law shall not be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his/her written consent.

A person who has been in conflict with the law as a child shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him/her for any purpose.

TITLE VI
REHABILITATION AND REINTEGRATION

SEC. 44. Objective of Rehabilitation and Reintegration. - The objective of rehabilitation and reintegration of children in conflict with the law is to provide them with interventions, approaches and strategies that will enable them to improve their social functioning with the end goal of reintegration to their families and as productive members of their communities.

SEC. 45. Court Order Required. - No child shall be received in any rehabilitation or training facility without a valid order issued by the court after a hearing for the purpose. The details of this order shall be immediately entered in a register exclusively for children in conflict with the law. No child shall be admitted in any facility where there is no such register.

SEC. 46. Separate Facilities from Adults. - In all rehabilitation or training facilities, it shall be mandatory that children shall be separated from adults unless they are members of the same family. Under no other circumstance shall a child in conflict with the law be placed in the same confinement as adults.

The rehabilitation, training or confinement area of children in conflict with the law shall provide a home environment where children in conflict with the law can be provided with quality counseling and treatment.

SEC. 47. Female Children. - Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

SEC. 48. Gender-Sensitivity Training. - No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

SEC. 49. Establishment of Youth Detention Homes. - The LGUs shall set aside an amount to build youth detention homes as mandated by the Family Courts Act. Youth detention homes may also be established by private and NGOs licensed and accredited by the DSWD, in consultation with the JJWC.

SEC. 50. Care and Maintenance of the Child in Conflict with the Law. - The expenses for the care and maintenance of a child in conflict with the law under institutional care shall be borne by his/her parents or those persons liable to support him/her: Provided, That in case his/her parents or those persons liable to support him/her cannot pay all or part of said expenses, the municipality where the offense was committed shall pay one-
third (1/3) of said expenses or part thereof; the province to which the municipality belongs shall pay one-third (1/3) and the remaining one-third (1/3) shall be borne by the national government. Chartered cities shall pay two-thirds (2/3) of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said obligations. Provided, further, that in the event that the child in conflict with the law is not a resident of the municipality/city where the offense was committed, the court, upon its determination, may require the city/municipality where the child in conflict with the law resides to shoulder the cost.

All city and provincial governments must exert effort for the immediate establishment of local detention homes for children in conflict with the law.

SEC. 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

SEC. 52. Rehabilitation of Children in Conflict with the Law. - Children in conflict with the law, whose sentences are suspended may, upon order of the court, undergo any or a combination of disposition measures best suited to the rehabilitation and welfare of the child as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

If the community-based rehabilitation is availed of by a child in conflict with the law, he/she shall be released to parents, guardians, relatives or any other responsible person in the community. Under the supervision and guidance of the local social welfare and development officer, and in coordination with his/her parents/guardian, the child in conflict with the law shall participate in community-based programs, which shall include, but not limited to:

1. Competency and life skills development;
2. Socio-cultural and recreational activities;
3. Community volunteer projects;
4. Leadership training;
5. Social services;
6. Homelife services;
7. Health services;
8. Spiritual enrichment; and
9. Community and family welfare services.

In accordance therewith, the family of the child in conflict with the law shall endeavor to actively participate in the community-based rehabilitation.

Based on the progress of the youth in the community, a final report will be forwarded by the local social welfare and development officer to the court for final disposition of the case. If the community-based programs are provided as diversion measures under Chapter II, Title V, the programs enumerated above shall be made available to the child in conflict with the law.

SEC. 53. Youth Rehabilitation Center. - The youth rehabilitation center shall provide 24-hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals. A quarterly report shall be submitted by the center to the proper court on the progress of the children in conflict with the law. Based on the progress of the youth in the center, a final report will be forwarded to the court for final disposition of the case. The DSWD shall establish youth rehabilitation centers in each region of the country.

SEC. 54. Objectives of Community Based Programs. - The objectives of community-based programs are as follows:
(a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;

(b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;

(c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and

(d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

SEC. 55. Criteria of Community-Based Programs. - Every LGU shall establish community-based programs that will focus on the rehabilitation and reintegration of the child. All programs shall meet the criteria to be established by the JJWC which shall take into account the purpose of the program, the need for the consent of the child and his/her parents or legal guardians, and the participation of the child-centered agencies whether public or private.

SEC. 56. After-Care Support Services for Children in Conflict with the Law. - Children in conflict with the law whose cases have been dismissed by the proper court because of good behavior as per recommendation of the DSWD social worker and/or any accredited NGO youth rehabilitation center shall be provided after-care services by the local social welfare and development officer for a period of at least six (6) months. The service includes counseling and other community-based services designed to facilitate social reintegration, prevent re-offending and make the children productive members of the community.

TITLE VII
GENERAL PROVISIONS

CHAPTER 1
EXEMPTING PROVISIONS

SEC. 57. Status Offensees. - Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

SEC. 58. Offenses Not Applicable to Children. - Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: Provided, That said persons shall undergo appropriate counseling and treatment program.

SEC. 59. Exemption from the Application of Death Penalty. - The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.

CHAPTER 2
PROHIBITED ACTS

SEC. 60. Prohibition Against Labeling and Shaming. - In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child’s class or ethnic origin.

SEC. 61. Other Prohibited Acts. - The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

(a) Employment of threats of whatever kind and nature;

(b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;

(c) Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads,
pours irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and

(d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

CHAPTER 3
PENAL PROVISION

SEC. 62. Violation of the Provisions of this Act or Rules or Regulations in General. - Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Fifty thousand pesos (P50,000.00) or suffer imprisonment of not less than eight (8) years but not more than ten (10) years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws. If the offender is a public officer or employee, he/she shall, in addition to such fine and/or imprisonment, be held administratively liable and shall suffer the penalty of perpetual absolute disqualification.

CHAPTER 4
APPROPRIATION PROVISION

SEC. 63. Appropriations. - The amount necessary to carry out the initial implementation of this Act shall be charged to the Office of the President. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the succeeding General Appropriations Act.

An initial amount of Fifty million pesos (P50,000,000.00) for the purpose of setting up the JJWC shall be taken from the proceeds of the Philippine Charity Sweepstakes Office.

TITLE VIII
TRANSITORY PROVISIONS

SEC. 64. Children in Conflict with the Law Fifteen (15) Years Old and Below. - Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SEC. 65. Children Detained Pending Div. - If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention.

If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SEC. 66. Inventory of "Locked-up" and Detained Children in Conflict with the Law. - The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

SEC. 67. Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings. - If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict with the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SEC. 68. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of
the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

Supreme Court Administrative Memorandum No. 004-07, Rule on Examination of a Child Witness (2000).

Sec. 2. Objectives.—The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

Sec. 6. Competency.—Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, motu proprio or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.

(a) Proof of necessity.—A party seeking a competency examination must present proof of necessity of competency examination. The age of the child by itself is not a sufficient basis for a competency examination.

(b) Burden of proof.—To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence.

(c) Persons allowed at competency examination. Only the following are allowed to attend a competency examination:

(1) The judge and necessary court personnel;

(2) The counsel for the parties;

(3) The guardian ad litem;

(4) One or more support persons for the child; and

(5) The defendant, unless the court determines that competence can be fully evaluated in his absence.

(d) Conduct of examination.—Examination of a child as to his competence shall be conducted only by the judge. Counsel for the parties, however, can submit questions to the judge that he may, in his discretion, ask the child.

(e) Developmentally appropriate questions.—The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

(f) Continuing duty to assess competence.—The court has the duty of continuously assessing the competence of the child throughout his testimony.

Sec. 7. Oath or affirmation.—Before testifying, a child shall take an oath or affirmation to tell the truth.

Sec. 8. Examination of a child witness.—The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The party who presents a child witness or the guardian ad litem of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule.

Sec. 9. Interpreter for child.—

(a) When a child does not understand the English or Filipino language or is unable to communicate
in said languages due to his developmental level, fear, shyness, disability, or other similar reason, an interpreter whom the child can understand and who understands the child may be appointed by the court, motu proprio or upon motion, to interpret for the child.

(b) If a witness or member of the family of the child is the only person who can serve as an interpreter for the child, he shall not be disqualified and may serve as the interpreter of the child. The interpreter, however, who is also a witness, shall testify ahead of the child.

(c) An interpreter shall take an oath or affirmation to make a true and accurate interpretation.

Sec. 10. Facilitator to pose questions to child.—
(a) The court may, motu proprio or upon motion, appoint a facilitator if it determines that the child is unable to understand or respond to questions asked. The facilitator may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative.

(b) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the child only through the facilitator. The questions shall either be in the words used by counsel or, if the child is not likely to understand the same, in words that are comprehensible to the child and which convey the meaning intended by counsel.

(c) The facilitator shall take an oath or affirmation to pose questions to the child according to the meaning intended by counsel.

Sec. 11. Support persons.—
(a) A child testifying at a judicial proceeding or making a deposition shall have the right to be accompanied by one or two persons of his own choosing to provide him emotional support.

(1) Both support persons shall remain within the view of the child during his testimony.

(2) One of the support persons may accompany the child to the witness stand, provided the support person does not completely obscure the child from the view of the opposing party, judge, or hearing officer.

(3) The court may allow the support person to hold the hand of the child or take other appropriate steps to provide emotional support to the child in the course of the proceedings.

(4) The court shall instruct the support persons not to prompt, sway, or influence the child during his testimony.

(b) If the support person chosen by the child is also a witness, the court may disapprove the choice if it is sufficiently established that the attendance of the support person during the testimony of the child would pose a substantial risk of influencing or affecting the content of the testimony of the child.

(c) If the support person who is also a witness is allowed by the court, his testimony shall be presented ahead of the testimony of the child.

Sec. 12. Waiting area for child witnesses.—The courts are encouraged to provide a waiting area for children that is separate from waiting areas used by other persons. The waiting area for children should be furnished so as to make a child comfortable.

Sec. 13. Courtroom environment.—To create a more comfortable environment for the child, the court may, in its discretion, direct and supervise the location, movement and deportment of all persons in the courtroom including the parties, their counsel, child, witnesses, support persons, guardian ad litem, facilitator, and court personnel. The child may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the child testifies may be turned to facilitate his testimony but the opposing party and his counsel must have a frontal or profile view of the child during the testimony of the child. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his counsel, if he chooses to look at them, without turning his body or leaving the witness stand. The judge need not wear his judicial robe.

Nothing in this section or any other provision of law, except official in-court identification provisions, shall be construed to require a child to look at the accused.

Accommodations for the child under this section need not be supported by a finding of trauma to
the child.

Sec. 14. Testimony during appropriate hours.— The court may order that the testimony of the child should be taken during a time of day when the child is well-rested.

Sec. 15. Recess during testimony.— The child may be allowed reasonable periods of relief while undergoing direct, cross, re-direct, and re-cross examinations as often as necessary depending on his developmental level.

Sec. 16. Testimonial aids.— The court shall permit a child to use dolls, anatomically-correct dolls, puppets, drawings, mannequins, or any other appropriate demonstrative device to assist him in his testimony.

Sec. 17. Emotional security item.— While testifying, a child shall be allowed to have an item of his own choosing such as a blanket, toy, or doll.

Sec. 18. Approaching the witness.— The court may prohibit a counsel from approaching a child if it appears that the child is fearful of or intimidated by the counsel.

Sec. 19. Mode of questioning.— The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

Sec. 20. Leading questions.— The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

Sec. 21. Objections to questions.— Objections to questions should be couched in a manner so as not to mislead, confuse, frighten, or intimidate the child.

Sec. 22. Corroboration.— Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

Sec. 23. Excluding the public.— When a child testifies, the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made to protect the right to privacy of the child or if the court determines on the record that requiring the child to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity. In making its order, the court shall consider the developmental level of the child, the nature of the crime, the nature of his testimony regarding the crime, his relationship to the accused and to persons attending the trial, his desires, and the interests of his parents or legal guardian. The court may, motu proprio, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be offensive to decency or public morals. The court may also, on motion of the accused, exclude the public from trial, except court personnel and the counsel of the parties.

Sec. 24. Persons prohibited from entering and leaving courtroom.— The court may order that persons attending the trial shall not enter or leave the courtroom during the testimony of the child.

Sec. 25. Live-link television testimony in criminal cases where the child is a victim or a witness.— (a) The prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian ad litem applies for an order under this section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian ad litem is convinced that the decision of the prosecutor or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.
The person seeking such an order shall apply at least five (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(b) The court may motu proprio hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.

(c) The judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

(e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefor. It shall consider the following factors:
1. The age and level of development of the child;
2. His physical and mental health, including any mental or physical disability;
3. Any physical, emotional, or psychological injury experienced by him;
4. The nature of the alleged abuse;
5. Any threats against the child;
6. His relationship with the accused or adverse party;
7. His reaction to any prior encounters with the accused in court or elsewhere;
8. His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
9. Specific symptoms of stress exhibited by the child in the days prior to testifying;
10. Testimony of expert or lay witnesses;
11. The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and
12. Other relevant factors, such as court atmosphere and formalities of court procedure.

(f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.

(g) If the court orders the taking of testimony by live-link television:
1. The child shall testify in a room separate from the courtroom in the presence of the guardian ad litem; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;
2. The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.
3. If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.
4. The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.

(h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in section 31(b).
Sec. 26. Screens, one-way mirrors, and other devices to shield child from accused.—

(a) The prosecutor or the guardian ad litem may apply for an order that the chair of the child or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. Before the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a) of this Rule. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

(b) If the court grants an application to shield the child from the accused while testifying in the courtroom, the courtroom shall be arranged to enable the accused to view the child.

Sec. 27. Videotaped deposition.—

(a) The prosecutor, counsel, or guardian ad litem may apply for an order that a deposition be taken of the testimony of the child and that it be recorded and preserved on videotape. Before the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a) of this Rule. If the court finds that the child will not be able to testify in open court at trial, it shall issue an order that the deposition of the child be taken and preserved by videotape.

(b) The judge shall preside at the videotaped deposition of a child. Objections to deposition testimony or evidence, or parts thereof, and the grounds for the objection shall be stated and shall be ruled upon at the time of the taking of the deposition. The other persons who may be permitted to be present at the proceeding are:

(1) The prosecutor;

(2) The defense counsel;

(3) The guardian ad litem;

(4) The accused, subject to sub-section (e);

(5) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child;

(6) One or both of his support persons, the facilitator and interpreter, if any;

(7) The court stenographer; and

(8) Persons necessary to operate the videotape equipment.

d) The rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the deposition.

e) If the order of the court is based on evidence that the child is unable to testify in the physical presence of the accused, the court may direct the latter to be excluded from the room in which the deposition is conducted. In case of exclusion of the accused, the court shall order that the testimony of the child be taken by live-link television in accordance with section 25 of this Rule. If the accused is excluded from the deposition, it is not necessary that the child be able to view an image of the accused.

(f) The videotaped deposition shall be preserved and stenographically recorded. The videotape and the stenographic notes shall be transmitted to the clerk of the court where the case is pending for safekeeping and shall be made a part of the record.

(g) The court may set other conditions on the taking of the deposition that it finds just and appropriate, taking into consideration the best interests of the child, the constitutional rights of the accused, and other relevant factors.

(h) The videotaped deposition and stenographic notes shall be subject to a protective order as provided in section 31(b).

(i) If, at the time of trial, the court finds that the child is unable to testify for a reason stated in section 25(f) of this Rule, or is unavailable for any reason described in section 4(c), Rule 23 of the 1997 Rules of Civil Procedure, the court may admit into evidence the videotaped deposition of the child in lieu of his testimony at the trial. The court shall issue an order stating the reasons therefor.

(jj) After the original videotaping but before or
during trial, any party may file any motion for additional videotaping on the ground of newly discovered evidence. The court may order an additional videotaped deposition to receive the newly discovered evidence.

Sec. 28. *Hearsay exception in child abuse cases*.— A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

(a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

(b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

1. Whether there is a motive to lie;
2. The general character of the declarant child;
3. Whether more than one person heard the statement;
4. Whether the statement was spontaneous;
5. The timing of the statement and the relationship between the declarant child and witness;
6. Cross-examination could not show the lack of knowledge of the declarant child;
7. The possibility of faulty recollection of the declarant child is remote; and
8. The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.

(c) The child witness shall be considered unavailable under the following situations:

1. Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
2. Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

(d) When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.

Sec. 29. *Admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases*.— The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:

(a) The child witness is unable to testify in court on grounds and under conditions established under section 28 (c).

(b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.

(c) The party offering the videotape or audiotape must prove that:

1. the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
2. the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;
3. the videotape and audiotape machine or device was capable of recording testimony;
4. the person operating the device was competent to operate it;
5. the videotape or audiotape is authentic and correct; and
(6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.

The fact that an investigative interview is not videotaped or audiotaped as required by this section shall not by itself constitute a basis to exclude from evidence out-of-court statements or testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.

**Sec. 30. Sexual abuse shield rule.** —
(a) Inadmissible evidence.— The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:
(1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and
(2) Evidence offered to prove the sexual predisposition of the alleged victim.

(b) Exception.— Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.

A party intending to offer such evidence must:

(1) File a written motion at least fifteen (15) days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(2) Serve the motion on all parties and the guardian ad litem at least three (3) days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian ad litem, the parties, and their counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protective order set forth in section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent.

**Sec. 31. Protection of privacy and safety.** —
(a) Confidentiality of records.— Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall only be released to the following:

(1) Members of the court staff for administrative use;

(2) The prosecuting attorney;

(3) Defense counsel;

(4) The guardian ad litem;

(5) Agents of investigating law enforcement agencies; and

(6) Other persons as determined by the court.

(b) Protective order.— Any videotape or audiotape of a child that is part of the court record shall be under a protective order that provides as follows:

(1) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem.

(2) No tape, or any portion thereof, shall be divulged by any person mentioned in sub-section (a) to any other person, except as necessary for the trial.

(3) No person shall be granted access to the tape, its transcription or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.

(4) Each of the tape cassettes and transcripts thereof made available to the parties, their counsel, and respective agents shall bear the following cautionary notice:

“This object or document and the contents thereof...
are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law."

(5) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.

(6) Within thirty (30) days from receipt, all copies of the tape and any transcripts thereof shall be returned to the clerk of court for safekeeping unless the period is extended by the court on motion of a party.

(7) This protective order shall remain in full force and effect until further order of the court.

(c) Additional protective orders.— The court may, motu proprio or on motion of any party, the child, his parents, legal guardian, or the guardian ad litem, issue additional orders to protect the privacy of the child.

(d) Publication of identity contemnous.— Whoever publishes or causes to be published in any format the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim or accused of a crime or a witness thereof, or an immediate family of the child shall be liable to the contempt power of the court.

(e) Physical safety of child; exclusion of evidence.— A child has a right at any court proceeding not to testify regarding personal identifying information, including his name, address, telephone number, school, and other information that could endanger his physical safety or his family. The court may, however, require the child to testify regarding personal identifying information in the interest of justice.

(f) Destruction of videotapes and audiotapes.— Any videotape or audiotape of a child produced under the provisions of this Rule or otherwise made part of the court record shall be destroyed after five (5) years have elapsed from the date of entry of judgment.

(g) Records of youthful offender.— Where a youthful offender has been charged before any city or provincial prosecutor or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be considered as privileged and may not be disclosed directly or indirectly to anyone for any purpose whatsoever.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to Chapter 3 of P. D. No. 603, all the records of his case shall also be considered as privileged and may not be disclosed directly or indirectly to anyone except to determine if a defendant may have his sentence suspended under Article 192 of P. D. No. 603 or if he may be granted probation under the provisions of P. D. No. 968 or to enforce his civil liability, if said liability has been imposed in the criminal action. The youthful offender concerned shall not be held under any provision of law to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.

Supreme Court Administrative Memorandum No. 02-1-18, Rule on Juveniles in Conflict with the Law (2002).

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The objective of this Rule is to ensure that the justice system treats every juvenile in conflict with the law in a manner that recognizes and upholds his human dignity and worth, and instills in him respect for the fundamental rights and freedoms of others. The Rule considers his developmental age and the desirability of his reintegration into and assumption of a constructive role in society in accordance with the principle of restorative justice.
To attain this objective, the Rule seeks:

a) To provide a procedure in the adjudication of juveniles in conflict with the law that takes into account their distinct circumstances and assures the parties of a fair hearing with their constitutional and statutory rights recognized and respected;

b) To divert from the justice system juveniles who can be cared for or placed under community-based alternative programs of treatment, training and rehabilitation in conformity with the principle of restorative justice;

c) To deal with the juvenile in a family environment whenever possible, separate him from his parents only when necessary for his welfare or in the interest of public safety;

d) To remove from juveniles in conflict with the law the stigma of criminality and the consequences of criminal behavior; and

e) To provide for the care, protection and wholesome moral, mental, and physical development of juveniles in conflict with the law.

Sec. 5. Exemption from Criminal Liability.— A minor under nine (9) years of age at the time of the commission of the offense shall be exempt from criminal liability.

A minor nine (9) years and above but under fifteen (15) years of age at the time of the commission of the offense shall be committed to the care of his father or mother, or nearest relative or family friend, in the sound discretion of the court and subject to its supervision. However, if the prosecution proves that he has acted with discernment, he shall be proceeded against in accordance with Sections 24 to 28, or 36 to 40 of this Rule, as the case may be, and subjected to a delinquency prevention program as determined by the court.

Exemption from criminal liability does not include exemption from civil liability which shall be enforced in accordance with the provisions of Article 221 of the Family Code in relation to Article 101 of the Revised Penal Code and Rule 111 of the Revised Rules of Criminal Procedure.

In case the act or omission of the juvenile involves a quasi-delict, Article 2180 of the Civil Code shall apply.

Sec. 6. Procedure in Taking a Juvenile into Custody.— Any person taking into custody a juvenile in conflict with the law shall:

(a) Identify himself and present proper identification to the juvenile;

(b) Inform the juvenile of the reason for such custody and advise him of his constitutional rights in a language or dialect understood by him;

(c) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the juvenile;

(d) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;

(e) Refrain from subjecting the juvenile to greater restraint than is necessary for his apprehension;

(f) Avoid violence or unnecessary force;

(g) Notify the parents of the juvenile or his nearest relative or guardian, if any, and the local social welfare officer as soon as the apprehension is made;

(h) Take the juvenile immediately to an available government medical or health officer for a physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever treatment for any physical or mental defect is necessary, steps shall be immediately taken by the said officer to provide the juvenile with the necessary and proper treatment; and

(i) Hold the juvenile in secure quarters separate from that of the opposite sex and adult offenders.

Sec. 7. Taking Custody of a Juvenile Without a Warrant.— A peace officer or a private person taking into custody a juvenile in conflict with the law without a warrant shall likewise follow the provisions of Sections 5, 8 and 9 of Rule 113 of
the Revised Rules of Criminal Procedure and shall forthwith deliver him to the nearest police station. The juvenile shall be proceeded against in accordance with Section 7 of Rule 112.

Sec. 8. Conduct of Initial Investigation by the Police.—The police officer conducting the initial investigation of a juvenile in conflict with the law shall do so in the presence of either of the parents of the juvenile; in the absence of both parents, the guardian or the nearest relative, or a social welfare officer, and the counsel of his own choice. In their presence, the juvenile shall be informed of his constitutional rights during custodial investigation.

The right of the juvenile to privacy shall be protected at all times. All measures necessary to promote this right shall be taken, including the exclusion of the media.

Sec. 9. Fingerprinting and Photographing of the Juvenile.—While under investigation, no juvenile in conflict with the law shall be fingerprinted or photographed in a humiliating and degrading manner. The following guidelines shall be observed when fingerprinting or photographing the juvenile:

(a) His fingerprint and photograph files shall be kept separate from those of adults and shall be kept confidential. They may be inspected by law enforcement officers only when necessary for the discharge of their duties and upon prior authority of the Family Court;

(b) His fingerprints and photographs shall be removed from the files and destroyed: (1) if the case against him is not filed, or is dismissed; or (2) when the juvenile reaches twenty one (21) years of age and there is no record that he committed an offense after reaching eighteen (18) years of age.

Sec. 10. Intake Report by the Social Welfare Officer.—Upon the taking into custody of a juvenile in conflict with the law, the social welfare officer assigned to him by the DSWD shall immediately undertake a preliminary background investigation of the juvenile and submit, prior to arraignment of the juvenile, a report on his findings to the Family Court in which the case may be filed.

Sec. 11. Filing of Criminal Action.—A criminal action may be instituted against a juvenile in conflict with the law by filing a complaint with the prosecutor or the municipal trial court in cases where a preliminary investigation is required. In Manila and other chartered cities, if their charters so provide, the complaint shall be filed with the Office of the Prosecutor. It may also be filed directly with the Family Court if no preliminary investigation is required under Section 1 of Rule 112 of the Revised Rules of Criminal Procedure.

All criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the public prosecutor assigned to the Family Court.

Sec. 12. Prosecution of Civil Action.—When a criminal action is instituted against a juvenile in conflict with the law, the action for recovery of civil liability arising from the offense charged shall be governed by Rule 111 of the Revised Rules of Criminal Procedure.

Sec. 13. Preliminary Investigation.—As far as consistent with this Rule, the preliminary investigation of a juvenile in conflict with the law shall be governed by Section 3 of Rule 112 of the Revised Rules of Criminal Procedure. If clarificatory questions become necessary, the Rule on Examination of a Child Witness shall apply.

If a preliminary investigation is required before the filing of a complaint or information, the same shall be conducted by the judge of the Municipal Trial Court or the public prosecutor in accordance with the pertinent provisions of Rule 112 of the Revised Rules of Criminal Procedure.

If the investigating prosecutor finds probable cause to hold the juvenile for trial, he shall prepare the corresponding resolution and information for approval by the provincial or city prosecutor, as the case may be. The juvenile, his parents/nearest relative/guardian and his counsel shall be furnished forthwith a copy of the approved resolution.

Sec. 14. Venue.—Subject to the provisions of Section 15, Rule 110 of the Revised Rules of Criminal Procedure, any criminal or civil action involving a juvenile in conflict with the law shall be instituted and tried in the Family Court of or
nearest the place where the offense was committed or where any of its essential elements occurred.

Sec. 15. Recognizance.— Before final conviction, all juveniles charged with offenses falling under the Revised Rule on Summary Procedure shall be released on recognizance to the custody of their parents or other suitable person who shall be responsible for the juveniles’ appearance in court whenever required.

Sec. 16. When Bail a Matter of Right.— All juveniles in conflict with the law shall be admitted to bail as a matter of right before final conviction of an offense not punishable by death, reclusion perpetua or life imprisonment.

In the event the juvenile cannot post bail for lack of financial resources, the Family Court shall commit the juvenile pursuant to Section 18 of this Rule.

However, where the juvenile does not pose a threat to public safety, the Family Court may, motu proprio or upon motion and recommendation of the DSWD, release the juvenile on recognizance to the custody of his parents or other responsible person.

Sec. 17. When Bail Not A Matter of Right.— No juvenile charged with an offense punishable by death, reclusion perpetua or life imprisonment shall be admitted to bail when evidence of guilt is strong.

Sec. 18. Care of Juveniles in Conflict with the Law.— The juvenile charged with having committed a delinquent act, held for trial or while the case is pending appeal, if unable to furnish bail or is denied bail, shall, from the time of his being taken into custody, be committed by the Family Court to the care of the DSWD, a youth detention center, or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the said court. The center or agency concerned shall be responsible for the juvenile’s appearance in court whenever required. In the absence of any such center or agency within a reasonable distance from the venue of the trial, the juvenile shall be detained in the provincial, city or municipal jail which shall provide adequate quarters for the juvenile separate from adult detainees and detainees of the opposite sex.

Sec. 19. Case Study Report.— After the institution of the criminal action, the social worker of the Family Court shall immediately undertake a case study of the juvenile and his family, his environment and such other matters relevant to the proper disposition of the case. His report shall be submitted within the period fixed by the Family Court, preferably before arraignment, to aid it in the proper disposition of the case.

Sec. 26. Duty of the Family Court to Protect the Rights of the Juvenile.— In all criminal proceedings in the Family Court, the judge shall ensure the protection of the following rights of the juvenile in conflict with the law:

a) To be presumed innocent until the contrary is proved beyond reasonable doubt;

b) To be informed promptly and directly of the nature and cause of the charge against him, and if appropriate, through his parents or legal guardian;

c) To be present at every stage of the proceedings, from arraignment to promulgation of judgment. The juvenile may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence at the trial is specifically ordered by the court for purposes of identification. The absence of the juvenile without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When the juvenile under custody escapes, he shall be deemed to have waived his right to be present in all subsequent hearings until custody over him is regained;

d) To have legal and other appropriate assistance in the preparation and presentation of his defense;

e) To testify as a witness in his own behalf and subject to cross-examination only on matters covered by direct examination, provided that the Rule on the Examination of a Child Witness shall be observed whenever convenient and practicable.

The juvenile shall not be compelled to be a
witness against himself and his silence shall not in any manner prejudice him;

f) To confront and cross-examine the witnesses against him;

g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf;

h) To have speedy and impartial trial, with legal or other appropriate assistance and preferably in the presence of his parents or legal guardian, unless such presence is considered not to be in the best interests of the juvenile taking into account his age or other peculiar circumstances;

i) To appeal in all cases allowed and in the manner prescribed by law;

j) To be accorded all the rights under the Rule on Examination of a Child Witness; and

k) To have his privacy fully respected in all stages of the proceedings.

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Sec. 30. Guiding Principles in Judging the Juvenile.—Subject to the provisions of the Revised Penal Code, as amended, and other special laws, the judgment against a juvenile in conflict with the law shall be guided by the following principles:

1. It shall be in proportion to the gravity of the offense, and shall consider the circumstances and the best interests of the juvenile, the rights of the victim, the needs of society in line with the demands of restorative justice.

2. Restrictions on the personal liberty of the juvenile shall be limited to the minimum. Where discretion is given by law to the judge to determine whether the penalty to be imposed is fine or imprisonment, the imposition of the former should be preferred as the more appropriate penalty.

3. No corporal punishment shall be imposed.

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Sec. 32. Automatic Suspension of Sentence and Disposition Orders.—The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian ad litem. It shall proceed to issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the juvenile:

1. Care, guidance, and supervision orders;

2. Community service orders;

3. Drug and alcohol treatment;

4. Participation in group counseling and similar activities;

5. Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juveniles in conflict with the law authorized by the Secretary of the DSWD.

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Sec. 39. Prohibition Against Labeling.—In the conduct of proceedings from initial contact with the juvenile in conflict with the law to the final disposition of the case, there shall be no branding or labeling of the latter as a young criminal, juvenile delinquent, prostitute, vagrant, or attaching to him in any manner any derogatory name. Likewise, no discriminatory remarks and practices shall be allowed, particularly with respect to the juvenile’s social or economic status, physical disability or ethnic origin.
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COMPENDIUM OF LAWS
I. INTRODUCTION
I.A. Principles of International Law

The horrid abuse and exploitation of child labor in the highly hazardous muro-ami fishing operations of a powerful political clan from Southern Philippines was brought to fore by local and foreign media only in the mid-1980s.1 Introduced in the Philippines by Japanese fishermen in the 1920s, muro-ami involves the use of "a large cone-shaped bag net xxx held 40 to 80 feet beneath the surface of the sea; long ‘scare-lines’ of nylon ropes xxx held by swimmers and attached to stones that are repeatedly dropped on the sea bottom (or often a coral reef to drive the fish into the net)."2

Reports have it that "a large number of muro-ami pescadores were in fact young boys no more than ten years of age."3 The "extremely harsh labor conditions" to which the young swimmers were exposed "twelve to fifteen hours a day with only the lightest of meals" resulted in "kidney infection, chest pains, fever, vomiting blood, hepatitis, typhoid fever, stomach cramps, headaches, hunger and fatigue."4 They "labored in the remote waters of the South China Sea without the benefit of a written contract” with their employer5 who “evaded labor laws that mandated minimum wages and social security benefits.”6

Citing as reasons the pervasive employment of minors and the damage to coral reefs,7 muro-ami was banned in the Philippines in 1986.

To date, however, and despite more than a quarter of a century after the banning of muro-ami, victims of its illegal operations are still complaining.8

UNICEF reports that “hundreds of millions of children are forced to work when they should be learning and playing, which deprives them, their families and nations the opportunity to develop and thrive.” In the words of the Executive Director of UNICEF, Ann M. Venemon, on the occasion of the celebration of the International Day Against Child Labour on 12 June 2006, “(C)hildren who are compelled to work are robbed of childhood itself.” Majority of them are “hidden from view and

2 Id., p. 117, citing 78.
3 Id., p. 119, citing 87; emphasis supplied.
4 Id., p. 119, citing 88.
5 Id., p. 120, citing 93.
6 Id., p. 120.
7 World Resources Institute, Philippines: Muro-ami and pa-aling fishing methods. Available at: <http://archive.wri.org/page.cfm?id=123&z=> [July 2011].
beyond the reach of the law ... denied basic health care, education, adequate nutrition, and the protection and security of their communities and families. Worldwide, there are an estimated 246 million children engaged in child labor. Some 180 million children aged 5-17 (or 73 per cent of all child laborers) are believed to be engaged in the worst forms of child labor, including working in hazardous conditions such as in mines and with dangerous machinery. Of these children, 5.7 million are forced into debt bondage or other forms of slavery, 1.8 million are forced into prostitution or pornography and 600,000 are engaged in other illicit activities.”

The problem of child labor is actually nothing new. It is no wonder that since time immemorial, the welfare and special protection of children have been the concern of everyone. The Holy Scriptures, no less, underscores the importance of children. Thus, in Psalm 127:3, it says: “Lo, children are a heritage of the LORD…”

It is only but fitting, then, that the very first international organization of States, the League of Nations recognized the urgent need to afford special protection to children as early as 1924, by endorsing the Declaration of the Rights of the Child, otherwise known as The Declaration of Geneva, which focused on children’s welfare, specifically their economic, psychological and social needs. Since then, numerous conventions have been adopted to address the special concerns and welfare needs of working children.

Thus, the United Nations General Assembly proclaimed The Declaration of the Rights of the Child on 20 November 1959 noting that “by reason of his physical and mental immaturity,” the child “needs special safeguards and care, including legal protection.” The child should, as such, be protected against “all forms of neglect, cruelty and exploitation.” He should not be admitted to employment before the “appropriate minimum age” nor shall he be allowed to engage in employment which would “prejudice his health or education, or interfere with his physical, mental or moral development.”

On 20 November 1989 or three (3) decades after the adoption of The Declaration of the Rights of the Child, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) which recognized the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Moreover, States Parties agreed to provide for (a) a minimum age for admission to employment; (b) appropriate regulation of the hours and conditions of employment; and (c) appropriate penalties or sanctions to ensure effective enforcement hereof.

Prior to the adoption of the CRC or on 16 December 1966, the United Nations General Assembly adopted The International Covenant on Economic, Social and Cultural Rights which specifically recognized the need for children and young persons to be protected from economic and social exploitation and called for legal sanctions against “work harmful to their morals or health or dangerous to life or likely to hamper their normal development.” Moreover, states parties were called upon to set age limits below which child labor should be prohibited and penalized.

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10 *People v Jose Abadies y Claveria*, GR 139346-50 (11 July 2002).
11 G.A. Res. 1386 (XIV).
12 A/RES/44/25.
13 993 UNTS 3.

Over the last 75 years, the Philippines through its Constitutions (1935, 1973, 1987), has underscored the need to afford protection to labor in general. The 1987 Constitution went a step further from the 1935 and 1973 Constitutions as the pertinent provision now mandates “full” protection to labor, wherever situated (local or overseas), whether organized or unorganized and at the same time, guarantees the seven cardinal or primary rights of all workers, to wit: the right to self-organization; the right to collective bargaining and negotiations; the right to peaceful concerted activities, including the right to strike in accordance with law; the right to security of tenure; the right to humane conditions of work; the right to a living wage; and the right to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.\(^{14}\)

Affirming “labor as a primary social economic force,” the 1987 Constitution in its Declaration of Principles mandates the State to “protect the rights of workers and promote their welfare.”\(^{15}\) Corollarily, Article II, Section 13 thereof emphasizes “the vital role of the youth in nation-building” and promotes the protection of “their physical, moral, spiritual, intellectual, and social well-being.”

Viewed against the earlier mentioned principles of international law, the present Philippine Constitution can be said to be compliant with international standards and covenants which are meant to afford special protection to the working child who is particularly vulnerable to all forms of abuses, exploitation and discrimination. Of particular relevance is Article II, Section 13 which calls for the protection and promotion of the child’s physical, moral, spiritual, intellectual, and social well-being and Article XV, Section 3 (2) which establishes the right of the child to special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to his development. Moreover, Article XIII, Section 3 which makes specific reference to labor, in general, coupled with Article II, Section 13 which recognizes the vital role of the youth in nation-building, reveals the intention of the framers of our fundamental law to emphasize the critical need to afford special protection to child labor.

I. C. Philippine National Laws

These Constitutional principles are translated into more concrete terms in special pieces of legislation which address the peculiar situation of the working child, the most significant of which is Republic Act (RA) No. 7610 of 1992\(^{16}\) which provides for stronger deterrence and special protection against child abuse, exploitation and discrimination. The law defines the “circumstances which gravely threaten or endanger the survival and normal development of children” as including “(w)orking under conditions hazardous to life, safety and morals which unduly interfere with their normal development.” Within the span of one decade, RA No. 7610 has undergone two major amendatory laws (RA No. 7658\(^{17}\) and RA No. 9231\(^{18}\)) in order to make it fully compliant with international standards on child labor.

\(^{14}\) Art. XIII, Sec. 3, Pars. 2-3, 1987 Constitution.
\(^{15}\) Art. II, Sec. 18, id.
II. Minimum Working Age
II.A. Principles of International Law

The International Labour Organization (ILO), a specialized agency of the United Nations concerned with the protection of workers’ rights and the promotion of their welfare, adopted a general instrument on minimum working age on 26 July 1973. Intended to be a general instrument to replace the existing conventions applicable to limited economic sectors, ILO Convention No. 138 or the Convention Concerning Minimum Age for Admission to Employment calls on each member of the Convention to pursue a national policy designed to ensure the effective abolition of child labor and to raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons. Accordingly, the specified minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than fifteen (15) years.

Article 5(3) specifies that the Convention shall apply as a minimum to mining and quarrying; manufacturing; construction; electricity, gas, and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings for commercial purposes but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

Under Article 6, the Convention explicitly excludes from its coverage work done by children and young persons in schooling for general, vocational or technical education or in other training institutions, or work done by persons at least fourteen (14) years of age in undertakings where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist. The provision requires though that the work be an integral part of a course of education or training for which a school or training institution is primarily responsible; a program of training mainly or entirely in an undertaking, which program has been approved by the competent authority; or a program a guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

To supplement ILO Convention No. 138, ILO likewise adopted ILO Recommendation No. 146 or the Recommendation Concerning Minimum Age for Admission to Employment on 26 June

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19 Minimum Age (Industry) Convention (1919); the Minimum Age (Sea) Convention (1920); the Minimum Age (Agriculture) Convention (1921); the Minimum Age (Trimmers and Stockers) Convention (1921); the Minimum Age (Sea) Convention (Revised) (1936); the Minimum Age (Industry) Convention, (Revised) (1937); the Minimum Age (Non-Industrial Employment) Convention (Revised) (1937); the Minimum Age (Fishermen) Convention (1959); and the Minimum Age (Underground Work) Convention (1965).


21 Art. 1, id.
22 Art. 2(3), id.
The Recommendation provides that the minimum age should be fixed at the same level for all sectors of economic activity. Also, members should take as their objective the progressive raising to sixteen (16) years of the minimum age for admission to employment or work specified pursuant to Article 2 of the Minimum Age Convention, 1973.

Where minimum age for employment or work covered by Article 2 of the Minimum Age Convention, 1973, is still below fifteen (15) years, urgent steps should be taken to raise the minimum age to that level. Where it is not immediately feasible to fix a minimum age for all employment in agriculture and in related activities in rural areas, a minimum age should be fixed at least for employment on plantations and in the other agricultural undertakings referred to in Article 5, paragraph 3, of the Minimum Age Convention, 1973.

II. B. National Laws, Rules and Regulations:
Compliance with International Standards.

RA No. 7610\textsuperscript{24} or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992 or the Child Abuse Act, for brevity, is the Philippine’s major law affording special protection to the working child. Under RA No. 7610, the term “children” has an expansive meaning. It refers not only to persons below eighteen (18) years of age but also to those over eighteen (18) years but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. Although RA No. 7610 has been the subject of two amendatory laws, namely, (1) RA No. 7658 of 1993\textsuperscript{25} or the Act Prohibiting the Employment of Children Below 15 years of Age in Public and Private Undertakings; and (2) RA No. 9231 of 2003\textsuperscript{26} or the Act Providing For the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection For the Working Child, the broad definition established in RA No. 7610 has been preserved only in RA No. 7658 but not in RA No. 9231 which makes the particular provision on “Employment of Children” applicable to a “child,” thereunder specifically defined, as a person under eighteen (18) years of age.

In regard, however, to its core provision which relates to “Employment of Children,” RA No. 7610 has undergone changes.

Under the present formulation in RA No. 9231, which merely reiterates the formulation in RA No. 7658, the general rule is that children below fifteen (15) years of age shall not be employed. Apparently, this is in stark contrast with the original formulation in RA No. 7610 to the effect that children below fifteen (15) years of age may be employed. In reality, even a cursory examination of RA No. 7610 vis-à-vis RA No. 7658 and RA No. 9231 reveals that what the law in RA 7610 sets forth as minimum, conditional requirements are specifically provided as exceptions in RA Nos. 7658 and 9231. Whether under RA No. 7610, RA No. 7658 or RA No. 9231, therefore, the crystal-clear implication is that the minimum employable age is fifteen (15) years which makes the Philippine national law on Employment Age compliant with the international general instrument on minimum age for admission to employment, ILO Convention No. 138. To reiterate, Article 2 (3) of the

\textsuperscript{24} Supra., note 16.
\textsuperscript{25} Supra., note 17.
\textsuperscript{26} Supra., note 18.
Convention provides that "(t)he minimum age ... shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. (Emphasis supplied)

As in RA No. 7658, RA No. 9231 allows employment of children below fifteen (15) years of age under two exceptional circumstances. First is when a child works in a family-run enterprise, that is, where only members of his/her family are employed, subject to the following conditions: (a) the child works directly under the sole responsibility of his/her parents or legal guardian; (b) his/her employment neither endangers his/her life, safety, health, and morals nor impairs his/her normal development; (c) the parent or legal guardian provides him/her with the prescribed primary and/or secondary education.

Second is where a child’s employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential. This second exception, subject to certain conditions, allows gifted children to make full use of their talents and earn therefrom. The conditions are: (a) the employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment; and (b) the following requirements are strictly complied with: (i) the employer ensures the protection, health, safety, morals and normal development of the child; (ii) the employer institutes measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and (iii) the employer formulates and implements, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

The law further requires in the above-exceptional cases, where any such child may be employed, that the employer first secures, before engaging such child, a work permit from the Department of Labor and Employment (DOLE, for brevity) in order to ensure observance of the above requirements.

On 25 July 2004 and pursuant to the foregoing requirement, DOLE issued Department Order (DO) No. 65-0427 concerning the Rules and Regulations Implementing RA No. 9231. Thus, under section 8 of DO No. 65-04, “no child below 15 years of age shall be allowed to commence work without a work permit” issued by the DOLE Regional Office having jurisdiction over the workplace of the child, except as provided in Section 13 concerning spot extras or those being cast outright on the day of the filming or taping.

The appropriate Regional Office shall issue the work permit within three days from the employer’s compliance with the requirements. These include, among others, a duly accomplished and verified application for work permit containing information on: (a) terms and conditions of employment such as hours of work, number of working days, remuneration, and rest period; and (b) measures which will ensure the protection, health, safety, morals, and normal development of the child. Such measures shall include but shall not limited to the following: comfortable workplace and adequate quarters; break or rest periods in comfortable day beds or couches; clean and separate dressing rooms and toilet facilities for boys and girls; adequate meals and snacks and sanitary eating facility; necessary assistance to ensure adequate and immediate medical and dental attendance and treatment to an injured or sick child in case of emergency.

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Likewise, except when the child is below seven years old, the employer must also submit proof that the child is enrolled and regularly attending elementary or secondary school classes. If the child is not enrolled, he must also submit a brief description of the program for education, training and skills acquisition for the child. In addition, a medical certificate must be issued by a licensed physician stating that he/she has personally examined the child for whom a work permit is being secured, and that the child is fit to undertake the work in which he/she is to be engaged.

Furthermore, when the employer is in public entertainment or information, he/she shall submit a certified true copy of the business permit or certificate of registration and a written employment contract to be approved by the DOLE. When the child is between seven (7) and below fifteen (15) years of age, his express agreement to the provisions of the contract is needed.

III. Terms and Conditions of Employment

III. A. In General

Soon after the Second World War in 1946, the International Labor Organization adopted ILO Convention No. 77. The Convention requires medical examination for fitness for employment in any industrial undertaking of children and young persons under eighteen years of age. The term “industrial undertaking” includes: mines, quarries, and other works for the extraction of mineral from the earth; undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind; undertakings engaged in building and civil engineering work, including constructional repair, maintenance, alteration and demolition work; and undertakings engaged in the transport of passengers or goods by road, rail, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports.

Article 2 thus prohibits employment by an industrial undertaking of children and young persons under eighteen years of age, unless they have been found fit for the work on which they are to be employed by a thorough medical examination. And in Article 3(2), his continued employment is subject to the repetition of medical examinations at intervals of not more than one year.

Two years, however, after the adoption of ILO Convention No. 77, ILO Convention No. 90 prohibited the night work of young persons under eighteen years of age in any industrial undertaking or in any branch thereof except as provided. Under Article 2 of the Convention, the term “night” signifies a period of at least twelve consecutive hours. In the case of young persons under sixteen years of age, it includes the interval between ten o’clock in the evening and six o’clock in the morning. In the case of young persons who have attained the age of sixteen years but are under the age of eighteen years, it includes an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o’clock in the evening and seven o’clock in the morning.

Under Article 3(2), however, for purposes of apprenticeship or vocational training in specified industries or occupations which are required to be carried on continuously, the competent authority may, after consultation with the employers’ and workers’ organizations

29 Id., 454-457.
looking after filipino children

concerned, authorize the employment in night work of young persons who have attained the age of sixteen years but are under the age of eighteen years.

A quarter of a century thereafter or on 26 June 1973, ILO adopted Convention No 138\textsuperscript{30} Concerning Minimum Age for Admission to Employment as well as Recommendation No. 146,\textsuperscript{31} “to ensure the success of the national policy” set forth in ILO Convention No. 138. The Recommendation thus includes provisions for measures that will ensure that the conditions of employment of children and young persons under the age of 18 years are maintained at a satisfactory standard and should be supervised closely. This provision likewise applies to orientation and training within undertakings, training institutions, and schools for vocational or technical education.

Moreover, special attention is to be given to (a) fair remuneration and its protection, bearing in mind the principle of equal pay for equal work; (b) strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, (c) except in emergency cases, a minimum consecutive period of 12 hours’ night rest, and of customary weekly rest days; (d) an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults; (e) social security schemes, including employment injury, medical care and sickness benefits schemes; and (f) satisfactory standards of safety and health and appropriate instruction and supervision.

Consistent with international standards, the Labor Code of the Philippines (1 November 1974) sets forth the prohibition against child discrimination with respect to terms and conditions of employment solely on account of his age.\textsuperscript{32}

Likewise, the Child and Youth Welfare Code of 1974\textsuperscript{33} mandates both labor and management to collaborate closely to ensure observance of the conditions of employment required by law for working children, including the undertaking of projects and in-service training programs, in cooperation with the Women and Minors Bureau of the Department of Labor and Employment to improve such conditions of employment.

Again, RA No. 9231 amended RA No. 7610 or the Child Abuse Act, for brevity, by inserting among others, a new section, Section 12-A, that is meant to regulate the hours of work of a working child. Thus, under the exceptional cases provided in Section 12, the following rules shall govern: first, a child below fifteen (15) years of age may be allowed to work for not more than twenty (20) hours a week but no more than four (4) hours at any given day; second, a child fifteen (15) years of age but below eighteen (18) may be allowed to work for not more than forty (40) hours a week but no more than eight (8) hours a day; third, no child below fifteen (15) years of age shall be allowed to work between eight o’clock in the evening and six o’clock in the morning of the following day; and fourth, no child fifteen (15) years of age but below eighteen (18) shall be allowed to work between ten o’clock in the evening and six o’clock in the morning of the following day. The above-mentioned rules provide not only the maximum hours of work of the working child but also, the night work prohibition consistent with international standards.

DOLE DO No. 65-04\textsuperscript{34} otherwise known as the Rules and Regulations implementing RA No. 9231, while reiterating the provision of RA 9231 on Hours of Work, also explicitly provides that the

\textsuperscript{30} Id.


\textsuperscript{32} Art. 140, P.D. 442, Labor Code.

\textsuperscript{33} Arts. 112 and 114, P.D. No. 603, Child and Youth Welfare Code.

\textsuperscript{34} Supra., note 27.
sleeping time as well as travel time of a child engaged in public entertainment or information from his/her residence to his/her workplace is not included as hours worked without prejudice to the application of existing rules on employees compensation.

III. B. Specific Situations

III.B.1. Children in the entertainment industry

One of two exceptional cases when the law (RA No. 9231) actually allows a child below fifteen (15) years of age to be employed is when his employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential, “regardless of the extent of the child’s role,” pursuant to Section 7(b) of DOLE DO No. 65-04. This provision recognizes that there are indeed children who can perform and thus, allows them to earn from their talents and skills. As earlier discussed, the law requires the employer, before engaging the child, to first secure a work permit from the DOLE. The Department is tasked to ensure that all the legal requirements are complied with before issuing such permit. Related to the above exceptional case, Section 14 of RA 7610, which has not been amended, prohibits the employment of child models in all commercials or advertisements promoting alcoholic beverages, intoxicating drinks, tobacco and byproducts, and violence.

Pursuant to DOLE DO No. 65-04, the employment contract must provide for terms and conditions of employment including hours of work, number of working days, remuneration and rest period in accordance with Section 9(a). Section 9(g) thereof requires the employer which is engaged in public entertainment or information to submit a certified true copy of his business permit or certificate of registration and a written employment contract to be approved by the DOLE. Again, as a measure of protection, an express agreement of the child to the provisions of the contract is required when he is between seven (7) and below fifteen (15) years of age. Over and above the requirements that ensure the protection, health, safety, morals and normal development of the child, RA No. 9231 further requires that although the working child's income shall be administered by the parents, such income shall pertain to him/her in ownership and shall be set aside primarily for his/her support, education or skills acquisition and secondarily, for the collective needs of the family. However, not more than twenty (20%) percent of the child's income may be used for the collective needs of the family. The law also requires the setting up of a trust fund to preserve at least thirty percent (30%) of the child's earnings, if it amounts to at least two hundred thousand (200,000) pesos per year. DOLE DO No. 65-04 further provides that if his earnings are less than two hundred thousand pesos, such thirty (30%) percent may be deposited in a savings account.

III. B. 2. Children in Hazardous Occupations/
Worst Forms of Child Labor

ILO Convention No. 138, the Convention Concerning Minimum Age for Admission to Employment (26 June 1973) allows national laws or regulations or competent authority, after consultation with employers’ and workers’ organizations, to authorize employment at sixteen (16) years of age upon the condition that the health, safety and morals of such young persons are fully

35 Id.
36 Supra., note 20.
protected (Article 3.3). Similarly, national laws or regulations may permit the employment of persons thirteen (13) to fifteen (15) years of age in light work which is not likely to be harmful to their health or development (Article 7.1.a). Finally, those who are at least fifteen (15) years of age but have not yet completed their compulsory schooling may be permitted if they meet the requirements set forth above (Article 7.2).

Under ILO Recommendation No. 146,\textsuperscript{37} where the minimum age for admission to types of employment which are likely to jeopardize the health, safety or morals of young persons is below 18 years, immediate steps should be taken to raise the age to the level.

The list of the types of employment in question, which includes dangerous substances, agents or processes (including ionizing radiation), underground work, among others, is to be re-examined periodically and revised as necessary, considering advancing scientific and technological knowledge.

To complement ILO Convention No. 138 and Recommendation No. 146 (6 June 1973) concerning minimum age for admission to employment, recalling the UN Convention on the Rights of the Child (CRC) of 20 November 1989, and considering the “need to adopt new instruments for the prohibition and elimination of the worst forms of child labour,” ILO adopted on 17 June 1999 ILO Convention No. 182,\textsuperscript{38} aptly cited as the Worst Forms of Child Labour Convention, 1999.

Under Article 3 of ILO Convention No. 182, the term “worst forms of child labour” comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treatise; and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

In Article 4, national laws or regulations or the competent authority, after consultation with employers’ and workers’ organizations, shall determine the types of work referred to under Article 3(d), taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labor Recommendation, 1999, as well as identify where the types of work so determined exist.

Moreover, each ILO member shall, after consultation with employers’ and workers’ organizations, establish appropriate mechanisms to monitor the implementation of provisions giving effect to the Convention (Article 5). The Member shall design and implement programs of action to eliminate as a priority the worst forms of child labor (Article 6) and furthermore, take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention including the provision and application of penal sanctions (Article 7).

To supplement ILO Convention No. 182, ILO Recommendation No. 190\textsuperscript{39} was adopted, likewise on 17 June 1999. The Recommendation provides in Part II.3 that in determining the types

\textsuperscript{37} Supra., note 21.


\textsuperscript{39} Available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190> [August 2011].
of work referred to under Article 3(d) of the Convention (that is, work likely to harm the health, safety or morals of children), and in identifying where they exist, consideration should be given, inter alia to: (a) work which exposes children to physical, psychological or sexual abuse; (b) work underground, under water, at dangerous heights or in confined spaces; (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Part II.12 of the Recommendation requires members to provide that the following worst forms of child labor are criminal offences: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.

Moreover, Members are required to ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention (Part II.13). In cases of persistent violation, they are to consider temporary or permanent revoking of permits to operate (Part II.14).

Consistent with ILO Convention No. 182 and Recommendation No. 190, the Labor Code of the Philippines,

40 Supra., note 30.

41 Art. 139, id.

42 Supra., note 18.

Section 12-D of the Act prohibits the engagement of any child in the worst forms of child labor. It provides that the phrase “worst forms of child labor” shall refer to any of the following: (1) All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003,” or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or (2) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or (3) The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or (4) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it: a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or
b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or c) Is performed underground, underwater or at dangerous heights; or d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or f) Is performed in a unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels or vibrations; or g) Is performed under particularly difficult conditions; or h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoa, nematodes and other parasites; or i) Involves the manufacture or handling of explosives and other pyrotechnic products.”

Subsequently or on 26 July 2004, the Department of Labor and Employment (DOLE) promulgated DOLE DO No. 65-04\textsuperscript{43} or the Rules and Regulations implementing RA No. 9231. Such Rules and Regulations include enforcement and administration mechanisms as well as access to education and training, immediate legal, medical and psycho-social services.

III. B. 3. Summer Employment

A special group of young workers is given special attention by the Philippine legislature in RA No. 7323,\textsuperscript{44} otherwise known as An Act to Help Poor But Deserving Students Pursue Their Education by Encouraging Their Employment During Summer and Christmas Vacations, as amended by RA No. 9547\textsuperscript{45} (1 April 2009).

Under Section 1 of RA No. 7323 as amended, any person or entity employing at least ten (10) persons may employ poor but deserving students fifteen (15) years of age but not more than twenty-five (25) years old. These students are to be paid a salary or wage not lower than the minimum wage for private employers and the applicable hiring rate for the national and local employment agencies. Their period of employment shall be from twenty (20) to fifty-two (52) working days only but during Christmas vacation, employment will be from ten (10) to fifteen (15) days which may be counted as part of the students’ probationary period should they apply in the same company or agency after graduation. Moreover, those employed in activities related to their course may earn equivalent academic credits.

Under the Act, poor but deserving students refer to those whose parents’ combined income, together with their own, if any, does not exceed the annual regional poverty threshold level for a family of six (6).

The 2010 Implementing Rules and Regulations of RA No. 9547,\textsuperscript{46} in particular, Rule III. Section 1 thereof, provides that the student-applicant for employment under the Program should meet the following qualifications: (a) at least 15 years of age but not more than 25 years old; (b) the combined net income after tax of parents, including his/her income, if any, does not exceed the latest annual regional poverty threshold level for a family of six (6) as determined by the National Economic Development Authority (NEDA); and (c) got at least an average passing grade during the

\textsuperscript{43} Supra., note no. 25.
\textsuperscript{44} 88 OG 2926 No. 20 (13 May 1992).
\textsuperscript{45} Laws and Resolutions, Published by Congress of the Philippines, 14\textsuperscript{th} Congress, 2\textsuperscript{nd} Reg. Session.
\textsuperscript{46} Joint Memo. Circular DOLE-DepEd-CHED-DSWD-DBM-DOF No. 2010-001.
last school term attended. As per available NEDA statistics, a family of five in 2009 needed P7,017.00 per month to stay out of poverty.47

IV. Administration & Enforcement of Child Labor Laws

Under ILO Recommendation No. 146 or the Recommendation Concerning Minimum Age for Admission to Employment (26 June 1973), Members should take measures to ensure that the conditions in which persons under the age of 18 years are employed are maintained at a satisfactory standard.48 Special attention should thus be given to (a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work; (b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities; (c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days; (d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults; (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be; and (f) the maintenance to satisfactory standards of safety and health and appropriate instruction and supervision.49

Pursuant to RA No. 9231,50 otherwise known as the Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Protection for the Working Child (28 July 2003), complaints on cases of unlawful acts committed against children, as enumerated in the Act, may be filed by the offended party or any of the following: parents or guardians; ascendant or collateral relative within the third degree of consanguinity; officer or social worker of a licensed child-caring institution or of the Department of Social Welfare and Development; Barangay chairman of the place where the violation occurred or where the child is residing or employed; or at least three (3) concerned, responsible citizens where the violation occurred.51 The Rules and Regulations Implementing RA No. 9231 or DOLE Department Order No. 65-0452 (26 July 2004) sets forth the procedure for the enforcement and administration of RA No. 9231 which affords special protection to children from all forms of abuse, neglect, cruelty, explanation and discrimination and other conditions prejudicial to their development including child labor and its worst forms.

Hence, in case of any violation, the Secretary of Labor and Employment or the Regional Director or any authorized representative shall undertake any of two courses of action as provided in Section 21. One, order the immediate and permanent closure of the establishment if: the violation of any provision of Republic Act No. 9231 has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or such firm or establishment is employing a child for prostitution or obscene or lewd shows. In such a case, the employer shall pay all employees affected by the closure their separation pay and other monetary benefits provided for by law.

48 IV. 12.1, ILO Recommendation No. 146.
49 IV. 13.1, id.
50 Supra., note 18.
51 Sec. 27, id.
52 Supra., note 27.
Two, order the immediate and temporary closure of the establishment if there is imminent danger to the life and limb of the child in accordance with the occupational safety and health standards. There is an imminent danger if a condition or practice could reasonably be expected to cause death or serious physical harm. For the duration of the closure, the wages of all affected employees shall be paid by the employer and if made permanent, after due hearing, the employer shall pay separation benefits.

In both cases, the Order shall require the employer to shoulder the transportation cost of the child, as well as the total actual cost of medical management, recovery and reintegration of the child, or in case of death, the child’s funeral expenses.

Moreover, Section 22 directs the Regional Director to suspend or cancel the work permit issued to a working child under the following instances: fraud or misrepresentation in the application for work permit or any supporting documents; violation of the terms and conditions in the child’s employment contract; the employer’s failure to institute measures to ensure the protection, health, safety, morals, and normal development of the child; the employer’s failure to formulate and implement a program for the education, training and skills acquisition of the child; or lack of access to formal, non-formal or alternative learning systems of education.

In cases of violations not resulting in death, insanity or injury of the child, Section 23 provides that the Regional Director, after due notice and hearing, and without prejudice to the filing of the appropriate criminal and civil actions, shall: in case of a first violation, issue a compliance order for immediate restitution and correction of the violation. Failure to comply with said order constitutes a second violation. In case of a second violation, the Regional Director shall issue a compliance order for immediate restitution and correction of the violation and prohibit the employer from hiring a child for six months commencing from date of last offense. Failure to comply with said order constitutes a third violation. In case of a third violation, the Regional Director shall issue a compliance order for immediate restitution and correction of the violation. Failure to comply constitutes a fourth violation which should justify closure of the establishment.

Finally, the proceedings arising from Sections 21, 22 and 23 shall be summary in nature which may be initiated motu proprio by the Department or upon complaint by any interested party.

Section 24, which sets forth the enforcement procedure, further provides that permanent or temporary closure shall be effected upon service by the Regional Director of a notice of closure on the employer. The Regional Director shall call a hearing within 24 hours from notice to confirm the closure, giving the employer an opportunity to present evidence why closure is not an appropriate remedy. And within 72 hours from the last hearing, he shall issue an order thus confirming or lifting the closure.

If what is involved is suspension or cancellation of work permit, the Regional Director shall serve a notice on the employer and the parent or guardian of the working child. Such persons are given three days from receipt of the notice to show cause why the work permit should not be suspended or cancelled. A revocation, suspension or dismissal order shall be issued within ten days from service of notice. Any motion for reconsideration of the Regional Director’s action shall be resolved by the Secretary of Labor and Employment. The child concerned shall not be allowed to work upon issuance of the notice and during the pendency of the proceedings.

Under Section 27, complaints on violations specified under Republic Act No. 9231 and the Implementing Rules which fall under the jurisdiction of the regular courts shall be filed by persons so identified and in accordance with the Rules of Court.
As regards any violation that may constitute a criminal offense under RA No. 9231, Section 28 requires the investigation report of the Department, together with other relevant documents and evidence, to be immediately forwarded to the provincial or city prosecutor who shall determine the filing of the appropriate criminal charge.

In compliance with international standards requiring the institution of all necessary measures, including the provision of appropriate penalties to ensure effective enforcement, Section 16 of RA No. 7610 as amended by RA 9231 sets forth the penal sanctions for violations of Sections 12, 12-A, 14 and 12-D, ranging from imprisonment of six (6) months and one (1) day to six (6) years to twelve (12) years and one (1) day to twenty (20) years and fine ranging from P50,000.00 to P300,000.00 to P100,000.00 to P1,000,000.00 or both such fine and imprisonment.

V. Persisting Problem: Child Labor in Sweatshops

Charles S. Clark, a former staff writer for CQ (Congressional Quarterly) Researcher writes: “(S)weatshops and child labor - supposedly eradicated in the U.S. early in the twentieth century - have re-emerged dramatically on the global landscape, just as the twentieth century is wrapping up.”53

In the same publication, Olivia Given elucidates: “The notorious sweatshops of the age of Big Business (the late 19th and early 20th centuries) virtually disappeared after World War II because of increased government regulation of monopolies and the rise of trade unions. Sweatshops began to reappear again, however, during the 1980’s and 1990’s because of economic globalization. Today’s economy is described as global because advancements in technology have made it possible for large corporations that were once confined to a specific geographic location to become large ‘multi-nationals.’”54

Ms. Given reveals what the evils of sweatshops—the horrible working conditions of sweatshop workers, as well as the notorious stratagem of sweatshop operators. Thus:

“(W)hat is a sweatshop? The Department of Labor defines a workplace as a sweatshop if it violates two or more of the most basic labor laws including child labor, minimum wage, overtime and fire safety laws. For many, the word sweatshop conjures up images of dirty, cramped, turn of the century New York tenements where immigrant women worked as seamstresses. High-rise tenement sweatshops still do exist, but, today, even large, brightly-lit factories can be the sites of rampant labor abuses.

“Sweatshop workers report horrible working conditions including subminimum wages, no benefits, non-payment of wages, forced overtime, sexual harassment, verbal abuse, corporal punishment, and illegal firings. Children can often be found working in sweatshops instead of going to school. Sweatshop operators are notorious for avoiding giving maternity leave by firing pregnant women and forcing women workers to take birth control or to abort their pregnancies.

“Sweatshop operators can best control a pool of workers that are ignorant of their rights as workers. Therefore, bosses often refuse to hire unionized workers and intimidate or fire any worker suspected of speaking with union representatives or trying to organize her fellow workers.”

Relying on ILO figures, Mr. Clark reports that “(a)round the world, there are at least 73 million child laborers ages 10-14” and that “working children of all ages” number “up to 200 million, noting that 25 percent of all the children in Africa are working” and that “(i)n Asia, the figure is 18 percent, in Latin America, 7 percent. A more recent ILO estimate reveals that 250 million children between the ages of five and fourteen work in developing countries: 61% in Asia, 32% in Africa and 7% in Latin America.”

Mr. Clark notes that “(m)ost labor abuses take place in industries producing everyday products such as clothing, toys, sneakers, carpets and sports equipment. But some of the worst cruelties are found in areas where household slave labor is common, such as the Sudan, and in the underground world of forced child prostitution, which is rampant in Thailand and the Philippines.”

In the Philippines, “(c)hild labor is recognized as a serious problem.” As early as 1991, “the Department of Labor and Employment (DOLE) estimated that there were 777,000 Filipino workers between the ages of 10 and 14, and 1.4 million between 15 and 17 years.” It is to be noted that “(t)hese figures exclude the large number of working children below the age of 10.” Moreover, “DOLE reportedly acknowledged that, altogether, at least five million children work in commercial and industrial sectors in the Philippines,” such figures coinciding “with UNICEF and ILO estimates of 5 to 5.7 million working children.”

Reports have it that child labor is prevalent in Philippine export industries, to wit: garments and embroidery, wood and rattan furniture and gold mining. With respect to garments and embroidery, it is said that:

"In 1993, the Philippines exported over $1 billion worth of garments to the United States. Studies report that children work on a piece-work basis at home, or in makeshift work places under a subcontracting system. Children sew, make button holes, trim, fold, wash, and pack garments. In smaller factories and home sites, children also embroider and smock clothes, including baby dresses.

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"Export products to the United States include embroidered blouses, skirts, dresses, table cloths, place mats, and potholders. While most workers were young adult

55 Supra, note no. 54, pp.21-22.
56 Supra., note no. 53, p. 11.
58 Supra., note no. 53, p. 11.
women, 11 to 14 year old children removed excess thread, folded, trimmed, patched, and embroidered the garments.

“A 1993 ILO report found that children generally worked long hours in poor, unhealthy and crowded conditions and received less than a third of the legislated minimum wage. Some children work 11 hours per day or up to 30 hours per week in addition to attending school. Children who stay at the factory pay rent, as well as expenses for needles, threads, and machine repairs, which are deducted from the salary. Children working in garment factories complain of lack of sleep, fatigue (especially during rush periods), colds, cough, headaches, finger and leg cramps, allergy to textile dust, and eye strain. Children working at smaller factories or home sites also suffer from various work-related health problems, including back strain, hand cramps after long hours of stitching and sometimes scissors cuts.”

As regards wood and rattan furniture, the same reports indicate that:

“Rattan furniture is a long-established Philippine export to the United States. Children are more likely to be found working in the subcontracted furniture shops than in larger factories.

“A 1988 ILO study describes children assembling furniture pieces, weaving seats, and varnishing wood. Approximately 88 percent of the children sampled for the study worked in industrial establishments, while only 12 percent worked for subcontractors as ‘home-based outworkers.’ Children working in factories received 15 to 25 pesos per day (approximately 61 cents to $1). About 29 percent of the children were compensated with free food or were unpaid; the rest were paid on a piece rate basis. About 48 percent of these children work between 15 to 25 hours a week, while 13 percent work more than 50 hours for less than the minimum wage. Children and others working in woodworking factories are subject to inhaling large amounts of wood dust due to the lack of ventilation. The study found that children frequently mishandle dangerous chemicals, resulting in skin diseases, respiratory irritations, and visual disturbances.”

Anent gold mining, studies show that:

“In 1992, the Philippines exported almost $2 million worth of non-monetary gold and approximately $16 million of gold and silver jewelry to the United States. A study in 1992 on gold mining in the South Cotabato region reports that small-scale mining produces an average of 3,000 bags of ore (25 kilograms or 55 pounds each) per day. It is alleged that some packers, who carry the bags of gold down the hill, are as young as seven and eight. The children reportedly earn between 40 to 50 pesos per day (approximately $1.62 to $2). Older packers earn between 250 and 300 pesos per day (approximately $10 to $12).”
VI. National Program Against Child Labor

The Philippines’ comprehensive response to the besetting, serious problem of child labor is the implementation of the National Program Against Child Labor in the country. The Program entails “an inter-agency network of government as well as non–governmental organizations and employers’ organizations, with the Department of Labor and Employment as lead agency.” Accordingly, the Sagip Batang Manggagawa (SBM) Project (that is, Rescue Child Laborers) was launched in 1993. “An inter-agency quick action mechanism which aims to respond to cases of child labor in extremely abject conditions”, SBM “employs an inter-agency quick action team for detecting, monitoring and rescuing child laborers in hazardous and exploitative working conditions.”

In line with the National Program Against Child Labor (NPACL) and recognizing that “one of the key characteristics of child labor is the relative invisibility of those engaged in it,” the Labor Secretary issued DOLE DO No. 033-02, otherwise known as the Guidelines and Operational Procedures on the Master Listing of Child Laborers, a concept approved by the National Child Labor Committee on 18 March 2002. This Program is actually in compliance with ILO Convention No. 182 on the Worst Forms of Child Labor which the Philippines has ratified and whereby it “committed to take immediate and effective measures to secure the prohibition of the worst forms of child labor in our country.”

Still in compliance with ILO Convention No. 182, the President of the Philippines issued Memorandum Order No. 71 on 2 September 2001. The Labor Secretary was directed to take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labor through the Philippine Time-Bound Program and Other Initiatives Pursuant To ILO Convention No. 182. The Program “represents the finest efforts of the Philippines’ network of social partners in eliminating the worst forms of child labor and transforming the lives of child laborers, their families and communities towards their sense of self-worth, empowerment and development.”

In addition to DOLE DO No. 65-04, the Labor Secretary also issued DOLE DO No. 03-39 or the Guidelines on the Procedure for Closure of Business, Firm or Establishment Under Republic Act No. 9231. With regard to the issuance of work certificates and permits to young workers aged 15 to less than 18 years of age, DOLE Advisory No. 01-08 was issued by the Labor Secretary on 10 June 2008 for reference and guidance of all DOLE Offices, concerned employers and workers.

Also, in 2008, DOLE DO No. 089-08 was issued by the Labor Secretary for a meaningful celebration of “Working Youth Day” effective 15 February 2008 and every year onward pursuant to Presidential Proclamation No. 1110 of 1973 declaring February 15 of every year as “Working Youth Day”.

64 Id.
66 Id.
67 98 OG 6942 No. 48 (Dec. 2, 2002).
69 Available at: <http://www.dole.gov.ph/finder/bong/files/DA-01-08.pdf> [August 2011].
Day.” This is certainly in line with the Constitutional recognition of the vital, even indispensable role of the youth in nation-building.70

The task at hand is daunting, given that child labor, as most studies have shown, is closely intertwined with poverty, a situation which will predictably worsen in the midst of the current global economic crisis. With practically the full force of government behind the international and national goal to eliminate the worst forms of child labor, in cooperation with workers’ and employers’ groups, non-governmental organizations (NGOs), business representatives, media, and all other sympathetic sectors, not all hope is lost that one day, the invisible will be made visible, and consequently, government in coordination with all concerned sectors would at least minimize, if not totally eradicate, the worst forms of child labor.71

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I. INTERNATIONAL LAW


Adopted and opened for signature and recitation or accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, and entered into force on 3 January 1976.

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of State under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Article 10. The States Parties to the present Covenant recognize that:

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

Preamble

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 9

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

2. The child shall not be admitted to employment before the appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.


PREAMBLE

The States Parties to the present Convention,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in
particular in article 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

**Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular

   (a) provide for a minimum age or minimum ages for admission to employment;

   (b) provide for appropriate regulation of the hours and conditions of employment;

   (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

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**II. DOMESTIC LAW**

**1987 Constitution.**

**Article II**

**Declaration of Principles and State Policies**

**Section 2.** The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

**Section 11.** The State values the dignity of every human person and guarantees full respect for human rights.

**Section 12.** The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

**Section 13.** The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.
Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Article XIII

Social Justice and Human Rights

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children. The State shall endeavor to provide free medical care to paupers.

Article XIV

Education, Science and Technology, Arts, Culture, and Sports Education

Section 2. The State shall:

(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

(5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

Article XV

The Family

Section 3. The State shall defend:

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of abuse, neglect, cruelty, exploitation, and other conditions prejudicial to their development;

and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

Section 3. Definition of Terms.–x x x

(c) “Circumstances which gravely threaten or endanger the survival and normal development of children” include, but are not limited to, the following:

1. Being in a community where there is armed conflict or being affected by armed conflict-related activities;

2. Working under conditions hazardous to life, safety and morals which unduly interfere with their normal development;

3. Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or any adult supervision needed for their welfare;

4. Being a member of an indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;

5. Being a victim of a man-made or natural disaster or calamity; or

6. Circumstances analogous to those above-stated which endanger the life, safety or normal development of children.

III. MINIMUM WORKING AGE

III.A. INTERNATIONAL LAW


The General Conference of the International Labor Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Fifty-Eight Session on 6 June 1973, and

Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention, (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and

Considering that the time has come to establish a general instrument on the subject, which would
gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labor, and

Having determined that this instrument take form of an international Convention,

Adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973:

Article 1 Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2 1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organization a statement

(a) that its reason for doing so subsists; or

(b) that it renounces its right to avail itself of the provisions in question as from a stated date.

Article 3 1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4 1. In so far as necessary, the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.

2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organization any categories which may
have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

3. Employment of work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.

2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas, and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article

   (a) shall indicate in its reports under Article 22 of the Constitution of the International Labour Organization the general position as regards the employment of work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention; and

   (b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of

   (a) a course of education or training for which a school or training institution is primarily responsible;

   (b) a program of training mainly or entirely in an undertaking, which program has been approved by the competent authority; or

   (c) a program of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age in light work which is

   (a) not likely to be harmful to their health or development; and

   (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling or work which meets the requirements set forth in subparagraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this
Article and shall prescribe the number of hours during which and the conditions in which such employment or work be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8
1. After consultation with the organizations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition on employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9
1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

ILO Recommendation No. 146, Recommendation Concerning Minimum Age for Admission to Employment (26 June 1973).

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-Eight Session on 6 June 1973, and

Recognizing that the effective abolition of child labor and the progressive raising of the minimum age for admission to employment constitute only one aspect of the protection and advancement of children and young persons, and

Noting the concern of the whole United Nations system with such protection and advancement, and having adopted the Minimum Age Convention, 1973, and

Desirous to define further certain elements of policy which are the concern of the International Labour Organization, and

Having decided upon the adoption of certain proposals regarding minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Minimum Age Convention, 1973, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three, the following Recommendation, which may be cited as the Minimum Age Recommendation, 1973:

I. National Policy

1. To ensure the success of the national policy provided for in Article 1 of the Minimum Age Convention, 1973, high priority should be given to planning for and meeting the needs of children and youth in national development policies and programs and to the progressive extension of the inter-related measures
necessary to provide the best possible conditions of physical and mental growth for children and young persons.

2. In this connection special attention should be given to such areas of planning and policy as the following:

   (a) firm national commitment to full employment, in accordance with the Employment Policy Convention and Recommendation, 1964, and the taking of measures designed to promote employment-oriented development in rural and urban areas;

   (b) the progressive extension of other economic and social measures to alleviate poverty wherever it exists and to ensure family living standards and income which are such as to make it unnecessary to have recourse to the economic activity of children;

   (c) the development and progressive extension, without any discrimination, of social security and family welfare measures aimed at ensuring child maintenance, including children’s allowances;

   (d) the development and progressive extension of adequate facilities for education and vocational orientation and training appropriate in form and content to the needs of the children and young persons concerned;

   (e) the development and progressive extension of appropriate facilities for the protection and welfare of children and young persons, including employed young persons, and for the promotion of their development.

3. Particular account should as necessary be taken of the needs of children and young persons who do not have families or do not live with their own families, and of migrant children and young persons who live and travel with their families. Measures taken to that end should include the provision of fellowships and vocational training.

4. Full-time attendance at school or participation in approved vocational orientation or training programs should be required and effectively ensured up to an age at least equal to that specified for admission to employment in accordance with Article 2 of the Minimum Age Convention, 1973.

5.(1) Consideration should be given to measures such as preparatory training, not involving hazards, for types of employment or work in respect of which the minimum age prescribed in accordance with Article 3 of the Minimum Age Convention, 1973, is higher than the age of completion of compulsory full-time schooling.

(2) Analogous measures should be envisaged where the professional exigencies of a particular occupation include a minimum age for admission which is higher than the age of completion of compulsory full-time schooling.

II. Minimum Age

6. The minimum age should be fixed at the same level for all sectors of economic activity.

7. (1) Members should take as their objective the progressive raising to 16 years of the minimum age for admission to employment or work specified in pursuance of Article 2 of the Minimum Age Convention, 1973.

(2) Where minimum age for employment or work covered by Article 2 of the Minimum Age Convention, 1973, is still below 15 years, urgent steps should be taken to raise the minimum age to that level.

8. Where it is not immediately feasible to fix a minimum age for all employment in agriculture and in related activities in rural areas, a minimum age should be fixed at least for employment on plantations and in the other agricultural undertakings referred to in Article 5, paragraph 3, of the Minimum Age Convention, 1973.

Sec. 1. Section 2 of Republic Act No. 7610, as amended, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”, is hereby amended to read as follows:

“Sec. 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

“It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

“The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.”

Sec. 2. Section 12 of the same Act, as amended, is hereby further amended to read as follows:

“Sec. 2. Employment of Children – Children below fifteen (15) years of age shall not be employed except:

“1) When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed: Provided, however, that his/her employment neither endangers his/her life safety, health, and morals, nor impairs his/her normal development: Provided, further, that the parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education; or

“2) Where a child's employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential: Provided, however, that the employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, further, that the following requirements in all instances are strictly complied with:

“(a) The employer shall ensure the protection, health, safety, morals and normal development of the child;

“(b) The employer shall institute measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and

“(c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

“In the above-exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and
Employment which shall ensure observance of the above requirements. “For purposes of this Article, the term “child” shall apply to all persons under eighteen (18) years of age.”

DOLE Department Order No. 65-04, Rules and Regulations Implementing Republic Act No. 9231, Amending Republic Act No. 7610, As Amended (26 July 2004).

Chapter 1 – Preliminary Provisions

Sec. 1. Coverage – These Rules shall cover all persons and entities engaging the services of or employing children.

Sec. 2. Declaration of State Policy and Principles – The State shall provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of, and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination. The State shall also protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The State shall also protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interest of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

Sec. 3. Definition of Terms. – As used in these Rules, the term:

(a) “Child” refers to any person under 18 years of age.

(b) “Child labor” refers to any work or economic activity performed by a child that subjects him/her to any form of exploitation or is harmful to his/her health and safety or physical, mental or psychosocial development.

(c) “Working Child” refers to any child engaged as follows:

i. when the child is below eighteen (18) of age, in work or economic activity that is not child labor as defined in the immediately preceding sub-paragraph, and

ii. when the child below fifteen (15) years of age, (i) in work where he/she is directly under the responsibility of his/her parents or legal guardian and where only members of the child’s family are employed; or (ii) in public entertainment or information.

(d) “Parent” refers to either the biological or adoptive mother or father.

(e) “Guardian” refers to any person who exercises substitute parental authority regardless of whether or not such parental authority over a child is bestowed by a court.

(f) “Members of the family” refers to the child’s parents, guardian, brothers or sisters whether of full or half blood, and other ascendants and descendants or collateral relatives within the fourth civil degree of consanguinity.

(g) “Employer” refers to any person, whether natural or juridical who, whether for valuable consideration or not, directly or indirectly procures, uses, avails itself of, contracts
out or otherwise derives benefit from the work or services of a child in any occupation, undertaking, project or activity, whether for profit or not. It includes any person acting in the interest of the employer.

(h) “Department” refers to the Department of Labor and Employment.

(i) “Collective needs of the family” refer to such basic needs as food, shelter, light and water, clothing, education, medical, transportation and other expenditure items necessary for the survival of the family of the child.

(j) “Work permit” refers to the permit secured by the employer, parent or guardian from the Department for any child below 15 years of age in any work allowed under Republic Act No. 9231.

(k) “Hours of work” include (1) all time during which a child is required to be at a prescribed workplace, and (2) all time during which a child is suffered or permitted to work. Rest periods of short duration during working hours shall be counted as hours worked.

(l) “Workplace” refers to the office, premises or worksite where a child is temporarily or habitually assigned. Where there is no fixed or definite workplace, the term shall include the place where the child actually performs work to render service or to take an assignment, to include households employing children.

(m) “Public entertainment or information” refers to artistic, literary, and cultural performances for television show, radio program, cinema or film, theater, commercial advertisement, public relations activities or campaigns, print materials, internet, and other media.

(n) “Formal education” refers to the institutionalized, hierarchically structured and chronologically - guided educational system running from elementary to tertiary levels.

(o) “Non-formal education” refers to any organized, systematic educational activity conducted outside of the formal education system to provide selected type of learning.

(p) “Alternative learning system” refers to a parallel and comparable learning system which provides a viable alternative to the existing formal education system.

(q) “Forced labor and slavery” refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception.

(r) “Child pornography” refers to any representation of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of child for primarily sexual purposes.

(s) “Recovery and reintegration” refers to various interventions and services that facilitate the process of healing and eventual return of the child to the family and community.

(t) “Normal development of the child” refers to the physical, emotional, mental, and spiritual growth of a child within a safe and nurturing environment where he/she is given adequate nourishment, care and protection and the opportunity to perform tasks appropriate at each stage of development.

Chapter 2 – Prohibition on the Employment of Children

Sec. 4. General Prohibition – Except as otherwise provided in these Rules, no child below 15 years of age shall be employed, permitted or suffered to work, in any public or private establishment.

Sec. 5. Prohibition on the Employment of Children in Worst Forms of Child Labor – No child shall be engaged in the worst forms of child labor. The phrase “worst forms of child labor” shall refer to any of the following:

(a) All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003”, or practices similar to slavery such as
sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict.

(b) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances;

(c) The use, procuring or offering of a child for illegal or illicit activities, including the production or trafficking of dangerous drugs or volatile substances prohibited under existing laws; or

(d) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:

i. Debases, degrades or demeans the intrinsic worth and dignity of a child as human beings; or

ii. Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or

iii. Is performed underground, underwater or at dangerous heights; or

iv. Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

v. Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or

vi. Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels or vibrations; or

vii. Is performed under particularly difficult conditions; or

viii. Exposes the child to biological agents such as bacteria, fungi, viruses, protozoa, nematodes and other parasites; or

ix. Involves the manufacture or handling of explosives and other pyrotechnic products.

Sec. 6. Prohibition on the Employment of Children in Certain Advertisements – No child below 18 years of age shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

Chapter 3 – Exceptions to the Protection

Sec. 7. Exceptions and Conditions – The following shall be the only exceptions to the prohibition on the employment of a child below 15 years of age:

(a) When the child works under the sole responsibility of his/her parents or guardian, provided that only members of the child’s family are employed.

(b) When the child’s employment or participation in public entertainment or information is essential, regardless of the extent of the child’s role.

Such employment shall be under the following conditions:

i. The total number of hours worked shall be in accordance with Section 15 of these Rules;

ii. The employment does not endanger the child’s life, safety, health and morals, nor impair the child’s normal development;

iii. The child is provided with at least the mandatory elementary or secondary education; and
iv. The employer secures a work permit for the child in accordance with Section 8-12 of these Rules.

Chapter 4 – Requirements to Avail of Exception To Employment Prohibition

Sec. 8. Work Permit – Except as provided is Section 13, no child below 15 years of age shall be allowed to commence work without a work permit. An employer must first secure a work permit from the Regional Office of the Department having jurisdiction over the workplace of the child. In cases where the work is done in more than one workplace falling under the jurisdiction of more than one Regional Office, the application shall be made with the Regional Office having jurisdiction over the principal office of the employer. However, at least two days prior to the performance of the work, the employer shall inform the Regional Office having jurisdiction over the workplace of the activities to be under taken involving the child.

Sec. 9. Requirements for the issuance of Work Permit – The employer shall submit to the appropriate Regional Office the following:

(a) A duly accomplished and verified application for work permit containing the following information:

i. Terms and conditions of employment including hours of work, number of working days, remuneration, and rest period, which shall be in accordance with law;

ii. Measures to ensure the protection, health, safety, morals, and normal development of the child, including but not limited to the following:

1. Comfortable workplace and adequate quarters;
2. Break or rest periods in comfortable day beds or couches;
3. Clean and separate dressing rooms and toilet facilities for boys and girls;
4. Provision for adequate meals and snacks and sanitary eating facility;
5. Provision of all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick child in case of emergency.

(b) Except when the child is below seven years old;

i. Proof that the child is enrolled and regularly attending elementary or secondary school classes, consisting of certificate of enrollment for the current year or current school identification or report card; or

ii. If the child is not enrolled, a brief description of the program for education, training and skills acquisition for the child, in accordance with Section 19 (b) of these Rules;

(c) An authenticated copy of the child’s Birth Certificate or a Certificate of late Registration of Birth issued by the NSO or the city/municipal registrar;

(d) A medical certificate issued by a licensed physician stating that he/she has personally examined the child for whom a work permit is being secured, and that the child is fit to undertake the work in which he/she is to be engaged. Such certificate must bear in print the certifying physician’s full name and his/her license number;

(e) Two passport size photographs of the child;

(f) When the employer is the parent, guardian, or a family member other than the parent of the child, he/she shall present any valid document such as latest passport, latest postal/company identification card, and driver’s license establishing his/her identity. A legal guardian is likewise required to present a duly authenticated proof of legal guardianship while a family member shall present any proof of relationship to the child;

(g) When the employer is in public entertainment or information, he/she shall submit a certified true copy of the employer’s business permit or certificate of registration and a written employment contract to be approved by the
Looking After Filipino Children

Department. An express agreement of the child to the provisions of the contract is needed when such child is between seven and below 15 years of age.

Department Circular No. 02-10 (29 June 2010).

TO: All Heads of DOLE Offices, DOLE Regional Directors, Labor Inspectors, Hearing Officers, Sheriffs and Child Labor Program Coordinators

SUBJECT: Manual on the Conduct of Inspection, Rescue and Enforcement Proceedings in Child Labor Cases

The Department of Labor and Employment strongly upholds the rights of children including their protection from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development, particularly child labor and its worst forms. Recognizing the vulnerability of children to abuse and exploitation, there is a need for the DOLE to strengthen the enforcement of Republic Act No. 9231 (An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, As Amended, Otherwise Known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”) through the issuance of procedural guidelines in pursuing child labor cases.

This Manual on the Conduct of Inspection, Rescue and Enforcement Proceedings in Child Labor Cases builds on the combined experiences and lessons learned by DOLE Regional Offices in carrying out the provisions of RA 9231 and related laws. It intends to provide a clear procedure for the DOLE implementers in the performance of their duties and functions as provided under RA 9231. The Manual will likewise pave the way for a speedy action and resolution of the implementers on reported child labor cases.

With this Manual, it is expected that the DOLE, through its Child Labor Prevention and Elimination Program, will be able to assist in pursuing child labor cases thereby increasing the number of erring employers penalized. This will greatly contribute to the government’s efforts to eradicate the child labor menace in our country.

In view thereof, the Manual on the Conduct of Inspection, Rescue and Enforcement Proceedings in Child Labor Cases for DOLE Regional Directors, Labor Inspectors, Sheriffs, Hearing Officers and Child Labor Program Coordinators is hereby issued and adopted. It shall take effect immediately and remain in force until revoked.

IV. TERMS AND CONDITIONS OF EMPLOYMENT

IV.A. IN GENERAL

ILO Convention No. 77, Convention Concerning Medical Examination for Fitness For Employment in Industry of Children and Young Persons (1946).

The General Conference of the International Labour Organization,

Having decided upon the adoption of certain proposals with regard to medical examination for fitness for employment in industry of children and young persons, which is included in the third item on the agenda of the Session, and

Having determined that these proposals shall take the form of an International Convention,
Adopts this ninth day of October of the year one thousand nine hundred and forty-six, the following Convention, which may be cited as the Medical Examination of Young Persons (Industry) Convention, 1946:

Part I. General Provisions

Art. 1. 1. This Convention applies to children and young persons employed or working in, or in connection with, industrial undertakings, whether public or private.

2. For the purpose of this Convention, the term “industrial undertaking” includes particularly:

   (a) mines, quarries, and other works for the extraction of minerals from the earth;

   (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind;

   (c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work; and

   (d) undertakings engaged in the transport of passengers or goods by road, rail, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports.

3. The competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations.

Art. 2. 1. Children and young persons under eighteen years of age shall not be admitted to employment by an industrial undertaking unless they have been found fit for the work on which they are to be employed by a thorough medical examination.

2. The medical examination for fitness for employment shall be carried out by a qualified physician approved by the competent authority and shall be certified either by a medical certificate or by an endorsement on the work permit or in the workbook.

3. The document certifying fitness for employment may be issued

   (a) subject to specified conditions of employment;

   (b) for a specified job or for a group of jobs or occupations involving similar health risks which have been classified as a group by the authority responsible for the enforcement of the laws and regulations concerning medical examination for fitness for employment.

4. National laws or regulations shall specify the authority competent to issue the document certifying fitness for employment and shall define the conditions to be observed in drawing up and issuing the document.

Art. 3. 1. The fitness of a child or young person for the employment in which he is engaged shall be subject to medical supervision until he has attained the age of eighteen years.

2. The continued employment of a child or your person under eighteen years of age shall be subject to the repetition of medical examinations at intervals of not more than one year.

3. National laws or regulations shall

   (a) make provision for the special circumstances in which a medical re-examination shall be required in addition to the annual examination or at more frequent intervals in order to ensure effective supervision in respect of the risks involved in the occupation and of the state of health of the child or young person as shown by previous examinations; or

   (b) empower the competent authority to require medical re-examinations in exceptional cases.
Art. 4. 1. In occupations which involve high health risks, medical examination and re-examinations for fitness for employment shall be required until at least the age of twenty-one years.

2. National laws or regulations shall either specify, or empower an appropriate authority to specify, the occupations or categories of occupations in which medical examination and re-examinations for fitness for employment shall be required until at least the age of twenty-one years.

Art. 5. The medical examination required by the preceding Articles shall not involve the child or young person, or his parents, in any expense.

Art. 6. 1. Appropriate measures shall be taken by the competent authority for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations.

2. The nature and extent of such measures shall be determined by the competent authority; for this purpose co-operation shall be established between the labor, health, educational and social services concerned, and effective liaison shall be maintained between these services in order to carry out such measures.

3. National laws or regulations may provide for the issue to children and young persons whose fitness for employment is not clearly determined

(a) of temporary work permits or medical certificates valid for a limited period at the expiration of which the young worker will be required to undergo re-examination;

(b) of permits or certificates requiring special conditions of employment.

x x x

ILO Convention No. 90, Convention Concerning the Night Work of Young Persons Employed in Industry (Revised 1948).

The General Conference of the International Labour Organization,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Night Work of Young Persons (Industry) Convention, 1919, adopted by the Conference at its First Session, which is the tenth item on the agenda of the session, and

Considering that these proposals must take the form of an international Convention,

Adopt this tenth day of July of the year one thousand nine hundred and forty-eight, the following Convention, which may be cited as the Night Work of Young Persons (Industry) Convention (Revised), 1948:

Part I. General Provisions

Art. 1. 1. For the purpose of this Convention, the term “industrial undertaking” includes particularly

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind;

(c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;

(d) undertakings engaged in the transport of passengers or goods
by road or rail, including the handling of goods at docks, quays, wharves, warehouses or airports.

2. The competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations.

3. National laws or regulations may exempt from the application of this Convention employment or work which is not deemed to be harmful, prejudicial, or dangerous to young persons in family undertakings in which only parents and their children or wards are employed.

Art. 2. 1. For the purpose of this Convention the term “night” signifies a period of at least twelve consecutive hours.

2. In the case of young persons under sixteen years of age, this period shall include the interval between ten o’clock in the evening and six o’clock in the morning.

3. In the case of young persons who have attained the age of sixteen years but are under the age of eighteen years, this period shall include an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o’clock in the evening and seven o’clock in the morning; the competent authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers’ and workers’ organizations concerned before prescribing an interval beginning after eleven o’clock in the evening.

Art. 3. 1. Young persons under eighteen years of age shall not be employed or work during the night in any public or private industrial undertaking or in any branch thereof except as hereinafter provided for.

2. For purposes of apprenticeship or vocational training in specified industries or occupations which are required to be carried on continuously, the competent authority may, after consultation with the employers’ and workers’ organizations concerned, authorize the employment in night work of young persons who have attained the age of sixteen years but are under the age of eighteen years.

3. Young persons employed in night work in virtue of the preceding paragraph shall be granted a rest period of at least thirteen consecutive hours between two working periods.

4. Where night work in the baking industry is prohibited for all workers, the interval between nine o’clock in the evening and four o’clock in the morning may, for purposes of apprenticeship or vocational training of young persons who have attained the age of sixteen years, be substituted by the competent authority for the interval of at least seven consecutive hours falling between ten o’clock in the evening and seven o’clock in the morning prescribed by the authority in virtue of paragraph 3 of Article 2.

Art. 4. 1. In countries where the climate renders work by day particularly trying, the night period and barred interval may be shorter than that prescribed in the above Articles if compensatory rest is accorded during the day.

2. The provisions of Articles 2 and 3 shall not apply to the night work of young persons between the ages of sixteen and eighteen years in case of emergencies which could not have been controlled or foreseen, which are not of a periodical character, and which interfere with the normal working of the industrial undertaking.

Art. 5. The prohibition of night work may be suspended by the government, for young persons between the ages of sixteen and eighteen years, when in case of serious emergency the public interest demands it.

Art. 6. 1. The laws or regulations giving effect to the provisions of this Convention shall

(a) make appropriate provision for ensuring that they are known to the persons concerned;
(b) define the persons responsible for compliance therewith;
(c) prescribe adequate penalties for any violation thereof;
(d) provide for the maintenance of a system of inspection adequate to ensure effective enforcement; and
(e) require every employer in a public or private industrial undertaking to keep a register, or to keep available official records, showing the names and dates of birth of all persons under eighteen years of age employed by him and such other pertinent information as may be required by the competent authority.

2. The annual reports submitted by Members under Article 22 of the Constitution of the International Labour Organization shall contain full information concerning such laws and regulations and a general survey of the results of the inspections made in accordance therewith.

Part II. Special Provisions for Certain Countries

Art. 7. 1. Any member which, before the date of the adoption of the laws or regulations permitting the ratification of this Convention, had laws or organizations restricting the night work of young persons in industry which provide for an age limit lower than eighteen years may, by a declaration accompanying its ratification, substitute an age limit prescribed in paragraph 1 of Article 3.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made in virtue of paragraph 1 of this Article is in force shall indicate each year in its annual report upon the application of this Convention the extent to which any progress has been made with a view to the full application of the provisions of the Convention.

ILO Recommendation No. 146, Recommendation Concerning Minimum Age for Admission to Employment (26 June 1973).

IV. Conditions of Employment

x x x

12. (1) Measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. These conditions should be supervised closely.

(2) Measures should likewise be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions, and schools for vocational or technical education, and to formulate standards for their protection and development.

13. (1) In connection with the application of the proceeding paragraph, as well as in giving effect to Article 7, paragraph 3 of the Minimum Age Convention, 1973, special attention should be given to

(a) the provision of fair remuneration and its protection, being in mind the principle of equal pay for equal work;

(b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;

(c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours’ night rest, and of customary weekly rest days;

(d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;

(e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;

(f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

(2) Subparagraph (1) of this paragraph applies to young seafarers in so far at they are not covered in respect of the matters dealt with therein by international labor Conventions or
Recommendations specifically concerned with maritime employment.

**Presidential Decree No. 442, Labor Code of the Philippines (1974).**

**Art. 139.** Minimum employable age

(b) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor in appropriate regulations.

**Art. 140.** Prohibition against child discrimination.

No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.


**Title I.** GENERAL PRINCIPLES

**Art. 1.** Declaration of Policy – The child is one of the most important assets of the nation. Every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life.

**Art. 104.** “Samahan” defined. As used in this Code, the term “Samahan” shall refer to the aggregate of persons working in commercial, industrial, and agricultural establishments or enterprises, whether belonging to labor or management.

**Art. 105.** Organization. The barangay, municipal and city councils, whenever necessary, shall provide by ordinance for the formation and organization of a Samahan in their respective communities. Membership in the Samahan shall be on voluntary basis from among responsible persons from the various sectors of the community mentioned in the preceding Article.

**Art. 106.** Duties of the Samahan. The Samahan shall

(1) prevent the employment of children in any kind of occupation or calling which is harmful to their normal growth and development;
(2) forestall their exploitation by insuring that their rates of pay, hours of work and other conditions of employment are in accordance not only with law but also with equity;
(3) give adequate protection from all hazards to their safety, health, and morals and secure to them their basic right to an education;
(4) help out-of-school youth to learn and earn at the same time by helping them look for opportunities to engage in economic self-sufficiency projects;
(5) coordinate with vocational and handicraft classes in all schools and agencies in the barangay, municipality or city to arrange for possible marketing of the products or articles made by the students; and
(6) provide work experience, training and employment in those areas where the restoration and conservation of our natural resources is deemed necessary.

x x x
Art. 108. Duty of employer to submit report. The employer shall submit to the Department of Labor a report of all children employed by him. A separate report shall be made of all such children who are found to be handicapped after medical examination. The Secretary of Labor shall refer such handicapped children to the proper government or private agencies for vocational guidance, physical and vocational rehabilitation, and placement in employment.

Art. 109. Register of children. Every employer in any commercial, industrial or agricultural establishment or enterprise shall keep

(1) a register of all children employed by him, indicating the dates of their birth;
(2) a separate file for the written consent to their employment given by their parents or guardians;
(3) a separate file for their educational and medical certifications; and
(4) a separate file for special work permits issued by the Secretary of Labor in accordance with existing laws.

Art. 110. Education of children employed as domestics. If a domestic is under sixteen years of age, the head of the family shall give him an opportunity to complete at least elementary education as required under Article 71. The cost of such education shall be a part of the domestic’s compensation unless there is a stipulation to the contrary.

Chapter 3 – Labor-Management Project

Art. 111. Right to self-organization. Working children shall have the same freedom as adults to join the collective bargaining union of their own choosing in accordance with existing law.

Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union.

Art. 112. Conditions of employment. There shall be close collaboration between labor and management in the observance of the conditions of employment required by law for working children.

Art. 113. Educational assistance program. The management may allow time off without loss or reduction of wages for working children with special talents to enable them to pursue formal studies in technical schools on scholarships financed by management or by the collective bargaining union or unions.

Art. 114. Welfare programs. Labor and management shall, in cooperation with the Women and Minors Bureau of the Department of Labor, undertake projects and in-service training programs for working children which shall improve their conditions of employment, improve their capabilities and physical fitness, increase their efficiency, secure opportunities for their promotion, prepare them for more responsible positions, and provide for their social, educational and cultural advancement.

Art. 115. Research projects. Labor and management shall cooperate with any government or private research project on matters affecting the welfare of working children.

Chapter 4 – Collaboration Between the Home and the Samahan

Art. 116. Collaboration between the home and the Samahan. The home shall assist the Samahan in the promotion of the welfare of working children and for this purpose shall

(1) instill in the hearts and minds of working children the value of dignity of labor;
(2) stress the importance of the virtues of honesty, diligence and perseverance in the discharge of their duties;
(3) counsel them on the provident use of the fruits of their labor for the enrichment of their lives and the improvement of their economic security; and
(4) protect their general well-being against exploitation by management or unions as well as against conditions of their work prejudicial to their health, education, or morals.

Sec. 4. Section 13 of the same Act is hereby amended to read as follows:

“Section 13. Access to Education and Training for Working Children – a) No child shall be deprived of formal or non-formal education. In all cases of employment allowed in this Act, the employer shall provide a working child with access to at least primary and secondary education.

“b) To ensure and guarantee the access of the working child to education and training, the Department of Education (DEPED) shall: (1) formulate, promulgate, and implement relevant and effective course designs and educational programs; (2) conduct the necessary training for the implementation of the appropriate curriculum for the purpose; (3) ensure the availability of the needed educational facilities and materials; and (4) conduct continuing research and development program for the necessary and relevant alternative education of the working child.

“c) The DEPED shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.”

Sec. 5. Section 14 of the same Act is hereby amended to read as follows:

“Sec. 14. Prohibition on the Employment of Children in Certain Advertisements. – No child shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.”

x x x

Sec. 15. Duty of employer. Every employer shall comply with the duties provided for in Articles 108 and 109 of Presidential Decree No. 603.

Ministry of Labor and Employment Policy Instruction No. 23 (30 May 1977).

TO : All concerned

SUBJECT : Hours of work of children; night work and physical examination of Children

Pursuant to the power vested upon the Secretary of Labor by Article 139(b) of the Labor Code as amended and in order to protect the health and welfare of the employed minor, the following regulations are hereby promulgated for the guidance of all concerned:

Sec. 1. Hours of work of children; night work.

(a) No child below sixteen years of age shall be employed or permitted or suffered to work in any applicable industrial undertaking for more than seven hours daily or forty-two hours weekly;

(1) between six o’clock in the afternoon and six o’clock in the morning of the following day.

(b) No child who has attained the age of sixteen years but below eighteen years shall be permitted or suffered to work in any industrial undertaking between ten o’clock at night and seven o’clock in the morning of the following day. Children employed at night under the provision of this sub-section shall be granted a rest of at least thirteen consecutive hours between any working periods.

(c) No children and young persons (below eighteen year of age) shall be admitted to
employment in any industrial undertaking unless they have been found fit for the work of which they are to be employed by a duly licensed physician after thorough pre-employment medical examination.

Sec. 2. The physician engaged by an employer pursuant to this rule shall, in addition to providing medical service to the workers in case of emergency, perform among others, the following duties:

(a) conduct pre-employment medical examination free of charge for proper selection and placement of all workers especially minor workers from fifteen years of age to eighteen years of age;
(b) collaborate closely with the safety and technical personnel of the establishment to assure selection and placement of workers from the standpoint of physical, mental, physiological and psychological suitability, including investigation of accidents where the probable causes are exposure to occupational health hazard;
(c) conduct free annual physical examination of the workers;
(d) develop and implement a comprehensive occupational health program for the employees of the establishment. A report shall be submitted annually to the Bureau of Labor Standards describing the program established and implementation thereof.

IV.B. SPECIFIC SITUATIONS

1. Children in the entertainment industry


PURSUANT to the authority of the Council for the Welfare of Children to promulgate rules and regulations under Article 209 of Presidential Decree No. 603, and to protect every child employed in the movie, television, radio and entertainment industry against exploitation, improper influence, hazards and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development, the following Rules and Regulations are hereby promulgated:

Sec. 1. Definition of terms. As used in these Rules and Regulations unless specifically provided otherwise,

(a) “child” refers to a child, minor, or youth below twenty-one (21) years of age, except those emancipated in accordance with law and subject to Article 9 of the Code. [Now amended by R.A. 6809 lowering the age of majority from 21 years to 18 years.]
(b) “Code” refers to Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code.
(c) “Council” refers to the Council for the Welfare of Children, Office of the President.
(d) “Director” refers to the Director of the Bureau of Women and Minors of the Ministry of Labor. [Now the Bureau of Women and Young Workers of the Department of Labor and Employment.]
(e) “employment” refers to the appearance, performance, or any work done by a child in the movie, television, radio, stage and the entertainment industry, including motion pictures or television programs of whatever length; live, video-taped or film commercials; still pictures; recordings.

Sec. 2. Applicability to employment contracts. These Rules and Regulations shall be applicable to all employment contracts of a child employed in the entertainment industry.

Sec. 3. Employment of a child. The employment of a child shall not be allowed unless said employment is covered by a valid and written contract duly signed by the employer and by the parents or legal guardian of the child, containing the following stipulations:
(a) that the parties shall protect the child against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social, educational, and moral development; and

(b) that the employer shall furnish a copy of the contract as well as all amendments thereto to the parents or legal guardian and to the Director within fifteen (15) days from the execution thereof.

**Sec. 4. Trust fund.** It shall be the duty of the parents or legal guardian to set up a trust fund for the child.

**Sec. 5. Duties of the Director.** It shall be the duty of the Director to see to it that:

(a) these Rules and Regulations have been complied with;

(b) the employment will not be inimical to the child’s safety and welfare; and

(c) the child will not be subjected to exploitation thereby.

**Sec. 6. Involuntary commitment of the child.** The Minister of Social Services and Development [now Secretary of Social Welfare and Development] may, motu proprio, or upon the recommendation of the Director, file a verified petition in Court for the involuntary commitment of a child who is physically or emotionally neglected under Title VIII, Chapter I of the Code or whose parent or guardian is found guilty of any of the crimes punishable under Articles 59 and 204 of the Code.

**Sec. 7. Penalty.** A parent, guardian, producer, director, or other persons violating or causing the violation of these Rules and Regulations shall upon conviction, suffer the penalties provided in Article 210 of the Code.

**Sec. 8. Separability clause.** The validity of any provision of these Rules and Regulations shall not be affected by the declaration of the invalidity of any other provision or provisions thereof.

**Sec. 9. Repealing clause.** These Rules and Regulations supersede any other rules and regulations on the employment of children in the movie, television, radio, and entertainment industry.

**Sec. 10. Effectivity clause.** These Rules and Regulations on the Employment of Children in the Movie, Television, Radio and Entertainment Industry shall take effect upon their publication in a newspaper of general circulation in the Philippines.

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2. **Children in hazardous occupations/Worst Forms of Child Labor**

**ILO Recommendation No. 146, Recommendation Concerning Minimum Age For Admission to Employment (6 June 1973).**

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III. Hazardous Employment or Work

9. Where the minimum age for admission to types of employment or work which are likely to jeopardize the health, safety or morals of young persons is below 18 years, immediate steps should be taken to raise the age to the level.

10. (1) In determining the types of employment or work to which Article 3 of the Minimum Age Convention 1973, applies, full account should be taken of relevant international labor standards, such as those concerning dangerous substances, agents or processes (including ionizing radiations), the lifting of heavy weights and underground work.

   (2) The list of the types of employment or work in question should be re-examined periodically and revised as necessary, particularly in the light of advancing scientific and technological knowledge.

11. Where, by reference to Article 5 of the Minimum Age Convention, 1973, a minimum age is not immediately fixed for certain branches of
LOOKING AFTER FILIPINO CHILDREN

economic activity or types of undertakings, appropriate minimum age provisions should be made applicable therein to types of employment or work presenting hazards for young persons.


Art. 139.

x x x

(c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor.

Department of Labor and Employment Department Order No. 4 (8 June 1973).

Pursuant to Section 2 of Republic Act No. 679, as further amended by Presidential Decree No. 148, commonly known as the Woman and Child Labor Law, the following occupations are hereby declared hazardous to young workers, without prejudice to other occupations that may subsequently be declared as such:

Occupations Hazardous to Young Workers

A. Farming, fishing, hunting, logging, and related occupations

- fishermen (deep sea and offshore)
- divers of sponge, pearl and shell
- workers in logging operations (as cutter, sawyer, stripper, cable installer, feller)
- burners (big scale)

B. Mining, quarrying and related occupations

- operators of drilling and blasting machines, stone crushing equipment, conveyors, compressors, steam boilers, air receivers, gas cylinders, acetylene generators
- firing (with fuse, electricity)
- stone splitters
- underground workers

C. Transport, communication and navigational occupations

- firemen
- drivers or operators of bulldozers, cranes, pile driving equipment, trailers, road rollers, tractor lifting appliances, scaffold winch hoists, excavators, loading machines, trucks, buses, jeepneys and taxis
- tillers and greasers of heavy machineries
- traffic controllers and dispatchers

D. Craftsman, production, process and related occupations

- spinners and winders (textile)
- fiber and plastic prepares
- bleachers, dyers, and finishers of textiles using chemicals
- tool makers, machinists, plumbers, welders, flame cutters and platers
- installers and repairers of telephone and telegraph
- electrical and electronic filters
- linemen and cable jointers
- sawyers and woodworking machine setters and operators
- furnace and oven workers in brick making
- oven fuel feeders in brick making and bakery
- furnace men and kilnmen in the manufacture of glass and ceramics
- brewers and wine makers
- distillers of alcoholic beverages
- tanners
- blacksmiths, hammersmiths, forgemen
- those slaughtering and killing large cattle (carabaos, cows, horses)
- extractors of lard and oil
E. Service, sports and related work

- firefighters and guards
- hip stewards
- airline hostesses
- bartenders
- bus conductors and conductresses
- masseurs and masseuses
- taxi drivers
- entertainers (stripteasers, burlesque dancers, bomba performers)
- female bath house attendants
- female escorts for men
- janitors in bawdy houses
- lifeguards in swimming pools and resorts
- jockeys and horse trainers
- judo-karate instructors
- embalmers and undertakers
- dealers, croupiers, bookies and bet takers
- those lifting, carrying, handling and moving heavy loads

F. Professional, technical and related work

- personal service of female in bars, cocktail lounges, motels, hotels, massage clinics and other drinking places

G. All occupations in the processing and preparation of drugs and chemical products involving exposure to dangerous chemicals

H. All occupations in the manufacturing, handling, and transporting of explosive, toxic, corrosive, poisonous, and noxious components and flammable liquids in bulk.

I. All activities in any workroom, building, premises or any place where radium is stored, kept or processed or used in the manufacturing of self-luminous compounds or other radioactive substances.

Occupational Safety and Health Standards (Department of Labor and Employment).

Rule 1013 – Hazardous Workplaces

1. Where the nature of work exposes the workers to dangerous environmental elements, contaminants or work conditions including ionizing radiation, chemical, fire, flammable substance, noxious components and the like;
2. Where the workers are engaged in construction work, logging, firefighting, mining, quarrying, blasting, stevedoring, dockwork, deep-sea fishing and mechanized farming;
3. Where the workers are engaged in the manufacture or handling of explosives and other pyrotechnic products;
4. Where the workers use or are exposed to power-driven or explosive power-actuated tools; and
5. Where the workers are exposed to biological agents such as bacteria, fungi, viruses, protozoans, hematodes and other parasites.

ILO Convention No. 182, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and
Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Art. 2

For the purposes of the Convention, the term child shall apply to all persons under the age of 18.

Art. 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treatise;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Art. 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Art. 5

Each Member shall, after consultation with employers’ and workers’ organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Art. 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Art. 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(d) identify and reach out to children at special risk; and

(e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Art. 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

ILO Recommendation No. 190, Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (17 June 1999).

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-seventh Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1. The provisions of the Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "The Convention"), and should be applied in conjunction with them.

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations,
taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

(a) identifying and denouncing the worst forms of child labour;

(b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

(c) giving special attention to:

(i) younger children;

(ii) the girl child;

(iii) the problem of hidden work situation, in which girls are at special risk;

(iv) other groups of children with special vulnerabilities or needs;

(d) identifying, reaching out to and working with communities where children are at special risk;

(e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. Hazardous work

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

(a) work which exposes children to physical, psychological or sexual abuse;

(b) work underground, under water, at dangerous heights or in confined spaces;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers’ and employers’ organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

III. Implementation

5. (1) Detailed information and statistical data on the nature and extent of child labour should be complied and kept up to date to serve as a basis for determining priorities for national action for the abolition, in particular for the prohibition and elimination of its worst forms as a matter of urgency.

(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.

(3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be complied and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.
7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.

8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.

9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.

10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.

11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:

   (a) gathering and exchanging information concerning criminal offences, including those involving international networks;

   (b) defecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;

   (c) registering perpetrators of such offences.

12. Members should provide that the following worst forms of child labour are criminal offences:

   (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

   (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and

   (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.

13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.

14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.


Sec 3. The same Act, as amended, is hereby further amended by adding new sections to be denominated as Sections 12-A, 12-B, 12-C, and 12-D to read as follows:

x x x
“(1) All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003”, or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or

“(2) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or

“(3) The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or

“(4) Work which, be its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:

“a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

“b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or

“c) Is performed underground, underwater or at dangerous heights; or

“d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

“e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or

“f) Is performed in a unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels or vibrations; or

“g) Is performed under particularly difficult conditions; or

“h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or

“i) Involves the manufacture or handling of explosives and other pyrotechnic products.”

3. **Summer employment**

**Republic Act No. 7323, An Act to Help Poor but Deserving Students Pursue Their Education by Encouraging Their Employment During Summer and For Christmas Vacations (1992).**

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Sec 1. Any provision of law to the contrary notwithstanding, any person or entity employing at least fifty (50) persons may during the summer and/or Christmas vacations employ poor but deserving students fifteen (15) years of age but not more than twenty-five (25) years old, paying them a salary or wage not lower than the minimum wage provided by law and other applicable labor rules and regulations. For purposes of this Act, poor but deserving students refer to those whose parents’ combined incomes, together with their income, if any, do not exceed thirty six thousand pesos (P36,000.00) per annum. Employment should be at the Labor Exchange Center of the Department of Labor and Employment (DOLE).

Sec 2. Sixty per centum (60%) of said salary or wage shall be paid by the employer in cash and forty per centum (40%) by the Government in the form of a voucher which shall be applicable in the payment for his tuition fees and books in any educational institution for secondary,
tertiary, vocational or technological education. The amount of the education voucher shall be paid by the Government to the educational institution concerned within thirty (30) days from its presentation to the officer or agency designated by the Secretary of Finance.

The voucher shall not be transferable except when the payee thereof dies or for a justifiable cause stops in his duties in which case it can be transferred to his brothers or sisters. If there be none, the amount thereof shall be paid his heirs or to the payee himself, as the case may be.

Sec 3. The Secretary of Labor and Employment, the Secretary of Education, Culture and Sports and the Secretary of Finance shall issue the corresponding rules and regulations to carry out the purposes of this Act.

The Secretary of Labor and Employment shall be the Project Director of this program.

Rules And Regulations Implementing Republic Act No. 7323, Summer Program for the Education of Student.

Pursuant to the authority granted to the Secretary of Labor and Employment, Secretary of Education, Culture and Sports and Secretary of Finance under Section 3 of Republic Act No. 7323, the following rules and regulations are hereby promulgated and issued for the guidance of all concerned:

Rule I: Preliminary Provisions

Sec 1. Title. This issuance shall be known as the Rules and Regulations Implementing R.A. No. 7323 entitled “An Act to Help Poor but Deserving Students Pursue Their Education by Encouraging Their Employment During Summer and/or Christmas Vacations, Through Incentives Granted to Employers, Allowing Them to Pay Only Sixty Per Centum of Their Salaries or Wages and the Forty Per Centum Through Education Vouchers to be Paid by the Government, Prohibiting and Penalizing the Filing of Fraudulent or Fictitious Claims, and for Other Purposes”.

Sec 2. Construction. These Rules and Regulations shall be liberally construed to carry out the objectives of R.A. 7323.

Sec 4. Any person or entity who shall make any fraudulent or fictitious claim under this Act, regardless of whether payment has been made, shall upon conviction be punished with imprisonment of not less than six (6) months and not more than one (1) year and a fine of not less than ten thousand pesos (P10,000.00), without prejudice to the prosecution and punishment for any other offense punishable under the Revised Penal Code or any other penal statute.

In case of partnerships or corporations, the managing partner, general manager, or chief executive officer, as the case may be, shall be criminally liable.

x x x
secondary, tertiary, vocational or technological education or intending to be enrolled in any of these schools.

d. at least garnered an average passing grade during the school year/term referred to above.

Sec. 2. Student dependent of displaced or would-be-displaced workers. Any student dependent or dropout, dependent or workers who are displaced or about to be displaced due to business closures or work stoppages arising from economic or non-economic reasons, may also qualify under this Program provided he/she meets the qualifications required in subsecs. (a), (b) and (d) of the preceding section.

Sec. 3. Requirements for employment. Is support of his/her qualifications, the following documents shall be required from the student:

a. copy of birth or baptismal certificate or joint certification of at least two persons who can attest to the date of birth of the student-applicant;

b. certification by the School Registrar as to (1) his/her last enrollment, and (2) his/her passing average grade; and

c. certified true copy of the latest income tax return (ITR) of his/her parents or certification from the Barangay Chairman in the locality where his/her family resides or certification from employer/union president as to the employment status of his/her parents.

Rule IV: Program Implementation

Sec. 1. Program administration. The administration of this Program shall be lodged in the DOLE and its implementing units in the regions.

Sec. 2. Role of DECS. The DECS shall coordinate with DOLE in the promotion of this Program among students and administrators of all secondary, tertiary, vocational or technological institutions. The DECS shall ensure that the vouchers presented by students and its application will be honored by all concerned schools and monitored accordingly.

Sec. 3. Role of DOF. The DOF shall designate an officer or agency to administer the financial requirements of this Program. The Financial Management Service Division at the DOLE
Regional Offices is hereby deputized for this purpose.

Sec. 4. Where to apply for employment. Any qualified student may apply for employment assistance under this Program in any employment service unit of the DOLE Regional Offices. For this purpose, the DOLE Regional Offices shall mobilize the NMYC Training/Placement Centers, Public Employment Service Offices (PESOs) and the Community Employment Centers (CECs) of local government units which are under its technical supervision to assist in the employment needs of students in the provincial and city/municipal levels. The Secretary of Labor and Employment or the DOLE Regional Directors may deputize unions, non-government organizations and employers’ groups for the purpose of processing SPES participants who shall coordinate such activities to the former.

Sec. 5. Availment procedure. The student shall apply in person to the nearest labor exchange center of DOLE, NMYC Training/Placement Centers, PESOs/CECs operated by local government units, or other duly deputized entities mobilized for this purpose. The student shall submit himself/herself to a preliminary interview and screening to determine his/her qualifications. The student’s qualifications are then matched with the requirements of vacancies of participating persons or entities. If the student is qualified to a vacancy, he/she is referred for consideration by the employer. The employer will either accept or deny his/her application. In case his/her application is denied, the student may return to the public employment office for referral to other vacancies of participating entities where he/she may qualify.

Rule V: Payment of Salary

Sec. 1. Procedure in the payment of salary or wage of employed students. At least sixty percent (60%) of the student-employee’s salary which shall not be less than sixty percent (60%) of the applicable minimum wage shall be paid in cash by the employer. The remaining forty percent (40%) of his/her salary shall be paid by the DOLE in the form of education vouchers based on information to be provided by the employer. The education voucher shall be presented by the student-employee to the educational institution where he/she is enrolled or where he/she intends to enroll to cover expenses of his/her tuition fees and books. In case the amount of the education voucher exceeds the amount presented by the educational institution for payment, the DOLE shall refund the balance amount in cash.

Rule VI: Terms and Conditions in the Employment of Students

Sec. 1. Contract of employment. The employment of students under this Program shall be covered by an Employment Contract between the employer and the student-employee.

Sec. 2. Duties and responsibilities of employer. In addition to other applicable labor rules and regulations, the employer shall exercise the following duties and responsibilities towards the student-employee:

(a) to pay in cash at least sixty per centum (60%) of his/her salary;

(b) to ensure that the student-employee will not be exposed to hazardous undertakings or allowed to work in night clubs, cocktail lounges, beerhouses, massage clinics, and bars of similar establishments;

(c) to ensure that the student-employee below 18 years old shall not be required to work beyond 8 hours a day or 48 hours a week, or render work during rest days;

(d) to submit periodic reports to DOLE or its subsidiary units to include among others the following: number of students hired, date of hiring and termination of employment, the wage rate and the total cash wage or salary paid to the student-employee, number of hours worked and other pertinent information; and

(e) to ensure that the employment of women and young workers shall be in accordance with the Labor Code and its Implementing Rules.

Sec. 3. Duties and responsibilities of student-employee. The student-employee shall have the following duties and responsibilities:

(a) to perform tasks and activities assigned by the employer;
(b) to strictly adhere to the rules and regulations imposed by the employer; and

c) to use the education voucher for the purposes intended in the Act.

**Sec. 4. Duties and responsibilities of DOLE.** It shall be the duty and responsibility of DOLE to ensure

(a) the payment of forty per centum (40%) of the salary of the student-employee in the form of a voucher which shall be applicable for the payment of his/her tuition fees and books; and

(b) the payment of the amount of the education voucher to the educational institution concerned within thirty (30) days from its presentation to the Regional Office of DOLE: Provided, That the Regional Office of DOLE under whose jurisdiction the school of enrollment of the student-employee is located should pay the education voucher.

**Rule VII: Non-transferability of Education Voucher**

The education voucher shall not be transferable except in the following cases:

(a) death of the payee; or

(b) when the student stops in his studies due to prolonged illness, incapacity, economic necessity and similar causes. In this case the voucher can be transferred to his brothers or sisters. If the payee has no brother or sister, the amount of the voucher shall be paid his lawful heirs or to the payee himself, as the case may be.

**Rule VIII: Entitlement to Other Benefits and Incentives**

**Sec. 1. Other benefits and incentives.** The student-employee shall be entitled to other monetary benefits and incentives provided under existing laws specifically SSS and Medicare contributions.

**Rules IX: Special Provision**

**Sec. 1. Effect on regular employee.** Nothing in these rules shall be construed to justify an employer in terminating the services of regular employees to accommodate the student-employee or diminish the benefits of regular employees upon the effectivity of these rules.

**Rule X: Penal Provisions**

**Sec. 1. Filing of fraudulent or fictitious claim.** Any person or entity who shall make any fraudulent or fictitious claim under this Act, regardless of whether payment has been made, shall upon conviction be punished with imprisonment of not less than six (6) months and not more than one (1) year and a fine of not less than ten thousand pesos (P10,000.00) without prejudice to their prosecution and punishment for any other offense punishable under the Revised Penal Code or any other penal statute.

In case of partnerships or corporations, the managing partner, general manager, or chief executive officer, as the case may be shall be criminally liable.

**Rule XI: Effectivity.** These rules and regulations shall take effect immediately.

**IV. Administration and Enforcement of Child Labor Laws**

**ILO Recommendation No. 146, Recommendation Concerning Minimum Age for Admission to Employment (1973).**

**IV. Conditions of Employment**

12. (1) Measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and age maintained at a satisfactory standard. These conditions should be supervised closely.
Measures should likewise be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions, and schools for vocational or technical education, and to formulate standards for their protection and development.

13. (1) In connection with the application of the preceding paragraph, as well as in giving effect to Article 7, paragraph 3, of the Minimum Age Convention, 1973, special attention should be given to

(a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work;

(b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;

(c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours’ night rest, and of customary weekly rest days;

(d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;

(e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;

(f) the maintenance to satisfactory standards of safety and health and appropriate instruction and supervision.

(2) Subparagraph (1) of this paragraph applies to young seafarers insofar as they are not covered in respect of the matters dealt with therein by international labor Conventions or Recommendations specifically concerned with maritime employment.

Department of Labor and Employment Administrative Order No. 2 (Series of 1992).

In line with the mandate of the Department of Labor and Employment on workers' protection and welfare and in order to facilitate implementation of the UNICEF-assisted project “Breaking Ground for Community Action on Child Labor,” a Child Labor Project Management Team is hereby constituted to be responsible for the planning, implementation, monitoring and evaluation of all child labor program activities falling within the area of responsibility of the Department under the project.

The Child Labor Project Management Team (CLPMT) shall be under the direct supervision of the Undersecretary for Workers’ Protection and Welfare, Chairman of the National Child Labor Program Committee (NCLPC).

The CLPMPT shall be composed of a Project Director, an Assistant Project Director and technical personnel who shall be selected from the bureaus and agencies of the Department as indicated in attached organizational and functional structure.

Moreover, in line with the government’s decentralization policy and to ensure the efficient and effective implementation of project activities in the pilot and expansion areas, all concerned Regional Offices shall assign full-time coordinators for the project.

Funds for operational and other requirements of the CLPMT shall be drawn from the existing project funds including the government counterpart (GOP), subject to the project’s approved Work and Financial Plan for 1992-1993.

All bureaus, offices and attached agencies of the Department are enjoined to extend assistance to the NCLPC and the CLPMT whenever necessary.
“Sagip Batang Manggagawa”, an Interagency Quick Action Program, aims to respond to cases of child laborers in extremely abject conditions. An Inter-Agency Quick Action Team (QAT) shall be involved in detecting, monitoring and responding to the most hazardous forms of child labor. The program activities include monitoring and reporting cases to project authorities who can either refer cases to appropriate institutions or provide assistance directly such as rescuing the child laborers from factories or other places of employment and, when necessary, imposing sanctions on the illegal employer/recruiter, provision of psycho-social services to child labor victims; and rendering assistance in the prosecution of civil and/or criminal cases against violators of child labor laws.

x x x

“Sagip Batang Manggagawa” shall pursue the following objectives:

(1) establishment of community-based mechanisms for detecting, monitoring and reporting the most hazardous forms of child labor to proper authorities who can either refer cases to appropriate institutions or provide assistance directly;

(2) establishment of 24-hour Quick Action Team Centers and Network to respond to immediate/serious child labor cases;

(3) effectuation of immediate relief for child laborers in hazardous/exploitative conditions through conduct of search and rescue operations and other appropriate interventions;

(4) provision of appropriate physical, psycho-social, and other needed services for the rescued child labor victims;

(5) imposing administrative sanctions and filing criminal cases against violators of child labor laws;

(6) provision of technical assistance for the prosecution of civil and/or criminal cases filed against employers and employment agencies violating laws and standards relative to child labor;

(7) facilitation of the return of child laborers to parents/guardians or appropriate custodian; and

(8) upgrading of capabilities of implementors in coming up with child-friendly procedures in protecting children.

The following are the general roles and responsibilities of the members of the implementation machinery:

a. The Department of Labor and Employment (DOLE) shall lead the program implementation. It shall be the overall coordinator of activities under the QAT, like standards setting, particularly in the improvement of conditions of work of children, banning of child employment in hazardous occupations, and enforcement of laws, standards and policies under the mandate of the Department.

b. The Department of Social Welfare and Development (DSWD) shall provide appropriate medical and other related services for the child labor victims. If necessary, it shall also facilitate the admission and care of victims in state clinics/hospitals.

c. The Department of Health (DOH) shall provide appropriate medical and other relative services for the child labor victims. If necessary, it shall also facilitate the admission and care of victims in state clinics/hospitals.

The Child and Youth Health Unit shall be the focal point for the provision of necessary medical interventions. The National Center for Mental Health shall also provide services for the psychological/psychiatric needs of the child labor victims.
d. The role of the **Department of Education, Culture and Sports (DECS)** includes provision of special educational assistance to the rescued child laborers. It shall determine the educational needs of the victims and shall extend assistance for the return of the children to school and shall monitor the progress of the children’s education.

e. The role of the **Philippine Information Agency (PIA)** is the provision of technical assistance in the conduct of information, education and communication efforts focusing on activities aimed at strengthening the system for banning employment of children in working conditions that are hazardous/exploitative. It shall take the lead in the implementation of the QAT’s advocacy and social mobilization activities.

f. The role of the **Department of Justice (DOJ)** includes rendering of legal assistance to child laborers. It shall give priority to the preliminary investigation of complaints filed or inquest cases referred by the National Bureau of Investigation and the Philippine National Police relating to violations of the law, rules and regulations pertaining to child labor and, if warranted by the evidence, of their prosecution in the courts of competent jurisdiction. Whenever necessary and in extreme cases, it shall place informants/witnesses under the Witness Protection, Security and Benefit program (WPSB) in accordance with the provisions of Republic Act No. 6981.

The Task Force on Protection of Children Against Abuse, Exploitation and Discrimination of the National Prosecution Service shall be the focal point for the criminal prosecution of child labor cases to ensure immediate and appropriate response to such.

g. The **National Bureau of Investigation (NBI)** and the Department of Interior and Local Government (DILG) through the Philippine National Police (PNP) shall assist in the conduct of search and rescue operations and other appropriate interventions. Said agencies shall also render technical assistance in the prosecution of civil and/or criminal cases filed in relation to violation of laws and policies relative to child labor.

h. The **Department of the Interior and Local Government (DILG)** shall also develop and strengthen the capabilities of the Local Government Units (LGUs) for effective detection, monitoring and response to child labor cases. It shall also help the LGUs in the establishment of local “Sagip Batang Manggagawa” networks.

i. The role of the **Commission on Human Rights (CHR), the Child Rights Center of the Commission on Human Rights (CHR-CRC)** includes provision of assistance to the child labor victims in terms of the investigation of human rights violations against children. It shall initiate legal action for and in behalf of the child victims, and shall look into reports on violations of civil rights and freedoms (Articles 12, 13, 14, 15 and 16), as well as the special protection provisions (Articles 19, 38, 39 and 40) of the Convention on the Rights of the Child.

j. The **Trade Union Congress of the Philippines (TUCP)**, the Labor and Advisory Consultative Council (LACC), the Employers Confederation of the Philippines (ECOP), the National Council of Social Development Foundations of the Philippines, Inc. (NCSD), the Kamalayan Development Center (LDC), and other NGOs/Pos shall be the key cooperators for the implementation of the project. Said institutions shall develop among their ranks, mechanisms of surveillance and detection of child labor cases both in the formal and the informal work situations. Such institutions shall also participate in the establishment and manning of community-based 24-hour network centers in different localities.

(a) To improve met holds of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Art. 12 1. The States Parties to the present Covenant recognize the right of everyone to the
enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for

   (a) the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;

   (b) the improvement of all aspects of environmental and industrial hygiene;

   (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;

   (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.
CHAPTER 5

THE LEGAL PROTECTION FOR CHILDREN IN TIMES OF ARMED CONFLICT

H. Harry Roque, LL. M.
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**COMPENDIUM OF LAWS**

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Introduction

Children have always been accorded protected by International Law in times of armed conflict. Since ancient times, this protection was because they formed part and parcel of the general civilian population. Since ancient times, children, as part of the general civilian population, benefitted from the non-derogable rules that all civilians should not be the object of attack. They benefited also from the principle that all civilians are entitled to humane treatment. It was also prohibited to subject them to coercion, corporal punishment, torture, collective penalties and reprisals.

Children also benefitted from the rules that limited the means and methods of warfare that combatants could resort to. They have been protected against indiscriminate attacks, defined as attacks not directed against a specific military objective; from the prohibition on the use of weapons which cannot be directed at a specific military objective; from the prohibition on treating different military objectives as single military objectives, and prohibition on attacks which do not comply with the principle of proportionality. All persons who knowingly attack children as civilians, or those who will resort to a prohibited means and method of warfare against them, commit a breach of international law. They are also guilty of committing a crime against the international community.

Despite the principle of protection accorded to children as civilians since ancient times, it was only at the end of the Second World War that specific protections were accorded children as such, and not just as part of the general civilian population. Without a doubt, the painful situations suffered by children during the Second World War, ranging from being recruited as combatants; being made to suffer conditions of life intended to kill, such as being interned in concentration camps forcibly separated from their parents; and being the object of willful killings in gas chambers, prompted the international community to specify that the targeting of children in times of armed conflicts are specifically criminal. Given too that 26 million of the estimated 50 million casualties were civilians, the number of children who were orphaned as a result of these casualties was unprecedented.

II. Protection of Children in General under the Geneva Conventions and its Protocols

The Geneva Conventions and its Protocols now provide for these specific protections. Article 77 of the First Additional Protocol ("AP I") provides that “children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.” As stated by Jean Pictet “the word ‘respect’ (respecter) means, according to the
Dictionary of the French Academy, ‘to spare, not to attack’ (epargner, ne point attaquer) whereas ‘protect’ (protéger) means ‘to come to some one’s defence, to give help and support’. These words make it unlawful to kill, ill-treat or in any way injure — while at the same time they impose an obligation to come to his aid and give him any care of which he stands in need.”¹ The scope of protection provided for children in States where there is an international armed conflict under Article 77 of AP I is unqualified.² Additional Protocol II (“AP II”), applicable in non-international armed conflicts, provides that “children shall be provided with the care and aid they require.” While Article 4 of AP II provides a list of obligations, this list does not prevent States from providing additional measures of protection for children.³ The Geneva Conventions then provides for the rights of the child in an armed conflict, as well as specific duties of states relative to them.⁴

II.A. Rights of Children in Armed Conflict

The following are the Rights of the Child in times of armed conflicts:

One, they are entitled to care and aid.⁵ This includes the right to receive aid and relief, right to receive support, and the right to additional food in proportion to their physical needs.⁶

Two, he has the right to his personal status.⁷ Neither nationality nor civil status of the child should be changed.⁸

Three, the child has the right to receive preferential treatment which is granted to the same categories of nationals of the State concerned.⁹

Fourth, he has the right to be detained in separate quarters separate from adults when he is arrested, detained, or interned;¹⁰

Five, the right to education when he is interned, as well as rights to a playground for sports and outdoor games;¹¹

Six, the right to special protection when captured as taking part in hostilities;¹²

Seventh, the right not to be meted the death penalty;¹³

Eighth, throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except

⁶ IV GENEVA Art. 89 and Art. 70, AP I; See also Principle 8, 1959 Declaration of the Rights of the Child (“1959 DRC”).
⁷ Art. 50, IV GENEVA.
⁸ Arts. 7-8, CRC.
⁹ Art. 38 (5), IV GENEVA.
¹⁰ Art. 81, Art. 82, pars. 2-3, IV GENEVA; Art 10(2)(b) and 10(3), ICCPR; Art. 77(4), AP I; and Art. 37(c), CRC.
¹¹ Art. 94, IV GENEVA.
¹² Art. 132, id.
¹³ Art. 68, id.
when separation of a temporary nature is necessitated for reasons of employment or health.\textsuperscript{14} Internees may request that their children who are left at liberty without parental care shall be interned with them.\textsuperscript{15} Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.\textsuperscript{16}

Ninth, right of infants to have their mothers spared from the death penalty.\textsuperscript{17}

Tenth, non-repatriated children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the state concerned.\textsuperscript{18} Preferential treatment may cover the granting of supplementary ration cards, facilities for medical and hospital treatment, special welfare treatment among others.\textsuperscript{19}

Eleven, all persons, which includes children, in the territory of a party to the conflict, or in its occupied territory shall be enabled to give and to receive news of a strictly personal nature to members of their families, wherever they may be, speedily and without undue delay.\textsuperscript{20} The expression "family news" should be taken as meaning all particulars, news, questions, information, etc. concerning the personal and family life of a person.\textsuperscript{21} The right to give family news is accompanied by the right to receive it; it applies to members of a family such as people who are related, or connected by marriage.\textsuperscript{22} The right to give his family news of a personal nature and to receive personal news from them is one of the inalienable rights of man; it must be respected fully and without reservations.\textsuperscript{23}

Twelve, children under 18 years cannot be compelled to work during internment.\textsuperscript{24} It is valid for all the types of work authorized by the Convention and should be included in the list of preferential measures in favor of children and protected persons who are minors, since young people must be protected by prohibiting once and for all such regrettable actions as the forcible enlistment of children and adolescents and their compulsory employment on work which is often beyond their physical capacity and in any case separates them from their parents.\textsuperscript{25}

\section*{II. B. Obligations of States for Children in Armed Conflict}

On the other hand, the obligations of State parties are:

a) Duty to provide children with aid and care;\textsuperscript{26}

b) Duty to evacuate children should this be necessary for compelling reasons;\textsuperscript{27}

\begin{footnotesize}
\begin{itemize}
  \item[14] Art. 82, id.
  \item[15] Art. 82, id.
  \item[16] Art. 82, id.
  \item[17] Art. 76, AP I.
  \item[18] Art. 38, IV GENEVA.
  \item[19] Conference, Commentary on IV GENEVA, Art. 38, pp. 248-249.
  \item[20] Art. 25, IV GENEVA.
  \item[21] Conference, Commentary on IV GENEVA, Art. 25, p. 191.
  \item[22] Id.
  \item[23] Id.
  \item[24] Art. 51, IV GENEVA.
  \item[25] Conference, Commentary on IV GENEVA, Art. 51, p. 294.
  \item[26] Art. 77, AP I and Art 4, AP II.
\end{itemize}
\end{footnotesize}
c) Duty to establish in their own territory and if the need arises, in occupied areas, hospital and safety zones and localities to protect from the effects of war children under fifteen, expectant mothers and mothers of children under seven.\textsuperscript{28} These categories were nevertheless chosen because the Conference considered that they were appropriate, reasonable and generally in accord with the requirements of the physical and mental development of children.\textsuperscript{29}

d) To facilitate in every possible way the reunion of families dispersed as a result of armed conflict and shall encourage in particular the work of humanitarian organizations engaged in this task;\textsuperscript{30}

e) The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children;\textsuperscript{31}

f) The Occupying power must refrain from requisitioning staff, premises or equipment of these institutions and must give people, who are responsible for children, facilities for communicating freely with the occupation authorities. When their resources are inadequate, the occupying Power must ensure that the persons concerned receive food, medical supplies and other things which are needed to enable them to carry out their task. It is in this sense that the expression ‘proper working’ of children’s institutions should be understood.\textsuperscript{32}

g) The occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favor of children under fifteen years, expectant mothers and mothers of children under seven years.\textsuperscript{33}

h) Parties to the conflict shall take necessary measures to ensure that children under fifteen who are orphaned or are separated from their families are not left to their own resources and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.\textsuperscript{34}

The maintenance of these children would mean their feeding, clothing, accommodation and care for their health including medical treatment. Jean Pictet believes that “in carrying out this task the parties to the conflict are to give the children the benefit of existing social legislation supplemented, where necessary, by new provisions. They are to ensure that any child who has been found abandoned is entrusted as soon as possible to the tender care of a friend or, when there is no such person, ensure that he is placed in a crèche, children’s home or infant’s home.”\textsuperscript{35}

i) Education shall, as far as possible, be entrusted to persons of the same cultural tradition to which the children belong. It should exclude any religious or political propaganda designed to

\textsuperscript{27} Art. 17, IV GENEVA, and Art 78, AP I.
\textsuperscript{28} Art. 14, IV GENEVA.
\textsuperscript{29} Conference, Commentary on IV GENEVA, Art 14, p. 126.
\textsuperscript{30} Art 74, IV GENEVA, and Art 4, AP II.
\textsuperscript{31} Art. 50, IV GENEVA.
\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Arts. 24 and 50, IV GENEVA.
wean away children from their natural milieu.\textsuperscript{36} Should the local institutions be inadequate for the purpose, the occupying power shall make arrangements for the maintenance and education of orphaned or separated children, if possible by persons of their own nationality, language and religion.\textsuperscript{37} This lays down expressly that even in the case of occupation it is the authorities of the country in question, implicitly designated by Article 24 of IV GENEVA, who are in the first instance responsible for looking after children who are without their natural protectors.\textsuperscript{38} The Occupying Power enters into the matter only when the local authorities have not carried out their duties and when there is no relative or friend who can provide for the maintenance and education of the children concerned.\textsuperscript{39}

j) Parties to the conflict shall endeavor to conclude local agreements for the removal from besieged or encircled areas of children and maternity cases along with wounded, sick etc. and for the passage of ministers of all religions, medical personnel and medical equipment.\textsuperscript{40}

k) No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require and the written consent of parents or legal guardians has been acquired.\textsuperscript{41} The adjective "temporary" used here is very important; it clearly shows that anyone who makes a decision to evacuate children, must at the same time hold out the prospect of their return and of restoring relations with their family in due course.\textsuperscript{42} In the absence of parents or guardians, consent is required of the persons who by law or custom are primarily responsible for the care of the children; this wording takes into account that in some parts of the world the family has a broader definition than in others.\textsuperscript{43}

l) Parties to the conflict shall endeavor to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.\textsuperscript{44} The identity discs used should be made of non-inflammable material and should bear the surname, date of birth and address of the child and its father's first name. These markings should either be engraved on the disc or inscribed in indelible ink.\textsuperscript{45} Further particulars might be useful, to reduce the danger of mistakes arising: finger prints, a photograph, an indication of the child's blood group, rhesus factor, etc.\textsuperscript{46}

m) Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage.\textsuperscript{47} In other words, the Occupying Power must not do anything to hamper the normal working of the administrative services responsible for the identification of children, in particular newly born infants. The register offices must therefore continue to play their part, which is essential to the legal life of the community and individuals and to the administration of the country (the drawing-up of official documents, preservation of original
n) Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons, including children, who are in its power.\textsuperscript{49} Note that this paragraph does not state in detail the nature, composition and working methods of the Bureau, all these matters being left to the free decision of each Party, nor does it state what authority will be responsible for establishing and conducting the Bureau.\textsuperscript{50}

o) The parties to the conflict shall release the internee after the close of hostilities.\textsuperscript{51} The expression "the close of hostilities" should be taken to mean a state of fact rather than the legal situation covered by laws or decrees fixing the date of cessation of hostilities.\textsuperscript{52} The Parties to the conflict shall, moreover, endeavor during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.\textsuperscript{53} However this does not imply that the Powers are obliged to conclude such agreements, but merely makes an urgent recommendation based on experience.\textsuperscript{54}

II.B.1. Protection of Children recruited as combatants

In addition to the foregoing rights of children and obligations of state parties relative to them, the Geneva Conventions and its Protocols, together with the Convention on the Rights of the Child (CRC) and its Optional Protocol provide for the prohibition and criminal nature of recruiting children as combatants.

Article 77 of Protocol I prohibits the enrolment of children, below fifteen years, in armed forces:

“The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor

\textsuperscript{48} Conference, \textit{Commentary on IV GENEVA}, Art. 50, p. 287.
\textsuperscript{49} Art. 136, IV GENEVA.
\textsuperscript{50} Conference, \textit{Commentary on IV GENEVA}, Art. 136, p. 523.
\textsuperscript{51} Art. 133, IV GENEVA.
\textsuperscript{52} Conference, \textit{Commentary on IV GENEVA}, Art. 133, pp. 514-515.
\textsuperscript{53} Art. 132, IV GENEVA.
\textsuperscript{54} Conference, \textit{Commentary on IV GENEVA}, Art 132, p 512.
to give priority to those who are oldest."

Article 4, paragraph 3 (c) of Protocol II lays down a similar principle which is applicable to non-international armed conflict. It provides: "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."

Children enrolled in the armed forces and who are between the age of fifteen and eighteen years and are caught taking part in hostilities do have the status of combatants and are *ipso facto* entitled to prisoner of war status under the terms of Art. 4 A, paragraph 1 of the Third Geneva Convention ("III GENEVA") relating to the treatment of Prisoners of War. Article 16 of III GENEVA does permit privileged treatment based upon age. This would allow a party to the conflict to take age of the combatant into consideration while giving privileged treatment. For example, Article 49 of III GENEVA prescribes that the Detaining Power may utilize the labor of prisoners of war taking into account their age and sex among others.

Children between the ages of fifteen and eighteen years who are members of the armed forces of a Party to the conflict and who have fallen into the power of the enemy are prisoners of war ("POW"). Such combatant children when they become prisoners of war are protected like any other POW by the provisions of III GENEVA, the fundamental principle of which is that the POW must at all times be humanely treated and are entitled in all circumstances to respect for their person and their honor.

AP I, Article 77, paragraph 4 explicitly prescribes that children, if arrested, detained or interned for reasons related to the armed conflict, shall be held in quarters separate from the quarters of adults except when they form part of the family and are accommodated as family.

### II.B.2. State Obligation to protect children under fifteen years from recruitment and direct participation in armed conflict

Parties to the conflict are required to take all feasible measures so that children below fifteen years of age do not take direct part in hostilities and are not recruited into their armed forces.\(^{55}\)

The question arises, in spite of the provisions of paragraph 2 of Article 77 of AP I, when children who have not attained the age of fifteen years are captured taking a direct part in hostilities. In such cases, paragraph 3 of Art. 77 of AP I prescribes that in such exceptional cases, the children under fifteen years shall continue to benefit from the special protection accorded by this article whether or not they are prisoners of war. Even when they are prisoners of war, "under fifteens" will continue to have the benefit of the provisions of paragraphs 1, 4 and 5 of Article 77 of AP I.\(^{56}\) The death penalty cannot be pronounced on them, and they must be interned in quarters separate from those of adults.\(^{57}\) According to Dutli, "children who participate in hostilities but are not combatants within the meaning of international humanitarian law remain subject to the

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\(^{55}\) Art. 77, par. 2, AP I.  
\(^{56}\) Conference, *Commentary on AP I*, Art. 77, par. 3194, p. 902.  
\(^{57}\) Id.
domestic legislation of the countries of which they are nationals. If a child under fifteen years of age participates in hostilities under such conditions that he does not have the right to POW status, he may fall under IV GENEVA if he is a protected person within the meaning of that Convention. Finally, if he does not have the right to POW treatment, and he is not a protected person either, he is entitled, according to Article 45 paragraph 3 of AP I, to the protection of Article 75 in AP I which is referred to in paragraph 4 of Article 77 under AP I. That provision is important, especially with regard to judicial guarantees, as these are only available under the fourth Convention for protected persons in occupied territory.

II.B.3 Minimum Protection for Child Soldiers in absence of POW status

Article 45 of AP I contains provisions relating to protection of persons who have taken part in hostilities. It is provided that a person who takes part in hostilities and is captured by an adverse party shall be presumed to be a POW and shall be protected by III GENEVA. In case of doubt, he shall continue to be treated as POW until such time as his status has been determined by a competent tribunal. If it is decided that he is not entitled to POW status, and he does not benefit from more favorable treatment in accordance with the IV GENEVA, he shall be entitled to protection as mentioned under Article 75 of AP I which prescribes the fundamental guarantees available to such persons. It is a very detailed and long provision. It prohibits violence to life, health or physical or mental well-being of persons, and provides detailed rules for a fair trial.

II.B.4. Repatriation at Close of Hostilities

Combatant children who are prisoners of war must, like all prisoners of war, be repatriated as soon as hostilities cease, except when they are required to face criminal proceedings and their consequences. When the ICRC helps in repatriation at the close of hostilities, it makes every effort to ensure that children are given priority on account of their vulnerability.

III. Issues concerning Children in Armed Conflict

III.A. Age of Minority under the Geneva Conventions and Protocols contrasts with the Optional Protocol to the

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60 Id.
61 Id.
62 Dutli, p. 430.
63 Id.
Convention on the Rights of the Child and International Labor Organization Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

While the Geneva Conventions and its protocols prohibit the recruitment of Children under 15 years of age, the prohibition was raised to 18 by the Optional Protocol to the Convention on the Rights of the Child:

“Article 1

"States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

“Article 2

"States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

“Article 3

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;
(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
(c) Such persons are fully informed of the duties involved in such military service;
(d) Such persons provide reliable proof of age prior to acceptance into

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national military.”

Likewise, the International Labor Organization Convention 182\textsuperscript{65} has condemned forced or compulsory recruitment of children as combatants, to wit:

“Article 1

“Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

“Article 2

“For the purposes of this Convention, the term \textit{child} shall apply to all persons under the age of 18.

“Article 3

“For the purposes of this Convention, the term \textit{the worst forms of child labour} comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom, and forced or compulsory labour, \textit{including forced or compulsory recruitment of children for use in armed conflict};”\textsuperscript{66}

III.B. Recruitment of children as combatants is prohibited but not criminalized prior to the Rome Statute

While recruitment is indeed prohibited under international humanitarian law (IHL), it does not appear to criminalize the act. Proof of this includes the fact that recruitment of children is not among those acts classified by the Geneva Conventions as grave breaches which State Parties to the Conventions are treaty bound to criminalize through domestic penal legislation.\textsuperscript{67} Neither is child recruitment among those crimes tried by the Ad Hoc World War II Tribunals, be it in Nuremberg or Tokyo. This failure to prosecute particularly by the Nuremberg Tribunal is a significant indicator that the act has not been criminalized since children were widely recruited as combatants, particularly by Nazi Germany, and yet not a single Nazi was tried for it.

The same may be said of the Statutes that created the United Nations War Crimes Tribunals for the Former Yugoslavia and for Rwanda. There is nothing in their respective statutes that granted these tribunals jurisdiction to try individuals for the recruitment of children. Furthermore, even in the human rights treaties that do prohibit the recruitment of child soldiers, there is no duty


\textsuperscript{66}Id., emphases supplied.

\textsuperscript{67}Art. 49, Geneva Convention I; Art. 50, Geneva Convention II; Art. 129, Geneva Convention III; Art. 146, Geneva Convention IV.
imposed on State Parties to enact domestic legislation criminalizing the act. As if to highlight the non-criminal nature of child recruitment, the UN Secretary-General included in his 2005 report a recommendation that: “National governments should enact and apply relevant legislation to ensure the protection, rights, and well-being of children and should ensure the protection and rehabilitation of war affected children within their jurisdiction.”

This recommendation seems to concede the need to enact domestic penal legislation to criminalize recruitment of children.

It was not until the Rome Statute Creating the International Criminal Court (Rome Statute) did an international treaty criminalize the prohibited act of child recruitment. Article VIII (2) (b) (xxvi) of the Rome Statute states:

“Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.”

In fact, the International Criminal Court (ICC) in 2006 arrested Thomas Lubanga of Congo, founder and leader of one of the most dangerous militias, who is now undergoing trial for designing policies to force the enlistment and conscription of children under fifteen years.

The problem, however, is that the Rome Statute has only one hundred and sixteen (116) States Parties as of June 22 2011. Most of the populous and politically influential States, if not “specially affected nations,” such as the United States, China, Russia, the Philippines, and India are not parties to the Rome Statute. As a treaty therefore, a State would have to be a party to the Rome Statute before recruitment may be considered as being illegal in its jurisdiction. This would mean that recruitment became illegal in only one hundred jurisdictions. Moreover, the Rome Statute itself provides that the ICC acquires jurisdiction prospectively.

The Rome Statute took effect only on 1 June 2002 upon the deposit of the sixtieth instrument of ratification. Apropos, unless the act of recruitment took place within the jurisdiction of any of the State Parties, or were committed by nationals thereof, and prospectively from 1 June 2002, recruitment per se would not be criminal.

Another possibility would be to examine if the Rome Statute may be said to restate a customary norm that would thereby bind all States regardless of whether they have become parties to the Statute. Here, guidance may be had in a long line of cases already decided upon by the International Court of Justice (ICJ). In the North Sea Continental Shelf case, the ICJ ruled that two elements, State practice and opinion juris, need to concur in order that a treaty norm may be said to have crystallized into a customary norm. State practice may be discerned from acts of competent organs of States and should be so extensive as to be virtually uniform, although unanimity is not

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71 Id.

72 Art. 11., Rome Statute of the International Criminal Court.


74 North Sea Continental Shelf cases, ICJ Reports (1969), par. 77.
looking after filipino children

required.\textsuperscript{75} \textit{Opinio juris}, on the other hand, refers to the psychological belief that a norm should be followed because it is law.\textsuperscript{76}

Here, the status of ratification of the Rome Statute militates against the conclusion that it is evidence of both State practice and \textit{opinion juris}. To begin with, its status of ratification of one hundred sixteen (116) States out of a total of one hundred ninety-seven States, albeit already comprising a simple majority of all States, could hardly qualify as “virtually uniform.” Worse, States that have not ratified the Rome Statute comprise an overwhelming majority of the world’s population or more than two-thirds of the planet’s population. In terms of geographical diversity, States that have ratified the Rome Statute only represent countries from three continents, to wit: Europe, although largely countries located in Western Europe, Latin America, and Africa. The status of ratification among Asian countries is particularly dismal as in fact only fifteen (15) Asian States have ratified the Rome Statute as of June 2011.\textsuperscript{77}

As to the element of \textit{opinio juris}, it is telling that on the basis of the UN Secretary-General’s report, only a number of countries have enacted domestic legislation criminalizing child recruitment. One of them, the Philippines, was even singled out in the Secretary-General’s report. All told, it would be doubtful to conclude that the Rome Statute provision criminalizing recruitment of children has already crystallized into a customary norm.

\subsection*{III.2.1. Use of Decisions by International Tribunals as evidence of the status of the criminal nature of recruitment of children as combatants is inadequate}

Decisions of International Tribunals, insofar as they are decisions of respected publicists, may provide ample evidence of the existence of an applicable norm. Here, there are at least three decisions that may provide assistance on the status of the criminal nature of child recruitment.

In \textit{Prosecutor v Tadic},\textsuperscript{78} the Trial Chamber of the United Nations International Criminal Tribunal for the former Yugoslavia ruled that while the Geneva Conventions were originally applicable only to international armed conflicts, with the increasing frequencies and increasing barbarity of non-international armed conflicts, the provisions of the Conventions should now be deemed applicable \textit{mutatis mutandis} also to non-international armed conflicts. The tribunal said:

“When what is in issue is what the Geneva Conventions contemplate in the case of grave breaches, namely their prosecution before a national court and not before an international tribunal, it is natural enough that there should be a requirement of internationality; a nation might well view with concern, as an unacceptable infringement of sovereignty, the action of a foreign court in trying an accused for grave breaches committed in a conflict internal to that nation. Such considerations do not apply to the International Tribunal, any more than do the references in the Conventions to High Contracting Parties and much else in the Conventions; all these are simply inapplicable to the International Tribunal. They do not apply because the International Tribunal is not in fact, applying conventional international law but,

\begin{itemize}
\item[\textsuperscript{75}] Id., par. 74, p. 43.
\item[\textsuperscript{76}] Id., par. 77.
\item[\textsuperscript{77}] See <http://www.icc-cpi.int/Menus/ASP/StatesParties/Asian%20States> [6 July 2011].
\end{itemize}
rather, customary international law, as the Secretary-General makes clear in his Report, and is doing so by virtue of the mandate conferred upon it by the Security Council. In the case of what are commonly referred to as "grave breaches", this conventional law has become customary law, though some of it may well have been conventional law before being written into the predecessors of the present Geneva Conventions."

While acknowledging the recent trends of "both State practice and the whole doctrine of human rights—which, as pointed out below, tend to blur in many respects the traditional dichotomy between international wars and civil strife," the Appeals Chamber however reversed this finding of the Trial Chamber and instead found that:

"Notwithstanding the foregoing, the Appeals Chamber must conclude that, in the present state of development of the law, Article 2 of the Statute only applies to offences committed within the context of international armed conflicts."

Nonetheless, the Appeals Chamber noted, "...the conflicts in the former Yugoslavia have both internal and international aspects..." and gave the trial chamber the freedom to determine the applicable law involved.

Applying now the rule given by the Appeals Chamber on grave breaches, the Trial Chamber nonetheless acquitted the accused for the said counts upon its characterization that the nature of the conflict was non-international and thus, no conviction may be had for grave breaches:

"The consequence of this finding, as far as this trial is concerned, is that, since Article 2 of the Statute is applicable only to acts committed against ‘protected persons’ within the meaning of the Geneva Conventions, and since it cannot be said that any of the victims, all of whom were civilians, were at any relevant time in the hands of a party to the conflict of which they were not nationals, the accused must be found not guilty of the counts which rely upon that Article, namely Counts 5, 8, 9, 12, 15, 18, 21, 24, 27, 29, and 32." Such acquittal contradicts the tribunal’s own conclusion that the nature of the conflict has become irrelevant insofar as what the applicable law is to a type of armed conflict.

Furthermore, on appeal, the Appellate Tribunal did not give credence to the above dicta and instead, reversed the acquittal upon its characterization that the conflict between the Bosnian Government forces and the Bosnian Serbs was “internationalized’ and thus, the applicable law are the Geneva Conventions. The Appeals Chamber stated:

"The Appeals Chamber therefore concludes that, for the period material to this case (1992), the armed forces of the Republika Srpska were to be regarded as acting under the overall control of and on behalf of the FRY. Hence, even after 19 May 1992...

81Id., par. 84.
82Id., par. 77.
the armed conflict in Bosnia and Herzegovina between the Bosnian Serbs and the central authorities of Bosnia and Herzegovina must be classified as an international armed conflict.”85

_Tadic_ could have been authority for the proposition that since the Geneva Conventions are now equally applicable to both international and non-international conflicts, then other serious violations of International Humanitarian Law (IHL) such as child recruitment could now be penalized. The problem here is that the Appellate Tribunal, in reversing the Trial Chamber on the counts for grave breaches, in fact reinforced the continuing dichotomy between international and non-international armed conflicts. With the Appellate Tribunal’s ruling that the Geneva Conventions will apply in a conflict, which it characterized as having been “internationalized,” it then ruled that grave breaches might thus be prosecuted. It would seem thus that the case would now be more appropriate for the proposition that child recruitment is not criminal in nature as the Geneva Conventions does not classify recruitment of child soldiers as being criminal in nature.

In _Prosecutor v. Akayesu_,86 the accused was charged with war crimes, crimes against humanity, and serious violations of both Common Article Three of the Geneva Conventions, and Protocol II to the Geneva Conventions. The defense of the accused was the legality of Article 4 of the Tribunal’s statute that gave the tribunal jurisdiction to try individuals for both violations of Common Article 3 and Additional Protocol II to the GC’s. While Akayesu was acquitted of the charges involving serious violations of IHL for failure of the accused to prove that he was a combatant in a non-international armed conflict, still the court had the occasion to state that Article 4 criminalizing serious violations, including child recruitment, was criminal not only pursuant to the statute of the tribunal, but also under international customary law. The Tribunal said:

> “The third crime on which the Chamber rendered its conclusions is that for which it has competence pursuant to article 4 of the Statute, which provides that the Tribunal is empowered to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the protection of War Victims, and of the Additional Protocol II thereto of 8 June 1977. The said Article 3 common to the Geneva Conventions extends a minimum threshold of humanitarian protection as well to all persons affected by a non-international conflict, a protection which was further developed and enhanced in the 1977 Additional Protocol II. The Chamber decided to analyze separately, the respective conditions of applicability of Article 3 Common to the Geneva Conventions and the Additional Protocol II thereto. It then analyzed the conflict which took place in Rwanda in 1994 in the light of those conditions and concluded that each of the two legal instruments was applicable in this case. Furthermore, the Chamber is of the opinion that all the norms set forth under Article 4 of its Statute constitute a part of customary international law. It finally recalled that the violation of the norms defined in Article 4 of the Statute, may, in principle, commit criminal responsibility of civilians and that, the Accused belongs to the category of individuals who could be held responsible for serious infringement of international humanitarian law, particularly for serious violations of

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85 Id., par. 162.
86 Case No. ICTR-96-4-T. Available at: <http://www.unictr.org/Portals/0/Case%5CEnglish%5CAkayesu%5CJudgement%5Cakay001.pdf> [6 July 2011].
As subsidiary source of international law, the ruling in Akayesu is at most persuasive although inconclusive as to the status of recruitment as an international crime. First, the court did not have to rely on customary law as basis for conviction as in fact, Article 4 of its statute already defined serious violations as being criminal in nature and within the jurisdiction of the tribunal. Second, the court did not elaborate on why it considered serious violations as being criminal under customary law. In fact, all that appeared in the decision is a conclusion unsupported by any evidence of either state practice or opinio juris.

Such a discussion did take place in the case of Prosecutor v. Norman, decided upon by the Special Tribunal for Sierra Leone. In a 3–2 decision, the majority concluded that the prohibition found in the Geneva Conventions, the First and the Second Additional Protocol, the Convention on the Rights of the Child, the African Declaration on the Rights of the Child, and the Report of the Secretary General, as well as the Statute of the Tribunal, and the Rome Statute are material evidence of the concurrence of both state practice and opinio juris. The Special Tribunal said, through the majority:

“Customary law, as its name indicates, derives from custom. Custom takes time to develop. It is thus impossible and even contrary to the concept of customary law to determine a given event, day or date upon which it can be stated with certainty that a norm has crystallized. One can nevertheless say that during a certain period the conscience of leaders and populations started to note a given problem. In this case of recruiting child soldiers this happened during the mid-1980s. One can further determine a period where customary law begins to develop, which in the current case began with the acceptance of key international instruments between 1990 and 1994. Finally, one can determine the period during which the majority of states criminalized the prohibited behavior, which in this case, as demonstrated, was the period between 1994 and 1996. It took a further six years for the recruitment of children between the ages of 15 and 18 to be included in treaty law as individually punishable behavior. The development process concerning as persons under the age of eighteen, culminated in the codification of the matter in the CRC Optional Protocol II.

“The overwhelming majority of States, as shown above, did not practice recruitment of children under fifteen years old according to their national laws, and many had, whether through criminal or administrative law, criminalized such behavior prior to 1996. The fact that child recruitment occurs and is thus illegally practiced does not detract from the validity of the customary norm. It cannot be said that there is a

88 Decision on Preliminary Motion on Lack of Jurisdiction (Child Recruitment), Prosecutor v. Sam Hinga Norman, Appeals Chamber of the Special Court for Sierra Leone (31 May 2004), Case Number SCSL-2003-14-AR72 (E). The full judgment is available in four parts at: <http://www.sc-sl.org/LinkClick.aspx?fileticket=XsdlFGVsuTI%3d&tabid=193>
<http://www.sc-sl.org/LinkClick.aspx?fileticket=IC1fDG3SUMo%3d&tabid=193>
<http://www.sc-sl.org/LinkClick.aspx?fileticket=z1qWR0wTtgp%3d&tabid=193>
<http://www.sc-sl.org/LinkClick.aspx?fileticket=UgpOSGi62M4%3d&tabid=193> [July 2011].
contrary practice with a corresponding *opinio juris* as States clearly consider themselves to be under a legal obligation not to practice child recruitment."  

The persuasiveness of the majority opinion, is, however, diluted by the fact that it is thus far the only judicial declaration that ruled that child recruitment is criminal under customary international law; it is highly dissented in that it was a 3–2 majority opinion; and the material evidence that it cites to prove the twin elements of customary law provide largely only for a prohibition of child recruitment, and not the criminalization thereof. More importantly, the strong dissenting opinion is equally impressive, if not in fact stronger than the majority opinion.

It was the opinion of Justice Robinson that the crime of child recruitment only became criminal when the Rome Statute took effect on 1 July 2002. In support of this conclusion, he emphasizes that the crime of child recruitment was included in the Rome Statute not as a codification of a customary norm, but as a progressive development in international criminal law.

He cites the work of members of the plenipotentiary conference who without doubt are recognized as publicists in the field: Professors Cassese and Schabas. He argues rather convincingly that as further proof that the crime was a progressive development, the fact that until the Rome Statute, only five countries have existing statute criminalizing child recruitment and that in fact, other states that do have such legislation did so as compliance with their treaty obligations under the Rome Statute itself. He says in fact that the impetus to make child recruitment an international crime begun only in 1996.

The above analysis convinces me that it would breach the *nullum crimen* rule to impute the necessary intention to create an international law crime of child enlistment to States until 122 of them signed the Rome Treaty. From that point, it seems to me it was tolerably clear to any competent lawyer that a prosecution would be “on the cards” for anyone who enlisted children to fight for one party or another in an ongoing conflict, whether internal or international. It is not of course necessary that a norm should be embodied in a Treaty before it becomes a rule of international criminal law, but in the case of child enlistment the Rome Treaty provides a *sufficient* mandate—certainly no previous development will suffice. It serves as the precise point from which liability can be reckoned and charged against defendants in this court. It did, of course, take four years before the necessary number of ratifications were received to bring the treaty into force. But the normative status of the rule applicable to States prior to 1998, the overwhelming acceptance by states in the Rome Treaty of its penal application to individuals, and the consequent predictability of prosecution from that point onwards, persuades me that the date of the Treaty provides the right starting point.  

**III.B.2. Use and application of United Nations Security Council Resolutions to hold individuals criminally responsible for the recruitment of child soldiers**

The conclusion thus far is that on the basis of the sources of law found in Article 38 of the ICJ statute, child recruitment became an international crime only because of the Rome Statute of the
ICC. With this conclusion, does this mean that there is no legal basis to prosecute a person for the crime of child recruitment if the act does not fall within the jurisdiction of the ICC?

To this, the answer is that notwithstanding the fact that child recruitment appears to be a treaty based international crime, there appears yet to be an additional basis to hold individuals criminally liable for the crime. This is because as a matter of treaty law, member nations of the United Nations are bound to follow resolutions approved by the Security Council (SC):

“Art. 25. The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

The law-making function of United Nations bodies, such as the United Nations Security Council (SC), has been the subject of numerous writings and is longer in dispute. Certainly, it is now safe to conclude that while the SC resolutions, particularly those pursuant to Chapter 7 of the UN Charter, were not intended to be material sources of international law, they are today recognized as a distinct source of obligation under international law.

SC resolutions appear to now have penalized the recruitment of child soldiers. All these resolutions were drafted invoking the mandate pursuant to Chapter 7 of the UN Charter for the SC to maintain international peace and security, and in this connection, “its commitment to address the impact of armed conflict on children,” a phrase intended to highlight the binding measures adopted by it relative to child recruitment as forms of collective security measures.

IV. Compliance of the Philippines through the enactment of laws protecting Children in Armed Conflict.

In line with its obligations under International Law, the Philippines has enacted its own legislation to protect the rights of the children especially in times of armed conflict.

Article II, Section 4 of the 1987 Constitution states that: “the Government may call upon the people to defend the state and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.” Further, Article XVI, Section 4 of the Constitution provides that “the Armed Forces of the Philippines shall be composed of a citizen armed forces which shall undergo military training and serve, as may be provided by law. It shall keep a regular force necessary for the security of the State.” The Philippine Constitution under Article II, Section 13 further “recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being.

Section 51 of Commonwealth Act No. 1 (“National Defense Act”) holds all Filipino liable for military service. While Section 14 of Republic Act (RA) No. 7077 (“Citizen Armed Forces of the Philippines Reservist Act”) provides for the compulsory military training of all men between 18 and 25 years of age, this should be read in light of RA No. 9136 (“National Service Training Program [NSTP] Act of 2001” which under Section 4 made Reserve Officers’ Training Corps (ROTC), optional and voluntary and included Literacy Training Service; and The Civic Welfare Training Service as

components of the NSTP. Under RA 8551 ("Philippine National Police Reform and Reorganization Act of 1998") Section 30 provides that every new applicant as officer or member of the Philippine National Police must not be less than twenty-one (21) or more than thirty (30) years of age.

The protection of children in situations of armed conflict is also stipulated in RA 7610. Article X, Section (22) (b) provides that: "[c]hildren shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units of other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies; Under Section 23 “Children shall be given priority during evacuation as a result of armed conflict. Existing community organizations shall be tapped to look after the safety and well-being of children during evacuation operations. Measures shall be taken to ensure that children evacuated are accompanied by persons responsible for their safety and well-being." Under Section 25 of the same law provides for the rights of children arrested for reasons of armed conflict:

“Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights;

(a) Separate detention from adults except where families are accommodated as family units;

(b) Immediate free legal assistance;

(c) Immediate notice of such arrest to the parents or guardians of the child; and

(d) Release of the child on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.

“If after hearing the evidence in the proper proceedings the court should find that the aforesaid child committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the Government, or duly-licensed agencies or any other responsible person, until he has had reached eighteen (18) years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the agency or responsible individual under whose care he has been committed.

“The aforesaid child shall subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly-licensed agency or such other officer as the court may designate subject to such conditions as it may prescribe.

“The aforesaid child whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.”

Under RA No. 8371, ("The Indigenous Peoples Rights Act of 1997") it provides protection of children of indigenous peoples during armed conflict in this manner:
“Sec. 22. Rights during Armed Conflict.- ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.”

Under RA No. 9208, ("Anti-Trafficking in Persons Act of 2003") trafficking includes.

“Section 4. Acts of Trafficking in Persons. - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.”

In March 2010, the Philippines enacted RA 9851 entitled: An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes against Humanity, Organizing Jurisdiction, Designating Special courts, and for Related Purposes.

Article 24 of the said law penalizes the commission of any of the following acts:

“(i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;

“(ii) Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and

“(iii) Using children under the age of eighteen (18) years to participate actively in hostilities;”

Likewise, the Philippines has declared that it will ratify the Rome Statute of the International Criminal Court.

V. Conclusion

Despite efforts to put a stop in the violation of the rights of children, there is a disturbing trend that violations continue unabatedly. In the 10th Annual Report of the U.N. Secretary General on Children and Armed Conflict A/65/820–S/2011/250 distributed on 23 April 2011:

“Developments in the Philippines

“174. There was an increase in the recorded number of cases of child recruitment and use by armed groups in 2010 (24 children), compared to 2009 (6 children). Of the seven recorded incidents attributed to the Moro Islamic Liberation Front (MILF), the country task force on monitoring and reporting was able to verify four incidents involving eight children carrying automatic weapons and performing military functions in MILF areas of Central Mindanao. Testimony from a 15-year-old child soldier in Maguindanao province confirmed that children, including girls, are being trained by MILF. The task force also continues to receive credible reports of children associated with the New People’s Army (NPA) surrendering to the police and Armed Forces of the Philippines. The presence of children among the ranks of Abu Sayyaf Group (ASG) in Sulu and Basilan was also reported by former captives of ASG, although these allegations could not be verified owing to security constraints. The task force verified two cases of children recruited by an armed group called the Black Fighters in North Cotabato. After participating in a series of attacks, including extrajudicial killings, the boys surrendered to police and gave detailed accounts of the group’s activities. Several members of the Black Fighters are ex-NPA combatants. The group operates in North Cotabato Province, sometimes reinforcing Government security forces in their operations.

“175. Reports indicate that at the local levels, members of the Armed Forces of the Philippines continued to use children for military purposes. A common pattern observed involved children being used in counter-insurgency operations, and often in pursuit of NPA rebels in remote areas of the country. The counter-insurgency strategy, “Oplan Bantay Laya” (Operation Freedom Watch), permits and encourages soldiers to engage with civilians, including children, for military purposes, using them as informants, guides and porters. Three cases involving boys, aged 13, 15 and 16 years old, were verified in 2010. Similarly, the country task force on monitoring and reporting recorded numerous allegations of recruitment and use of children by paramilitary groups, particularly the Citizens’ Armed Forces Geographical Unit, who reportedly pressure and coerce children to join their ranks. The Units are locally recruited from their community and their military operations are confined to the municipality where they are formed. They are under the command structure of the Armed Forces of the Philippines, but are loosely supervised.

“176. The Armed Forces of the Philippines continued to detain children. Children in detention reported being physically abused, interrogated under extreme duress, subject to ill treatment and subjected to acts tantamount to torture to extract information on insurgents. Four incidents involving four girls and one boy were verified and involved the 11th, 34th, 25th, 54th infantry Battalions of the Philippine army (IBPA). Such incidents also led to the displacement of families for fear of being targeted as alleged members of NPA.

“177. While there was a decline in the number of armed encounters between the Armed Forces of the Philippines and MILF in 2010, fighting with other non-State armed actors remained relatively unchanged. An increase in the number of casualties of children in 2010 was documented: 38 children, including 8 girls, were reportedly killed and 40, including 16 girls, reportedly maimed; in 2009, 12 children were killed and 40 injured. Of those, verified incidents implicated NPA, the Armed Forces of the Philippines and private militias of local politicians. The perpetrators were not identified in 13 incidents of killing and 10 incidents of maiming.
“178. There has been an upward trend in the number of attacks on schools and hospitals and their personnel in 2010. This may be partially attributed to the use of schools as polling stations during the May and October elections. Forty-one incidents were recorded, compared to 10 in 2009. Of those, 14 were attributed to the Armed Forces of the Philippines, 4 to NPA, 1 to MILF, 2 to ASG, 6 to private militias of local politicians, and 14 to unidentified perpetrators. Schools have been targets of improvised explosive device attacks and burning. In addition, teachers are increasingly targeted; 11 teachers were reportedly killed during the reporting period.

“179. There has also been a rising trend of the occupation of schools by the Armed Forces of the Philippines and the Citizens’ Armed Forces Geographical Unit in 2010, in contravention of national legislation prohibiting such practice. In remote communities across the country, the Armed Forces of the Philippines and the Unit have been using functioning public school buildings as barracks and command centers, including for storing weapons and ammunition. In some situations, the soldiers were observed approaching children, questioning them and allowing them to handle weapons.”


“Children in detention reported being physically abused, interrogated under extreme duress, subject to ill treatment and subjected to acts tantamount to torture to extract information on insurgents.”

The child shall be entitled from his birth to a name and a nationality.

**Principle 4**

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

**Principle 5**

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

**Principle 6**

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

**Principle 8**

The child shall in all circumstances be among the first to receive protection and relief.

**Principle 9**
The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

**Principle 10**

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

**Convention on the Rights of the Child (signed and ratified 1990; entry into force 1990).**

**Preamble**

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

xxx

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

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**PART I**

**Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

**Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex,
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language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3

1. 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

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Article 9

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4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

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Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

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Article 19
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmers to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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**Article 1**
The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

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**Article 3**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further
endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

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Article 8

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

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PART II

GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR

Article 13

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Article 14

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven. Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Article 15

Any Party to the conflict may, either directly or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

(a) Wounded and sick combatants or non-combatants;

(b) Civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

Article 16

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.
Article 17

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

Article 23

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

(a) That the consignments may be diverted from their destination;

(b) That the control may not be effective; or

(c) That a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Article 24

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

PART III

STATUS AND TREATMENT OF PROTECTED PERSONS

SECTION I

PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES

Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.
Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

Article 28

The presence of a protected person may not be used to render certain points or areas immune from military operations.

Article 50

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend. A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

Article 51

The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.
Expression of deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm.

Aware of the suffering of women and children in many areas of the world, especially in those areas subject to suppression, aggression, colonialism, racism, alien domination and foreign subjugation,

Deeply concerned by the fact that, despite general and unequivocal condemnation, colonialism, racism and alien and foreign domination continue to subject many peoples under their yoke, cruelly suppressing the national liberation movements and inflicting heavy losses and incalculable sufferings on the populations under their domination, including women and children,

Deploring the fact that grave attacks are still being made on fundamental freedoms and the dignity of the human person and that colonial and racist foreign domination Powers continue to violate international humanitarian law,

Recalling the relevant provisions contained in the instruments of international humanitarian law relative to the protection of women and children in time of peace and war,

Recalling, among other important documents, its resolutions 2444 (XXIII) of 19 December 1968, 2597 (XXIV) of 16 December 1969 and 2674 (XXV) and 2675 (XXV) of 9 December 1970, on respect for human rights and on basic principles for the protection of civilian populations in armed conflicts, as well as Economic and Social Council resolution 1515 (XLVIII) of 28 May 1970 in which the Council requested the General Assembly to consider the possibility of drafting a declaration on the protection of women and children in emergency or wartime,

Conscious of its responsibility for the destiny of the rising generation and for the destiny of mothers, who play an important role in society, in the family and particularly in the upbringing of children,

Bearing in mind the need to provide special protection of women and children belonging to the civilian population,

Solemnly proclaims this Declaration on the Protection of Women and Children in Emergency and Armed Conflict and calls for the strict observance of the Declaration by all Member States:

1. Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned.

2. The use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949 and the principles of international humanitarian law and inflicts heavy losses on civilian populations, including defenseless women and children, and shall be severely condemned.

3. All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children.

4. All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of
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the civilian population that consists of women and children.

5. All forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.

6. Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law.


Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practice, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.

3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother’s enforced disappearance,
and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.


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Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

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Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

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Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

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Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3
1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and
cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

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Art 70. Relief actions

1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

3. The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:
   (a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;
   (b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;
   (c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.

4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.

5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions referred to in paragraph 1.

Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to The Protections of Victims of Non-International Armed Conflicts (Protocol II) (accession 1986; entered into force in 1978).

PART II

HUMANE TREATMENT

Article 4.--Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape,
enforced prostitution and any form of indecent assault;

(f) Slavery and the slave trade in all their forms;

(g) Pillage;

(h) Threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;

(e) Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

xxx

II. DOMESTIC LAW

1987 Constitution.

Article II

Declaration of Principles and State Policies

Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

x x x

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

x x x

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Article XIII

Social Justice and Human Rights

x x x
Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children. The State shall endeavor to provide free medical care to paupers.

x x x

Article XV

The Family

Section 3. The State shall defend:

(2) 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;

Republic Act 9851, An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for related Purposes (2009).

CHAPTER I
INTRODUCTORY PROVISIONS

Section 1. Short Title. - This Act shall be known as the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity".

Section 2. Declaration of Principles and State Policies. -

(a) The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation and amity with all nations.

(b) The state values the dignity of every human person and guarantees full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children;

(c) It shall be the responsibility of the State and all other sectors concerned to resolved armed conflict in order to promote the goal of "Children as Zones of Peace";

(d) The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law our nation;
(e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

x x x

CHAPTER III
CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY

Section 4. War Crimes. - For the purpose of this Act, "war crimes" or "crimes against International Humanitarian Law" means:

(a) In case of an international armed conflict, grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:

(1) Willful killing;

(2) Torture or inhuman treatment, including biological experiments;

(3) Willfully causing great suffering, or serious injury to body or health;

(4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;

(5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(6) Arbitrary deportation or forcible transfer of population or unlawful confinement;

(7) Taking of hostages;

(8) Compelling a prisoner to serve in the forces of a hostile power; and

(9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.

(b) In case of a non-international armed conflict, serious violations of common Article 3 to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including member of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause;

(1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;

(2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

(3) Taking of hostages; and

(4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

(1) Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(2) Intentionally directing attacks against civilian objects, that is, object which are not military objectives;

(3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;

(4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the
Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;

(6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health.

(7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;

(8) Killing or wounding a person in the knowledge that he/she is hors de combat, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;

(9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;

(10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;

(11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;

(12) Killing, wounding or capturing an adversary by resort to perfidy;
(13) Declaring that no quarter will be given;
(14) Destroying or seizing the enemy’s property unless such destruction or seizure is imperatively demanded by the necessities of war;
(15) Pillaging a town or place, even when taken by assault;
(16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
(17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
(18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;
(19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
(20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
(21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
(22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war;
(23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
(24) Committing any of the following acts:
(i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;

(ii) Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and

(iii) Using children under the age of eighteen (18) years to participate actively in hostilities; and

(25) Employing means of warfare which are prohibited under international law, such as:

(i) Poison or poisoned weapons;

(ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and

(iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.
CHAPTER 6

SCATTERED RIGHTS: A Portrait of the Street Child under Philippine and International Laws

Sherwin Dwight Ebalo, J.D.
Liway Czarino S. Ruiz
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I. Background

There is no international agreement on the definition of “street children,” and the label of “street children” is increasingly recognized by sociologists and anthropologists to be a socially constructed category that in reality does not form a clearly defined, homogeneous population or phenomenon.

The European Union’s operating definition states that a street child is one who is under 18 years of age, who lives short- or long-term on the streets in poor conditions and bad environment and is in contact primarily with other youth groups also present on the streets. Officially, street children have home addresses or are officially registered but the severity of problems at their homes is so strong that they have virtually no contact with their parents or guardians which are responsible for them.

The UNICEF, however, developed the earliest definitions and categories of street children which includes: children “of the street” (street-living children), who sleep in public spaces, without their families; children “on the street” (street-working children), who work on the streets during the day and return to their family homes to sleep; and ‘street-family children,’ who live with their families on the street.

The categorizations however prove to be inaccurate in the light of research and practice which have yielded an enormous variation in children’s experiences and considerable overlap between these three groups. For example, some children live on the streets all the time, others only occasionally or seasonally, while others move between home, street and welfare shelters. Some retain strong links with their families; others have broken or lost all contact.

Definitions continue to evolve, with terms such as “street-connected children” and “children in street situations,” or defining street children as “children for whom the street is a reference point and has a central role in their lives.” The wide variety of children’s circumstances and characteristics, however, continues to present huge definitional challenges. These definitional challenges, in turn, prove to be significantly problematic when seen in the light of how the laws have strived to meet all the situational demands that street children are found in.

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In 2004, it was estimated that there are about 100 million children living in the streets.\(^2\)

According to statistics, the highly visible children in the streets total to an estimated 138,328. It is estimated there are 85,000 street children in Metro Manila alone.\(^3\) The UNICEF estimate of the number of street children nationwide, however, is significantly higher at 250,000.\(^4\) In Angeles City, the DSWD has registered more than 1,500 street children, who are highly at risk in the notorious Fields Avenue from pedophiles hounding the entertainment area.\(^5\) According to the child-rights group Tambayan, most of the cities’ street children belong to gangs, and approximately 70% of the children in all the Philippine streets are boys.

In reality, the number is much higher, and the children are exposed to more destructive elements than just the cold and harsh street pavements.

One prominent danger that street children face is the greater risk of being in conflict with the law. The following excerpt succinctly captures the problem:

“According to UNICEF, approximately 28 children were arrested every day. The BJMP stated that approximately 1,700 minors were in jail; at least 7 had been sentenced to death, while 21 were serving life sentences. Many child suspects were detained for extended periods without access to social workers and lawyers, and were not segregated from adult criminals. NGOs said that children held in integrated conditions with adults were highly vulnerable to sexual abuse, recruitment into gangs, forced labor, torture, and other ill treatment. There were also reports that many children detained in jails appeared to have been arrested without warrants.”\(^6\)

In the Philippines the most blatant form of violence against children is summary execution. In Davao City, 39 children in conflict with the law have been killed by vigilante groups since 2001.\(^7\) Most of them were killed after being released from police detention cells. Human rights groups said the killings have become an unwritten government policy to deal with crime, largely because of an ineffective criminal justice system and the tendency of the authorities to take shortcuts in the administration of justice.

Child prostitution is also another prevalent form of sexual exploitation, with the prostituted child being used by foreign or local sex tourists and pedophiles. Many street children are lured into prostitution as a means of surviving, while others work in order to earn money for their families. A variety of different factors contribute to the commercial sexual exploitation of children in the Philippines. Although there are no institutionalized programs that administer HIV testing for children in the Philippines, a rough estimate of 18% of the street children have been reported to

\(^6\) U.S. Department of State, Bureau of Democracy, Human Rights and Labor, supra.
have contracted sexually transmitted infections (STIs) through the many exploitative activities under which they have fallen prey.\textsuperscript{8}

The following observation of the Committee on the Rights of the Child in 2005 is telling:

“The Committee reiterates its grave concern at the high number of children living in the streets and their special vulnerability to various forms of violence and abuse, including sexual abuse and exploitation, economic exploitation and substance abuse. The Committee notes the lack of a systematic and comprehensive strategy to address the situation and protect children living in the streets.”\textsuperscript{9}

II. International Law on the Rights of Street Children

The international body of laws, in theorem, appears to already contain all the rights that are needed to ensure that children are kept far from the perilous conditions of living or staying on the streets. These laws provide for the fundamental rights that the family, as the basic unit of any society, are legally entitled to enjoy. The law on its face reveals a clear broad stroke pattern of operating on the principle that to protect the children, and more particularly those who dwell on the streets, the law must foremost seek to defend and look after the family within which the children first belong.

The above said attitude of the law is embodied in the International Convention on Civil and Political Rights, more specifically Article 23, which states that the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State.\textsuperscript{10} This is echoed and laid emphasis on in the International Convention on Economic, Social and Cultural Rights and Article 10, Section 1 thereof, which provides that the widest possible protection and assistance should be accorded to the family.\textsuperscript{11} The latter convention also draws closer attention to the crucial nature of the establishment of it, and its concomitant responsibility to care for and educate dependent children. Section 2 of the same article also affirms the important link between the care for the family and the attendant concern for the welfare of the children within such a family by averring that special protection should be accorded to mothers during a reasonable period before and after childbirth.\textsuperscript{12}

\begin{enumerate}
\item Id.
\item Art. 23, International Covenant for Civil and Political Rights.
\item 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
\item 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.
\item Art. 10, Sec. 1, International Covenant on Economic, Social and Cultural Rights. - The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
\item Sec. 2, id. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
\end{enumerate}
Upon closing in on the relevant provisions that are directly forwarded for the care of the children themselves, the laws clearly articulate that their ultimate goal is to ensure the highest attainable standard of physical and mental health for all, especially the children who are most vulnerable to hazards and elements that cause the overall health to suffer. Section 3 of the same article pronounces that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

This Convention and Article 11 thereof also declares the international recognition of the right of every individual to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. It also upholds the fundamental right of everyone to be free from hunger, with the attendant commitment to taking up, within each State and through international co-operation, all the measures and programs necessary to ensure that world food is equitably distributed in proportion to the needs, so that families, children, from all parts of the globe may always have adequate food on their tables.\textsuperscript{13}

In the same breadth, Article 12 of this Convention also expresses the intent to safeguard the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and, the creation of conditions that would assure to all medical service and medical attention in the event of sickness.\textsuperscript{14}

Finally, Article 3 of the said Covenant, upon a consensus that education enables all persons to participate effectively in a free society, identifies the right of everyone to education, that shall be directed to the full development of the human personality and the sense of dignity, and shall strengthen the respect for human rights and fundamental freedoms. For the full realization of this essential right, the Covenant proclaims that primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; and, higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.\textsuperscript{15}

One cannot help but observe that if these rights stated in black and white were translated into practice and applied to the condition of Filipino street children, these international agreements

\textsuperscript{13} Art. 11, id., p. 3.
\textsuperscript{14} Art. 12, id.
\textsuperscript{15} Art. 3, id. - The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
seem to have been rendered toothless in the face of the interlaying socio-economic challenges that the country faces - individually through each poor citizen, and as a collective whole.

Nevertheless, the Universal Declaration of Human Rights reiterates the aim of securing the right to a full life for each individual. Article 25 states that everyone has the right to a standard of living adequate for his/her health and well-being and of his/her family, including food, clothing, housing and other necessaries. Motherhood and childhood are specifically mentioned as entitled to special care and assistance. And finally, that all children, regardless of the legitimacy or the lack thereof, shall enjoy the same social protection. Article 26 of the Declaration echoes the premium put on the right of the children to proper education.

The International Convention on Civil and Political Rights makes salient the right of every child to be protected from the evils of discrimination based on race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State, under Article 24 thereof.

Ultimately, with the Declaration of the Rights of the Child, as the quintessence of all the rights pertaining to the best interests of children, asserts under its second article that every child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. Article 5 of the same Declaration also provides that a child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

The sixth article of the Declaration slightly shifts in terms of tone in comparison to the other provisions and declarations that preceded it as it sheds light on the right of the child to love and understanding, and that the child wherever possible, ought to grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; that a child of tender years shall not, save in exceptional circumstances, be

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16 Art. 25, Universal Declaration of Human Rights. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
17 Art. 26, id. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit; (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace; (3) Parents have a prior right to choose the kind of education that shall be given to their children.
18 Art. 24, International Convention on Civil and Political Rights. 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State; 2. Every child shall be registered immediately after birth and shall have a name; 3. Every child has the right to acquire a nationality.
19 Art. 2, Declaration of the Rights of the Child. The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.
20 Art. 5, id. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.
separated from his mother. It also calls the society and the public authorities to task by delegating to them the duty to extend particular care to children without a family and to those without adequate means of support, and that payment of State and other assistance towards the maintenance of children of large families is desirable. Article 7 reverberates the paramount concern of educating each and every child, with the addition of the right of the child to have full opportunity for play and recreation, which should be directed to the same purposes as education.

Lastly, Article 9 thereof expresses the need for the child to be protected against all forms of neglect, cruelty and exploitation, which includes guarding the child from being the subject of traffic, in any form, as well as the right of the child to not be employed at an age and under dangerous circumstances that are detrimental to his welfare.

III. National Law

Street children are likewise guaranteed rights under national law through the Constitution and other general laws. Unlike children in other especially difficult circumstances, say children involved in trafficking and child labor, there is no special law to date which caters to street children per se. Furthermore, the rights and protection guaranteed by domestic law tend to be piecemeal and symptomatic, that is, they address the symptoms and effects of being a street child, rather than the cause of such.

Constitutional protection for street children (and any child, for that matter) is three-pronged. It addresses the child’s health, education and family. Article XIII, Section 11 guarantees the availability of health services to children and the poor. Article XIV, Sections 1 and 2, on the other hand, lays down the policy of accessibility of education for all, especially out-of-school youths. Finally, Article XV, Section 3 imposes upon the State the duty to defend children from all forms of “conditions prejudicial to their development” and to provide assistance, including proper care and nutrition.

21 Art. XIII, Sec. 11, 1987 Constitution. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

22 Art. XIV, Sec. 1, id., The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all. Sec. 2. The State shall:

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(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the under-privileged;

xxx

(5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

23 Art. XV. Sec. 3, id. The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) 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;
These Constitutional protections are broad. They address the symptoms and ill-effects of being a street child—the lack of health assistance, education and protection for the family. But for a child who lives in the streets, these broad protections are not enough; there is a need for more specific and implementable laws.

The abovementioned Constitutional provisions have found their way to laws protecting the rights of street children and children in general. Art. 356 of the Civil Code emphasizes the importance of parental care, elementary education, moral and civic training by the parents and an atmosphere conducive to a child’s physical, moral and intellectual development. The Child and Youth Welfare Code lays down a more comprehensive set of rights. The Child and Youth Welfare Code, in particular, harps on the importance of the family as the institution which ensures the rights of the child. This is important because a significant number of children live on the streets because of problems in their families.

The Civil Code and the Child and Youth Welfare Code provide for rights which are applicable to all children, and the protection they offer is comprehensive and family-oriented. This trend of “general protection” is further manifested in other laws, to wit:

1. “The **Neglected Child** refers to a child whose basic needs have been deliberately unattended or inadequately attended within a period of three (3) continuous months. Neglect may occur in two (2) ways:
   
   a. “There is **physical neglect** when the child is malnourished, ill-clad, and without proper shelter. A child is unattended when left by himself/herself without proper provisions and/or without proper supervision.
   
   b. “There is **emotional neglect** when the child is maltreated, raped, seduced, exploited, overworked, or made to work under conditions not conducive to good health; or is made to beg in the streets or public places; or when children are in moral danger, or exposed to gambling, prostitution, and other vices.”

2. “A **dependent child** is one who is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody; and is dependent upon the public for support.”

3. “An **abandoned child** is one who has no proper parental care or guardianship, or whose parents or guardians have deserted him for a period of at least six continuous months.”

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24(2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security. The dependent or abandoned child shall be provided with the nearest substitute for a home.

25 Sec. 24, R.A. 9523, An Act Requiring DSWD Certification for Adoption.


27 Art. 141.2, id.
4. "A neglected child is one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:
   a. "There is a physical neglect when the child is malnourished, ill clad and without proper shelter.

   "A child is unattended when left by himself without provisions for his needs and/or without proper supervision.

   b. "Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in moral danger, or exposed to gambling, prostitution and other vices."

   (c) "Circumstances which gravely threaten or endanger the survival and normal development of children" include, but are not limited to, the following:

   "(2) Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development;

   "(3) Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or basic services needed for a good quality of life;"

   These definitions may not be comprehensive nor entirely accurate, but each touches upon an important facet of being a street child. The very fact that the street child appears in various laws reveals that it is a recognized archetype, a classification worth making and protecting under the law. The only downside with this multiplicity is that the law tends to spread itself too thin. Each definition will apply only for a specific purpose, as each definition applies only within the scope of the special law in which it is found. For example, the first definition may only be used for purposes of procuring a DSWD certification in preparation for adoption, the next three definitions may be used for availing the rights guaranteed in the Child and Youth Welfare Code as regards parental authority, and the last one may be used for identifying cases of child abuse. There are as many legal definitions of street children as there are special laws on children, yet they refer to but one socially-recognized accepted group. Perhaps it is time to consolidate all of these legal definitions in one law which will spell out all the rights of street children.

IV. Remedial Law


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28 Art. 141.3, id.
29 Sec. 3, R.A. 7610, Special Protection of Children Against Abuse, Exploitation and Discrimination Act.
For RA 9523, the crucial contribution to the body of laws is the operative definition it provided for the concept of a “neglected child” under section 2, under which the case of street children squarely falls. The “neglected child” is defined “as a child whose basic needs have been deliberately unattended (when left by himself/herself without proper provisions and/or without proper supervision) or inadequately attended within a period of three continuous months. The neglect may either be physical, as when the child is malnourished, ill-clad, and without proper shelter or emotional, as the child is maltreated, raped, seduced, exploited, overworked, or made to work under conditions not conducive to good health; or is made to beg in the streets or public places; or when children are in moral danger, or exposed to gambling, prostitution, and other vices.”

The Rules and Regulations on the Reporting and Investigation of Child Abuse Cases first identifies the critical terms used and their definitions. Section 2 of the said law defines “child abuse” as the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child; “cruelty” as any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being, exclusive of reasonable discipline of parents which do not amount to physical or psychological injury. The same article also defines two concepts that are sadly illustrated in the plight of street children: “neglect” as the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, basic education or medical care so as to seriously endanger the physical, mental, social and emotional growth and development of the child; and the term “exploitation” which covers the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials.

Finally, as for the Rule on Commitment of Children, the third section provides the definitions for terms that serve as the basis for the action of committing children, including those who inhabit the streets. The “dependent child” is defined as one who is without a parent, guardian or custodian, or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody, and is dependent upon the public for support; an “abandoned child” is defined as one who has no proper parental care or guardianship, or whose parents or guardian has deserted him for a period of at least six continuous months; and a “neglected child” is one whose basic needs have been deliberately unattended to or inadequately attended to, physically or emotionally, by his parents or guardian.

The forms of neglect have also been elucidated on, to encourage greater vigilance in protecting the rights of children. The term “physical neglect” is defined as that which occurs when the child is malnourished, ill-clad and without proper shelter, while “emotional neglect” is that which occurs when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health; made to beg in the streets or public places, or

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30 Sec. 2(4), R.A. 9523. Neglected Child refers to a child whose basic needs have been deliberately unattended or inadequately attended within a period of three (3) continuous months. Neglect may occur in two (2) ways: (a) There is physical neglect when the child is malnourished, ill-clad, and without proper shelter. A child is unattended when left by himself/herself without proper provisions and/or without proper supervision; (b) There is emotional neglect when the child is maltreated, raped, seduced, exploited, overworked, or made to work under conditions not conducive to good health; or is made to beg in the streets or public places; or when children are in moral danger, or exposed to gambling, prostitution, and other vices.

31 Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

32 Art. 2, id.
when placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices (emphasis supplied).\textsuperscript{33}

This Rule defines the act of committing or surrendering a child as the legal act of entrusting a child to the care of the Department or any duly licensed child-placement or child-caring agency or individual by the court, parent or guardian or any interested party. An “involuntarily committed child” is one whose parents have been permanently and judicially deprived of parental authority due to abandonment, substantial, continuous, or repeated neglect, abuse, or incompetence to discharge parental responsibilities. In contrast a “voluntarily committed child” is one whose parents knowingly and willingly relinquished parental authority to the Department or any duly licensed child-placement or child-caring agency or individual.

Sections 4, 5 and 6 outline the steps that one must undergo in the process of committing children. Section 4 particularly sketches the method of committing children by the Secretary of the DSWD, his/her authorized representative or any duly licensed child-placement or child-caring agency that has knowledge of a child who appears to be dependent, abandoned or neglected.

This process commences with any of the aforementioned persons or instrumentalities’ filing of a verified petition for involuntary commitment of said child to the care of any duly licensed child-placement or child-caring agency or individual. The petition should be filed with the Family Court of the province or city in which the parent or guardian resides or where the child is found and must include the names of the parents or guardian and their place of residence. If the child’s parents are unknown, the petitioner must likewise allege that diligent efforts have been exerted to locate them. If said parents are deceased, petitioner shall attach a certified true copy of their death certificate. The petition should also cover the facts showing that the child is dependent, abandoned, or neglected, and those indicating who has custody of the child at the time of the filing of the petition; and the name, address and written consent of the Department or duly licensed child-placement or child-caring agency or individual to whose care the commitment of the child is sought to be entrusted.

If the court is satisfied that the petition is sufficient in form and substance, the parents or guardian of the child and the office of the public prosecutor will then be given summons not less than five days before the date of the hearing. The office of the public prosecutor shall be directed to immediately transmit the summons to the prosecutor assigned to the Family Court concerned. If in case it appears from the petition that both parents of the child are dead or that neither parent can be found in the province or city where the court is located and the child has no guardian residing therein, summons may not be issued and the court shall thereupon appoint a guardian ad litem pursuant to Sub-section (f) below and proceed with the hearing of the case with due notice to the provincial or city prosecutor.\textsuperscript{34}

After the court sets the petition for hearing, it shall direct the social worker to submit, before the hearing, a case study report of the child to aid it in evaluating whether said child should be committed to the care of the Department or any duly licensed child-placement or child-caring agency or individual. If neither of the parents nor the guardian of the child can be located or does not appear in court despite due notice, or if the court finds them incompetent to protect the best interests of the child, it shall be the duty of the court to appoint a suitable person as guardian ad litem to represent the child. In making the appointment, the court shall consider the background of

\textsuperscript{33} Art.3, Rule on Commitment of Children.
\textsuperscript{34} Art. 4, id.
the guardian ad litem and his familiarity with the judicial process, social service programs and child
development. A member of the Philippine Bar may be appointed guardian during the pendency of
the proceedings.

The court shall direct the person or agency which has custody of the child to bring the latter
to the court on the date of the hearing of the petition and shall ascertain the facts and determine
whether the child is dependent, abandoned, or neglected, and if so, the cause and circumstances of
such condition. If, after the hearing, the court finds the child to be dependent, abandoned, or
neglected, it shall render judgment committing him to the care and custody of the Department or
any duly licensed child-placement or child-caring agency or individual until he reaches the age of
eighteen. The judgment shall also make proper provisions for the custody of the property or money
belonging to the committed child.

If the child is committed to the DSWD, it shall notify the court within thirty (30) days from
the order of commitment, the name and address of the duly licensed and accredited child-
placement or child-caring agency or individual where the child shall be placed. However, if the
court finds that the abandonment or neglect of the child may be remedied, the child may be allowed
to stay in his own home under the care and control of his parents or guardian, subject to
supervision and direction of the Department.

The duly licensed child-placement or child-caring agency or individual to whom a child has
been committed may file a verified motion with the court which granted the petition for
involuntary commitment of a child to place him in the care of any suitable person, upon the latter's
request, for a period not exceeding one month at a time. The court may order the social worker to
submit a case study report to aid it in evaluating whether such temporary custody shall be for the
best interests of the child. The court may extend the period of temporary custody of the child for a
period not exceeding one month at a time upon motion of the duly licensed child-
placement or
child-caring agency or individual to which the child has been committed.

The court, on its own, or upon request of the child assisted by his guardian ad litem, or at
the instance of the agency or person to whom the child was committed, after due notice and
hearing, shall discontinue the temporary custody of the child if it appears that he is not being given
proper care. After one month from the date temporary custody of the child was given to another
suitable person, the agency or individual shall submit to the court a verified report on whether the
temporary custody of the child has promoted his best interests. If the child is committed to the
Department, it may change the custody of a child if it appears that such change is for the best
interests of the child. The Department shall notify the court of any change in custody of the child.35

When conflicting interests arise among child-placement or child-caring agencies, the court
that granted the involuntary commitment of the child, upon motion of the Department or any of the
agencies concerned, shall order the change of commitment of the child.36

A motion to remove custody of a child may be filed by an authorized representative of the
Department with knowledge of the facts against a child-placement or child-caring agency or
individual to whose custody a child has been committed by the court on the ground of neglect of
such child as defined in Section 3 (e) of this Rule. The court shall set the motion for hearing with
notice to the public prosecutor and the court-designated social worker. If the court finds after

35 Id.
36 Id.
hearing that the allegations of the motion have been established and that it is for the best interests and welfare of the child, the court shall issue an order removing him from the custody of the person or agency, as the case may be, and committing him to the custody of another duly licensed child-placement or child-caring agency or individual.

In other cases, the voluntary commitment of a child to an institution or an individual is also availed of by parents or guardians of the dependent children, the process for which is governed by section 5 of this Rule which enunciates that no child shall be committed unless he is surrendered in writing by his parents or guardian stating such voluntary commitment and specifically naming the office, agency, or individual to whose custody the child is to be committed. Such written instrument should be notarized and signed in the presence of an authorized representative of the Department after counseling and other services have been made available to encourage the child's parents to keep the child.37

In the event that the parents or guardians who voluntarily committed the child desire to remove the child from the custody of the child-placement or child-caring agency, they may file a petition to remove custody with the Family Court of the province or city where the child-placement or child-caring agency is located or where the child may be found on the ground of neglect of such child.38 A child may also be removed from the custody of the child-placement or child-caring agency or individual on the ground that the voluntary commitment of the child was unjustified. Such a petition must similarly contain the name and address of the child-placement or child-caring agency or individual to whose custody the child has been voluntarily committed; the facts showing that the child has been neglected by the agency or in cases where the voluntary commitment was unjustified, that the parents of the child are actually capable of taking care and custody of the child; the name, address and written consent of the duly licensed child-placement or child-caring agency or individual to whose care the child may be transferred; and the facts showing that petitioner has exhausted the administrative remedies available to him.

Finally, Section 6 thereof delineates the procedural steps to be taken in case a person may find the need to commit a disabled child where the child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care but his parents or guardians are opposed thereto. The Department, or any duly licensed child-placement or child-caring agency or individual may file a verified petition with the Family Court of the place where the parent or guardian resides or where the child is found, for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.39 The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when his welfare and interests are at stake.

This petition shall contain the facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care; the name of the parents and their residence, if known, or if the child has no living parent, the name and residence of the guardian, if any; and the fact that the parents or guardian or any duty licensed disabled child-placement or child-caring agency, as the case may be, has opposed the commitment of such child; the name and written conformity of the

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37 Sec. 5, id.
38 Sec 3, id.
39 Sec. 6, id.
institution where the child is to be committed; and an estimate of the costs and other expenses of maintaining the child in the institution.

If the court, after hearing, finds that the allegations of the petition have been established and that institutional care of the child is for his best interests or the public welfare and that his parents, or guardian or relatives are unable for any reason whatsoever to take proper care of him, the court shall order his commitment to the proper institution for disabled children. The court shall likewise make proper provisions for the custody of the property or money belonging to the committed child. The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the immediately preceding paragraph, the Department shall bear the expenses, or such part thereof as may remain unpaid.

V. Implementing Agencies

The recognition of the rights of street children is one thing, and enforcement of the said rights is another. Many agencies are tasked with implementing these rights, there being no single entity responsible for implementing them. Among these agencies, the DSWD tops the list with its broad mandate.

In 2009, the Council for the Welfare of Children (CWC), created under the Child and Youth Welfare Code, was changed into the Early Childhood Care and Development (ECCD) Council. It is tasked to “support the implementation of the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six (6) and to promote their optimum growth and development.”40 The DSWD forms part of its Governing Board.

The main player in the enforcement of the rights of street children is the DSWD, which was created under the Revised Administrative Code. Its mandate is wide. It covers the social and welfare development of all branches of the population, children and adults alike.41 The Department has one Assistant Secretary who supervises the Bureau of Child and Youth Welfare.42

40 Sec. 1, E.O. 778.
41 Book V, Title XVI, Sec. 2, Revised Administrative Code. Mandate.
42 Sec. 7, id.
In 1991, the Local Government Code devolved some of the functions of the DSWD to local government units. Each LGU is supposed to have a Social Welfare and Development Officer whose functions, among others, are to facilitate the implementation of welfare programs for the prevention of juvenile delinquency and such other activities which would eliminate or minimize the ill-effects of poverty, and to initiate and support youth welfare programs that will enhance the role of the youth in nation-building.\textsuperscript{43}

It must be noted that there is no established commission specifically tailored for street children. In contrast, consider the following statutory commissions: the Juvenile Justice and Welfare Act established the Juvenile Justice and Welfare Council tasked to monitor the enforcement of the said Act; The Anti-Child Pornography Act in turn created the Inter-Agency Council against Child Pornography with similar functions; The Anti-Violence Against Women and Children created a similar council, the Inter-Agency Council on Violence Against Women and Their Children; and, the Anti-Trafficking in Persons Act of 2003 also created the Inter-Agency Council Against Trafficking.

\textbf{VI. Criticisms and Gaps in the Law}

The first salient observation upon surveying the laws that exist pertinently for the street children is that there is no existing operative definition of street children. The definitions are generic, i.e. abandoned/neglected/begging children, and limited, i.e. applicable only within the ambit of the special laws in which they are found.

Street children became an umbrella term for children in difficult circumstances; so that if a child is found being peddled for sex on the streets, he/she is sub-categorized and placed under the care of another government or non-government entity. There is direct effort to address the circumstance of being a street child per se. The fact of children living in the streets is approached as if it were a mere status/condition to be described, as opposed to treating it as problem or an issue that involves not just a description of a child’s living condition and location, but a careful analysis of society and the root problems, from which street children stem.

The laws also mention, in their operative definition of street children, the other key issues that are intimately woven, and often considered automatically identifiable, with the street children’s condition. Examples of these are child labor, prostitution, neglect, lack of education, and other forms of abuses.

The reasons that cause them to be there in the first place may not be as accurately addressed because of the deficiency or generality of the laws presently in place. Hence, though these laws are in black and white, they are toothless in practice.

Another concern made salient in this area is the fact that the DSWD, tasked with extending its manpower and resources to solve a wide range of societal problems, is either undermanned, underfunded, or both. Thus, majority of their projects have to be launched, facilitated and sustained with the aid of local and foreign non-government organizations which have the same social end in mind.

\textsuperscript{43} Sec. 483, \textit{Local Government Code}. 
From a holistic evaluation of the current state of affairs with respect to the rights of street children, there is a need for more specific laws and administrative directives that will put the theory of the laws into operation.

The DSWD has occasional projects geared towards alleviating the situation of the street children, but there is an emergent call for more concrete and sustained programs in addition to, or as foundations of current undertakings. The laws themselves appear to only tangentially address the reasons behind the phenomenon of children living in the streets in the first place. There exists no custom-made program which directly tackles the main and immediate problems of street children.

VII. Recommendations

It is common to see children begging in the streets of Manila and other urbanized cities. This is so despite the general protection offered by international and national law. The fact that children still live in the streets is clear evidence that the present regime of protection is deficient.

The Constitutional provisions which may be related to children living in the streets are expressions of a broad mandate to the Government. They are well-meaning, but they need to be enforced by laws which set out in detail just exactly what the Government is supposed to do. The Civil Code and Family Code try to do this, but they still lack a specificity that relates significantly with street children. The Child and Youth Welfare Code lays down a very comprehensive list of children’s rights. Many of the said rights are applicable to children living in the streets. The Rule on Child Commitment takes into consideration the concerns of the street child, and puts forth a simpler, more efficient judicial remedy for those concerned.

Nevertheless, it is still more beneficial as a whole for Congress to enact a law which specifically governs the rights and circumstances of children living in the streets. The problem with the present state of the law is that the rights of children living in the streets are found in different statutes. Provisions which address the reasons why street children live in the streets are not harmonized with the provisions alleviating the ill-effects of the being a street child. It is important to separate provisions aimed at preventing children from living in the streets and remedying the effects of being a street child to ensure a more efficient delivery of service.

Furthermore, street children are a valid classification under the law which deserves the creation of a special law governing their rights. There are numerous legal definitions for abandoned and neglected children, beggars, and other variants of street children. It is now time to collate them and formally offer protection for these “abandoned, neglected children, beggars, etc.” through a law specifically tailored for them.

Despite the comprehensive rights laid down in the Child and Youth Welfare Code, the problem lies in the absence of an office with a specific mandate to monitor the implementation of the rights of children living in the streets.

The authors support the creation of a Commission tailored specifically to address the needs of street children. This issue requires a body which will streamline efforts to enforce the rights of street children. At present, these are distributed to different agencies, primarily on the DSWD, whose mandate is too broad to be efficient.
The Commission may be patterned after the inter-agency councils made under special laws, which have generally similar mandates. The Commission’s duties should include:

- The monitoring of the implementation of the rights of children living in the streets;
- Policy formulation;
- Assisting concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones;
- Recommendations as to amendments to present laws;
- Collection of relevant information and conducting continuing research and support evaluations and studies on all matters relating to street children; and,
- Coordinating the conduct of trainings for the personnel of the agencies involved in the administration of the rights of street children.

As to what projects to espouse, the Commission may take influence from the recommendations of the Committee on the Rights of the Child made in 2005, to wit:

“(a) To develop a comprehensive strategy with active participation of street children, non-governmental organizations and other relevant professionals to address the high number of street children, with the aim of reducing and preventing this phenomenon;

“(b) To secure that children living in the streets are not unlawfully arrested and detained, to protect them from police brutality and where needed, to secure their access to adequate legal services;

“(c) To ensure that street children are reached through trained street educators and counselors and provided with adequate nutrition, clothing and shelter as well as with social and health services and educational opportunities, including vocational and life-skills training, in order to support their full development and provide them with adequate protection and assistance;

“(d) To provide street children with adequate recovery and social reintegration services for physical, sexual and substance abuse and to promote reunification with their families, when feasible;

“(e) To reduce and prevent the environmental health risks faced by children living in the streets, inter alia, through raising awareness about environmental health risks among these children and instructing appropriate behaviours protecting them from these risks;

“(f) To support the efforts of street children to organize themselves in order to enhance their self-esteem;

“(g) To collaborate with and support non-governmental organizations working with and for street children.”

44 CRC/C/15/Add.258 (2005), supra.
VIII. The Street Child and the Millennium Development Goals

Collating the rights of the street child in a special law and establishing a commission for the enforcement of their rights is but one step in protecting the Filipino street child. The greater bulk of the challenge is how to operationalize the rights of the child in the Philippine milieu. To be effective, implementation has to be comprehensive, and comprehensiveness is possible only if the implementation is done with the context of the country’s economic, social and political circumstances, in mind.

The Millennium Development Goals (MDGs) is a good starting point for developing a framework for the implementation of the street child’s rights. The MDGs are goals agreed upon by over 190 countries and international organizations in 2000. The goals are targeted to be achieved in 2015 and are represented by indicators which are periodically measured. The Philippines is one of the countries that committed to the achievement of the MDGs.

Most relevant for the street child are Goals 1 (Eradicate Extreme Poverty and Hunger) and 2 (Achieve Universal Primary Education). The National Statistical Coordination Board has closely monitored the performance of the Philippines in terms of the two goals. On the whole, the progress of the Philippine government in terms of complying with the goals is slow.

For example, Indicator 1.1A of Goal 1, or the proportion of population below national poverty threshold shows vast improvement from 33.1% in 1991 to 26.5% in 2009. However, the figure is still far behind from the goal of 16.6% by 2015. The poverty gap ratio, Indicator 1.2, however, has successfully been reduced from 8.6% in 1991 to 2.7% in 2009. This is well below the target of 4.3% by 2015.45

The prevalence of underweight children under 5 years of age, Indicator 1.8, has been fairly reduced from 34.5% in 1990 to 26.2% in 2008. It still lags behind the target of 17.3% by 2015. The same tenor of improvement can be said for Indicator 1.9a or the Percent of household with per capita energy less than 100% capita. The Proportion of population below national subsistence (food) threshold, Indicator 1.9b, however, bodes well at 10.8% in 2006, very near the target of 8.25% by 2015.46

The importance of MDG 1 to children cannot be overemphasized. Poverty is the primary reason why children are forced to live on the streets. It is therefore imperative that efforts toward the enforcement of their rights are rationalized with efforts at reducing poverty.

MDG 2, Achieve Universal Primary Education, addresses both a cause and an effect of the circumstance of being a street child. The performance of the Philippines for this goal is low. Of the five indicators, four were rated as low in probability of achieving the 2015 targets. These are: Indicator 2.1 (Net enrolment ratio in primary education), Indicator 2.2 (Proportion of pupils starting grade 1 who reach grade 6), Indicator 2.2a (Primary completion rate), and Indicator 2.3 (Literacy rate of 15 to 24 year-olds). The 2015 target for Indicator 2.3a, Ratio of literate females to males of 15 to 24 year-olds, was already met in 2003.47

46 Id.
47 Id.
Street children’s lack in education is an effect of the more general problem of poverty, which, over time, is exacerbated when these street children grow up to be unequipped members of the workforce, unable to improve their economic status. They then pass their circumstance of having been street children to their own children in a seemingly endless cycle of misery. The enforcement of the rights of street children, therefore, should focus on education as a means to break the cycle of poverty.
Universal Declaration of Human Rights (adopted in 1948).

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.


Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.


Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of
dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation the measures, including specific programs, which are needed:

   (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

   (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

   (b) The improvement of all aspects of environmental and industrial hygiene;

   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

   (a) Primary education shall be compulsory and available free to all;
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

II. DOMESTIC LAW


Section. 2. Definition of Terms. – As used in this Act, the following terms shall mean:

(4) Neglected Child refers to a child whose basic needs have been deliberately unattended or inadequately attended within a period of three (3) continuous months. Neglect may occur in two (2) ways:

(a) There is physical neglect when the child is malnourished, ill-clad, and without proper shelter. A child is unattended when left by himself/herself without proper provisions and/or without proper supervision.

(b) There is emotional neglect when the child is maltreated, raped, seduced, exploited, overworked, or made to work under conditions not conducive to good health; or is made to beg in the streets or public places; or when children are in moral danger, or exposed to gambling, prostitution, and other vices.


Art. 141. Definition of Terms. - As used in this Chapter:

(1) A dependent child is one who is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody; and is dependent upon the public for support.

(2) An abandoned child is one who has no proper parental care or guardianship, or whose
parents or guardians have deserted him for a period of at least six continuous months.

(3) A **neglected child** is one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:

a) There is a physical neglect when the child is malnourished, ill clad and without proper shelter.

A child is unattended when left by himself without provisions for his needs and/or without proper supervision.

b) Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in moral danger, or exposed to gambling, prostitution and other vices.

(4) **Commitment or surrender** of a child is the legal act of entrusting a child to the care of the Department of Social Welfare or any duly licensed child placement agency or individual. Commitment may be done in the following manner:

a) Involuntary commitment, in case of a dependent child, or through the termination of parental or guardianship rights by reason of abandonment, substantial and continuous or repeated neglect and/or parental incompetence to discharge parental responsibilities, and in the manner, form and procedure hereinafter prescribed.

b) Voluntary commitment, through the relinquishment of parental or guardianship rights in the manner and form hereinafter prescribed.

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**R.A. 7610, Special Protection of Children Against Abuse, Exploitation and Discrimination Act (1992).**

**Section 3. Definition of Terms.** –

(a) "**Children**" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination (b) because of a physical or mental disability or condition;

(b) "**Child abuse**" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

   (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

   (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

   (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

   (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

(c) "Circumstances which gravely threaten or endanger the survival and normal development of children" include, but are not limited to, the following;

   (1) Being in a community where there is armed conflict or being affected by armed conflict-related activities;

   (2) Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development;

   (3) Living in or fending for themselves in the streets of urban or rural areas without the
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care of parents or a guardian or basic services needed for a good quality of life;

(4) Being a member of a indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;

(5) Being a victim of a man-made or natural disaster or calamity; or

(6) Circumstances analogous to those abovestated which endanger the life, safety or normal development of children.

(d) "Comprehensive program against child abuse, exploitation and discrimination" refers to the coordinated program of services and facilities to protected children against:

- (1) Child Prostitution and other sexual abuse;
- (2) Child trafficking;
- (3) Obscene publications and indecent shows;
- (4) Other acts of abuses; and
- (5) Circumstances which threaten or endanger the survival and normal development of children.


SECTION 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

a) “Child” shall refer to a person below eighteen (18) years of age or one over said age and who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse;

b) “Child abuse” refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child;

c) “Cruelty” refers to any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

d) “Physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm suffered by a child;

e) “Psychological injury” means harm to a child’s psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of said behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

f) “Neglect” means failure to provide, for reasons other than poverty, adequate food, clothing, shelter, basic education or medical care so as to seriously endanger the physical, mental, social and emotional growth and development of the child;

g) “Sexual abuse” includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

h) “Lascivious conduct” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,
bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person;

i) “Exploitation” means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials.

**Rules and Regulations on the Trafficking of Children (1994).**

**SECTION 1. Definition of terms.** - As used in these Rules, unless the context otherwise requires:

a. “Child” shall refer to a Filipino citizen who is below eighteen (18) years of age;

b. “Trafficking” shall refer to the act of trading or dealing with children, including but not limited to, the buying and selling children for money, or for any other consideration, or barter;

c. "Parent” shall refer to the natural parents, legal guardian of a child or one exercising parental authority over the child;

**Rules and Regulations Implementing Republic Act No. 9344, or the “Juvenile Justice and Welfare Act of 2006” (2006).**

**RULE 4. Definition of terms.** As used in these Rules, the term/s:  

(a) “Child” refers to a person under the age of eighteen (18) years.

(b) “Children at risk” refers to children who are vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

1. being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;

2. being exploited including sexually or economically;

3. being abandoned or neglected, and after diligent search and inquiry the parent or guardian cannot be found;

4. coming from a dysfunctional or broken family or without a parent or guardian;

5. being out of school;

6. being a street child;

7. being a member of a gang;

8. living in a community with a high level of criminality or drug abuse; and

9. living in situations of armed conflict.

**A.M. No. 02-6-02-SC 2002-08-02, Rule on Adoption (2002).**

**Sec. 3. Definition of Terms.** – For purposes of this Rule:

(a) “Child” is a person below eighteen (18) years of age at the time of the filing of the petition for adoption.
(f) "Abandoned child" refers to one who has no proper parental care or guardianship or whose parents have deserted him for a period of at least six (6) continuous months and has been judicially declared as such.

(g) "Dependent child" refers to one who is without a parent, guardian or custodian or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody and is dependent upon the public for support.

(h) "Neglected child" is one whose basic needs have been deliberately not attended to or inadequately attended to, physically or emotionally, by his parents or guardian.

(i) "Physical neglect" occurs when the child is malnourished, ill-clad and without proper shelter.

(j) "Emotional neglect" exists when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health or made to beg in the streets or public places, or when placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices.


SEC. 3. Definition of Terms -

(a) "Child" is a person below eighteen years of age.

(b) "Department" refers to the Department of Social Welfare and Development.

(c) "Dependent child" is one who is without a parent, guardian or custodian, or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody, and is dependent upon the public for support.

(d) "Abandoned child" is one who has no proper parental care or guardianship, or whose parents or guardian has deserted him for a period of at least six (5) continuous months.

(e) "Neglected child" is one whose basic needs have been deliberately not attended to or inadequately attended to, physically or emotionally, by his parents or guardian.

(f) "Physical neglect" occurs when the child is malnourished, ill-clad and without proper shelter.

(g) "Emotional neglect" occurs when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health; made to beg in the streets or public places, or when placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices.

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(i) "Physically handicapped child" is one who is crippled, deaf-mute, blind, or otherwise suffers from a defect which restricts his means of action or communication with others.

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(m) "Commitment" or "surrender of a child" is the legal act of entrusting a child to the care of the Department or any duly licensed child-placement or child-caring agency or individual by the court, parent or guardian or any interested party.

(n) "Involuntarily committed child" is one whose parents have been permanently and judicially deprived of parental authority due to abandonment; substantial, continuous, or repeated neglect; abuse; or incompetence to discharge parental responsibilities in accordance with Section 4 herein.

(o) "Voluntarily committed child" is one whose parents knowingly and willingly relinquished parental authority to the Department or any duly
licensed child-placement or child-caring agency or individual in accordance with Section 3 herein.

(p) "Child-placing or child-placement agency" refers to a private non-profit or charitable institution or government agency duly licensed and accredited by the Department to provide comprehensive child welfare services, including but not limited to, receiving applications for adoption or foster care, evaluating the prospective adoptive or foster parents and preparing the home study report.

(q) "Child-caring agency" refers to a private non-profit or charitable institution or government agency duly licensed and accredited by the Department that provides twenty-four hour residential care services for abandoned, orphaned, neglected, involuntarily or voluntarily committed children.

(r) "Guardian ad litem is a person appointed by the court where the case is pending for a child sought to be committed to protect his best interests.

**III. RIGHTS of STREET CHILDREN**

**III.A. INTERNATIONAL LAW**


**Article 25.**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.


**Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or
birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.


Article 2
The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

xxx

Article 5
The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Article 6
The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Article 7
The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

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Article 9
The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.
1987 Constitution.

Article XIII

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

ARTICLE XIV

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE AND SPORTS

EDUCATION

Section 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

Section 2. The State shall:

(1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;

(2) Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the under-privileged;

(4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and

(5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

ARTICLE XV

THE FAMILY

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3. The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) 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;

(3) The right of the family to a family living wage and income; and

(4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

**Art. 356.** Every child:

(1) Is entitled to parental care;

(2) Shall receive at least elementary education;

(3) Shall be given moral and civic training by the parents or guardian;

(4) Has a right to live in an atmosphere conducive to his physical, moral and intellectual development.


**Art. 3.** Rights of the Child. - All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

(1) Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.

(2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

(3) Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care.

The physically or mentally handicapped child shall be given the treatment, education and care required by his particular condition.

(4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.

(5) Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.

(6) Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.

(7) Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.

(8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.

(9) Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.

(10) Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.
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(11) Every child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.

(12) Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

IV. ENFORCEMENT
IV.A. LAWS CREATING COMMISSIONS

Executive Order 778, Transforming the Council for the Welfare of Children into the Early Childhood Care and Development Council (2009).

WHEREAS, Republic Act (RA) No. 8980, also known as the Early Childhood Care and Development (ECCD) Act, promulgated a comprehensive policy and a national system for early ECCD, and provided funds therefor and for other purposes;

WHEREAS, the functions of the Council for the Welfare of Children have expanded to include not only its original functions under Presidential Decree No. 603 and Executive Order No. 233, series of 1988, but also that as National ECCD Coordinating Council, pursuant to Section 8 of RA 8980;

WHEREAS, there is a necessity to promote the welfare and benefits of young children aged 0 to 6 years, who are the principal beneficiaries of the ECCD Act, as well as to ensure that the objectives of the National ECCD System as defined by RA No. 9080 are achieved;

WHEREAS, Section 31, Chapter 10, Book III of the Administrative Code of 1987 grants the President the continuing authority to reorganize the Executive Branch of government;

NOW, THEREFORE I, GLORIA M. ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Transforming the Council for the Welfare of Children (CWC) into the Early Childhood Care and Development (ECCD) Council. — The Council for the Welfare of Children is hereby transformed into the ECCD Council, attached to the Office of the President, which will support the implementation of the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six (6) and to promote their optimum growth and development.


TITLE IX
COUNCIL FOR THE WELFARE OF CHILDREN AND YOUTH

Chapter 1
CREATION AND COMPOSITION

Art. 205. Creation of the Council for the Welfare of Children. - A Council for the Welfare of Children is hereby established under the Office of President. The Council shall be composed of the Secretary of Social Welfare as Chairman, and seven members, namely: The Secretary of Justice, the Secretary of Labor, the Secretary of Education and Culture, the Secretary of Health, the Presiding Judge of the Juvenile and Domestic Relations Court, City of Manila, and two representatives of voluntary
welfare associations to be appointed by the President of the Philippines, each of whom shall hold office for a term two years.

There shall be a permanent Secretariat for the Council headed by an Executive Director, to be appointed by the Chairman and approved by a majority of the members of the Council.

For actual attendance at regular meetings, the Chairman and each member of the Council shall receive a per diem of one hundred pesos for every meeting actually attended, but the total amount of per diem that the Chairman and a member may receive in a month shall in no case exceed five hundred pesos.


WHEREAS, it is the policy of the state to promote the well-being and total development of children and youth, and to protect them from exploitation, abuse, improper influence, hazards and other circumstances prejudicial to their physical, mental, emotional, social and moral development;

WHEREAS, the Council for the Welfare of Children has been created under the Office of the President by virtue of Presidential Decree No. 603 otherwise known as THE CHILD AND YOUTH WELFARE CODE with primary functions, among others, to coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare so as to formulate and evaluate policies, programs and services relative to the development of the general welfare and protection of the best interests of children and youth;

WHEREAS, it is necessary to revise the composition of and enlarge the membership and organizational structure of the Council to enable the Council to more effectively carry out its responsibilities under the law and to ensure the assistance and cooperation of government agencies concerned with child and youth welfare and development;

WHEREAS, to provide better focus and perspective, it becomes imperative to redefine the roles and functions of the Council;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the sovereign will of the Filipino people and the Constitution, do hereby order:

**Section 1. Title.** This Executive Order shall otherwise be known as the Reorganization Act of the Council for the Welfare of Children.

**SECTION 2. ATTACHMENT TO THE DSWD.** The Council shall continue to be an attached agency of the Department of Social Welfare and Development (DSWD).

XXX

**E.O. NO. 275, Creating a Committee for the Special Protection of Children from All Forms of Neglect, Abuse, Cruelty, Exploitation, Discrimination and Other Conditions Prejudicial to Their Development (1995).**

WHEREAS, the Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government;

WHEREAS, 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 discrimination, and other conditions prejudicial to their development;

WHEREAS, there is a need to consolidate in one body the assessment, monitoring and implementation of the aforecited policy on a continuing basis;

NOW, THEREFORE, I, FIDEL V. RAMOS President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:
SECTION 1. There is hereby created a Special Committee for Children to be composed of:

1. The Secretary of Justice C Chairman
2. The Secretary of Social Welfare and Development C Co-Chairman
3. The Chairman of the Commission on Human Rights C Member
4. Commissioner of the Bureau of Immigration C Member
A representative with a rank not lower than undersecretary from the following:
5. Department of Labor and Employment C Member
6. Department of Tourism C Member
7. Department of the Interior and Local Government C Member
8. Department of Foreign Affairs C Member
9. Three representatives of private organizations to be nominated by said groups and appointed by the President C Member

SECTION 2. The Committee shall exercise the following functions and duties:

a. To report to the President acts taken to address specific issues on child abuse and exploitation brought to the Committee's attention.

b. To direct other agencies to immediately respond to the problems brought to their attention and to report to the Committee on action taken.

c. To perform such other functions and duties as may be necessary to meet the objectives of the Committee.

*Executive Order 8044, Youth in Nation-Building Act (1995).*

Sec. 1. Title. — This Act shall be known as the "Youth in Nation-Building Act."

Sec. 2. Policy. — The State recognizes its responsibility to enable the youth to fulfill their vital role in nation-building and hereby establishes the National Comprehensive and Coordinated Program on Youth Development, creates the structures to implement the same and appropriates adequate funds to provide support for the program and implementing structures on a continuing sustained basis.

The State hereby declares that "Youth" is the critical period in a person's growth and development from the onset of adolescence towards the peak of mature, self-reliant and responsible adulthood comprising the considerable sector of the population from the age of fifteen (15) to thirty (30) years.

The State further declares the National Comprehensive and Coordinated Program on Youth Development shall be based on the following principles:

(a) Promotion and protection of the physical, moral, spiritual, intellectual and social well-being of the youth to the end that the youth realize their potential for improving the quality of life;

(b) Inculcation in the youth of patriotism, nationalism and other basic desirable values to infuse in them faith in the Creator, belief in the sanctity of life and dignity of the human person, conviction for the strength and unity of the family and adherence to truth and justice;

(c) Encouragement of youth involvement in character-building and development activities for civic efficiency, stewardship of natural resources, agricultural and industrial productivity, and an understanding of world economic commitments on tariffs and trade and participation in structures of policy-making and program implementation to reduce the incidence of poverty and accelerate socioeconomic development; and

(d) Mobilization of youth's abilities, talents and skills and redirecting their creativity, inventive genius and wellspring of enthusiasm and hope for the freedom of our people from fear, hunger and injustice.

BOOK V
Title XVI
SOCIAL WELFARE AND DEVELOPMENT

CHAPTER 1
GENERAL PROVISIONS

Section 1. Declaration of Policy. - The State is committed to the care, protection, and rehabilitation of individuals, families and communities which have the least in life and need social welfare assistance and social work intervention to restore their normal functioning and enable them to participate in community affairs.

Section 2. Mandate. - The Department shall provide a balanced approach to welfare whereby the needs and interests of the population are addressed not only at the outbreak of crisis but more importantly at the stage which would inexorably lead to such crisis. Following such strategy, the Department’s objectives shall be to:

(1) Care for, protect and rehabilitate the physically and mentally handicapped and socially disabled constituents, for effective social functioning;

(2) Provide an integrated welfare package to its constituents on the basis of their needs and coordinate the service facilities required from such departments or agencies, governmental and non-governmental, which can best provide them;

(3) Arrest the further deterioration of the socially disabling or dehumanizing conditions of the disadvantaged segment of the population at the community level; and

(4) Advocate for policies and measures addressing social welfare concerns.

Section 3. Powers and Functions. - To accomplish its mandate and objectives, the Department shall:

(1) Formulate, develop and implement plans, programs and projects in the field of social welfare and development;

(2) Adopt policies to ensure effective implementation of programs for public and private social welfare services;

(3) Promote, support and coordinate the establishment, expansion and maintenance of non-government social welfare facilities, projects and services;

(4) Establish, operate, maintain and otherwise support institutional facilities, projects and services for its constituents;

(5) Promote, build and strengthen people’s organizations for a self-directing welfare system at the grassroots level;

(6) Promote, support and coordinate networks and facilities for the identification and delivery of appropriate interventions to its welfare constituents;

(7) Accredit institutions and organizations engaged in social welfare activities and provide consultative and information services to them;

(8) Undertake researches and studies on matters pertaining to its constituency;

(9) Initiate, promote and maintain bilateral and multi-lateral linkages for technical cooperation, in coordination with the Department of Foreign Affairs;

(10) Provide advisory services and develop and implement training standard and programs for personnel, social workers and students and third-country participants for career and staff development in social welfare activities;

(11) Disseminate information and publish technical bulletins on social welfare and development;

(12) Deputize law enforcement agencies to assist in the implementation of laws, rules and regulations for the protection of the rights of the exploited, abused and disadvantaged;

(13) Regulate fund drives, public solicitations and donations for charitable or welfare purposes;

(14) Set standards, accredit and monitor performance of all social welfare activities in both public and private sectors;

(15) Exercise functional and technical supervision
over social workers in other government settings or agencies like courts, hospitals, schools and housing projects;

(16) Deputize local government units and other agencies of government as are necessary in providing disaster relief;

(17) Coordinate all activities pertaining to the implementation of programs and services for the disabled, the aging and other socially disadvantaged; and

(18) Perform such other functions as may be provided by law.

Section 4. Organizational Structure. - The Department, aside from the Department Proper comprising the Office of the Secretary, the Offices of the Undersecretaries and Assistant Secretaries and the Services, shall consist of the Bureaus, Regional Offices, Provincial/City Offices and Municipal/District Offices.


Article Thirteen. - The Social Welfare and Development Officer

SEC. 483. Qualifications, Powers and Duties. - (a) No person shall be appointed social welfare and development officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a duly licensed social worker or a holder of a college degree preferably in sociology or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in the practice of social work for at least five (5) years in the case of the provincial or city social welfare and development officer, and three (3) years in the case of the municipal social welfare and development officer. The appointment of a social welfare and development officer is mandatory for provincial and city governments, and optional for municipal government.

(b) The social welfare and development officer shall take charge of the office on social welfare and development services and shall:

(1) Formulate measures for the approval of the sanggunian and provide technical assistance and support to the governor or mayor, as the case may be, in carrying out measures to ensure the delivery of basic services and provision of adequate facilities relative to social welfare and development services as provided for under Section 17 of this Code;

(2) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with social welfare programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(3) In addition to the foregoing duties, the social welfare and development officer shall:

(i) Identify the basic needs of the needy, the disadvantaged and the impoverished and develop and implement appropriate measures to alleviate their problems and improve their living conditions;

(ii) Provide relief and appropriate crisis intervention for victims of abuse and exploitation and recommend appropriate measures to deter further abuse and exploitation;

(iii) Assist the governor or mayor, as the case may be, in implementing the barangay level program for the total development and protection of children up to six (6) years of age;

(iv) Facilitate the implementation of welfare programs for the disabled, elderly, and victims of drug addiction, the rehabilitation of prisoners and parolees, the prevention of juvenile delinquency and such other activities which would eliminate or minimize the ill-effects of poverty;

(v) Initiate and support youth welfare programs that will enhance the role of the youth in nation-building;

(vi) Coordinate with government agencies and non-governmental organizations which have for their purpose the promotion and the protection of all needy, disadvantaged, underprivileged or impoverished groups or individuals, particularly those identified to be vulnerable and high-risk to exploitation, abuse and neglect;
LOOKING AFTER FILIPINO CHILDREN

(4) Be in the frontline of service delivery, particularly those which have to do with immediate relief during and assistance in the aftermath of man-made and natural disaster and natural calamities;

(5) Recommend to the sanggunian and advise the governor or mayor, as the case may be, on all other matters related to social welfare and development services which will improve the livelihood and living conditions of the inhabitants; and

(c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.


SEC. 8. Juvenile Justice and Welfare Council (JJWC). - A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

(a) Council for the Welfare of Children (CWC);

(b) Department of Education (DepEd);

(c) Department of the Interior and Local Government (DILG);

(d) Public Attorney's Office (PAO);

(e) Bureau of Corrections (BUCOR);

(f) Parole and Probation Administration (PPA)

(g) National Bureau of Investigation (NBI);

(h) Philippine National Police (PNP);

(i) Bureau of Jail Management and Penology (BJMP);

(j) Commission on Human Rights (CHR);

(k) Technical Education and Skills Development Authority (TESDA);

(l) National Youth Commission (NYC); and

(m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

(a) Department of Justice (DOJ);

(b) Department of Social Welfare and Development (DSWD);

(c) Council for the Welfare of Children (CWC)

(d) Department of Education (DepEd);

(e) Department of the Interior and Local Government (DILG)

(f) Commission on Human Rights (CHR);

(g) National Youth Commission (NYC); and

(h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.
**R.A. 9775, Anti-Child Pornography Act (2009).**

**Section 20. Inter - Agency Council against Child Pornography.** - There is hereby established an Inter-Agency Council against Child Pornography to be composed of the Secretary of the DSWD as chairperson and the following as members:

(a) Secretary of the Department of Justice;

(b) Secretary of the Department of Labor and Employment;

(c) Secretary of the Department of Science and Technology;

(d) Chief of the Philippine National Police;

(e) Chairperson of the Commission on Information and Communications Technology;

(g) Commissioner of the National Telecommunications Commission;

(h) Executive Director of the Council for the Welfare of Children;

(i) Executive Director of the Philippine Center for Transnational Crimes;

(j) Executive Director of the Optical Media Board;

(k) Director of the National Bureau of Investigation; and

(l) Three (3) representatives from children’s nongovernmental organizations. These representatives shall be nominated by the government agency representatives of the Council for appointment by the President for a term of three (3) years and may be renewed upon renomination and reappointment by the Council and the President respectively.

The members of the Council may designate their permanent representatives, who shall have a rank not lower than assistant secretary or its equivalent, to meetings and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

The DSWD shall establish the necessary Secretariat for the Council.

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**Republic Act 9262, Anti-Violence Against Women and Their Children Act of 2004 (2004).**

**SECTION 39. Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC).** In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their children, hereinafter known as the Council, which shall be composed of the following agencies:

(a) Department of Social Welfare and Development (DSWD);

(b) National Commission on the Role of Filipino Women (NCRFW);

(c) Civil Service Commission (CSC);

(d) Commission on Human rights (CHR);

(e) Council for the Welfare of Children (CWC);

(f) Department of Justice (DOJ);

(g) Department of the Interior and Local Government (DILG);

(h) Philippine National Police (PNP);

(i) Department of Health (DOH);

(j) Department of Education (DepEd);
(k) Department of Labor and Employment (DOLE); and

(l) National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.


Section 20. Inter-Agency Council Against Trafficking. - There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

(a) Secretary, Department of Foreign Affairs;
(b) Secretary, Department of Labor and Employment;
(c) Administrator, Philippine Overseas Employment Administration;
(d) Commissioner, Bureau of Immigration;
(e) Director-General, Philippine National Police;
(f) Chairperson, National Commission on the Role of Filipino Women; and
(g) Three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting, rules and regulations.


I. Children and Youth Relations Section (CYRS)
A. Rationale:

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the Beijing Rules, specifically stipulates that special police units shall be established to exclusively deal with juveniles. In line with these rules, former President Corazon C. Aquino issued on August 12, 1986 Proclamation No. 20 emphasizing the policy of the state to promote the well-being and total development of the Filipino youth and children and to protect them from exploitation, abuse, improper influences, hazards, and other conditions or circumstances prejudicial to their physical, mental, emotional, social and moral development.

The proclamation created an inter-agency task force for the protection of children of which the defunct Philippine Constabu-lary-
Consonant with these powers and functions is the duty of the police, in coordination with the other components of the criminal justice system, to endeavor in bringing about a peaceful and orderly environment conducive to the promotion of a wholesome growth for children.

The creation of the CYRS and/or designation of CYRO in every police station will ensure the efficiency and effectiveness in the application of appropriate techniques, approaches and procedures in the processing of cases of CEDC which are designed to aid in the protection and rehabilitation of the CEDC.

**IV.B. REMEDIAL LAW**


**SEC. 4.**

(a) Who may file. - The Secretary of the Department or his authorized representative or any duly licensed child-placement or child-caring agency having knowledge of a child who appears to be dependent, abandoned or neglected, may file a verified petition for involuntary commitment of said child to the care of any duly licensed child-placement or child-caring agency or individual.

(b) Venue. - The petition shall be filed with the Family Court of the province or city in which the parent or guardian resides or where the child is found.

(c) Contents of Verified Petition. - The petition must state:

The facts showing who has custody of the child at the time of the filing of the petition; and

The name, address and written consent of the Department or duly licensed child-placement or child-caring agency or individual to whose care the commitment of the child is sought to be entrusted.

(d) Summons; Court to Set Time for Hearing. - If the court is satisfied that the petition is sufficient in form and substance, it shall direct the clerk of court to immediately issue summons which shall be served together with a copy of the petition and a notice of hearing, upon the parents or guardian of the child and the office of the public prosecutor not less than five (5) days before the date of the hearing. The office of the public prosecutor shall be directed to immediately transmit the summons to the prosecutor assigned to the Family Court concerned.

If it appears from the petition that both parents of the child are dead or that neither parent can be found in the province or city where the court is located and the child has no guardian residing therein, summons may not be issued and the court shall thereupon appoint a guardian ad litem pursuant to Sub-section (f) below and proceed
with the hearing of the case with due notice to the provincial or city prosecutor.

(e) Social Worker. - After the court sets the petition for hearing in accordance with Sub-section (d) above, it shall direct the social worker to submit, before the hearing, a case study report of the child to aid it in evaluating whether said child should be committed to the care of the Department or any duly licensed child-placement or child-caring agency or individual. The report shall bear the signature of the social worker on every page.

(f) Guardian Ad Litem of Child. - If neither of the parents nor the guardian of the child can be located or does not appear in court despite due notice, or if the court finds them incompetent to protect the best interests of the child, it shall be the duty of the court to appoint a suitable person as guardian ad litem to represent the child. In making the appointment, the court shall consider the background of the guardian ad litem and his familiarity with the judicial process, social service programs and child development. A member of the Philippine Bar may be appointed guardian ad litem.

(g) Child's Right to Counsel - The court, upon request of the child capable of forming his own views or upon request of his guardian ad litem, shall appoint a lawyer to represent him in the proceedings.

(h) Duty of Public Prosecutor. - The provincial or "city prosecutor shall appear for the State and ascertain if there has been due notice to all parties concerned and that there is justification for the declaration of dependency, abandonment or neglect.

(i) Hearing. - The court shall direct the person or agency which has custody of the child to bring the latter to the court on the date of the hearing of the petition and shall ascertain the facts and determine whether the child is dependent, abandoned, or neglected, and if so, the-cause and circumstances of such condition.

(j) Judgment. - If, after the hearing, the court shall find the child to be dependent, abandoned, or neglected, it shall render judgment committing him to the care and custody of the Department or any duly licensed child-placement or child-caring agency or individual until he reaches the age of eighteen (18), The judgment shall likewise make proper provisions for the custody of the property or money belonging to the committed child.

However, if the court finds that the abandonment or neglect of the child may be remedied, the child may be allowed to stay in his own home under the care and control of his parents or guardian, subject to supervision and direction of the Department.

(k) Visitation or Inspection. - Any duly licensed child-placement or child-caring agency or individual to whom a child has been committed by the court shall be subject to visitation or inspection by a representative of the court or of the Department, as the case may be or of both, to determine whether the welfare and interests of the child are being served,

(l) Report of Person or Institution. - Any duly licensed child-placement or child-caring agency or individual to whom a child has been committed by judicial order may at any time be required by the court to submit a report, containing all necessary information for determining whether the welfare of the child is being served.

(m) Temporary Custody of Child. - The duly licensed child-placement or child-caring agency or individual to whom a child has been committed may file a verified motion with the court which granted the petition for involuntary commitment of a child to place him in the care of any suitable person, upon the latter's request, for a period not exceeding one month at a time. The court may order the social worker to submit a case study report to aid it in evaluating whether such temporary custody shall be for the best interests of the child. The period of temporary custody of the child may be extended by the court for a period not exceeding one month at a time upon motion of the duly licensed child-
placement or child-caring agency or individual to which the child has been committed.

The court, motu proprio, or upon request of the child assisted by his guardian ad litem, or at the instance of the agency or person to whom the child was committed, after due notice and hearing, shall discontinue the temporary custody of the child if it appears that he is not being given proper care.

After one month from the date temporary custody of the child was given to another suitable person, the agency or individual shall submit to the court a verified report on whether the temporary custody of the child has promoted his best interests.

(n) Change of Custody. - If the child is committed to the Department, it shall have the authority to change the custody of a child it had placed with any duly licensed child-placement or child-caring agency or individual if it appears that such change is for the best interests of the child. The Department shall notify the court of any change in custody of the child.

When conflicting interests arise among child-placement or child-caring agencies, the court which granted the involuntary commitment of the child, upon motion of the Department or any of the agencies concerned, shall order the change of commitment of the child.

(o) Removal of Custody. - A motion to remove custody of a child may be filed by an authorized representative of the Department with knowledge of the facts against a child-placement or child-caring agency or individual to whose custody a child has been committed by the court on the ground of neglect of such child as defined in Section 3 (e) of this Rule. The court shall set the motion for hearing with notice to the public prosecutor and the court-designated social worker. If the court finds after hearing that the allegations of the motion have been established and that it is for the best interests and welfare of the child, the court shall issue an order removing him from the custody of the person or agency, as the case may be, and committing him to the custody of another duly licensed child-placement or child-caring agency or individual.

In the same proceeding, the court may suspend or revoke the license of the agency or individual found guilty of such neglect depending upon the gravity or frequency of the offense.

(p) Restoration of Parental Authority After Involuntary Commitment. -

(i) Who may file; Ground. - The parents or guardian of a child committed to the care of a person, agency or institution by judicial order may file a verified motion for the restoration of his rights over the child with the court which granted the involuntary commitment on the ground that he is now able to take proper care and custody of said child, provided, however, that the child has not yet been adopted.

(ii) Notice of Hearing. - The court shall fix the time and date for the hearing of the motion, which shall not be earlier than thirty (30) days nor later than sixty (60) days from the date of the filing of said motion and cause notice of the hearing to be sent to the person, agency or institution to which the child has been committed, the public prosecutor and the court-designated social worker, at least five (5) days before the date of hearing.

(iii) Hearing. - At the hearing, any person may be allowed to intervene at the discretion of the court to contest the right to the relief demanded. Witnesses may be called and examined by the parties or by the court motu proprio.

(iv) Resolution. - If it is found that the cause for the commitment of the child no longer exists and that the movant is already able to take proper care and custody of the child, the court, after taking into consideration the best interests and the welfare of the child, shall issue a resolution terminating the parental authority of the person, agency or institution to whom the child was committed by judicial order and restoring parental authority to the movant.

(q) Jurisdiction for Prosecution of Punishable Acts. - The Family Court which granted the involuntary commitment shall have jurisdiction over the prosecution of a child who left without prior permission from the person or institution to which he has been judicially committed or the person under whose custody he has been judicially committed in accordance with Sub-section (m) of
Section 4 of this Rule. It shall likewise have jurisdiction over the person who induced the child to leave such person or institution, except in case of actual or imminent grave physical or moral danger to the child. The Family Court which granted the involuntary commitment shall also have jurisdiction over the procurement of parents or guardians of the child who may be held liable under Articles 59 and 60 of P.D. No. 603 and Sections 9, 10 and 31 of R.A. No. 7610.

SEC. 5. Voluntary Commitment of a Child to an Institution or Individual. - The parent or guardian of a dependent, abandoned or neglected child may voluntarily commit him to the Department or any duly licensed child-placement or child-caring agency or individual subject to the rules of the Department. However, no child shall be committed unless he is surrendered in writing by his parents or guardian stating such voluntary commitment and specifically naming the office, agency, or individual to whose custody the child is to be committed. Such written instrument should be notarized and signed in the presence of an authorized representative of the Department after counseling and other services have been made available to encourage the child’s parents to keep the child.

(a) Petition for Removal of Custody. -

(i) Who may file; Ground. - The parents or guardian who voluntarily committed the child, or in their absence or failure, any person with knowledge of the facts, may file a verified petition to remove custody of the child against the child-placement or child-caring agency or individual to whose custody the child has been voluntarily committed on the ground of neglect of such child as defined in Section 3 (e) of this Rule. A child may also be removed from the custody of the child-placement or child-caring agency or individual on the ground that the voluntary commitment of the child was unjustified.

(ii) Venue. - The petition shall be filed with the Family Court of the province or city where the child-placement or child-caring agency to which the child has been voluntarily committed is located or where the child may be found.

Contents of Verified Petition - The petition must state:

The name and address of the child-placement or child-caring agency or individual to whose custody the child has been voluntarily committed;

The facts showing that the child has been neglected by the agency or in cases where the voluntary commitment was unjustified, that the parents of the child are actually capable of taking care and custody of the child;

The name, address and written consent of the duly licensed child-placement or child-caring agency or individual to whose care the child may be transferred.

The facts showing that petitioner has exhausted the administrative remedies available to him,

(iv) Notice of Hearing. - If the petition is sufficient in form and substance, the court shall set the same for hearing with notice to the Department, the public prosecutor, the court-designated social worker, the agency or individual to whom the child has been committed and in appropriate cases, the parents of the child.

(v) Judgment. - If after hearing the court finds that the allegations of the petition have been established and that it is for the best interests and welfare of the child, it shall issue an order removing the child from the custody of the person or agency concerned, and committing him to the custody of another duly licensed child-placement or child-caring agency or individual.

The court, in the same proceeding may, after hearing the comment or recommendation of the Department, suspend or revoke the license of the agency or individual found guilty of such neglect depending upon the gravity or frequency of the offense.

(b) Restoration of Parental Authority After Voluntary Commitment. - The restoration of rights of the parent or guardian over the child who has been voluntarily committed shall be governed by the rules of the Department, provided, however, that the petition for restoration is filed within six (6) months from the date of voluntary commitment. In case the Department refuses to grant legal custody and parental authority to the parent or guardian over the child who has been voluntarily committed to an agency or individual, the parent or guardian may file a petition in
court for restoration of parental authority in accordance with Section 4 (p) of this Rule.

(c) Jurisdiction for Prosecution of Punishable Acts. - The Family Court of the place where the child may be found or where the duly licensed child-placement or child-caring agency or individual is located shall have jurisdiction over the prosecution of a child who left without prior permission from the person or institution to which he has been voluntarily committed. It shall likewise have jurisdiction over the person who induced the child to leave such person or institution, except in case of grave actual or imminent physical or moral danger, to the child. The same Family Court shall also have jurisdiction over the prosecution of parents or guardians of the child who may be held liable under Articles 59 and 60 of P.O. No. 603 and Sections 9, 10 and 31 of R.A. No. 7610.

SEC. 6. Petition for Commitment of a Disabled Child. -
(a) Who may file. - Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care but his parents or guardians are opposed thereto, the Department, or any duly licensed child-placement or child-caring agency or individual may file a verified petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children. The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when his welfare and interests are at stake.
(b) Venue. - The petition for commitment of a disabled child shall be filed with the Family Court of the place where the parent or guardian resides or where the child is found.
(c) Contents of Verified Petition. - The petition for commitment must state the following:
   (1) The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and needs institutional care;
   (2) The name of the parents and their residence, if known, or if the child has no living parent, the name and residence of the guardian, if any; and
   (3) The fact that the parents or guardian or any duly licensed disabled child-placement or child-caring agency, as the case may be, has opposed the commitment of such child;
   (4) The name and written conformity of the institution where the child is to be committed.
   (5) An estimate of the costs and other expenses of maintaining the child in the institution.

The verified petition shall be sufficient if based upon the personal knowledge of the petitioner.

(d) Order of Hearing; Notice. - If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date of the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, physically handicapped, emotionally disturbed, mentally ill, with cerebral palsy or with similar afflictions and on the person having charge of him or any of his relatives residing in the province or city as the court may deem proper. The order shall also direct the sheriff or any other officer of the court to produce, if necessary, the alleged disabled child on the date of the hearing.

(e) Hearing and Judgment. - If the court finds that the allegations of the petition have been established and that institutional care of the child is for his best interests or the public welfare and that his parents, or guardian or relatives are unable for any reason whatsoever to take proper care of him, the court shall order his commitment to the proper institution for disabled children. The court shall likewise make proper provisions for the custody of the property or money belonging to the committed child. The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the immediately preceding paragraph, the Department shall bear the expenses, or such part thereof as may remain unpaid.

The court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the reports and other data pertinent to the case.
(f) Discharge of Judicially Committed Disabled Child. - Upon motion of the parent, guardian or institution to which the child has been judicially committed under this Rule, the court, after hearing, shall order the discharge of such child if it is established and certified by the Department that:

(1) He is no longer a danger to himself and the community;

(2) He has been sufficiently rehabilitated from his physical handicap or if of working age, is already fit to engage in gainful occupation; or

(3) He has been sufficiently relieved of his psychological, mental and emotional problems and is ready to assume normal social relations,

SEC. 7. Effectivity. - This rule shall take effect on April 15, 2002 after its publication in a newspaper of general circulation not later than March 15, 2002.
CHAPTER 7

RIGHTS OF A CHILD AS A PERSON

Rowena Daroy-Morales, LL. B.
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## COMPENDIUM OF LAWS

- International Instruments
- Domestic Law
I. Introduction

The Philippines, as a member of the international community, is bound by its obligations under international law. Such obligations are embodied in treaties or conventions of which the Philippines is a State-Party, customary norms and generally accepted principles of international law.

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on 10 December 1948, codify the human rights guaranteed to all people everywhere in the world. Its binding effect on States is founded on principles of morals and diplomacy.

The Preamble of the UDHR declares “the inherent dignity and of the equal and inalienable rights of all members of the human family.” While a child is invariably a member of the “human family,” he is a disempowered member by virtue of his physical, emotional and mental maturity. The UDHR finds significance to the child not only because of its universal application but also that his disadvantaged position in society makes him more vulnerable than the average person to violations of human rights. To address the imbalance of power, it is acknowledged that he needs special safeguards and care, including appropriate legal protection. On 20 November 1959, the General Assembly proclaimed the Declaration of the Rights of the Child which eventually became basis of the Convention of the Rights of the Child (CRC).

The CRC, adopted by the United on 20 November 1989, is the first treaty that seeks to deal with the protection of specific human rights of children. The Philippines is a signatory to the CRC and is thus bound by its provisions.

International law is part of Philippine law. Section 2, Article II of the 1987 Philippine Constitution, declares that the Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.” This is known as the doctrine of incorporation by which international law forms part of Philippine law and no legislative action is required to make them applicable to Filipinos and, in some cases, to all persons within Philippine territory.
II. Who is the Filipino Child?

The Filipino child enjoys the protection of international law and Philippine law.

The *Convention on the Rights of the Child* defines the “child” as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. The age of majority in the Philippines is eighteen (18) years old\(^1\), however, special laws enacted or the purpose of protecting against abuse provides that while a child is one whose age is below 18 years, a person who is older but is unable to fully take care of, or protect, himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition\(^2\) is also considered a child under the law.

We note the preambular statement of the *Declaration of the Rights of the Child* which states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” The child is thus defined by the DRC by his vulnerability and the CRC is age-focused. The *Family Code of the Philippines*, as amended, is age-focused for purposes of determining entitlement to civil and political rights while it is vulnerability-focused for penal law purposes.

The child includes one unborn and one who has been born and has acquired civil personality. The rights that attach to a child are hinged on his having life as well his having acquired civil personality. Civil personality, or juridical personality is\(^3\) “the fitness to be subject of legal relations”\(^4\) attaches, as a general rule, the moment he is born alive,\(^5\) rights attach the moment life begins, or the moment of conception.

The rights granted to the unborn are basically founded on the right to life and the right to be born; as a matter of fact, the right “to be born well.”\(^6\)

A child is Filipino if his mother and or father is a Filipino citizen, whether born in the Philippines or elsewhere. A child who acquires a citizenship other than Filipino by virtue of the law of the state where it was born, or by the laws of his non-Filipino parent is still Filipino in which case he may possess dual citizenship.\(^7\) The rights that attach to him as a Filipino are not stripped as a

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2 Sec. 3 (a), R.A. 7610.
4 Art. 37, R.A. 386, *Civil Code*.
5 Art. 40, id.
7 Art. IV, Sec. 1, 1987 *Philippine Constitution*.
consequence of his other citizenship though it may be best to consider the international rules in cases of conflict of laws.

A conceived child is considered born for all purposes favorable to it, provided he is born alive later, under the following conditions: if it is alive at the time it is completely delivered, or if he had an intra-uterine life of seven (7) months and is born alive and remains to be so after twenty-four (24) hours after its complete delivery.\(^8\)

Philippine laws that relate to the rights, condition and legal capacity are binding upon a Filipino wherever he resides, i.e. even if he resides abroad. Thus, a Filipino below eighteen (18) years old is a child even when residing in another country, whose age-focused laws provide a different definition of a child, for purposes that affect a Filipino’s legal capacity, i.e. marrying age.

### III. Rights of the Unborn

Article II, Section 12 of the 1987 Constitution states that “[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception (emphasis provided).” Statutes and jurisprudence support this state policy.

A person is one who possesses civil personality. Personality is juridical capacity\(^9\) which is defined as “the fitness to be the subject of legal relations”\(^10\) and is lost by death.\(^11\) The Civil Code, as amended, states that “the civil personality of the child shall commence from the time of his conception for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code.”\(^12\) Article 41 provides the conditions under which a foetus is considered born: a) If upon complete delivery from the womb it is alive; or b) if the foetus had an intra-uterine life of less than seven (7) months, it should have lived beyond 24-hours after its complete delivery from the womb. The first instance refers to full-term foetuses while the second instance refers to premature births. By implication, a prematurely-born child is one whose intra-uterine life is less than seven (7) months.

Thus, an unborn child is given by law what Justice J.B.L. Reyes, a civilist of note, describes as “provisional personality” in the case of *Geluz v Court of Appeals*,\(^13\) and later in *Quimiguing v Icao*.\(^14\) In the *Geluz* case, the Supreme Court denied the claim for damages sought by a parent in behalf of an aborted child, stating that the parent cannot “invoke the provisional personality of a conceived child (*conceptus pro nato habetur*) under Article 40 of the Civil Code, because that same article expressly limits such provisional personality by imposing the condition that the child should be subsequently born alive: "provided it be born later with the conditions specified in the following article.” In the *Geluz* case, there is no dispute that the child was dead when separated from its mother's womb.” That a foetus, nonetheless, is a person for purposes favorable to it is illustrated in

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8 Art. 41, R.A. 386, *Civil Code*.
10 Art. 37, *Civil Code*.
11 Art. 37 and Art. 42, id.
12 Art. 40, id., as amended by Art. 5 of P.D. 603, known as the *Child and Youth Welfare Code*. The original text of Art. 40 reads “Birth determines personality but the conceived child shall be considered born for all purposes that are favorable to it, provided it is born later with the conditions specified in the following Article”.
the *Quimiguing case*, where the Supreme Court stated that “[a] conceived child, although as yet unborn, is given by law a provisional personality of its own for all purposes favorable to it, as explicitly provided in Article 40 of the Civil Code of the Philippines.”

Article 37 of the Civil Code states that “[j]uridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death.”

Death is cessation of life. It is only through death that the rights that a child enjoys are terminated. In the *Continental* case, the Supreme Court stated that “one need not acquire civil personality first before he/she could die. Even a child inside the womb already has life. No less than the Constitution recognizes the life of the unborn from conception, that the State must protect equally with the life of the mother. If the unborn already has life, then the cessation thereof even prior to the child being delivered, qualifies as death.”

The following rights attach to the unborn, provided it is born later.

1. The right to be recognized by its father and to use his name.

Recognition of paternity may be made even before the child is born. In a case decided by the Supreme Court in 2009, the recognition of paternity by the father who died before the child was born was upheld. With the recognition was the right to the use of the father’s surname when the child was later born.

In the 2009 *De la Cruz* case, the application with the Civil Registrar to have a child registered with his father’s surname was denied because the father died while the child was born after the father’s death. Attached to the application was an Affidavit of Acknowledgement executed by the father, as well as an unsigned Autobiography recognizing paternity of the unborn child. The Civil Registrar based the denial on the requirements of RA 9225 (“An Act Allowing Illegitimate Children to Use the Surname of their Father, and other Purposes”), and therefore, the child cannot use the surname of his father because he was born out of wedlock and because the father died prior to his birth and has no more capacity to acknowledge his paternity to the child. The Supreme Court, noting that there was no doubt as to the paternity of the child, directed the Civil Registrar to register the child in the father’s surname.

This case illustrates how the right of the child to bear the surname of his father who acknowledges paternity attaches even while *in utero*. It should, however, be noted that the child was born later.

2. The right to be supported by its parents.

This right is linked to the right of the child to be “born well” and the related obligation of its parents to support such unborn child so that he is born alive.

The noted civilist, Justice J.B.L. Reyes, described the right to support of the unborn as emanating from the "provisional personality of its own for all purposes favorable to it, as explicitly..."
provided in Article 40 of the Civil Code of the Philippines.” In the Quimiguing case, support was sought by the mother for her unborn child. In ruling that indeed support is an entitlement, the Court stated that “a conceived child, although as yet unborn, is given by law a provisional personality of its own for all purposes favorable to it, as explicitly provided in Article 40 of the Civil Code of the Philippines. The unborn child, therefore, has a right to support from it progenitors... even if the said child is only ‘en ventre de sa mere’... It is true that Article 40 prescribing that ‘the conceived child shall be considered born for all purposes that are favorable to it’ adds further ‘provided it be born later with the conditions specified in the following article’ (i.e., that the foetus be alive at the time it is completely delivered from the mother’s womb). This proviso, however, is not a condition precedent to the right of the conceived child.”

In a 2009 case, the Supreme Court stated that even an unborn child is a dependent of his parents. In the Continental Case, a father was seeking benefits from his employer for the death of his unborn child, on the basis of their Collective Bargaining Agreement (CBA) providing for benefits for the death of a dependent. The CBA defines a dependent as “one who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else,” including a child. The Court, in interpreting the meaning and scope of the term “dependent,” stated that the unborn fetus in the mother’s womb was included in the definition of “child” and was thus entitled to support.

The right to support of the unborn is the right to receive everything indispensable for the sustenance and the medical support to ensure that he is born alive, in keeping with the financial capacity of the family. Evidently, the other forms of support mentioned in Article 194, of the Family Code, i.e. dwelling, clothing, medical attendance, education and transportation, do not apply to the unborn.

3. Right to receive donations.

The unborn child may receive donations which, to perfect such donation, may be accepted by its parents or anyone who may legally represent it if they were already born.

A donation may be inter vivos or mortis causa. It is inter vivos if the donor intends that the donation shall take effect during the lifetime of the donor; it is mortis causa if it is intended that the donation be effective after the donor’s death. The laws on testamentary succession shall apply in donations mortis causa.

Donations mortis causa are made by will, in which case the unborn acquires the property described in the will upon in accordance with the law governing testate succession.

4. Right to succeed.

Succession is defined by law as a “mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others by his will or by operation of law,” or mixed. If the

21 Continental Steel Mfg., supra
22 Art. 194, Family Code.
23 Art. 742, Civil Code.
24 Art. 729, id.
25 Art. 774, id.
26 Art. 778, id.
decedent left a will or testament, in which case he is called a testator;\textsuperscript{27} the property is transmitted by testate succession; if there be no will, it is called intestate succession.

The unborn has the right to succeed or the right to acquire property and rights to the extent of the value of his legitime.\textsuperscript{28} Legitime is the part of the property which the testator cannot dispose of because the law has reversed it for certain heirs called forced or compulsory heirs.

\textit{Testate succession}. An unborn child may be instituted as an heir in a will. The unborn is a compulsory, or forced, heir of its parents, provided filiation is proved; and of its grandparents as well, if it is a legitimate child.\textsuperscript{29} The legitime of an illegitimate unborn is one-half the legitime of a legitimate child.

The law provides that “the preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.”\textsuperscript{30} Preterition consists in the omission in the testator’s will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, they are neither instituted as heirs nor are expressly disinheritcd. \textsuperscript{31}

If the unborn who is a compulsory heir is omitted or preterited, the institution of an heir in the will shall be annulled only insofar as the legitime of the omitted heir is impaired.\textsuperscript{32}

\section*{IV. Rights of a Child as a Person}

We now refer to a child who has acquired civil personality by virtue of birth. The rights due him \textit{in utero} continue to attach, and as a child with full civil personality, more rights can be claimed.

The Universal Declaration of Human Rights provides that the entitlement is “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\textsuperscript{33} The principle of equality is echoed in many other provisions of the UDHR as well as other international law instruments. Nonetheless, where there is a valid distinction, the law provides that rights should be enjoyed equally by children within the classification. For instance, in the Philippines, the law distinguishes recognizes the distinctions in filiation, or the legal relationship between the child and his parent/s, siblings, and child/ren of his parent/s.

The distinction is significant because there are rights available to legitimate children that are not available to illegitimate children. While this may seem unfair since it is through no fault of the child that he/she is legally handicapped because of the non-marriage of his/her parents or that his/her parents have committed some social/legal transgression, it bears stressing that the State, pursuant to the national policy relating to the family, is merely putting in place mechanisms which stress the importance of the family. Article 2, Section 12 of the 1987 Constitution states that “[t]he

\begin{itemize}
\item \textsuperscript{27} Art. 775, id.
\item \textsuperscript{28} Art. 774, id.
\item \textsuperscript{29} Art. 887, id.
\item \textsuperscript{30} Art. 854.
\item \textsuperscript{31} \textit{Neri v Akutin}, G.R. No. 47799 (13 June 1941).
\item \textsuperscript{32} \textit{Solano v CA}, G.R. No. L-41971 (29 November 1983).
\item \textsuperscript{33} Art. 2, \textit{UDHR}. See also \textit{DRC, CRC, ICCPR}, and the \textit{Philippine Constitution}.
\end{itemize}
State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution."

The Family Code provides that:

“Children conceived or born during the marriage of the parents are legitimate.

“Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child."34

A child will enjoy all the rights of a legitimate child when he is likewise legitimated.35 A child may be legitimated if he is conceived and born outside of marriage of parents who, at the time of the conception of the child were not disqualified by any impediment to marry each other.36 Minority of the parent or parents is not a disqualification under this provision, as amended.

Legitimation takes place by a valid marriage, subsequent to the birth of the child, between the parents37 and the effect shall retroact to the time of the child's birth.38

Thus far, we refer to a child whose filiation is by natural means. Another means whereby a relationship is created between and among family members is by adoption. While the state policy is to ensure that every child remains under the care and custody of his/her parents and be provided love, care, understanding and security, it may happen that for the best interests of the child adoption must be considered. Members of the extended family are given first crack at the adoption and only when such efforts prove futile should persons unrelated to the child are considered. For the relationship to be created, all the requirements by law need to be fulfilled, otherwise, only a de facto relationship may be forged and the rights to which a legitimate child is entitled to under the law will not attach.

An illegitimate child, on the other hand, is one conceived and born outside a valid marriage or within a void marriage. A child born within a voidable marriage is legitimate.

34Art. 164, Family Code.
35 Art. 179, id.
36 Art. 177, id.
37 Art. 178, id.
38 Art. 180, id.
IV.A. Right to a Name/Status

The right to a name is an essential part of the right inherent in every person to have an identity and to be recognized as a person under the law. It is also known as the right to a civil status.

The Declaration of the Rights of the Child provides that “the child shall be entitled from his birth to a name and a nationality.” The Convention on the Rights of the Child goes further in that the State is under obligation to “respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

The name of a child, as well as his status, i.e., date of birth, place of birth, filiation, and other circumstances at the time of his birth, are recorded in his Certificate of Live Birth which is required to be registered. As a general rule, the rights that attach, as well as those he may claim to exercise later, i.e. marrying age, right to vote, etc., will be determined by the information in the Certificate of Live Birth. It must be noted that fetal death is also required to be registered. Non-registration, or even late registration, exposes the person under obligation to report and register the event to sanctions under the law.

Live Birth is defined as “the complete expulsion or extraction of a product of conception from its mother, irrespective of the duration of pregnancy, which after such separation, breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut off or the placenta is still attached.”

Also considered as live birth is when a fetus with an intra-uterine life of seven (7) months or more and born alive at the time it was completely delivered from the maternal womb but dies later.

In such a case, a certificate of death must be registered. However, a fetus with an intra-uterine life of less than seven (7) months dies within twenty hours (24) hours after its complete delivery from the maternal womb is not considered born.

If the fetus, regardless of the period of pregnancy, dies before complete delivery from the mother’s womb, what will be registered is a certificate of fetal death. Such fetal death is indicated if after separation the fetus does not breathe nor show any other evidence of life, such as the beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.

The Civil Register is where acts, events, legal instruments and court decrees concerning civil status of a person are recorded. The head of the National Statistics Office (NSO) is the Civil Registrar-General. The status of a person includes: 1) nationality; 2) filiation, which unites him to his parent/s and through such parent/s, to a given family name; and, 3) the different facts showing the beginning and the end of his civil personality and any modification thereof. The facts relevant to the commencement change and termination of civil personality are: i) birth; ii) recognition; iii) legitimation; iv) adoption; v) marriage; vi) legal separation; and vii) death. Even facts established by court judgments that are final and executory that will affect the status of a child are required to be registered, such as, but not limited to adoption/rescission of adoption, declaration of nullity of marriage of the child’s parents, change of name or correction of entry in any official document,

40 Rule 18(2), id.
41 Art. 41, Civil Code.
42 Rule 38 (1), NSO AO No. 1-93.
compulsory recognition of an illegitimate child, voluntary recognition of a minor illegitimate child, or legitimation.

The birth of a child is required to be registered within thirty (30) days from the time of birth. When the birth occurs in a medical institution, hospital or clinic, it is the administrator who is responsible for the registration while it is the attendant at birth who will certify as to the facts of birth. If the birth occurs elsewhere, it is the physician, nurse, midwife, “hilot,” or anybody who attended to the delivery of the child who is responsible for certifying and registering or causing to register the birth. In default of the medical institution administrator or attendant, the responsibility rests upon the parents. In the event the birth takes place aboard a vehicle, vessel or airplane while in transit it is the joint responsibility of the driver, the captain or pilot, as the case may be, AND the parents to register the birth. 43 Failure to register the birth, or false statements made in the certificate submitted for registration is punishable by imprisonment or fine or both.44

The obligation to register applies likewise to a foundling, a deserted or abandoned infant or a child found, with parents, guardian, or relatives, being unknown, or a child committed in an orphanage or charitable or similar institution with unknown facts of birth and parentage.45 Registration of the foundling must be made within thirty (30) days from the date of finding/commitment of the child.46 If the finder is awarded custody by the proper authority, he shall give the foundling a name which he shall cause to be registered with the civil registry. The surname that a child has the right to use will depend on his filiation and acknowledgement of paternity. A legitimate child has the right to use the surnames of both parents; an illegitimate child can use the father’s surname only if paternity is expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father.47

IV. B. Right to Support

The right to support is “founded upon the need of the recipient to maintain his existence.”48 A child, legitimate or illegitimate, has the right to be supported by his parents and grandparents49 as well as from his siblings.50 The law sets the order by which the obligation may be demandable: first, from the ascendants in the nearest degree; and, second, from the brothers and sisters.51 The obligation to support is to the full extent of “everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family”52 subject to financial capacity. This right to be supported by family is known as family support, or legal support; it cannot be renounced and compromised. It is also exempt from attachment or execution.

43 Rule 21, id.
44 Rule 69, id.
45 Rule 26, id.
46 Rule 27, id.
47 Article 176, Family Code, as amended by R.A. 9255.
48 De Asis v Court of Appeals, G.R. No. 127578 (15 February 1999).
50 Art. 196, id.
51 Art. 199, id.
52 Art. 194, id.
The duty to support under the Family Code provisions on support is not age-specific, that is, support is a right demandable as long as it is needed and provided it is within the means of the person obliged to support.\(^54\) However, the duty of the person/s exercising parental authority to support terminates when the child is emancipated, that is, when he reaches the age of majority.

Are those obliged by law to give support to the child, under the two sets of provisions in the Family Code, concurrently liable? This issue was settled by the Supreme Court in a 2009 case where the grandparents argued that their liability is activated only when parental authority over the child is terminated. The Court did not agree and stated that the obligation to give support under the provisions on Parental Authority in the Family Code and the same obligation under the provisions on Support are two different and separate issues. To appreciate the distinction, we walk through the concept of parental authority.

Parental authority is the natural right and duty of parents over the person and property of their unemancipated (minor) children. The duty includes the caring for and rearing of the child for civic consciousness and efficiency and the development of his moral, mental and physical character and well-being.\(^55\) This duty is incumbent jointly upon both the mother and the father and in the event there is disagreement, the father’s decision prevails unless there is a court order to the contrary.\(^56\) In case of death, absence or unsuitability of the parents, substitute parental authority is exercised by the surviving grandparent. Under the Family Code provisions on parental authority, one of the duties of those exercising parental authority is to support the child.

The issue of seeming disharmony and conflict is addressed by the Supreme Court in the case *Spouses Lim v Lim, et al.*\(^57\) The case involved a wife who filed a suit for herself and in behalf of her minor children against her husband, her husband’s parents and grandparents. The husband’s parents (the children’s grandparents) admitted that they have the obligation to support, but claim that such obligation is triggered only after parental authority of the parents over the children terminated. The Court stated:

“[N]either the text of the law nor the teaching of jurisprudence supports this severe constriction of the scope of familial obligation to give support. In the first place, the governing text are the relevant provisions in Title VIII of the Civil Code, as amended, on Support, not the provisions in Title IX on Parental Authority. While both areas share a common ground in that parental authority encompasses the obligation to provide legal support, they differ in other concerns including the duration of the obligation and its concurrence among relatives of differing degrees. Thus, although the obligation to provide support arising from parental authority ends upon the emancipation of the child, the same obligation arising from spousal and general familial ties ideally lasts during the obligee’s lifetime. Also, while parental authority under Title IX (and the correlative parental rights) pertains to parents, passing to ascendants only upon its termination or suspension, the obligation to provide legal support passes on to ascendants not only upon default of the parents but also for the latter’s inability to provide sufficient support.

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“This inability of Edward and Cheryl to sufficiently provide for their children shifts a

\(^{54}\) Art.201, *Family Code*.

\(^{55}\) Art. 209, id.

\(^{56}\) Art. 211, id.

\(^{57}\) *Spouses Prudencio and Filomena Lim v Ma. Cheryl Lim, for herself and on behalf of her minor children, et al.*, G.R. No. 163209 (30 October 2009).
portion of their obligation to the ascendants in the nearest degree, both in the paternal (petitioners) and maternal lines, following the ordering in Article 199. To hold otherwise, and thus subscribe to petitioners’ theory, is to sanction the anomalous scenario of tolerating extreme material deprivation of children because of parental inability to give adequate support even if ascendants one degree removed are more than able to fill the void.”.58

Thus, grandparents with the means are obliged to share in the obligation with the parents who do not have the means, to the exclusion of the great-grandparents unless the grandparents themselves are unable to give support. The Spouses Lim case, however, limits the support of the ascendants next in line to filling in the insufficiency of the parents and does not cover the full extent of the support.

IV.C. The Right to be Cared for by his Parents

The right to be cared, in sickness and in health, by the child’s parents includes, but is not limited to, the development of his moral, mental and physical character and well being. The right is corollary to the “natural right and duty of parents over the person and property of their unemancipated children.”59 This is known as Parental Authority.

The Family Code provisions on Parental Authority are generally stated from the point of view of the parents. It is described as a “natural” right and duty, from the moral understanding of what constitutes a family. Parents of illegitimate children have rights different from parents of legitimate children. This stresses how the civil status of a child can affect not just the type of rights that are demandable, but also, from whom such can be demanded. From the perspective of the child, however, his right to be fully cared for is not affected.

The father and the mother jointly exercise parental authority over their common children,60 legitimate or illegitimate and “in case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.”61 Unless the father and mother live separately, as a general rule, both parents to the exclusion of others, have the right to the custody of the child. In the event the parents are separate, either, to the exclusion of others, has the right to the custody of the child. This is known as the parental preference rule where “a natural parent, father or mother, as the case may be, who is of good character and a proper person to have the custody of the child and is reasonably able to provide for such child, ordinarily is entitled to the custody as against all persons. Accordingly, such parents are entitled to the custody of their children as against foster or prospective adoptive parents; and such entitlement applies also as against other relatives of the child, including grandparents, or as against an agency or institution.”62 The right is considered a natural right and is inherent to the nature of a family.63

If there is a conflict between the mother and the father over the custody of a child, parental authority is exercised the parent designated by the court, which will take into account all relevant considerations, including but not limited to the choice of the child over seven (7) years old, and the

58 Id.
59 Art. 209, Family Code.
60 Art. 211, id.
61 Id.
63 Sagala Eslao v Court of Appeals, G.R. No. 116773 (16 January 16, 1997).
fitness of the parent. Unless there are compelling reasons, a child under seven (7) shall not be separated from his mother. In any case, the child’s welfare is of paramount consideration.

The right of the child to be cared devolves upon a judicially appointed guardian in case of death, absence or unsuitability of the parents. In default of parents or a judicially appointed guardian, substitute parental authority shall be exercised by, (in order) a) the surviving grandparent/s; b) the oldest brother or sister over twenty-one years old; c) the child’s actual custodian. In all cases, fitness of the substitute parent who is not otherwise disqualified, and the choice of the child over seven (7) years old, shall be taken into consideration. Again, however, it is the child’s welfare that must be given paramount consideration. This is called substitute parental authority.

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64 Art. 213, Family Code.
65 Id.
66 Santos v Court of Appeals, G.R. No. 113054 (16 March 1995).
67 Art. 216, Family Code.
68 Id.
69 Art. 214, Family Code.
The Universal Declaration of Human Rights (adopted 1948).

PREAMBLE
Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,
Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
Xxx

Art. 1.
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Art. 2.
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Art. 3.
Everyone has the right to life, liberty and security of person.
Art. 6.
Everyone has the right to recognition everywhere as a person before the law.

Art. 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Declaration of the Rights of the Child (proclaimed 1959).

Preamble
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Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1
The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2
The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3
The child shall be entitled from his birth to a name and a nationality.

Principle 4
The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5
The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6
The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 8
The child shall in all circumstances be among the first to receive protection and relief.

Principle 9
The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice
his health or education, or interfere with his physical, mental or moral development.

**Principle 10**
The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

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**Convention on the Rights of the Child (Adopted 1989, entered into force 1990).**

**Preamble**
The States Parties to the present Convention,
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,
Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,
Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,
Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

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**PART I**

**Art. 1**
For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

**Art. 2**
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

**Art. 3**
1. 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.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities,
particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Art. 4
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Art. 6
1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Art. 9
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Art. 16
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

II. DOMESTIC LAW

1987 Constitution.

Art. II
Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Art. II

Sec. 1. The following are citizens of the Philippines:
1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine Citizenship upon reaching the age of majority; and
4. Those who are naturalized in accordance with law.

Sec. 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Sec. 3. Philippine citizenship may be lost or reacquired in the manner provided by law.

Sec. 4. Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law to have renounced it.

Sec. 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.
TITLE VI
PATERNITY AND FILIATION

Chapter 1. Legitimate Children
Art. 164. Children conceived or born during the marriage of the parents are legitimate. Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child. (55a, 258a)

Art. 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code. (n)

Chapter 2. Proof of Filiation
Art. 174. Legitimate children shall have the right:
(1) To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;
(2) To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and
(3) To be entitled to the legitimate and other successional rights granted to them by the Civil Code. (264a)

Chapter 4. Legitimated Children
Art. 177. Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated. (269a)

Art. 178. Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation. (270a)

Art. 179. Legitimated children shall enjoy the same rights as legitimate children. (272a)

Art. 180. The effects of legitimation shall retroact to the time of the child’s birth. (273a)

Art. 181. The legitimation of children who died before the celebration of the marriage shall benefit their descendants. (274)

Art. 182. Legitimation may be impugned only by those who are prejudiced in their rights, within five years from the time their cause of action accrues. (275a)

TITLE VIII
SUPPORT
Art. 194. Support compromises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (290a)

Art. 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant’s fault or negligence. (291a)

Art. 199. Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:
(1) The spouse;
(2) The descendants in the nearest degree;
(3) The ascendants in the nearest degree; and
(4) The brothers and sisters. (294a)

Art. 201. The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient. (296a)
Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. (n)

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Art. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit. (n)


Art. 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost. (n)

CHAPTER 2
Natural Persons

Art. 40. Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article. (29a)

Art. 41. For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother’s womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb. (30a)

Art. 42. Civil personality is extinguished by death.

Art. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority. (355a)

Chapter 2. Substitute and Special Parental Authority

Art. 216. In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child in the order indicated:

1. The surviving grandparent, as provided in Art. 214;
2. The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
3. The child’s actual custodian, over twenty-one years of age, unless unfit or disqualified.

Whenever the appointment or a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed. (349a, 351a, 354a)

The effect of death upon the rights and obligations of the deceased is determined by law, by contract and by will. (32a)

CHAPTER 5
Separation of Property of the Spouses and Administration of Property by the Wife During the Marriage

Art. 194. The separation of property shall not prejudice the rights previously acquired by creditors. (1438)

TITLE III
DONATION

CHAPTER 1
Nature of Donations

Art. 729. When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor’s death, this shall be a donation inter vivos. The fruits of the property from the time of the acceptance of the donation, shall pertain to the donee, unless the donor provides otherwise. (n)


CHAPTER 2
Persons Who May Give or Receive a Donation

Art. 742. Donations made to conceived and unborn children may be accepted by those persons who would legally represent them if they were already born. (627)

TITLE IV
SUCCESSION
CHAPTER 1
General Provisions

Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law. (n)

Art. 775. In this Title, "decedent" is the general term applied to the person whose property is transmitted through succession, whether or not he left a will. If he left a will, he is also called the testator. (n)

Art. 778. Succession may be:
(1) Testamentary;
(2) Legal or intestate; or
(3) Mixed. (n)

Art. 854. The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation. (814a)

Art. 887. The following are compulsory heirs:
(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
(3) The widow or widower;
(4) Acknowledged natural children, and natural children by legal fiction;
(5) Other illegitimate children referred to in article 287.

Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code. (807a)


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Art. 1. Declaration of Policy. - The Child is one of the most important assets of the nation. Every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life.

The child is not a mere creature of the State. Hence, his individual traits and aptitudes should be cultivated to the utmost insofar as they do not conflict with the general welfare.

The molding of the character of the child starts at the home. Consequently, every member of the family should strive to make the home a wholesome and harmonious place as its atmosphere and conditions will greatly influence the child’s development.

Attachment to the home and strong family ties should be encouraged but not to the extent of making the home isolated and exclusive and unconcerned with the interests of the community and the country.

The natural right and duty of parents in the rearing of the child for civic efficiency should receive the aid and support of the government.

Other institutions, like the school, the church, the guild, and the community in general, should assist the home and the State in the endeavor to prepare the child for the responsibilities of adulthood.
Art. 2. Title and Scope of Code. - The Code shall be known as the "Child and Youth Welfare Code". It shall apply to persons below twenty-one years of age except those emancipated in accordance with law. "Child" or "minor" or "youth" as used in this Code, shall refer to such persons.

Art. 3. Rights of the Child. - All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

(1) Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.

(2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

(3) Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care.

The physically or mentally handicapped child shall be given the treatment, education and care required by his particular condition.

(4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.

(5) Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.

(6) Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.

(7) Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.

(8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.

(9) Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.

Republic Act 9255, An Act Allowing Illegitimate Children to Use the Surname of Their Father, Amending for the Purpose Article 176 of Executive Order No. 209, otherwise known as the Family Code of the Philippines (February 24, 2004).

Sec. 1. Article 176 of Executive Order No. 209, otherwise known as the Family Code of the Philippines, is hereby amended to read as follows:

"Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child."
DUTIES OF PARENTS AND LIMITS TO PARENTAL AUTHORITY

Elizabeth Aguiling-Pangalangan, LL. M.
I. The Scope of Parental Authority

The Civil Code, Family Code and the Child and Youth Welfare Code expound on the rights and duties of parents over the person and property of their children. The father and the mother exercise joint parental authority over the person of the child\(^1\) although in the case of an illegitimate child, only the mother exercises authority.\(^2\) This reflects the reality that most illegitimate children live with their mother and that their father is not a constant presence in their lives.

Although both the Code of Muslim Personal Laws and Family Code confer joint parental authority on the parents, Islamic law extinguishes the authority of the widowed mother if she remarries.\(^3\) The only exception is if she marries a man related to the children within the third degree of consanguinity.\(^4\) The Civil Code, which preceded the Family Code, likewise deprived the mother of authority over her children upon remarriage.\(^5\) The Family Code repealed this and states that:

“Art. 212 FC. In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.”

In the Family Code, the parents jointly exercise legal guardianship over the property of their unemancipated common child without having to be appointed by the court.\(^6\) It is presumed that they will manage their children’s property responsibly even without the court telling them so. To guarantee the performance of their obligation, they are nevertheless required to post a bond if the property or its annual income exceeds ₱50,000.\(^7\)

Islamic law prescribes similar rights and duties for parents, among them are the responsibility to imbue their children with religious and civic consciousness and to ensure that the

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\(^1\) Art. 211, Family Code.-The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary. Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority

\(^2\) Art. 176, Family Code.-Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing succession rights shall remain in force.

\(^3\) Art. 77, par.2, P.D. 1083, Code of Muslim Personal Laws of the Philippines. - Subject to Article 78, the widowed mother who contracts a subsequent marriage shall lose parental authority and custody over all children by the deceased husband, unless the second husband is related to them within the prohibited degrees of consanguinity.

\(^4\) Id.

\(^5\) Title XI (Parental Authority) Civil Code, repealed by E.O. 209, otherwise known as the Family Code of the Philippines.

\(^6\) Art. 211.

\(^7\) Art. 225.
children’s rights are respected. However, unlike the Family Code, the Muslim Code gives to the father sole parental authority over the property of the children. Only in his absence does the mother become the legal administrator of the children’s properties.

Art. 211 of the Family Code makes it a duty of children to obey their parents for as long as they are under parental authority but enjoins sons and daughters to always respect and revere their parents. Minors guilty of disrespect and disobedience may be judicially sanctioned or even committed for not more than 30 days in an institution engaged in child care. In Muslim law, children have the duty to respect their parents and obey them except if the latter “cast them in disbelief.” This exception refers to matters of religious belief, which sons and daughters already of age may decide for themselves.

I. A. Civil Liability of Parents

As a result of far-reaching powers that parents exercise, they are civilly liable for tortious and criminal acts committed by their children. Failure of parents to carry out their duties also gives cause for suspending or even terminating parental authority.

In the case of Libi v Intermediate Appellate Court, Wendell Libi shot his former girlfriend Julie Ann. Despite the defense of Wendell’s parents that they had exercised due diligence of a good father of a family, and therefore could not be civilly liable for the crime committed by their minor son, the court held otherwise. Wendell’s mother testified that they kept their gun in a safety deposit box inside a drawer in their bedroom and both parents held keys to the box. The Court deduced that Wendell could not have gotten hold of the key unless it was “negligently left lying around or he had free access to the bag of his mother where the other key was.”

The Court explained that:

“[t]he diligence of a good father of a family required by law in a parent and child relationship consists, to a large extent, of the instruction and supervision of the child. Petitioners were gravely remiss in their duties as parents in not diligently supervising the activities of their son, despite his minority and immaturity...Both parents were sadly

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8 Art. 73, P.D. 1083.
9 Art. 75, par. 1, P.D. 1083.
10 Art. 223, Family Code. The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard.
   However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper.
11 Art. 224, Family Code. The measures referred to in the preceding article may include the commitment of the child for not more than thirty days in entities or institutions engaged in child care or in children’s homes duly accredited by the proper government agency.
   The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper.
12 Art. 72, par. 1, P.D. 1083.
13 Art. 129, Family Code.
14 Art. 231, id.
wanting in their duty and responsibility in monitoring and knowing the activities of their children who, for all they know, may be engaged in dangerous work such as being drug informers, or even drug users.”\(^{16}\)

The court decided that “the parents are and should be held primarily liable for the civil liability arising from criminal offenses committed by their minor children under their legal authority or control, or who live in their company, unless it is proven that the former acted with the diligence of a good father of a family to prevent such damages.”\(^{17}\)

This situation presents a challenge to parents. The CRC speaks of the parents’ duty “to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”\(^{18}\) International and domestic laws call for parents’ recognition of their children’s rights, faith in their children’s ability to decide matters that will affect them directly and acceptance of the certainty that as their children grow they will assert their independence. In the same breath, although parents should give their children space, statute and case laws demand that parents know exactly where their children are and what they are doing as part of parental duty to rear children “for civic efficiency and the development of moral character.”\(^{19}\)

### II. Specific Duties of Parents
#### II.A. Duties of Custody and Support

Most controversies over the custody of the children arise from the separation of the parents. In a broad sense, custody refers to the relationship between the parents and the child in a traditional family set-up where the child and parents live in the same home, where the parents care for and support the child who in the turn has the duty to respect and obey his or her parents. If the parents separate, the court should designate the parent with whom the child will live.

Two provisions of the Family Code are relevant to this discussion:

“ARTICLE 63. The decree of legal separation shall have the following effects:
xxx

“(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code;
xxx

“ARTICLE 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit. (n)

“No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.”

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\(^{16}\) Id.
\(^{17}\) Art. 209, *Family Code*.
\(^{18}\) Art. 5, *CRC*.
\(^{19}\) Art. II, Sec. 12, *1987 Constitution*. 
In case of legal separation of parents, the law requires that custody of the children be conferred to the innocent spouse.\textsuperscript{20} However, if the innocent spouse is the father but the children are less than seven years of age, Article 213\textsuperscript{21} will apply. In the case of \textit{Sy v Court of Appeals} \textsuperscript{22} the Court reiterated that:

“[T]he law favors the mother if she is a fit and proper person to have custody of her children so that they may not only receive her attention, care, supervision but also have the advantage and benefit of a mother’s love and devotion for which there is no substitute. Generally, the love, solicitude and devotion of a mother cannot be replaced by another and are worth more to a child of tender years than all other things combined.”

In \textit{Gamboa–Hirsh v. Court of Appeals} \textsuperscript{23} the court held that, “[I]n all controversies regarding the custody of minors, the sole and foremost consideration is the physical, educational, social and moral welfare of the child concerned, taking into account the respective resources and social and moral situations of the contending parents.” \textsuperscript{24}

In the earlier case of \textit{Medina v Makabili} \textsuperscript{25}, the court contextualized the right of parents to the company and custody of their children as merely ancillary to their duty to provide their children with adequate support, education, and moral, intellectual and civic training.

In \textit{Espiritu v Court of Appeals} \textsuperscript{26} the court held that, “[I]n ascertaining the welfare and best interests of the child, courts are mandated by the Family Code to take into account all relevant considerations. If a child is under seven years of age, the law presumes that the mother is the best custodian. The presumption is strong but it is not conclusive: It can be overcome by compelling reasons.”

Case law has established that compelling evidence of the mother’s unfitness include instances of neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, or affliction with a communicable disease. \textsuperscript{27} However, the court clarifies:

\textsuperscript{20} Art. 63(3), \textit{Family Code}.
\textsuperscript{21} Art. 213, \textit{Family Code}. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.
\textsuperscript{22} 541 SCRA 371 (2007).
\textsuperscript{23} 527 SCRA 380 (2007).
\textsuperscript{24} Art. 31, Sec. 1, \textit{CRC}; cited in \textit{Pablo-Gualberto v Gualberto}, G.R. No. 154994 (June 28, 2005), 461 SCRA 450, 475.
\textsuperscript{25} 27 SCRA 502 (1985).
\textsuperscript{26} 246 SCRA 362 (1995).
\textsuperscript{27} \textit{Gualberto v Gualberto}, supra.
“But sexual preference or moral laxity alone does not prove parental neglect or incompetence. Not even the fact that a mother is a prostitute or has been unfaithful to her husband would render her unfit to have custody of her minor child. To deprive the wife of custody, the husband must clearly establish that her moral lapses have had an adverse effect on the welfare of the child or have distracted the offending spouse from exercising proper parental care.”

When the child is over seven years of age, Article 213 states that the Court should take into account all relevant considerations, especially the choice of the child except if the parent chosen is unfit “to take charge of the child by reason of moral depravity, habitual drunkenness or poverty.”

The Court adds that it is not bound by that choice if it finds the chosen parent unfit, in which case it may “award custody to the other parent, or even to a third party as it deems fit under the circumstances.”

The court held in Laxamana v Laxamana that having a history of drug dependence does not automatically show inadequacy in the father’s moral, financial and social well-being. The Court observed that the children who were 14 and 15 years old at the time of the promulgation of the decision, were not categorically asked about their choice though they did say during the trial that they “entertain(ed) fears in their hearts and want(ed) to be sure that their father is no longer a drug dependent.”

Article 78 of the Muslim Code governs the care and custody (hathana) of children. It states that in the event of a divorce, the care and custody of children below seven years of age shall belong to the mother. In her absence, the maternal grandmother, paternal grandmother, sister and aunt will gain custody in that order. Only in default of these persons shall custody devolve upon the father and the nearest paternal relatives.

It should be noted that both the Muslim Code and the Family Code consider seven years of age as the cut-off point for the tender years presumption, thereby signifying this as the age of discretion. Both Codes also refer to the choice of parent made by a child above seven. In Islamic Law, however, the rules change when, although still a minor, the child reaches the age of puberty. In this situation, the law provides that the unmarried daughter shall stay with the father while the unmarried son stays with the mother.

PD 603 provides that “grandparents shall be consulted in important family questions but they shall not interfere in the exercise of parental authority.” In the Family Code, grandparents exercise substitute parental authority in the event of death, absence or unsuitability of the child’s parents. There are some interesting cases as regards the role grandparents play in the lives of their grandchildren. The Supreme Court held in Santos v. Court of Appeals and the Spouses Bedia that although grandparents may shower their grandchild with love and exhibit a better ability to support the child financially, these are insufficient to defeat the father’s parental authority and right

28 Sy v Court of Appeals, 541 SCRA 371 (2007).
29 Id.
30 388 SCRA 296 (2002).
31 Art. 78, par.2, P.D. 1083.
32 Art. 18.
33 Art. 214, Family Code. - In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.
34 G.R. No. 113054 (16 March 1995).
to custody. Characterizing parental authority and responsibility as inalienable, the Court reiterated that this authority may not be transferred or renounced and that a parent who entrusts the custody of his minor child to another, such as the grandparents, merely gives temporary custody.

*Luna v. Intermediate Appellate Court* was decided differently. Custody of the child was given to the grandparents instead of her biological parents, the court having concluded that to return her to the custody of her parents “to face the same emotional environment which she is now complaining of would be indeed traumatic and cause irreparable damage to the child.” The dissenting opinion of Justice Makasiar is noteworthy. He stressed that the right of parents to the custody of their minor children is both a natural and legal right that the Court should not disturb “except for the strongest reasons, and only upon a clear showing of a parent’s gross misconduct or unfitness, or other extraordinary circumstances affecting the welfare of the child.”

Both parents are responsible for giving their children adequate support. According to Article 194 of the Family Code, support encompasses “everything indispensable for sustenance, clothing, shelter, transportation, medical needs and education in accordance with the financial capacity of the family.” In the case of *Sy*, the Court affirmed that the award of P50,000.00 a month as support for the minor children was based on the father’s wealth and his capability to provide for his family.

The Philippine government should be encouraged to ratify the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. As stated in Article I of Chapter I, the objectives of the Convention are:

“a) To determine the State whose authorities have jurisdiction to take measures directed to the protection of the persons or property of the child;

“b) To determine which law is to be applied by such authorities in exercising their jurisdiction;

“c) To determine the law applicable to parental responsibility;

“d) To provide for the recognition and enforcement of such measures of protection in all contracting States;

“e) To establish such cooperation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.”

The Convention determines questions of jurisdiction and applicable law on the issue of parental responsibility. It also aims to avoid conflicts between various legal systems in the recognition and enforcement of foreign measures, whether it is a law or judgment, for the protection of children, which is sought to be given legal effect in another country.

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35 Art. 210, *Family Code*.- Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.
36 137 SCRA 7(1985).
37 *Sy v Court of Appeals*, 541 SCRA 371 (2007).
38 Concluded on 19 October 1996.
39 *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*, done at The Hague on 19 October 1996: Preamble: xxx Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of
The Muslim Code further differs from the Family Code in the duty to give support or maintenance, called *nafaqa* under Islamic Law. The duty to support the children falls on the shoulders of the father alone and remains until the child reaches puberty and the daughters are married. The father is not compelled to support a child capable of supporting himself/herself out of his/her own property.  

**II.B. Duty to Provide Education**

Target 2.A of the Millennium Development Goals is to ensure that, by 2015, children everywhere will be able to complete primary education. UNDP figures show that for the school-age population 6 to 11 years, there has been a decline from 90.29% SY 2002-2003 to 84.44% for SY 2005-2006. Data further shows an increase in the dropout rates from 2001 to 2005. In contrast, completion rate decreased from 2002 to 2005. The study attributed this to the “weak ability of the government to provide complete basic education services in more than 7,000 barangays in the country.”

A UNICEF study documented the basic literacy rate of Filipino children between 10 and 14 years of age in 2003. Figures show that “almost 95% of the youth can read and write” but that the literacy rate varied too drastically across the regions. In particular, while almost all youth in the National Capital Region are literate, only 75% are literate in the Autonomous Region of Muslim Mindanao (ARMM). Moreover, while basic literacy was high, functional literacy was not. Furthermore, 90% of NCR youth but only 60% of those in ARMM are functionally literate.

Although in 2002, the Philippines had a medium probability of meeting the MDG target, our government’s erratic programs have led to a low probability of attaining our country’s target by 2015.

The Constitution mandates the state to “give priority to education...to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.” It shall “protect and promote the right of all citizens to quality education” which the state should endeavor to be “accessible to all.” The State is required to support an “integrated system of education relevant to the needs of the people” and maintain a “system of free public education in the elementary and high school levels.”

In contrast, the Family Code entrusts the following rights and duties directly to the parents:

“Art. 220.”
“(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

xxx

“(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals.”

In PD 603, the Child and Youth Welfare Code, parents must "enroll their children in schools to complete, at least, an elementary education." Consistent with this duty, said law also provides that "necessary assistance possible shall be given to parents, especially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education..."

The responsibility of parents for the education of their children is stated unequivocally in Article 59 of said law, to wit:

“Criminal liability shall attach to any parent who:

“(1) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs;

xxx

“(4) Neglects the child by not giving him the education that the family's station in life and financial condition permits;

“(5) Fails or refuses without justifiable grounds, to enroll the child as required by Article 72;

“(6) Causes, abates or permits the truancy of the child from the school he is enrolled in...”

A case in point is Roberto De Guzman v. Hernando Perez and Shirley Aberdo. Roberto and Shirley were law students in the University of Sto. Tomas. Their studies were interrupted when private respondent became pregnant. She gave birth to their child, Robby, on October 2, 1987. In 1991, petitioner married another woman with whom he begot two children. Roberto sent money for Robby's schooling only twice.

In a letter dated February 21, 2000, private respondent demanded support for Robby's high school education. She explained that given her financial problems, it was extremely difficult for her

49 Art. 71, Child and Youth Welfare Code.
50 Art. 72.
51 G.R. No. 156013 (July 25, 2006).
to send him to a good school. Roberto, who led a luxurious lifestyle, ignored Shirley’s demand. A few months later, she filed a criminal complaint for abandonment and neglect of child under Article 59(2) and (4) of PD 603 with the Office of the City Prosecutor. An information was filed before the Regional Trial Court for the crime of neglecting a minor child. The Secretary of Justice affirmed the filing of the information. Roberto assailed the validity of the finding of the Secretary of Justice.

The issue before the Supreme Court was whether a parent who fails to provide his child the education his financial condition permits could be charged of neglect of child under Article 59(4) of PD 603. The court decided in the affirmative. It explained that:

“The crime has the following elements:

“(1) the offender is a parent;
“(2) he or she neglects his or her own child;
“(3) the neglect consists in not giving education to the child; and
“(4) the offender’s station in life and financial condition permit him to give an appropriate education to the child.

“Here, petitioner acknowledged Robby as his son. He has not denied that he never contributed for his education except in two instances (1992 and 1993). He admitted that the boy’s education was being financed by private respondent and her relatives. He stated under oath that the last time he sent material support to his son was in 1994 when he gave ₱7,000 for the latter’s hospitalization and medical expenses.”

The Court further held that: “the law intends to punish the neglect of any parent, which neglect corresponds to the failure to give the child the education which the family’s station in life and financial condition permit. The irresponsible parent cannot exculpate himself from the consequences of his neglect by invoking the other parent’s faithful compliance with his or her own parental duties.”52

As required by law, government should provide educational facilities,53 especially in the rural areas, where many parents do not have the financial resources to send their children to school. These facilities are likewise necessary so students would not have to leave their parental homes to pursue higher education elsewhere. To illustrate, a research conducted by the University of the Philippines Population Institute shows that 48% of adolescents in Western Mindanao have left their homes to study in the cities where the “degree of urbanization by may expose them to activities that promote risk taking behaviors.”54 The importance of education is highlighted in a related research that reveals that rural youth with less education or who live away from their homes are more likely to accept stereotypes that do not promote gender equity and equality, and are more vulnerable to risk taking activities.55

This situation paints a grim picture. Under these circumstances, parental responsibility to recognize, protect and fulfill their children’s right to education becomes feasible only at the expense of their other responsibilities to keep their children in their company,56 supervise their activities

52 G.R. No. 156013 (July 25, 2006)
55 Bercilla, J., Filipino Youth in the Region: Parental Influences on the Youths attitudes on Sexual issues and Sexual Behavior: Focus on Western Visayas, p.12.
and extend to them the benefits of moral guidance and self-discipline. 57

III. Adoption and alternative family arrangements

In both international and domestic laws, emphasis is placed on the supreme right of biological parents to raise their children. It is conceded, however, that there are situations where the child may have to grow up in an alternative family such as when it is in the child’s best interest to be removed from the biological family. For example, when the child suffers neglect and abuse in the hands of her or his own parents, then she/he should be taken away from them and after the necessary legal procedure, be placed in foster care or adoption. 58

Article 20 of the Convention of the Rights of the Child recognizes the possibility that the child cannot be with his family and provides that:

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

“2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.” 59

Adoption is a judicial procedure by which a parent-child relationship is created between the adopted and the adoptee. 60 In Muslim Law, only foster care (kafala) is allowed; adoption as defined above is not recognized. 61 Hence, an adopted child does not enjoy the rights of a legitimate child of the adopter. He or she does not inherit as a compulsory heir and is entitled only to a gift or will. 62

Provisions governing domestic adoptions were, until recently, found in the Child Welfare Code and the Family Code. The Domestic Adoption Act, signed into law on 25 February 1998 as Republic Act 8552, consolidated all provisions on domestic adoption. It also introduced important changes regarding the eligibility of resident aliens to adopt in the Philippines, 63 the effects of adoption, 64 rescission of adoption, 65 rectification of simulated births, 66 and penalties for violation of

57 Art. 46, P.D. 603.
58 Art. 231, Family Code.
59 Art. 20, CRC.
60 Sec.17. Legitimacy. — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.
61 Art. 64. Adoption. — No adoption in any form shall confer upon any person the status and rights of a legitimate child under Muslim law, except that said person may receive a gift (hiba).
62 Rasul, id, p. 237.
63 Art. 3, Sec. 7(b), R.A. 8552.
64 Art. 5, id.
adoption laws.67

RA 8552 specified pre-adoption services68, especially counseling for the biological parents,69 prospective adoptive parents70 and prospective adoptee.71 Under the new law, the DSWD should provide counseling to the child’s biological parent(s) before and after the birth of his/her child. The social worker should make it clear to the parents72 that there is “no binding commitment to an adoption plan shall be permitted before the birth of his/her child.”73 This means that if prior to the birth of the child, the biological parents voluntarily and willfully relinquish their rights over him and commit him to the care and custody of the DSWD adoption, this decision has no legal effect. Consent must be given when the child is already born. Moreover, the biological parents’ decision having been given after the child is born, the law allows them three (3) months74 to reconsider their decision to relinquish their child for adoption before it becomes irrevocable.

RA 8552 shows deep concern for the plight of the biological parents by requiring the DSWD to ensure that the parents are not relinquishing custody because of the “strain or anxiety to give up the child.”75 Steps should likewise be taken to explain to the biological parents “all alternatives for the child’s future and the implications of each alternative.”76 If the biological parents of the child are unknown, the DSWD has the duty to “exert all efforts to locate his/her unknown biological parent(s)” and if they cannot be found, “the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.”77 The term “foundling” refers to a “deserted or abandoned infant or child whose parents, guardian or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage.”

The DSWD counseling responsibilities entail giving advice to prospective adoptive parents in order “to resolve possible adoption issues and to prepare him/her for effective parenting.”78 Prospective adopters should be made aware of the nature and legal effects of adoption and the responsibilities of the adopters toward their child. It is crucial that they understand that the adopted child is their child, adoption being merely the way by which the child became part of their family and they, part of the child’s life.

65 Art. 6., id.
66 Art. 7, Sec.22., id.
67 Art. 7., id.
68 Art. 2., id.
69 Art. 2, Sec.4(a), id.
70 Art. 2, Sec.4(b), id.
71 Art. 2, Sec.4(c), id.
72 If the child given up for adoption is legitimate, both parents should be counseled, given that both their consent will be needed. If the child is illegitimate, only the mother’s participation and consent are necessary.
73 Art. 2, Sec. 4, R.A. 8552.
74 Sec. 7, par. 3, R.A. 9523 .
75 Sec.10. Hurried Decisions. — In all proceedings for adoption, the court shall require proof that the biological parent(s) has been properly counseled to prevent him/her from making hurried decisions caused by strain or anxiety to give up the child, and to sustain that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his/her own home will be inimical to his/her welfare and interest.
76 Art. 2, Sec.4(a), R.A. 8552.
77 Sec. 5, id.
78 Sec. 4(c), id.
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The Act clarifies ambiguities with respect to the successional rights of the adopted and adopter, and expressly makes them compulsory heirs of each other. It gives to every adopted child the rights of a legitimate child to inherit from the adopter, and for the adopter to inherit from the adoptee. Biological parents of the child to be adopted must sign the deed voluntarily waiving their parental authority over the child and giving consent to the child’s adoption. However, the court has held that, if the biological parents have abandoned their child, their consent is not required. Parents are deemed to have abandoned their child if they show conduct that “evinces a settled purpose to forgo all parental duties and relinquish all parental claims to the child.”

RA 8552 defines an abandoned child as "one who has no proper parental care or guardianship or whose parent(s) has deserted him/her for a period of at least six (6) continuous months and has been judicially declared as such.”

In Cang v. Clavano, the word "abandon" was defined as “forsaking entirely” or “renouncing utterly.” In this case, the court held that the biological father’s consent to the adoption of his children was necessary given that he had not abandoned them:

“[r]ecords disclose that petitioner’s conduct did not manifest a settled purpose to forego all parental duties and relinquish all parental claims over his children as to constitute abandonment. Physical estrangement alone, without financial and moral desertion, is not tantamount to abandonment. While admittedly, petitioner was physically absent as he was then in the United States, he was not remiss in his natural and legal obligations of love, care and support for his children. He maintained regular communication with his wife and children through letters and telephone. He used to send packages by mail and catered to their whims…”

RA 8552 likewise repeals a contentious provision in Article 192(2) of the Family Code that permits the adopter to rescind the adoption during the adoptee’s minority, when the latter commits acts that “definitely repudiate the adoption.” This provision places an undue burden on the child to behave properly at all times lest his actions be perceived as acts of repudiation. It is in the child’s best interest that rescission by the adopter is not allowed given that biological parents do not have this option anyway. RA 8552 states:

“SECTION 19. Grounds for Rescission of Adoption. — Upon petition of the adoptee, with the assistance of the Department if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

79 Art. 5, Sec.18, id.
80 Art. 5, Sec.18, id.
81 Art. 3, Sec.9(b), id.
82 Santos v Aranzanso ,16 SCRA 344 (1966).
83 Sec. 3(e), RA. 8552.
84 296 SCRA 128 (1998).
“Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in under Article 919 of the Civil Code.”

In case the adoptee does something reprehensible such as attempting on the life of the adopter, refusing without justifiable cause to support the adopter, or maltreating the adopter by word or deed, the adopter may instead disinherit the adoptee. The one-sided rescission is deemed to be in the best interest of the child. This same standard is underscored in the Rule on Adoption promulgated by the Supreme Court.

“SECTION 2. Objectives. – (a) The best interests of the child shall be the paramount consideration in all matters relating to his care, custody and adoption, in accordance with Philippine laws, the United Nations (UN) Convention on the Rights of the Child, UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally, and the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption.”

The Domestic Adoption Act provides that aliens who have been residents in the Philippines for at least three years may be qualified to adopt. By permitting aliens to apply for adoption in this country, Philippine agencies are wholly responsible for the effectiveness and success of the entire adoption process. Prospective adoptive parents are screened by licensed social workers of the Department of Social Welfare and Development (DSWD) and later by the national adoption matching committee, thereby ensuring that the applicants satisfy all requirements under Philippine law. The adoption process, furthermore, provides for a six-month trial custody period, during which home visits should be conducted by the social workers handling the case.

Of utmost importance is the focus RA 8552 gives on penalties for violation of adoption laws. Securing the adoption of a child contrary to the stipulated procedure, including obtaining consent for adoption through coercion or fraud as well as exposing the child to danger, abuse of exploitation, is penalized with a prison term and/or fine.

The Act, however, shows some leniency on the matter of “simulation of birth,” if the simulation was made prior to 1998. This offense involves tampering with the civil registry to make it appear that a woman gave birth to the child she is claiming as her own, although she is not the real biological mother. This is considered a crime against the civil status of persons since it causes the child to lose his or her identity and status. RA 8552, however, gives those who had simulated the birth of a child an opportunity to rectify this by filing for correction of the birth registration and petitioning for legal adoption. This provision is important in the light of the DSWD finding that some 500,000 children have been “adopted” through birth simulation. However, this

85 A.M. No. 02-6-02-SC 2002-08-02, Rule on Adoption.
86 Art. 3, Sec.7(b), supra.
88 Art. IV, Sec. 12, RA 8552.
89 Art. 7, id.
90 Art. 7, Sec. 22. Also see discussion in Chapter 1, Child Welfare and Development.
91 Art. 347, Revised Penal Code.
92 Art. 7, Sec. 22., R.A. 8552.
amnesty period ended in 2003 and the Congress should enact a law extending the period within which to legalize the adoption in order to safeguard the child’s rights.

The domestic adoption procedure goes as follows: application (1 day); attendance in an Adoption Forum, adoption home study (4 weeks); matching (1 month); preparation for placement (2 weeks); placement or bringing the child home, supervised trial custody (6 months) and adoption case filed in court and finalization of the adoption decree (9 months to 1 year).93

This process will take even longer, if the parents had abandoned the child. Given that the parent could not have signed a deed of voluntary commitment94 of the child to the DSWD, the child must first be declared abandoned, which in turn will be the basis for his being legally available for adoption. This in itself is a separate judicial procedure. In the “interest of full emotional and social development of the abandoned, surrendered or neglected child” Republic Act No. 952395 provides a more expeditious procedure for declaring the child legally available for adoption. Instead of filing a case before the Family Court, the petition is filed with the regional office of the DSWD where the child was found or abandoned. In transforming the procedure into an administrative one, the process of declaring the child an abandoned child is significantly hastened.

The Philippines is a State Party to the Hague Convention on Inter-country Adoption. The Convention establishes safeguards to ensure that inter-country adoptions are for the child’s best interests.96 The Convention ascertains cooperation amongst contracting states in order to prevent adoption from being used in the abduction, trafficking and slavery of children. Provisions apply to children below 18 years of age who are being moved from their country of origin to that of their adopting parents97. In compliance with treaty obligations, the Philippines enacted the Inter-country Adoption Law in 1995.

The Inter-country Adoption law distinguishes between the place of application for adoption and the place of filing the petition for adoption. An application to adopt a Filipino child shall be filed either with the (ICAB) family court having jurisdiction over the child, or with the Inter-country Adoption Board, through an accredited agency, in the country of the prospective adoptive parents.98 After the adopter is matched with the Filipino child and after the completion of the six-month supervised trial custody period, the adopters shall file the petition for the adoption of the child with the proper court in the country where the applicant resides.99 The adoption decree shall therefore be a foreign judgment that will have to be recognized and enforced by our courts in the Philippines.

RA 8043 reiterates that inter-country adoption shall be considered as the last resort. This means that the ICAB must ensure that all efforts toward the adoption of the child within the Philippines have been exhausted before the child is placed for inter-country adoption.100

93 Art. 4., id.
94 Sec. 2 (c)(i-iii), id.
95 An Act Requiring Certification of the Department of Social Welfare and Development (DSWD) to Declare a “Child Legally Available for Adoption” as a prerequisite for Adoption Proceedings, Amending for this Purpose Certain Provisions of Republic Act No. 8552, otherwise known as the Domestic Adoption Act of 1998, Republic Act No. 8043, otherwise known as the Inter-Country Adoption Act of 1995, Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, and for other purposes.
96 Sec. 1, Convention on Protection of Children and Co-operation in respect of Inter-country Adoption (Concluded 29 May 1993).
97 Art. 2, id.
98 Sec. 10, R.A. 8043.
99 Sec. 49, id.
100 Sec. 7, id.
Alternative family environment also includes foster care. This refers to the provision of a planned yet temporary substitute parental care for a child. Licensed foster parents provide a home to the child while waiting for the child’s return to his biological parents or placement with an adoptive family. Bills to boost foster care as an alternative family arrangement and to update the provisions in the Child and Youth Welfare Code\(^1\) have been filed in Congress\(^2\).

**IV. Child Abuse and the Termination of Parental Authority**

The Constitutional declares that the State “recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being.”\(^3\)

The Convention on the Rights of the Child provides for the protection of children from all forms of physical and mental violence, injury, neglect and abuse while in the care of their parents, guardians or any person who has care of the child. It stresses the duty of the state to protect children from sexual abuse and exploitation by taking all necessary measures to prevent children from being induced or coerced into engaging in prostitution or other unlawful sexual activity, and their being used in pornographic performances and material. It obliges the state to put in place an efficient system of identification, reporting, referral, investigation and management of child abuse cases, to be able to respond to these promptly and effectively. Parties to the Convention, pursuant to Article 39, also undertake to ensure the physical and psychological recovery and social reintegration of abuse and exploited children, in an environment that fosters their self-respect and human dignity.

Under the Domestic Adoption Act and the Supreme Court Rules on Adoption, abandoned and neglected children may be declared legally available for legal adoption. The Rules define the following terms:

‘(d) “Involuntarily committed child” is one whose parents, known or unknown, have been permanently and judicially deprived of parental authority over him due to abandonment; substantial, continuous or repeated neglect and abuse; or incompetence to discharge parental responsibilities.

‘(f) “Abandoned child” refers to one who has no proper parental care or guardianship or whose parents have deserted him for a period of at least six (6) continuous months and has been judicially declared as such.

‘(h) “Neglected child” is one whose basic needs have been deliberately not attended to or inadequately attended to, physically or emotionally, by his parents or guardian.

‘(i) “Physical neglect” occurs when the child is malnourished, ill-clad and without proper shelter.

\(^1\) Art. 67, P.D. 603.
\(^2\) 15\(^{th}\) Congress, Senate Bill 2486, *An Act to Strengthen and Propagate Foster Care for Abused, Abandoned, Neglected and Other Children with Special Needs, Providing Appropriations therefor and for other purposes*.
\(^3\) Art. II, Sec. 13, *1987 Constitution*. 
‘(j) “Emotional neglect” exists when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health or made to beg in the streets or public places, or placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices.’

Adoption will have the effect of severing the legal ties with the biological parents who have neglected or abandoned them. Should the abuse be committed instead by the adoptive parents, the adoption will be rescinded. Section 20 of RA 8552 warns that the effects of rescission “shall be without prejudice to the penalties imposable under the Penal Code if the criminal acts are properly proven.”

Republic Act 7610, or the Child Abuse Act, is considered the Philippines’ landmark legislation in this field. It has a broader definition of what acts constitute child abuse, and considers as abusive conduct the maltreatment of the child, whether or not this is habitual. Maltreatment includes the following:

“1) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

“2) any act by deed or which debases, degrades, deems the intrinsic worth and dignity of the child as a human being;

“3) unreasonable deprivation of his/her basic needs for survival such as food and shelter; or

“4) failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.”

Unlike the CRC, RA 7610 applies to all forms of child abuse whether committed by parents and guardians or by strangers who are under no obligation to care for the child. A person who abandons a minor incurs criminal liability in three ways:

“1) finding an abandoned child under seven years and not giving assistance;

“2) leaving a child under seven years who is in one’s custody. Penalty increases if death occurs from such abandonment, and to a lesser degree if the life of the minor was merely endanger;

“3) delivering a child to a public institution or to other persons by one having charge of rearing or educating the minor, without the consent of those who entrusted the child to him/her, or of proper authorities.”

Interestingly, parents who neglect their children’s education suffer the same penalty.

104 Art. 229, Family Code. Unless subsequently revived by a final judgment, parental authority also terminates:

(1) Upon adoption of the child;

105 RA 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for other purposes (17 June 1992).

106 Sec. 3, id.
Before the passage of RA 7610, acts constituting child prostitution and other forms of abuse were punishable under the Revised Penal Code. RA 7610 specifically condemns the prostitution\textsuperscript{107} and trafficking of children including attempts at such\textsuperscript{108}, and using children for obscene publications and indecent shows\textsuperscript{109}. These acts call for steep penalties because of the fact that their victims are the innocent and defenseless\textsuperscript{110}.

Persons guilty of sexually exploiting children are those who:

“1) engage in or promote prostitution, by acting as procurer or encouraging or threatening the child to engage in prostitution;

“2) have sexual intercourse with or act lasciviously toward a child exploited in prostitution; and

“3) derive profit from prostitution by providing the venue for such\textsuperscript{111}.

Child trafficking is trading or dealing in children, and includes the act of buying or selling a child. By this definition, biological parents who give up their child to another, whether a relative or stranger, in exchange for a sum or any consideration, as well as the person who pays for the child, are guilty of child trafficking. This is penalized with reclusion temporal (12 years, 1 day to 20 years) to reclusion perpetua, which requires serving at least 30 years of the sentence before the convict may be pardoned.\textsuperscript{112} This act is likewise punishable under the Domestic Adoption Law, which considers the fictitious registration of the birth of a child an offense constituting child trafficking “when committed by a syndicate or where it involves two or more children.”\textsuperscript{113}

RA 7610 also considers failure to provide for the child’s needs as child abuse.\textsuperscript{114} Thus, a parent who abandons a child under seven years of age for six continuous months is punished with arresto mayor and a fine. A higher penalty is imposed if the child dies as a result of abandonment.\textsuperscript{115}

In the case of \textit{De Guzman v. Hernando Perez}\textsuperscript{116} the Court pointed out the scope of acts punishable under RA 7610. The Court held that Roberto, the biological father, could not be charged for violation of Section 10(a) of RA 7610 that provides:

“SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child’s Development. –

“(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of PD No. 603, as amended, \textbf{but

\textsuperscript{107}Art. 3, Secs. 5-6, id.}
\textsuperscript{108}Art. 4, Secs. 7-8, id.}
\textsuperscript{109}Art. 5, Secs. 9, id.}
\textsuperscript{110}Art. 12, id.}
\textsuperscript{111}Art. 3, id.}
\textsuperscript{112}Art. 4, Sec. 7, R.A. 7610.}
\textsuperscript{113}Sec. 21 (b), par. 5, R.A. 8552.}
\textsuperscript{114}Art. 1, Sec. 3, R.A. 7610.}
\textsuperscript{115}Art. 6, Sec. 10, id.}
\textsuperscript{116}G.R. No. 156013 (25 July 2006).
not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period. (emphasis supplied)"

The decision underscored that Roberto’s acts of neglecting his child also constituted a crime known as “indifference of parents.” Since this is penalized under Article 277 of the Revised Penal Code, then it is explicitly beyond the ambit of RA 7610.

Unlike the single assault by a stranger, family violence exposes victims to continuing maltreatment because they live with the perpetrators of the crime. For this reason, an abused or neglected child should be committed to the care of the Department of Social Welfare and Development (DSWD) or any duly licensed child placement agency or individual, in order to remove him/her from the menacing environment that in some cases, is the child’s own home. It is only when the court determines that the situation of abandonment or neglect has been corrected may the child remain under his or her parent’s care, but with DSWD supervision.

Parents or lawful guardians found to have abused their children shall be temporarily deprived of their parental authority. Should the crime be sexual abuse, however, this authority shall be permanently removed from them and transferred to the child’s next of kin, the DSWD or a duly accredited children’s home, as the Court deems fit.

In addition, the appropriate criminal charge shall be filed against the abuser. In People of the Philippines v. Roberto Negosa, Negosa was charged for the rape of and commission of acts of lasciviousness against his eleven-year-old stepdaughter, Gretchen. He was convicted of both crimes. The Court stressed that Gretchen was only in Grade V and not even 11 years old when the appellant raped her on June 28, 1997. Under Article 335, paragraph 3 of the Revised Penal Code, as amended by Republic Act No. 7659, Negosa is guilty of statutory rape since “the under twelve-year-old victim is conclusively presumed incapable of giving consent to sexual intercourse with another.”

The Court said that “[e]ven assuming that the appellant did not threaten nor intimidate the victim, this, and the fact that the latter agreed to live with her mother and her abuser, are purely inconsequential matters. This does not affect the veracity of the victim’s testimony.” However, the court modified the lower court ruling and found Negosa guilty only of simple statutory rape since he was merely the common-law husband, not the legal husband, of Gretchen’s mother. Here we see ...

117 Art. 11, Sec. 28., R.A. 7610.
118 Art. 231, Family Code. The court in an action filed for the purpose in a related case may also suspend parental authority if the parent or the person exercising the same:
(1) Treats the child with excessive harshness or cruelty;
(2) Gives the child corrupting orders, counsel or example;
(3) Compels the child to beg; or
(4) Subjects the child or allows him to be subjected to acts of lasciviousness.
The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.
If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.
The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated.
119 Art. 232, Family Code. If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority.
120 Art. 3., R.A. 7610.
that the absence of the legal relationship proved to be beneficial to the abuser even if the monstrosity of the offense are alike since the mother's live in partner occupied the same position of confidence, trust and ascendancy with respect to other children in the family.

The elements of sexual abuse under Section 5, Article III of RA No. 7610 that must be proven in addition to the elements of acts of lasciviousness are the following:

“(1) The accused commits the act of sexual intercourse or lascivious conduct;

“(2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

“(3) The child, whether male or female, is below 18 years of age.”

The Court held in one case that based on this definition, petitioner’s act of purposely touching the eight year old girl’s breasts, at times even under her shirt, unmistakably amounted to lascivious conduct.122

In limited instances, the parent or guardian of the abused or neglected child may petition the court for restoration of parental authority. If the court finds that the cause for the commitment of the child is no longer present – such as when the neglectful parent has undergone drug rehabilitation, found a steady job, and can take suitable care of the child– the court may reinstate the petitioner’s parental rights over the child.123

RA No. 7610 introduced an important provision with respect to additional persons who may file a complaint of child abuse. These include the offended party, his or her parents or guardians, ascendants or collateral relatives within the third degree, officers or social workers of the Department of Social Welfare and Development (DSWD), the barangay chairman, and at least three concerned and responsible citizens residing in the place where the violation occurred.124

Moreover, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated in October 1993, state that the report of child abuse may be made orally or in writing to the DSWD, the police, or a Barangay Council for the Protection of Children.125 It also compels the head of a hospital or clinic, as well as the attending physician and nurse, to make a report within forty-eight hours from the time they examine or treat a child who appears to have suffered abuse.126 Public school teachers, school administrators, law enforcers and barangay officials and other government workers also have the duty to report all incidents of possible child abuse to the DSWD.127 Failure of hospital and government workers to report these cases is punishable with a fine of not more than P2,000.00.128 It is curious though why the law excludes private school teachers and non-government workers from the duty of reporting when the evil sought to be avoided - child abuse- is the same.

122 Alvin Amployo v Republic of the Philippines , G.R. No. 157718 (26 April 2005).
123 Art. 230, Family Code. - Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender.
124 Art. 11, Sec.27, R.A. 7610.
125 Sec. 3, Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.
126 Sec. 4, id.
127 Sec.5, id.
128 Sec.6, id.
Department Order No. 18 provides the implementing rules and regulations for a special project aimed at the protection as well as recovery and social reintegration of sexually abused and exploited children. It has three major components: early detection and prevention, treatment and rehabilitation, and training and research.

The first includes advocacy and community mobilization, and information dissemination with extensive involvement of the media particularly in the project called Bantay Bata Hotline. Treatment and rehabilitation services range from protective custody which may entail the child's removal from his home, to psycho-social interventions such as counseling and organization of support groups, to various services including medical, legal, and child placement services and provision of livelihood or financial assistance. Because of their highly sensitive nature, child abuse cases have to be handled with specialized skills, thus the urgency for training social workers and other service providers like houseparent, the police, and prosecutors. Through the study of sexual abuse cases and other research, the project hopes to deepen the understanding of the issues in order to enhance public awareness and vigilance.

V. Conclusion

Legislative reform and a greater determination to enforce the law have led to the criminalization of child abuse, neglect and exploitation. Consequently this has called for the imposition of heavier punishment – for instance, the penalty of reclusion perpetua to death for parricide,129 or reclusion temporal to reclusion perpetua for child prostitution130 or child trafficking.131

However, the criminalization of child abuse has had a backlash. If the abuser is a family member, other family members might hesitate to prosecute since that would extinguish any possibility of the abuser coming back to the protective fold of the family. Moreover, the family could become resentful of the child given that accusing the offender who might happen to be the principal wage earner would definitely imperil the family's financial viability. There have also been apprehensions that criminalizing child abuse and neglect poses a threat on the autonomy and privacy that the family enjoys under the law. It is thus important to clarify that though the family is autonomous, it is not absolutely free from state intervention in the face of violations of the rights of its individual members, especially children who are most vulnerable.

Children are considered the hope of our nation and are “destined to guide the fortunes of mankind.”132 Hence they are fitting recipients of the love, care and support not only of their families but also of the state. To this end, several laws have been enacted to ensure their survival, protection, development, and participation to remind us that children should not be perceived merely as passive beneficiaries of rights and the "subject of legal relations"133 but as active rights bearers.

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129 Art. 246, Revised Penal Code.
130 Art. 3, Sec. 5-6, R.A. 7610.
131 Art. 4, Sec. 7, id.
132 Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples (7 December 1965).
133 Art. 37, Civil Code. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.
There are several laws recognizing children’s rights already in place but there is still room for change in order to fully comply with the requirement of non-discrimination on the basis of “national ethnic or social origin... disability, birth or other status.”

Credit should be given to the media as well as children’s and women’s rights advocates for bringing the issues of abuse, neglect and exploitation to the fore and urging government to give it immediate attention.

In addressing this problem, the state should not limit the solutions to imprisonment and similar punitive actions to be imposed on the offenders, but expand the responses to counseling, support from self-help groups, and community involvement. Also, it remains the responsibility of the state to uniformly implement laws penalizing acts of family violence and ensure societal change in mindset so that these acts are not viewed as ordinary family misunderstandings but serious crimes for which the perpetrators are unquestionably accountable. Most importantly, it should alter the social conditions that foster violence and abusive behavior, like lack of employment opportunities, which encourages idleness and leads to anger and despair.

134 Art. 2, CRC.
LOOKING AFTER FILIPINO CHILDREN


Art. 2

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Art. 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Art. 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

Art. 1
States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Art. 2
For the purposes of the present Protocol:
(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Art. 3
1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
(a) In the context of sale of children as defined in article 2:
(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
   a. Sexual exploitation of the child;
   b. Transfer of organs of the child for profit;
   c. Engagement of the child in forced labour;
(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Art. 8
1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

II. CONSTITUTIONAL LAW

1987 Philippine Constitution.

ART. II

Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Sec. 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

ART. XIV

Sec. 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

Sec. 2. The State shall:

1. Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
2. Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;
3. Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;  
4. Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs;  
5. Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.


Art. 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost. (n)

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Art. 311. The father and mother jointly exercise parental authority over their legitimate children who are not emancipated. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Children are obliged to obey their parents so long as they are under parental power, and to observe respect and reverence toward them always.

Recognized natural and adopted children who are under the age of majority are under the parental authority of the father or mother recognizing or adopting them, and are under the same obligation stated in the preceding paragraph.

Natural children by legal fiction are under the joint authority of the father and mother, as provided in the first paragraph of this article. (154a)

Art. 312. Grandparents shall be consulted by all members of the family on all important family questions. (n)

Art. 313. Parental authority cannot be renounced or transferred, except in cases of guardianship or adoption approved by the courts, or emancipation by concession.

The courts may, in cases specified by law, deprive parents of their authority. (n)

Art. 314. A foundling shall be under the parental authority of the person or institution that has reared the same. (n)

Art. 315. No descendant can be compelled, in a criminal case, to testify against his parents and ascendants. (n)


TITLE III
PATERNITY AND FILIATION

Art. 64. Adoption. No adoption in any form shall confer upon any person the status and rights of a legitimate child under Muslim law, except that said person may receive a gift (hiba).

TITLE IV
SUPPORT (NAFAQA)

Art. 65. Support defined. Support (nafaqa) includes everything that is indispensable for sustenance, dwelling, clothing and medical attendance according to the social standing of the person obliged to give it, and the education of the person entitled to the support until he completes his education, training, or vocation even beyond the age of majority.

Art. 66. Amount. The amount of support shall be in proportion to the resources of the giver and to the needs of the recipient.
Art. 67. Support for wife and infant.
(1) The wife shall be entitled to support during the marriage. In cases of divorce, (talaq), her right shall be extended up to the expiration of the 'idda. However, in case the wife is pregnant at the time of the separation, she shall be entitled to support until delivery.
(2) Any divorced nursing mother who continues to breastfeed her child for two years shall be entitled to support until the time of weaning.

Art. 68. Support between ascendants and descendants. The ascendants and descendants shall be obliged to support each other in the order in which they are called to succeed by intestacy the person who has a right to claim support.

Art. 69. Payment.
(1) The obligation to support shall be demandable from the time the recipient needs it for maintenance, but it shall not be paid except from the date it is extrajudicially demanded.
(2) Payment shall be made daily, weekly or monthly in advance, and when the recipient dies, his heirs shall not be obliged to return what he had received in advance.
(3) If the recipient is the wife, the rule established in the foregoing paragraph shall apply even though the marriage is dissolved.

Art. 70. Extinguishment of support. The obligation to support shall cease:
(a) Upon the death of the recipient;
(b) When the resources of the obligor have been so reduced that he cannot give the support without neglecting his own need and those of his family, except that in the case of the spouses, the husband, though needy, is obliged to support the wife; or
(c) When the recipient commits any act which would give rise to disqualification to inherit or denial of support under Muslim law.

TITLE V
PARENTAL AUTHORITY
Chapter One
NATURE AND EFFECTS
Art. 72. Duty to parents.
(1) Children shall respect, revere, and obey their parents always unless the latter cast them into disbelief.
(2) Grandparents are likewise entitled to respect and reverence, and shall be consulted whenever practicable by all members of the family on all important questions.

Art. 73. Duty to children. Every parent and every person exercising parental authority shall see to it that the rights of the children are respected, and their duties complied with, and shall particularly by precept and example, imbue them with religious and civic attachment to the ideal of permanent world peace.

Art. 75. Effects upon property of children.
(1) The father, or in his absence the mother, shall be the legal administrator of the property of the child under parental authority. If the property is worth more than five thousand pesos, the father or the mother shall give a bond to be approved by the court.
(2) The court may appoint a guardian (wasi) in the absence of one who is natural or testamentary.

Art. 76. Parental authority non-transferable. Parental authority can neither be renounced nor transferred except as otherwise provided in this Code and the general principles of Islamic law.

Art. 77. Extinguishment of parental authority.
(1) Parental authority terminates upon the death of the parents or the child, or upon emancipation.
(2) Subject to Article 78, the widowed mother who contracts a subsequent marriage shall lose parental authority and custody over all children by the deceased husband, unless the second husband is related to them within the prohibited degrees of consanguinity.
(3) The court may deprive a person of parental authority or suspend the exercise thereof if he treats his children with excessive harshness, gives them corrupting or immoral orders and counsel, or abandons them.

Chapter Two
CUSTODY AND GUARDIANSHIP
Art. 78. Care and custody.
(1) The care and custody of children below seven years of age whose parents are divorced shall belong to the mother or, in her absence, to the maternal grandmother, the paternal grandmother, the sister and aunts. In their default, it shall devolve upon the father and the nearest paternal relatives. The minor above seven years of age but below the age of
puberty may choose the parent with whom he wants to stay.
(2) The unmarried daughter who has reached the age of puberty shall stay with the father; the son, under the same circumstances, shall stay with the mother.

Art. 79. Guardian for marriage (wali). The following persons shall have authority to act as guardian for marriage (wali) in the order of precedence:
(a) Father
(b) Paternal grandfather;
(c) Brother and other paternal relatives;
(d) Paternal grandfather’s executor or nominee;
or
(e) The court.

Art. 80. Guardian of minor’s property. The following persons shall exercise guardianship over the property of minors in the order of precedence:
(a) Father;
(b) Father’s executor or nominee;
(c) Paternal grandfather;
(d) Paternal grandfather’s nominee; or
(e) The court


Chapter 3. Illegitimate Children
Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. (287a)

Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. (n)

Art. 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law. (313a)

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Art. 212. In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children. (n)

Art. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit. (n)

Art. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority. (355a)

Art. 215. No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other. (315a)
Chapter 3. Effect of Parental Authority Upon the Persons of the Children

Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

(5) To represent them in all matters affecting their interests;

(6) To demand from them respect and obedience;

(7) To impose discipline on them as may be required under the circumstances; and

(8) To perform such other duties as are imposed by law upon parents and guardians. (316a)

Art. 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law. (2180(2)a and (4)a )

Art. 222. The courts may appoint a guardian of the child’s property or a guardian ad litem when the best interests of the child so requires. (317)

Art. 223. The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard.

However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper. (318a)

Art. 224. The measures referred to in the preceding article may include the commitment of the child for not more than thirty days in entities or institutions engaged in child care or in children’s homes duly accredited by the proper government agency.

The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper. (391a)

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Chapter 4. Effect of Parental Authority Upon the Property of the Children

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.
A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply. (320a)

Art. 230. Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender. (330a)

Art. 231. The court in an action filed for the purpose in a related case may also suspend parental authority if the parent or the person exercising the same:

(1) Treats the child with excessive harshness or cruelty;
(2) Gives the child corrupting orders, counsel or example;
(3) Compels the child to beg; or
(4) Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.

The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated. (33a)

Art. 232. If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority. (n)

Art. 233. The person exercising substitute parental authority shall have the same authority over the person of the child as the parents.

In no case shall the school administrator, teacher of individual engaged in child care exercising special parental authority inflict corporal punishment upon the child. (n)


CHAPTER I

Parental Authority

SEC. A. In General

Art. 18. Grandparents. - Grandparents shall be consulted on important family questions but they shall not interfere in the exercise of parental authority by the parents.

CHAPTER III

Duties of Parents

Art. 46. General Duties. - Parents shall have the following general duties toward their children:
1. To give him affection, companionship and understanding;

2. To extend to him the benefits of moral guidance, self-discipline and religious instruction;

3. To supervise his activities, including his recreation;

4. To inculcate in him the value of industry, thrift and self-reliance;

5. To stimulate his interest in civic affairs, teach him the duties of citizenship, and develop his commitment to his country;

6. To advise him properly on any matter affecting his development and well-being;

7. To always set a good example;

8. To provide him with adequate support, as defined in Article 290 of the Civil Code; and

9. To administer his property, if any, according to his best interests, subject to the provisions of Article 320 of the Civil Code.

Art. 47. Family Affairs. - Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him. In cases involving his discipline, the child shall be given a chance to present his side.

TITLE III.
CHILD AND YOUTH WELFARE AND EDUCATION

CHAPTER I
Access to Educational Opportunities

Art. 71. Admission to Schools. - The state shall see to it that no child is refused admission in public schools. All parents are required to enroll their children in schools to complete, at least, an elementary education.

Art. 72. Assistance. - To implement effectively the compulsory education policy, all necessary assistance possible shall be given to parents, specially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programs which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.


ARTICLE II
PRE-ADOPTION SERVICES

Sec. 4. Counseling Service. – The Department shall provide the services of licensed social workers to the following:

(a) Biological Parent(s) – Counseling shall be provided to the parent(s) before and after the birth of his/her child. No binding commitment to an adoption plan shall be permitted before the birth of his/her child. A period of six (6) months shall be allowed for the biological parent(s) to reconsider any decision to relinquish his/her child for adoption before the decision becomes irrevocable. Counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption.

Steps shall be taken by the Department to ensure that no hurried decisions are made and all alternatives for the child’s future and the implications of each alternative have been provided.

(b) Prospective Adoptive Parent(s) – Counseling sessions, adoption fora and seminars, among others, shall be provided to prospective adoptive parent(s) to resolve possible adoption issues and to prepare him/her for effective parenting.
(c) Prospective Adoptee – Counseling sessions shall be provided to ensure that he/she understands the nature and effects of adoption and is able to express his/her views on adoption in accordance with his/her age and level of maturity.

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Sec. 9. Whose Consent is Necessary to the Adoption. – After being properly counseled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

(a) The adoptee, if ten (10) years of age or over;

(b) The biological parent(s) of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child;

(c) The legitimate and adopted sons/daughters, ten (10) years of age or over, of the adopter(s) and adoptee, if any;

(d) The illegitimate sons/daughters, ten (10) years of age or over, of the adopter if living with said adopter and the latter's spouse, if any; and

(e) The spouse, if any, of the person adopting or to be adopted.

ARTICLE IV
PROCEDURE

Sec. 10. Hurried Decisions. – In all proceedings for adoption, the court shall require proof that the biological parent(s) has been properly counseled to prevent him/her from making hurried decisions caused by strain or anxiety to give up the child, and to sustain that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his/her own home will be inimical to his/her welfare and interest.

Sec. 11. Case Study. – No petition for adoption shall be set for hearing unless a licensed social worker of the Department, the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the adoptee, his/her biological parent(s), as well as the adopter(s), and has submitted the report and recommendations on the matter to the court hearing such petion.

At the time of preparation of the adoptee’s case study, the concerned social worker shall confirm with the Civil Registry the real identity and registered name of the adoptee. If the birth of the adoptee was not registered with the Civil Registry, it shall be the responsibility of the concerned social worker to ensure that the adoptee is registered.

The case study on the adoptee shall establish that he/she is legally available for adoption and that the documents to support this fact are valid and authentic. Further, the case study of the adopter(s) shall ascertain his/her genuine intentions and that the adoption is in the best interest of the child.

The Department shall intervene on behalf of the adoptee if it finds, after the conduct of the case studies, that the petition should be denied. The case studies and other relevant documents and records pertaining to the adoptee and the adoption shall be preserved by the Department.

Sec. 12. Supervised Trial Custody. – No petition for adoption shall be finally granted until the adopter(s) has been given by the court a supervised trial custody period for at least six (6) months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter(s).

The court may motu proprio or upon motion of any party reduce the trial period if it finds the same to be in the best interest of the adoptee, stating the reasons for the reduction of the period. However, for alien adopter(s), he/she must complete the six (6)-month trial custody except for those enumerated in Sec. 7 (b) (i) (ii) (iii).

If the child is below seven (7) years of age and is placed with the prospective adopter(s) through a pre-adoption placement authority issued by the Department, the prospective adopter(s) shall
enjoy all the benefits to which biological parent(s) is entitled from the date the adoptee is placed with the prospective adopter(s).

ARTICLE V
EFFECTS OF ADOPTION

Sec. 16. Parental Authority. – Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

Sec. 17. Legitimacy. – The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

Sec. 18. Succession. – In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

ARTICLE VI
RESCISSION OF ADOPTION

Sec. 19. Grounds for Rescission of Adoption. – Upon petition of the adoptee, with the assistance of the Department if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

Sec. 20. Effects of Rescission. – If the petition is granted, the parental authority of the adoptee’s biological parent(s), if known, or the legal custody of the Department shall be restored if the adoptee is still a minor or incapacitated. The reciprocal rights and obligations of the adopter(s) and the adoptee to each other shall be extinguished.

The court shall order the Civil Registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate.

Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.

All the foregoing effects of rescission of adoption shall be without prejudice to the penalties imposable under the Penal Code if the criminal acts are properly proven.

ARTICLE VII
VIOLATIONS AND PENALTIES

Sec. 21. Violations and Penalties. – (a) The penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine not less than Fifty thousand pesos (P50,000.00), but not more than Two hundred thousand pesos (P200,000.00) at the discretion of the court shall be imposed on any person who shall commit any of the following acts:

(i) obtaining consent for an adoption through coercion, undue influence, fraud, improper material inducement, or other similar acts;

(ii) non-compliance with the procedures and safeguards provided by the law for adoption; or

(iii) subjecting or exposing the child to be adopted to danger, abuse, or exploitation.

(b) Any person who shall cause the fictitious registration of the birth of a child under the name(s) of a person(s) who is not his/her
biological parent(s) shall be guilty of simulation of birth, and shall be punished by prision mayor in its medium period and a fine not exceeding Fifty thousand pesos (P50,000.00).

Any physician or nurse or hospital personnel who, in violation of his/her oath of office, shall cooperate in the execution of the abovementioned crime shall suffer the penalties herein prescribed and also the penalty of permanent disqualification.

Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents, and communications of adoption applications, cases, and processes shall suffer the penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years, and/or a fine of not less than Five thousand pesos (P5,000.00) but not more than Ten thousand pesos (P10,000.00), at the discretion of the court.

A penalty lower by two (2) degrees than that prescribed for the consummated offense under this Article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated. Acts punishable under this Article, when committed by a syndicate or where it involves two (2) or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of reclusion perpetua.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided, shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

When the offender is an alien, he/she shall be deported immediately after service of sentence and perpetually excluded from entry to the country.

Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: Provided, That upon the filing of a case, either administrative or criminal, said government official, employee, or functionary concerned shall automatically suffer suspension until the resolution of the case.

Sec. 22. Rectification of Simulated Births. – A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act: Provided, That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter: Provided, further, That the application for correction of the birth registration and petition for adoption shall be filed within five (5) years from the effectivity of this Act and completed thereafter: Provided, finally, That such person complies with the procedure as specified in Article IV of this Act and other requirements as determined by the Department.


Sec. 3. Petition. – The petition shall be in the form of an affidavit, subscribed and sworn to before any person authorized by law to administer oaths. It shall contain facts necessary to establish the merits of the petition and shall state the circumstances surrounding the abandonment or neglect of the child.

The petition shall be supported by the following documents:

(1) Social Case Study Report made by the DSWD, local government unit, licensed or accredited child-caring or child-placing agency or institution charged with the custody of the child;
(2) Proof that efforts were made to locate the parent(s) or any known relatives of the child. The following shall be considered sufficient:

(a) Written certification from a local or national radio or television station that the case was aired on three (3) different occasions;

(b) Publication in one (1) newspaper of general circulation;

(c) Police report or barangay certification from the locality where the child was found or a certified copy of a tracing report issued by the Philippine National Red Cross (PNRC), National Headquarters (NHQ), Social Service Division, which states that despite due diligence, the child’s parents could not be found; and

(d) Returned registered mail to the last known address of the parent(s) or known relatives, if any.

(3) Birth certificate, if available; and

(4) Recent photograph of the child and photograph of the child upon abandonment or admission to the agency or institution.

Sec. 4. Procedure for the Filing of the Petition. – The petition shall be filed in the regional office of the DSWD where the child was found or abandoned.

The Regional Director shall examine the petition and its supporting documents, if sufficient in form and substance and shall authorize the posting of the notice of the petition conspicuous place for five (5) consecutive days in the locality where the child was found.

The Regional Director shall act on the same and shall render a recommendation not later than five (5) working days after the completion of its posting. He/she shall transmit a copy of his/her recommendation and records to the Office of the Secretary within forty-eight (48) hours from the date of the recommendation.

Sec. 5. Declaration of Availability for Adoption. – Upon finding merit in the petition, the Secretary shall issue a certification declaring the child legally available for adoption within seven (7) working days from receipt of the recommendation.

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Sec. 7. Declaration of Availability for Adoption of Involuntarily Committed Child and Voluntarily Committed Child. – The certificate declaring a child legally available for adoption in case of an involuntarily committed child under Article 141, paragraph 4(a) and Article 142 of Presidential Decree No. 603 shall be issued by the DSWD within three (3) months following such involuntary commitment.

In case of voluntary commitment as contemplated in Article 154 of Presidential Decree No. 603, the certification declaring the child legally available for adoption shall be issued by the Secretary within three (3) months following the filing of the Deed of Voluntary Commitment, as signed by the parent(s) with the DSWD.

Upon petition filed with the DSWD, the parent(s) or legal guardian who voluntarily committed a child may recover legal custody and parental authority over him/her from the agency or institution to which such child was voluntarily committed when it is shown to the satisfaction of the DSWD that the parent(s) or legal guardian is in a position to adequately provide for the needs of the child: Provided, That, the petition for restoration is filed within (3) months after the signing of the Deed of Voluntary Commitment.

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Sec. 10. Penalty. – The penalty of One hundred thousand pesos (P100,000.00) to Two hundred thousand pesos (P200,000.00) shall be imposed on any person, institution, or agency who shall place a child for adoption without the certification that the child is legally available for adoption issued by the DSWD. Any agency or institution found violating any provision of this Act shall have its license to operate revoked without prejudice to the criminal prosecution of its officers and employees.

Violation of any provision of this Act shall subject the government official or employee concerned to appropriate administrative, civil and/or criminal sanctions, including suspension and/or
LOOKING AFTER FILIPINO CHILDREN

dismissal from the government service and forfeiture of benefits.

A.M. No. 02-6-02-SC 2002-08-02, Rule on Adoption (2002).

A. Domestic Adoption

Sec. 1. Applicability of the Rule. – This Rule covers the domestic adoption of Filipino children.

Sec. 3. Definition of Terms. – For purposes of this Rule:

(a) “Child” is a person below eighteen (18) years of age at the time of the filing of the petition for adoption.

(b) “A child legally available for adoption” refers to a child who has been voluntarily or involuntarily committed to the Department or to a duly licensed and accredited child-placing or child-caring agency, freed of the parental authority of his biological parents, or in case of rescission of adoption, his guardian or adopter(s).

(c) “Voluntarily committed child” is one whose parents knowingly and willingly relinquish parental authority over him in favor of the Department.

(d) “Involuntarily committed child” is one whose parents, known or unknown, have been permanently and judicially deprived of parental authority over him due to abandonment; substantial, continuous or repeated neglect and abuse; or incompetence to discharge parental responsibilities.

(e) “Foundling” refers to a deserted or abandoned infant or child whose parents, guardian or relatives are unknown; or a child committed to an orphanage or charitable or similar institution with unknown facts of birth and parentage and registered in the Civil Register as a “foundling.”

(f) “Abandoned child” refers to one who has no proper parental care or guardianship or whose parents have deserted him for a period of at least six (6) continuous months and has been judicially declared as such.

(g) “Dependent child” refers to one who is without a parent, guardian or custodian or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody and is dependent upon the public for support.

(h) “Neglected child” is one whose basic needs have been deliberately not attended to or inadequately attended to, physically or emotionally, by his parents or guardian.

(i) “Physical neglect” occurs when the child is malnourished, ill-clad and without proper shelter.

(j) “Emotional neglect” exists when a child is raped, seduced, maltreated, exploited, overworked or made to work under conditions not conducive to good health or made to beg in the streets or public places, or placed in moral danger, or exposed to drugs, alcohol, gambling, prostitution and other vices.

(k) “Child-placement agency” refers to an agency duly licensed and accredited by the Department to provide comprehensive child welfare services including, but not limited to, receiving applications for adoption, evaluating the prospective adoptive parents and preparing the adoption home study report.

(l) “Child-caring agency” refers to an agency duly licensed and accredited by the Department that provides 24-hour residential care services for abandoned, orphaned, neglected or voluntarily committed children.

(m) “Department” refers to the Department of Social Welfare and Development.

(n) “Deed of Voluntary Commitment” refers to the written and notarized instrument relinquishing parental authority and committing the child to the care and custody of the Department executed by the child’s biological parents or in their absence, mental incapacity or death, by the child’s legal guardian, to be witnessed by an authorized representative of the Department after counseling and other services have been made available to encourage the biological parents to keep the child.
(o) “Child Study Report” refers to a study made by the court social worker of the child’s legal status, placement history, psychological, social, spiritual, medical, ethno-cultural background and that of his biological family needed in determining the most appropriate placement for him.

(p) “Home Study Report” refers to a study made by the court social worker of the motivation and capacity of the prospective adoptive parents to provide a home that meets the needs of a child.

(q) “Supervised trial custody” refers to the period of time during which a social worker oversees the adjustment and emotional readiness of both adopters and adoptee in stabilizing their filial relationship.

(r) “Licensed Social Worker” refers to one who possesses a degree in bachelor of science in social work as a minimum educational requirement and who has passed the government licensure examination for social workers as required by Republic Act No. 4373.

(s) “Simulation of birth” is the tampering of the civil registry to make it appear in the birth records that a certain child was born to a person who is not his biological mother, thus causing such child to lose his true identity and status.

(t) “Biological Parents” refer to the child’s mother and father by nature.

(u) “Pre-Adoption Services” refer to psychosocial services provided by professionally-trained social workers of the Department, the social services units of local governments, private and government health facilities, Family Courts, licensed and accredited child-caring and child-placement agencies and other individuals or entities involved in adoption as authorized by the Department.

(v) “Residence” means a person’s actual stay in the Philippines for three (3) continuous years immediately prior to the filing of a petition for adoption and which is maintained until the adoption decree is entered. Temporary absences for professional, business, health, or emergency reasons not exceeding sixty (60) days in one (1) year does not break the continuity requirement.

(w) “Alien” refers to any person, not a Filipino citizen, who enters and remains in the Philippines and is in possession of a valid passport or travel documents and visa.

SEC. 4. Who may adopt. – The following may adopt:

(1) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude; who is emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his children in keeping with the means of the family. The requirement of a 16-year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee or is the spouse of the adoptee’s parent;

(2) Any alien possessing the same qualifications as above-stated for Filipino nationals: Provided, That his country has diplomatic relations with the Republic of the Philippines, that he has been living in the Philippines for at least three (3) continuous years prior to the filing of the petition for adoption and maintains such residence until the adoption decree is entered, that he has been certified by his diplomatic or consular office or any appropriate government agency to have the legal capacity to adopt in his country, and that his government allows the adoptee to enter his country as his adopted child. Provided, further, That the requirements on residency and certification of the alien’s qualification to adopt in his country may be waived for the following:

(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or

(ii) one who seeks to adopt the legitimate child of his Filipino spouse; or

(iii) one who is married to a Filipino citizen and seeks to adopt jointly with his spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse.

(3) The guardian with respect to the ward after the termination of the guardianship and clearance of his financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:
(i) if one spouse seeks to adopt the legitimate child of one spouse by the other spouse; or
(ii) if one spouse seeks to adopt his own illegitimate child: Provided, however, That the other spouse has signified his consent thereto; or
(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt or one spouse adopts the illegitimate child of the other, joint parental authority shall be exercised by the spouses.

SEC. 5. Who may be adopted. — The following may be adopted:

(1) Any person below eighteen (18) years of age who has been voluntarily committed to the Department under Articles 154, 155 and 156 of P.D. No. 603 or judicially declared available for adoption;

(2) The legitimate child of one spouse, by the other spouse;

(3) An illegitimate child, by a qualified adopter to raise the status of the former to that of legitimacy;

(4) A person of legal age regardless of civil status, if, prior to the adoption, said person has been consistently considered and treated by the adopters as their own child since minority;

(5) A child whose adoption has been previously rescinded; or

(6) A child whose biological or adoptive parents have died: Provided, That no proceedings shall be initiated within six (6) months from the time of death of said parents.

(7) A child not otherwise disqualified by law or these rules.

Sec. 6. Venue. — The petition for adoption shall be filed with the Family Court of the province or city where the prospective adoptive parents reside.

Sec. 7. Contents of the Petition. — The petition shall be verified and specifically state at the heading of the initiatory pleading whether the petition contains an application for change of name, rectification of simulated birth, voluntary or involuntary commitment of children, or declaration of child as abandoned, dependent or neglected.

1) If the adopter is a Filipino citizen, the petition shall allege the following:

(a) The jurisdictional facts;

(b) That the petitioner is of legal age, in possession of full civil capacity and legal rights, is of good moral character; has not been convicted of any crime involving moral turpitude; is emotionally and psychologically capable of caring for children; is at least sixteen (16) years older than the adoptee, unless the adopter is the biological parent of the adoptee or is the spouse of the adoptee’s parent; and is in a position to support and care for his children in keeping with the means of the family and has undergone pre-adoption services as required by Section 4 of Republic Act No. 8552.

2) If the adopter is an alien, the petition shall allege the following:

(a) The jurisdictional facts;

(b) Sub-paragraph 1(b) above;

(c) That his country has diplomatic relations with the Republic of the Philippines;

(d) That he has been certified by his diplomatic or consular office or any appropriate government agency to have the legal capacity to adopt in his country and his government allows the adoptee to enter his country as his adopted child and reside there permanently as an adopted child; and

(e) That he has been living in the Philippines for at least three (3) continuous years prior to the filing of the petition and he maintains such residence until the adoption decree is entered.

The requirements of certification of the alien’s qualification to adopt in his country and of residency may be waived if the alien:

(i) is a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or

(ii) seeks to adopt the legitimate child of his Filipino spouse; or

(iii) seeks to adopt the legitimate child of one spouse by the other spouse; or

(iv) if one spouse seeks to adopt his own illegitimate child: Provided, however, That the other spouse has signified his consent thereto; or

(v) if the spouses are legally separated from each other.
(iii) is married to a Filipino citizen and seeks to adopt jointly with his spouse a relative within the fourth degree of consanguinity or affinity of the Filipino spouse.

3) If the adopter is the legal guardian of the adoptee, the petition shall allege that guardianship had been terminated and the guardian had cleared his financial accountabilities.

4) If the adopter is married, the spouse shall be a co-petitioner for joint adoption except if:
   (a) one spouse seeks to adopt the legitimate child of the other, or
   (b) if one spouse seeks to adopt his own illegitimate child and the other spouse signified written consent thereto, or
   (c) if the spouses are legally separated from each other.

5) If the adoptee is a foundling, the petition shall allege the entries which should appear in his birth certificate, such as name of child, date of birth, place of birth, if known; sex, name and citizenship of adoptive mother and father, and the date and place of their marriage.

6) If the petition prays for a change of name, it shall also state the cause or reason for the change of name.

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B. Inter-Country Adoption

Sec. 26. Applicability. – The following sections apply to inter-country adoption of Filipino children by foreign nationals and Filipino citizens permanently residing abroad.

SEC. 27. Objectives. – The State shall:

a) consider inter-country adoption as an alternative means of child care, if the child cannot be placed in a foster or an adoptive family or cannot, in any suitable manner, be cared for in the Philippines;

b) ensure that the child subject of inter-country adoption enjoys the same protection accorded to children in domestic adoption; and

c) take all measures to ensure that the placement arising therefrom does not result in improper financial gain for those involved.

Sec. 28. Where to File Petition. – A verified petition to adopt a Filipino child may be filed by a foreign national or Filipino citizen permanently residing abroad with the Family Court having jurisdiction over the place where the child resides or may be found.

It may be filed directly with the Inter-Country Adoption Board.

Sec. 29. Who may be adopted. – Only a child legally available for domestic adoption may be the subject of inter-country adoption.

Sec. 30. Contents of Petition. – The petitioner must allege:

a) his age and the age of the child to be adopted, showing that he is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted at the time of application, unless the petitioner is the parent by nature of the child to be adopted or the spouse of such parent, in which case the age difference does not apply;

b) if married, the name of the spouse who must be joined as co-petitioner except when the adoptee is a legitimate child of his spouse;

c) that he has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his country;

d) that he has not been convicted of a crime involving moral turpitude;

e) that he is eligible to adopt under his national law;

f) that he can provide the proper care and support and instill the necessary moral values and example to all his children, including the child to be adopted;

g) that he agrees to uphold the basic rights of the child, as embodied under Philippine laws and the U. N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of Republic Act No. 8043;

h) that he comes from a country with which the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption of a
Filipino child is allowed under his national laws; and
i) that he possesses all the qualifications and none of the disqualifications provided in this Rule, in Republic Act No. 8043 and in all other applicable Philippine laws.

Sec. 31. Annexes. - The petition for adoption shall contain the following annexes written and officially translated in English:

a) Birth certificate of petitioner;
b) Marriage contract, if married, and, if applicable, the divorce decree, or judgment dissolving the marriage;
c) Sworn statement of consent of petitioner's biological or adopted children above ten (10) years of age;
d) Physical, medical and psychological evaluation of the petitioner certified by a duly licensed physician and psychologist;
e) Income tax returns or any authentic document showing the current financial capability of the petitioner;
f) Police clearance of petitioner issued within six (6) months before the filing of the petition;
g) Character reference from the local church/minister, the petitioner’s employer and a member of the immediate community who have known the petitioner for at least five (5) years;
h) Full body postcard-size pictures of the petitioner and his immediate family taken at least six (6) months before the filing of the petition.

Sec. 32. Duty of Court. – The court, after finding that the petition is sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Inter-Country Adoption Board for appropriate action.

SEC. 33. Effectivity. - This Rule shall take effect on August 22, 2002 following its publication in a newspaper of general circulation.


General Policies

1. The child’s best welfare and interest shall be the paramount consideration," in all matters relating to the care, protection, custody and adoption of the child.

2. All efforts to prevent the child from unnecessary separation from his/her biological parents shall be exhausted.

3. The biological parents shall be safeguarded from hurried decisions by providing them counseling, focusing on their strengths as parents with emphasis that poverty should not be a reason for giving up their child for adoption.

4. Children with special needs shall be immediately cleared for inter-country adoption.

5. Children who had been independently placed out with families should be given priority consideration for adoption by same families, provided that they are qualified to adopt a child. During the petition for adoption, the child may remain with the said family."

6. Licensed foster parents who decide to adopt the child/ren under their care shall be allowed to do so, provided that they are qualified to adopt and that the child they want to adopt is legally free for adoption and not yet matched to other prospective adoptive parents, either domestic or intercountry.

Said foster parents desiring to adopt their foster child need not undergo the matching process. However, the same thorough study must be made on licensed foster families to determine their motivations, capacities and potentials as prospective adoptive parents.

7. Placement of a child locally shall be exhausted and only when this is not possible shall inter-country adoption be considered.

8. The integration of the regional and interregional matching shall be done at Central Office level by one authorized body, which is the National Child Welfare Specialist Group (NCWSG).

9. The CWSG at Field Offices shall cease to function upon approval of this Omnibus Guidelines for Domestic Adoption Process and the NCWSG shall thereafter commence its functions, as mandated in the provisions of the Domestic Adoption Act.

10. The NCWSG shall be lodged at the Program Management Bureau (PMB) in the Central Office. The PMB Head will now perform the functions,
which used to be lodged with the Regional Directors.
11. A licensed social worker shall be designated to handle adoption cases on a full time basis, both at the Adoption Resource and Referral Unit (ARRU) in Field Offices and Adoption Resource and Referral Office (ARRO) in the Central Office.
12. "Religious Affiliation" as a criteria shall only be considered if the child has reached an age and level of understanding of religious practices. Generally, the age at which understanding can be said to occur would be 6 years old and above.
13. Post-Adoption Services shall be provided to the adoptee, adoptive parents and birth parents by trained social workers of the Department, the social services units of Local Governments, Family Courts, licensed and accredited child-caring/placing agencies and other individuals or entities involved in adoption as may be authorized by the Department.

v. Definition of Terms
1. Department - shall refer to the Department of Social Welfare and Development
2. Secretary - shall refer to the Secretary of the Department of Social Welfare and Development or his/her duly authorized representative.
3. Child - shall refer to a person below eighteen (18) years of age or a person over eighteen (18) years of age who is unable to fully take care of him/herself or protect him/herself from abuse, neglect, cruelty, exploitation or discrimination because of physical or mental disability or condition.
4. Child Caring Agency (CCA) - shall refer to private, non-profit or charitable institutions or government agencies duly licensed or accredited by the Department that provides 24-hour residential care services for abandoned, orphaned, neglected or voluntarily committed children (IRR of RA 8552).
5. Child-Placing Agency (CPA) - shall refer to private, non-profit or charitable institution or government agencies duly licensed or accredited by the Department to provide comprehensive child welfare services including but not limited to receiving applications for adoption/foster care, evaluating the prospective adoptive/foster parents, preparing the home study and all other processes required for adoption. (IRR of RA 8552)

Act 3815, Revised Penal Code (1930).

Art. 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.
xxx

Title Twelve

Art. 255. Infanticide. — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of prision correccional in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be prision mayor.

Art. 256. Intentional abortion. — Any person who shall intentionally cause an abortion shall suffer:
1. The penalty of reclusion temporal, if he shall use any violence upon the person of the pregnant woman.
2. The penalty of prision mayor if, without using violence, he shall act without the consent of the woman.
3. The penalty of prision correccional in its medium and maximum periods, if the woman shall have consented.

Art. 257. Unintentional abortion. — The penalty of prision correccional in its minimum and medium period shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.

Art. 258. Abortion practiced by the woman herself of by her parents. — The penalty of prision correccional in its medium and maximum periods shall be imposed upon a woman who shall
practice abortion upon herself or shall consent that any other person should do so.

Any woman who shall commit this offense to conceal her dishonor, shall suffer the penalty of prision correccional in its minimum and medium periods.

If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of prision correccional in its medium and maximum periods.

Art. 259. Abortion practiced by a physician or midwife and dispensing of abortives. — The penalties provided in Article 256 shall be imposed in its maximum period, respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer arresto mayor and a fine not exceeding 1,000 pesos.

Art. 263. Serious physical injuries. — Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:

1. The penalty of prision mayor, if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent, or blind;

2. The penalty of prision correccional in its medium and maximum periods, if in consequence of the physical injuries inflicted, the person injured shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm, or a leg or shall have lost the use of any such member, or shall have become incapacitated for the work in which he was therefor habitually engaged;

3. The penalty of prision correccional in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he as habitually engaged for a period of more than ninety days;

4. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.

If the offense shall have been committed against any of the persons enumerated in Article 246, or with attendance of any of the circumstances mentioned in Article 248, the case covered by subdivision number 1 of this Article shall be punished by reclusion temporal in its medium and maximum periods; the case covered by subdivision number 2 by prision correccional in its maximum period to prision mayor in its minimum period; the case covered by subdivision number 3 by prision correccional in its medium and maximum periods; and the case covered by subdivision number 4 by prision correccional in its minimum and medium periods.

The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.

Art. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-
mentioned were present in the commission of the offense.

Art. 270. Kidnapping and failure to return a minor. — The penalty of reclusion perpetua shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians.

Art. 271. Inducing a minor to abandon his home. — The penalty of prision correccional and a fine not exceeding seven hundred pesos shall be imposed upon anyone who shall induce a minor to abandon the home of his parent or guardians or the persons entrusted with his custody.

If the person committing any of the crimes covered by the two preceding articles shall be the father or the mother of the minor, the penalty shall be arresto mayor or a fine not exceeding three hundred pesos, or both.

Art. 272. Slavery. — The penalty of prision mayor and a fine of not exceeding 10,000 pesos shall be imposed upon anyone who shall purchase, sell, kidnap or detain a human being for the purpose of enslaving him.

If the crime be committed for the purpose of assigning the offended party to some immoral traffic, the penalty shall be imposed in its maximum period.

Art. 273. Exploitation of child labor. — The penalty of prision correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon anyone who, under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of a minor, shall, against the latter’s will, retain him in his service.

Art. 275. Abandonment of person in danger and abandonment of one’s own victim. — The penalty of arresto mayor shall be imposed upon:

1. Any one who shall fail to render assistance to any person whom he shall find in an uninhabited place wounded or in danger of dying, when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.

2. Anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured.

3. Anyone who, having found an abandoned child under seven years of age, shall fail to deliver said child to the authorities or to his family, or shall fail to take him to a safe place.

Art. 276. Abandoning a minor. — The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any one who shall abandon a child under seven years of age, the custody of which is incumbent upon him.

When the death of the minor shall result from such abandonment, the culprit shall be punished by prision correccional in its medium and maximum periods; but if the life of the minor shall have been in danger only, the penalty shall be prision correccional in its minimum and medium periods.

The provisions contained in the two preceding paragraphs shall not prevent the imposition of the penalty provided for the act committed, when the same shall constitute a more serious offense.

Art. 277. Abandonment of minor by person entrusted with his custody; indifference of parents. — The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon anyone who, having charge of the rearing or education of a minor, shall deliver said minor to a public institution or other persons, without the consent of the one who entrusted such child to his care or in the absence of the latter, without the consent of the proper authorities.

The same penalty shall be imposed upon the parents who shall neglect their children by not giving them the education which their station in life require and financial conditions permit.

Art. 278. Exploitation of minors. — The penalty of prision correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon:

1. Any person who shall cause any boy or girl under sixteen years of age to perform any dangerous feat of balancing, physical strength, or contortion.
2. Any person who, being an acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager or engaged in a similar calling, shall employ in exhibitions of these kinds children under sixteen years of age who are not his children or descendants.

3. Any person engaged in any of the callings enumerated in the next paragraph preceding who shall employ any descendant of his under twelve years of age in such dangerous exhibitions.

4. Any ascendant, guardian, teacher or person entrusted in any capacity with the care of a child under sixteen years of age, who shall deliver such child gratuitously to any person following any of the callings enumerated in paragraph 2 hereof, or to any habitual vagrant or beggar.

If the delivery shall have been made in consideration of any price, compensation, or promise, the penalty shall in every case be imposed in its maximum period.

In either case, the guardian or curator convicted shall also be removed from office as guardian or curator; and in the case of the parents of the child, they may be deprived, temporarily or perpetually, in the discretion of the court, of their parental authority.

5. Any person who shall induce any child under sixteen years of age to abandon the home of its ascendants, guardians, curators, or teachers to follow any person engaged in any of the callings mentioned in paragraph 2 hereof, or to accompany any habitual vagrant or beggar.

Art. 347. Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child. — The simulation of births and the substitution of one child for another shall be punished by prision mayor and a fine of not exceeding 1,000 pesos.

The same penalties shall be imposed upon any person who shall conceal or abandon any legitimate child with intent to cause such child to lose its civil status.

Any physician or surgeon or public officer who, in violation of the duties of his profession or office, shall cooperate in the execution of any of the crimes mentioned in the two next preceding paragraphs, shall suffer the penalties therein prescribed and also the penalty of temporary special disqualification.


ARTICLE 1
Title, Policy, Principles and Definitions of Terms

Sec. 1. Title. — This Act shall be known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

Sec. 2. Declaration of State Policy and Principles. — It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.1awphi1@alf

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies,
consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

Sec. 3. Definition of Terms. –

(a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

(c) "Circumstances which gravely threaten or endanger the survival and normal development of children" include, but are not limited to, the following;

(1) Being in a community where there is armed conflict or being affected by armed conflict-related activities;

(2) Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development;

(3) Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or basic services needed for a good quality of life;

(4) Being a member of a indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;

(5) Being a victim of a man-made or natural disaster or calamity; or

(6) Circumstances analogous to those abovedescribed which endanger the life, safety or normal development of children.

(d) "Comprehensive program against child abuse, exploitation and discrimination" refers to the coordinated program of services and facilities to protected children against:

(1) Child Prostitution and other sexual abuse;
(2) Child trafficking;
(3) Obscene publications and indecent shows;
(4) Other acts of abuses; and
(5) Circumstances which threaten or endanger the survival and normal development of children.

ARTICLE II
Program on Child Abuse, Exploitation and Discrimination

Sec. 4. Formulation of the Program. – There shall be a comprehensive program to be formulated, by the Department of Justice and the Department of Social Welfare and Development in coordination with other government agencies and private sector concerned, within one (1) year from the effectivity of this Act, to protect children against child prostitution and other sexual abuse; child trafficking, obscene publications and indecent shows; other acts of abuse; and circumstances which endanger the life, safety or normal development of children.

ARTICLE III
Child Prostitution and Other Sexual Abuse

Sec. 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due
to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Sec. 6. Attempt To Commit Child Prostitution. – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

ARTICLE IV
Child Trafficking

Sec. 7. Child Trafficking. – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

Sec. 8. Attempt to Commit Child Trafficking. – There is an attempt to commit child trafficking under Section 7 of this Act:

(a) When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child’s parents or legal guardian;

(c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or
LOOKING AFTER FILIPINO CHILDREN

(d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or

(e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.

A penalty lower two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.

ARTICLE VI
Other Acts of Abuse

Sec. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

(b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Fifty thousand pesos (P50,000): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.

(c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of prision mayor in its medium period and a fine of not less than Forty thousand pesos (P40,000); Provided, however, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be prision mayor in its maximum period, a fine of not less than Fifty thousand pesos (P50,000), and the loss of parental authority over the minor.

(d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of prision mayor in its medium period and a fine of not less than Fifty thousand pesos (P50,000), and the loss of the license to operate such a place or establishment.

(e) Any person who shall use, coerce, force or intimidate a street child or any other child to;

(1) Beg or use begging as a means of living;

(2) Act as conduit or middlemen in drug trafficking or pushing; or

(3) Conduct any illegal activities, shall suffer the penalty of prision correccional in its medium period to reclusion perpetua.

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years age.

The victim of the acts committed under this section shall be entrusted to the care of the Department of Social Welfare and Development.
ARTICLE VII
Sanctions for Establishments or Enterprises

Sec. 11. Sanctions of Establishments or Enterprises which Promote, Facilitate, or Conduct Activities Constituting Child Prostitution and Other Sexual Abuse, Child Trafficking, Obscene Publications and Indecent Shows, and Other Acts of Abuse. – All establishments and enterprises which promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted under this Act and/or the Revised Penal Code, as amended, or special laws. A sign with the words "off limits" shall be conspicuously displayed outside the establishments or enterprises by the Department of Social Welfare and Development for such period which shall not be less than one (1) year, as the Department may determine. The unauthorized removal of such sign shall be punishable by prision correccional.

An establishment shall be deemed to promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse if the acts constituting the same occur in the premises of said establishment under this Act or in violation of the Revised Penal Code, as amended. An enterprise such as a sauna, travel agency, or recruitment agency which: promotes the aforementioned acts as part of a tour for foreign tourists; exhibits children in a lewd or indecent show; provides child masseurs for adults of the same or opposite sex and said services include any lascivious conduct with the customers; or solicits children or activities constituting the aforementioned acts shall be deemed to have committed the acts penalized herein.

ARTICLE XII
Common Penal Provisions

Sec. 31. Common Penal Provisions. –

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

(d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is prision correccional or arresto mayor, the penalty of suspension shall also be imposed; and

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.


Art. 59. Crimes. - Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.
(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.

(3) Sells or abandons the child to another person for valuable consideration.

(4) Neglects the child by not giving him the education which the family’s station in life and financial conditions permit.

(5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.

(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.

(9) Causes or encourages the child to lead an immoral or dissolute life.

(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.

(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

Art. 60. Penalty. - The act mentioned in the preceding article shall be punishable with imprisonment from two or six months or a fine not exceeding five hundred pesos, or both, at the discretion of the Court, unless a higher penalty is provided for in the Revised Penal Code or special laws, without prejudice to actions for the involuntary commitment of the child under Title VIII of this Code.


Sec. 5. Acts of Violence Against Women and Their Children.- The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;

(b) Threatening to cause the woman or her child physical harm;

(c) Attempting to cause the woman or her child physical harm;

(d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman’s or her child’s freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman’s or her child’s movement or conduct:

(1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately
providing the woman’s children insufficient financial support;
(3) Depriving or threatening to deprive the woman or her child of a legal right;
(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim’s own money or properties, or solely controlling the conjugal or common money, or properties;
(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
(1) Stalking or following the woman or her child in public or private places;
(2) Peering in the window or lingering outside the residence of the woman or her child;
(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
(5) Engaging in any form of harassment or violence;
(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman’s child/children.

Sec. 6. Penalties.- The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prison mayor; those constituting less serious physical injuries shall be punished by prison correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

(b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;

(c) Acts falling under Section 5(e) shall be punished by prision correccional;

(d) Acts falling under Section 5(f) shall be punished by arresto mayor;

(e) Acts falling under Section 5(g) shall be punished by prision mayor;

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

Sec. 4. Unlawful or Prohibited Acts. - It shall be unlawful for any person:

(a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;

(b) To produce, direct, manufacture or create any form of child pornography;

(c) To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;

(d) To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast. Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;

(e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;

(f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;

(g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;

(h) To engage in the luring or grooming of a child;

(i) To engage in pandering of any form of child pornography;

(j) To willfully access any form of child pornography;

(k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and

(l) To possess any form of child pornography.

Sec. 5. Syndicated Child Pornography - The crime of child pornography is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another and shall be punished under Section 15(a) of this Act.
Chapter 9

Adolescent Reproductive Health
As A Private Right and Public Health Issue

Elizabeth Aguiling-Pangalangan, LL. M.
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**COMPENDIUM OF LAWS**

International Instruments
National Law
Constitutional Law
Statute Law
I. Introduction

The Philippines is the twelfth most populated country in the world with over 94 million people in 2010. About 33% of the population is comprised of youths who are 15 years old and below. However, 18% of the population is undernourished.

The Philippine population is growing rapidly at 4 births per minute. Figures show a projected population of over 141 million people by 2040. Half of the Philippine population is below the age of 21. Thus we have what is called a “youth bulge,” which refers to the number of young people as a percentage of the adult population.

Eighty-five percent of the population is nominally Catholic. The Church teaches against pre-marital sex and yet, figures show that 23% of the youth engage in premarital sex. The Church hierarchy has consistently tried to assert its influence on legislators and the public to block the passage of laws that will allow contraceptives, especially for young people.

One piece of good news is that the simple literacy rate of the population over 10 years of age is 93.4%.

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II. Legal Framework

As a member of the international community, the Philippines has signed various human rights instruments. A core principle in these instruments is non-discrimination. Under the International Convention on Civil and Political Rights (ICCPR), the State is duty-bound to observe the following:

“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

The International Convention on Economic, Social and Cultural Rights (ICESCR) also calls for the provision of special measures of protection for children. It states:

“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation...”

The same principle of non-discrimination is enunciated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

In 1990, the Philippine government signed and ratified the Convention of the Rights of the Child (CRC), which likewise articulates the principle of non-discrimination in Article 2. Article 3(1) of the CRC contains another general principle: that of the “best interest of the child” as a primary consideration in all actions concerning children.

The CRC recognizes the evolving capacities of children that parents must respect, even as they carry out their rights and duties to provide direction and guidance to their children. Contained in Article 5, this is crucial in understanding and implementing all other rights given that it understands the child not just as “a miniature adult but as a human being in development in need of different degree and levels of guidance, protection, provisions and participation at different stages of his/her life.”

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8 Signed by the Philippines on 1966 and ratified on 1986.
9 Art. 24, Par. 1., ICCPR.
10 Signed by the Philippines on 1966 and ratified on 1974.
11 Art. 10, Par. 3, ICESCR.
12 Art. 1, CEDAW.
13 The other general principles of the CRC are survival and development (Art. 6) and child participation (Art. 12).
14 Art. 5, CRC.
Furthermore, the Philippine government signed the Millennium Development Declaration which set the eight MDG targets. Among these goals are Promotion of gender equality and empowerment of women (Goal 3) and attaining universal reproductive health care (Goal 5b).

By signing the various conventions, the Philippines is obligated to abide by them, in accordance with Article II, Section 2 of the Constitution which explicitly states that the “Philippines ... adopts the generally accepted principles of international law as part of the law of the land.” Article II, Section 11 further confirms that, “[T]he State values the dignity of every human person and guarantees full respect for human rights.”16 Thus, it is the obligation of government to ensure that its policies empower millions of people to live with dignity and security. In particular, the Constitution recognizes the role of the youth in nation-building and directs the State to “protect and promote the right of all citizens to quality education at all levels.”17

III. Reproductive health and related concepts

Reproductive Health is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes” and implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.18

The term “reproductive health services,” on the other hand, refers to the “constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving RH problems. These include matters on sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmissible diseases.”19

Reproductive health has 10 elements. These are the following:

1. Maternal Care and Nutrition,
2. Family Planning,
3. Care of Post-Abortion Complications,
4. Sexuality Education,
5. STD-AIDS Prevention,
6. Adolescent Reproductive Health,
7. Violence Against Women,
8. Infertility and Sexual Dysfunctions,
9. Reproductive Tract Cancers, and

16 Art. II, Sec. 11, 1987 Constitution.
17 Art. XIV, Sec. 1 and 2(1), id.
18 7.2., International Conference on Population and Development (ICPD), Cairo (1994).
19 Id.
The rights pertaining to reproductive health are rights already embraced in other human rights instruments, significantly the Universal Declaration of Human Rights, and the International Convention on Civil & Political Rights. These reproductive rights rest on the "recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the means and information to make these informed decisions." Unquestionably, the youth are not barred from exercising reproductive rights on the sole ground of their age.

Akin to reproductive health is sexual health defined as “a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.”

The State also has the duty to promote the right to health and instill health consciousness amongst its citizenry and adopt an integrated and comprehensive approach to health development. Though not expressly mentioned in the Constitution, it is reasonable to consider sexuality education and adolescent sexual and reproductive health as integral to the rights to education and health.

IV. Children, Adolescents, Youths, and Young People

The Child and Youth Welfare Code and The Family Code both use the term “child” and define it as a person below the age of majority. The word is used interchangeably with terms “minor” and “youth.” On the other hand, the Anti-Child Abuse Law is broader in scope, in that it includes those over 18 years of age but are unable to fully take care of themselves or protect themselves from abuse, neglect exploitation, cruelty or discrimination, while RA 8044, Act Creating the National Youth Commission extends the category “youth” to persons from 15-30 yrs. old.

In contrast, the United Nations uses the term “adolescent” to refer to persons between 10-
19 years of age and “youth” to those between 15-24 years old. Although there is no legal definition of “young people” it has been empirically described as males and females from 10-24 and thus covers both adolescents and youth.\textsuperscript{29} According to the World Health Organization, this age group comprises a little over 30\% (or roughly 26 million) of the Philippine population.\textsuperscript{30}

Research studies use different age classifications for different purposes. For instance, a survey on women of reproductive age would cover women with ages 15-49,\textsuperscript{31} while the age structure of 0-14, 15-64 and 65 above is used as a gauge to identify and anticipate the country’s key socioeconomic and political concerns and whether its programs should cater to the young, middle-aged or older population.\textsuperscript{32}

\section*{V. Elements of RH relevant to Young People}
\subsection*{V.A. Maternal Death and Abortion Complications}

Every year over half a million mothers die around the world and almost all of these deaths are preventable.\textsuperscript{33} Many of women who die in pregnancy or childbirth are adolescents leading the UNFPA to conclude that “[a]dolescent pregnancy is dangerous.” UNFPA reports that although adolescent mothers “account for 11 per cent of all births worldwide, they bear 23 per cent of the overall burden of disease due to pregnancy and childbirth.” They further report that girls between the 10 -14 years old are five times more likely to die in pregnancy or childbirth while those between 15-19 years old are twice likely to die in pregnancy or childbirth than women between 20-24 years of age.\textsuperscript{34}

In the Philippines, 11 mothers die every day or a total of over 4,000 lives are lost due to pregnancy related complications.\textsuperscript{35} In effort to reduce the number of maternal deaths, MDG 5 targets the reduction of maternal mortality ratio (MMR) by two-thirds between 1990 and 2015 while also including universal access to reproductive health services. Thus from the maternal mortality ratio (MMR) of 209 in 1990, our target was to reduce it to 52. In 1996, it had gone down to only 162. At this pace of reduction, the United Nations Development Program concludes that it is unlikely that we will meet our target by 2015.\textsuperscript{36}

\begin{footnotesize}
\begin{enumerate}
\item United Nations Population Fund, “Supporting Adolescents and Youth.” Available at: \url{<http://www.unfpa.org/adolescents/>} [5 October 2009].
\item This is the age group surveyed by the 2004 National Survey of Women.
\item The CIA Factbook website explains that countries with a high percentage of its populations under 5 years of age need to invest more in schools while countries with a high percentage of its population aged 65 years and above need to invest more in the health sector.
\item Hypertension (27\%), hemorrhage (18\%) and unsafe abortion (11\%) are the three major causes of maternal mortality.
\item \textit{About the MDGs: Basics.} Available at \url{<http://www.undp.org/mdg/basics.html>}[March 2011].
\end{enumerate}
\end{footnotesize}
According to the 2004 National Survey of Women, 30% of abortion attempts are by women aged 20-24 and 16% by teenagers. A recent study of abortions in the Philippines, conducted by the Guttmacher Institute established that majority of Filipino women who have had an abortion are poor, Catholics, legally married or in a consensual union (with a live-in partner) and already have three children. Of the 3.1 million pregnancies a year in the Philippines, almost half are unintended and a third of women who experienced unintended pregnancy resorted to abortion. An estimate of 473,000 induced abortions take place every year.

It can be presumed that these women opted for abortion because their pregnancy was unplanned and that had they been using a family planning method, it would have prevented that pregnancy instead. These women are not the giggling, flighty or promiscuous teenagers that we are made to believe our children will become if they receive information on reproductive health. With fewer unplanned pregnancies the number of births will be lower, including those among women between 15 to 19 years of age, which in turn will reduce the number of maternal deaths and abortions.

V.B. Family Planning information, services and supplies

Figures reveal that 36% of young Filipino women aged 15-24 conceive before marriage, and more than half of illegitimate births are from young mothers. The Philippines has a low contraceptive prevalence rate and a high 20% unmet need problem.

Though social norms have changed and young Filipinos are exposed to sexual messages and innuendos even on day time shows and cartoon channels and while dance steps mimic sexual activity and songs glorify it, they do not have ample knowledge to protect themselves from the consequences of sexual behavior.

The lack of effective access to family planning (FP) information and services and significantly large unmet need for contraception are due mainly to the absence of a government policy to provide a sound family planning program to young people who are sexually active. In the State of the Philippine Population Report 2000, family planning is defined as the “fundamental right of couples and individuals to choose the number and spacing of their children, taking into account their responsibilities to their communities and the country.” Thus reproductive and sexual health is part of the state’s duty “to promote the right to health of the people and instill health consciousness among them.”

38 Id., p 15-16.
39 Id., p.4, 12.
41 Art. II, Sec. 15, 1987 Constitution.
A study conducted by ReproCen on contraceptive use by more than 300 young people in five urban poor communities shows that for 70% of the participants, sexual initiation occurred between the ages of 16-18 years. The 2002 Young Adult Fertility Survey (YAFS 3) established this pattern and revealed no significant differential in the probability sex was initiated based on the economic status of the survey respondents. This means that whether young people belong to the poorest or wealthiest quintile, the majority of them had their first sexual encounter within the same age range. An explanation is that sexual initiation is determined by hormones and not by social class. Our study likewise demonstrates that engaging in non-marital sex is not evidence of promiscuity given that 66% of male respondents and 83% of female respondents reported having had only one partner since they became sexually active.

Furthermore, only 27% of the respondents use contraception. There were more men than women who did not perceive a need for contraceptives (79% to 21%). Some male participants in the study insist that it is their partner’s responsibility to use contraceptives to prevent pregnancy. Here we see the interconnection between traditional gender roles and harmful sexual health practices. This calls for a re-thinking of conventional notions of what it is to be manly. The narrow definition of masculinity gives rise to questions of whether it is any one’s sole burden to say “no” and be responsible to protect against pregnancy or sexually transmissible diseases. Counseling should include lessons that will bolster the decision-making capacity of adolescent women, which is crucial to the exercise of sexual and reproductive health rights and in exercising her participation rights, a core principle of the CRC. A prevalent belief that avoiding pregnancy is a woman’s responsibility reflects little knowledge of sexual health and safe sexual practices as well as absence of respect for one’s partner. In the context of Philippine culture and laws that continue to give premium to decisions made by males, this is a double burden (the disparate impact of pregnancy on women and the responsibility to avoid it) that is unjustly placed on women.

Our study reveals that lack of information about contraception is the overwhelming reason given for non-use of contraceptives. The YAFS 3 results show that only 21% use contraception and the main reason for their non-use is that they “didn’t expect to have sex.” These reasons are not disparate given that the inadequacy and inaccessibility of information about reproductive health, specifically family planning, emboldens their indifference and irresponsibility.

A variable regarding young people’s non-use of contraceptives on which our study and the YAFS3 have contrary findings is the role played by religion in the decision making process of young people. While this study shows that religion is not a significant factor, it was a common reason cited by participants in the YAFS 3 for non-use of contraceptives. Nonetheless, the ReproCen study is consistent with nation-wide reports that “85 million Catholics have endorsed the Reproductive Health Bill.”

Should minors be allowed access to contraceptives? Those who say they should not, advance the position that access restrictions will encourage self-restraint and prevent minors from engaging in sexual acts. However, there has been no study that establishes that the absence of

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contraceptives deters premarital sexual relations. On the contrary, despite the relative inaccessibility of contraceptives to young people, the National Demographic Surveys by the NSO, youth pregnancy (15-24 years old) posted an increase from 25% in 2003 to 28.6% in 2008.

Second, since absence of contraceptives is not a deterrent to sexual relations, prohibition against sale of contraceptives to minors will result in increased exposure to sexually transmissible disease and the rise of unplanned pregnancy. In effect, our laws will be deemed to prescribe sexually transmissible diseases and pregnancy as punishments for sexual relations by minors. It would thus be unconscionable for our society to find these fitting penalties for pre-marital sex. In Eisenstadt v Baird the question for the US court to determine was whether there was a ground for treating married and unmarried people differently in terms of their ability to access contraceptives. The Court struck down the Massachusetts law for violating the right to privacy and the equal protection clause. The court held that a law cannot allow distribution of contraceptives to married people and prohibit it for unmarried individuals without violating the equal protection clause since unwanted pregnancy and disease do not distinguish between their civil status.

Third, the implication of a law or policy preventing access to contraception by minors is that premarital sexual activity is inimical or detrimental to minors. The backbone of this contention is the child’s lack of capacity to decide intelligently for himself. Given the premise that absence of contraceptives is not a deterrent, it will be in the adolescent’s best interest to be allowed to avail of contraceptives in order to avoid sexually transmitted diseases and the risk of unwanted pregnancy that could in turn, lead them to an abortion.

Fourth, it may be claimed that the restriction on the sale of contraceptives to minors is necessary to protect public morals. Yet, the NSO survey shows that adolescents do engage in sexual acts despite the apparent “public morals” argument. The relevant question, therefore, is whether the “public morals” argument should trump the child’s right to health, a right protected in the Constitution.

The concept of the child’s “evolving capacities” contained in Article 5 of the CRC and ICPD Programme of Action paragraph 7.45 calls for a balancing act between the rights and responsibilities of parents to rear and guide their children, on one hand, and on the other, the rights of the child to non-discrimination, survival, development, and participation. The best interest of the child being a primary consideration in all matters affecting him/her necessarily includes information and access to services related to sexual and reproductive health, as the child’s capacity for comprehension and decision-making advances.

Finally, contraceptive access restrictions on adolescents are not justifiable for reasons of public health. Similar sale restrictions to minors are found in the FCTC (Framework Convention and Tobacco Control) with regard to cigarettes. The FCTC particularly states in its Preamble that:

“Recognizing that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases;

44 405 US 438, 92 S.Ct, 1029, 31 L.Ed. 2d349 (1972).
“Deeply concerned about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide, particularly smoking at increasingly early ages;”

Restrictions on smoking, and for that matter, consumption of alcohol by minors are imposed by the State to protect public health in the face of overwhelming scientific evidence that smoking and drinking are detrimental to a child’s health.

The chief difference between laws prohibiting sale to minors of tobacco/alcohol and contraceptives is that there are no similar risks found in the use of contraception by adolescents. Another way of putting it is that allowing minors to access tobacco products or alcohol will expose them to serious health risks and infringe on their right to the “enjoyment of the highest standard of health.” On the contrary, allowing minors to access contraceptives will protect them from health risks such as sexually transmitted diseases and early pregnancy.

In Curtis v Falmouth, the US Court ruled that a school program on contraception made available to high school students did not violate the right of parents’ primary right to rear their children. In 1992, the Falmouth School Committee authorized the Superintendent of Schools to implement a new program making condoms available to students in the junior and senior high schools. At Lawrence Junior High School, students could request free condoms from the school nurse. Prior to receiving them, students would be counseled. The nurse was also instructed to give students pamphlets on AIDS/HIV and other sexually transmitted diseases.

Parents of students challenged the validity of the program, citing their “substantive due process rights, protected by the Fourteenth Amendment, to direct and control the education and the upbringing of their children.” The Court relied on the test of compulsion in order to determine whether or not the program indeed violated the parents’ right to control the education of their children. The Court found compulsion lacking in the facts of the case. It observed that:

“We discern no coercive burden on the plaintiffs’ parental liberties in this case. No classroom participation is required of students. Condoms are available to students who request them and, in the high school, may be obtained from vending machines. The students are not required to seek out and accept the condoms, read the literature accompanying them, or participate in counseling regarding their use. In other words, the students are free to decline to participate in the program. No penalty or disciplinary action ensues if a student does not participate in the program. For their part, the plaintiff parents are free to instruct their children not to participate. The program does not supplant the parents’ role as advisor in the moral and religious development of their children.... Although exposure to condom vending machines and to the program itself may offend the moral and religious sensibilities of the plaintiffs, mere exposure to programs offered at school does not amount to unconstitutional interference with parental liberties without the existence of some compulsory aspect to the program.”

45Art. 24, , CRC.
This same reasoning would apply to questions of the legality of access and availability of contraceptives to adolescents as well as to conducting mandatory sex education in all public and private schools in the Philippines.

V.C. Sex education

Many of our youth get little or no information from government services or schools. Some Filipino parents are anxious about the effect of sex education on their children fearing that this will only fan their curiosity about sex.

Interestingly, a study analyzing 23 school-based condom availability programs in the US indicate that such programs do not hasten the onset of intercourse among students or increase its frequency. Likewise, in the Philippines, some public school children were taught sex education using the Department of Education Modules and many said that they were discouraged, rather than encouraged to engage in early sexual activity. Nevertheless, the government pulled out the modules due to opposition from the Catholic Bishop Conference of the Philippines.

Teaching sexuality education in schools does not contravene the rights of parents to rear their children. Though parental rights are primary, they should be reconciled with the State’s own duty of parens patriae. It is a doctrine which refers to the inherent power or authority of the State to provide protection of the person and property of a person non sui juris. Under this doctrine, the state has the sovereign power of guardianship over persons under disability. The state has a public policy power of parens patriae to act as the parent of a child in the child’s best interest and is expected to work for the protection of minors in light of their inherent disability. One guiding principle from the CRC that is relevant is the best interests of the child.

Data on adolescents’ source of contraceptive information is noteworthy. In the 2009 ReproCen study on contraceptive use of young people, friends/peers (42%) were the most common source of information about contraceptives while relatives or household members was merely the fourth source and accounted for only 10%. Likewise, the YAFS 3 study illustrated that among the poorest 20% and wealthiest 20% of their respondents, the drugstore ranked the first, friends the second, and community health center the third source of information on contraceptives.

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50 Vasco v CA, 81 SCRA 762 (1978).
Since parents are not in fact active in educating their children on sexual matters, they can be confident that a well designed sexuality education program will be taught by responsible and trained teachers. A national ASRHR program can be crafted where services are not limited to information, education and communications (IEC) but likewise teach both “resistance skills” to delay the onset of sexual activity as well as contraceptive skills to prevent teenage pregnancy.

Age appropriate sex education classes for young people with disability should likewise be crafted. Government programs, including sex education for school and out of school youth, often forget that persons with disability, especially girls “are subject to multiple discrimination.” Thus States Parties to the Convention on the Rights of Persons with Disabilities are mandated to take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. Moreover, the convention underscores that persons with disabilities have the right to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided. . .” It is also important for sex education programs to help abled young people to overcome stereotypes and misconceptions that will deny or magnify the sexuality of persons who are differently abled.

Sex education can help adolescents especially young girls to protect themselves against HIV and other sexually transmissible diseases. A study done by UNFPA in the Philippines looked at the knowledge level of HIV prevention methods among females 15 – 24 years of age. 83.9% of them knew that limiting sex with one partner will reduce the risk AIDS but only 50.6% knew that using a condom is a method to avoid contracting AIDS. Only 32.1% of young women between the ages of 15 and 19 have spoken to their partners about avoiding AIDS. Knowledge of sexual and reproductive health matters, life skills including communication and negotiating skills are among the lessons that an effective sex education program will impart.

It must be stressed, however, that sexuality education by parents and schools are not mutually exclusive. Yet, if the only instructions parents and schools can give young people are mantras, such as “just say no,” we surrender our right to guide them and yield this instead in favor of the an internet site or comic book whose contents we have no say or control over.

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51 Art. 6(1), Convention on the Rights of Persons with Disabilities.
52 Art. 23(1), id.
55 Among these common fallacies are that PWDs – including young people- do not feel any desire to have sex and on the other extreme, that they cannot control their sexuality. Sex Education for Physically, Emotionally and Mentally Challenged Youth. Available at: <http://www.advocatesforyouth.org/publications/publications-a-z/479-sex-education-for-physically-emotionally-and-mentally-challenged-youth>.
57 Id., Table 16: Communication with Partner about AIDS, p. 51.
VI. Conclusion

The preamble to the Charter of the United Nations sets as one of its central goals the reaffirmation of “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.” The Committee on the Rights of the Child and the CEDAW Committee have recognized adolescents’ right to contraceptive information and services.

The MDG recognizes the equality and empowerment of women and girls as among the most effective ways of fighting poverty and disease. Government must undertake all measures to remove all manifestations of gender inequality. Lack of access to and availability of information and services on the full range of legally allowed and scientifically safe family planning methods fosters gender inequality given that it is only females who get pregnant. Thus, if adolescent women do not have the information and means to control their own fertility it is highly unrealistic that they will have the opportunities – or when they do – the confidence to demand that their views be heard.

Art. 12
1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   a. The provision for the reduction of stillbirth-rate and of infant mortality and for the health development of the child;
   b. The improvement of all aspects of environment and industrial hygiene;
   c. The prevention, treatment and control of epidemic, endemic occupational and other diseases;
   d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.


Art. 15(1)
The States Parties to the present Covenant recognize the right of everyone: . . . (b) To enjoy the benefits of scientific progress and its applications. . . .

Art. 24
1. Every child shall have, without discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required of his status as a minor, on the part of his family, society and the State.

Art. 1
The term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Art. 3
States Parties shall take in all fields . . . all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

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Art. 16(1)
States Parties shall . . . ensure, on a basis of equality of men and women . . . (e) [t]he same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights . . .


Principles

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Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

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Art. 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Art. 3
1. 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

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Art. 5
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Art. 6
1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

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Art. 12
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Art. 13
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Art. 14
1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

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Art. 16
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

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Art. 24
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

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Art. 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.

_Declaration on the Rights of the Child (proclaimed 1959)._  

**Art. 2**  
The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

**Art. 7**  
The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

_Convention on the Rights of Persons with Disabilities (signed 2007; ratified 2008; entry into force 2008)._  

**Art. 6(1)**  
States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

**Art. 10**  
States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

**Art. 22(1)**  
No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home…

**Art. 23(1)**  
States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure…[']the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided…


**Chapter VII**  
REPRODUCTIVE RIGHTS AND REPRODUCTIVE HEALTH

**7.1.** This chapter is especially guided by the principles contained in chapter II and in particular the introductory paragraphs.

**A. Reproductive rights and reproductive health**

**Basis for action**

7.2. Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they
have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.

7.3. Bearing in mind the above definition, reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning. As part of their commitment, full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality. Reproductive health eludes many of the world’s people because of such factors as: inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information and services; the prevalence of high-risk sexual behaviour; discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives. Adolescents are particularly vulnerable because of their lack of information and access to relevant services in most countries. Older women and men have distinct reproductive and sexual health issues which are often inadequately addressed.

7.4. The implementation of the present Programme of Action is to be guided by the above comprehensive definition of reproductive health, which includes sexual health.

Objectives

7.5. The objectives are:

(a) To ensure that comprehensive and factual information and a full range of reproductive health-care services, including family planning, are accessible, affordable, acceptable and convenient to all users;
(b) To enable and support responsible voluntary decisions about child-bearing and methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law and to have the information, education and means to do so;
(c) To meet changing reproductive health needs over the life cycle and to do so in ways sensitive to the diversity of circumstances of local communities.

Actions

7.6. All countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should, inter alia, include: family-planning counselling, information, education, communication and services; education and services for prenatal care, safe delivery and post-natal care, especially breast-feeding and infant and women’s health care; prevention and appropriate treatment of infertility; abortion as specified in paragraph 8.25, including
prevention of abortion and the management of the consequences of abortion; treatment of reproductive tract infections; sexually transmitted diseases and other reproductive health conditions; and information, education and counselling, as appropriate, on human sexuality, reproductive health and responsible parenthood. Referral for family-planning services and further diagnosis and treatment for complications of pregnancy, delivery and abortion, infertility, reproductive tract infections, breast cancer and cancers of the reproductive system, sexually transmitted diseases, including HIV/AIDS should always be available, as required. Active discouragement of harmful practices, such as female genital mutilation, should also be an integral component of primary health care, including reproductive health-care programmes.

7.7. Reproductive health-care programmes should be designed to serve the needs of women, including adolescents, and must involve women in the leadership, planning, decision-making, management, implementation, organization and evaluation of services. Governments and other organizations should take positive steps to include women at all levels of the health-care system.

7.8. Innovative programmes must be developed to make information, counselling and services for reproductive health accessible to adolescents and adult men. Such programmes must both educate and enable men to share more equally in family planning and in domestic and child-rearing responsibilities and to accept the major responsibility for the prevention of sexually transmitted diseases. Programmes must reach men in their workplaces, at home and where they gather for recreation. Boys and adolescents, with the support and guidance of their parents, and in line with the Convention on the Rights of the Child, should also be reached through schools, youth organizations and wherever they congregate. Voluntary and appropriate male methods for contraception, as well as for the prevention of sexually transmitted diseases, including AIDS, should be promoted and made accessible with adequate information and counselling.

7.9. Governments should promote much greater community participation in reproductive health-care services by decentralizing the management of public health programmes and by forming partnerships in cooperation with local non-governmental organizations and private health-care providers. All types of non-governmental organizations, including local women's groups, trade unions, cooperatives, youth programmes and religious groups, should be encouraged to become involved in the promotion of better reproductive health.

7.10. Without jeopardizing international support for programmes in developing countries, the international community should, upon request, give consideration to the training, technical assistance, short-term contraceptive supply needs and the needs of the countries in transition from centrally managed to market economies, where reproductive health is poor and in some cases deteriorating. Those countries, at the same time, must themselves give higher priority to reproductive health services, including a comprehensive range of contraceptive means, and must address their current reliance on abortion for fertility regulation by meeting the need of women in those countries for better information and more choices on an urgent basis.

7.11. Migrants and displaced persons in many parts of the world have limited access to reproductive health care and may face specific serious threats to their reproductive health and rights. Services must be particularly sensitive to the needs of individual women and adolescents and responsive to their often powerless situation, with particular attention to those who are victims of sexual violence.

C. Sexually transmitted diseases and prevention of human immunodeficiency virus (HIV)

Basis for action

7.27. The world-wide incidence of sexually transmitted diseases is high and increasing. The situation has worsened considerably with the emergence of the HIV epidemic. Although the incidence of some sexually transmitted diseases has stabilized in parts of the world, there have been increasing cases in many regions.

7.28. The social and economic disadvantages that women face make them especially vulnerable to sexually transmitted infections,
including HIV, as illustrated, for example, by their exposure to the high-risk sexual behaviour of their partners. For women, the symptoms of infections from sexually transmitted diseases are often hidden, making them more difficult to diagnose than in men, and the health consequences are often greater, including increased risk of infertility and ectopic pregnancy. The risk of transmission from infected men to women is also greater than from infected women to men, and many women are powerless to take steps to protect themselves.

Objective

7.29. The objective is to prevent, reduce the incidence of, and provide treatment for, sexually transmitted diseases, including HIV/AIDS, and the complications of sexually transmitted diseases such as infertility, with special attention to girls and women.

Actions

7.30. Reproductive health programmes should increase their efforts to prevent, detect and treat sexually transmitted diseases and other reproductive tract infections, especially at the primary health-care level. Special outreach efforts should be made to those who do not have access to reproductive health-care programmes.

7.31. All health-care providers, including all family-planning providers, should be given specialized training in the prevention and detection of, and counselling on, sexually transmitted diseases, especially infections in women and youth, including HIV/AIDS.

7.32. Information, education and counselling for responsible sexual behaviour and effective prevention of sexually transmitted diseases, including HIV, should become integral components of all reproductive and sexual health services.

7.33. Promotion and the reliable supply and distribution of high-quality condoms should become integral components of all reproductive health-care services. All relevant international organizations, especially the World Health Organization, should significantly increase their procurement. Governments and the international community should provide all means to reduce the spread and the rate of transmission of HIV/AIDS infection.

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E. Adolescents

Basis for action

7.41. The reproductive health needs of adolescents as a group have been largely ignored to date by existing reproductive health services. The response of societies to the reproductive health needs of adolescents should be based on information that helps them attain a level of maturity required to make responsible decisions. In particular, information and services should be made available to adolescents to help them understand their sexuality and protect them from unwanted pregnancies, sexually transmitted diseases and subsequent risk of infertility. This should be combined with the education of young men to respect women’s self-determination and to share responsibility with women in matters of sexuality and reproduction. This effort is uniquely important for the health of young women and their children, for women’s self-determination and, in many countries, for efforts to slow the momentum of population growth. Motherhood at a very young age entails a risk of maternal death that is much greater than average, and the children of young mothers have higher levels of morbidity and mortality. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world. Overall for young women, early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on their and their children’s quality of life.

7.42. Poor educational and economic opportunities and sexual exploitation are important factors in the high levels of adolescent child-bearing. In both developed and developing countries, adolescents faced with few apparent life choices have little incentive to avoid pregnancy and child-bearing.

7.43. In many societies, adolescents face pressures to engage in sexual activity. Young women, particularly low-income adolescents, are especially vulnerable. Sexually active adolescents of both sexes are increasingly at
high risk of contracting and transmitting sexually transmitted diseases, including HIV/AIDS, and they are typically poorly informed about how to protect themselves. Programmes for adolescents have proven most effective when they secure the full involvement of adolescents in identifying their reproductive and sexual health needs and in designing programmes that respond to those needs.

**Objectives**

7.44. The objectives are:

(a) To address adolescent sexual and reproductive health issues, including unwanted pregnancy, unsafe abortion 20/ and sexually transmitted diseases, including HIV/AIDS, through the promotion of responsible and healthy reproductive and sexual behaviour, including voluntary abstinence, and the provision of appropriate services and counselling specifically suitable for that age group;

(b) To substantially reduce all adolescent pregnancies.

**Actions**

7.45. Recognizing the rights, duties and responsibilities of parents and other persons legally responsible for adolescents to provide, in a manner consistent with the evolving capacities of the adolescent, appropriate direction and guidance in sexual and reproductive matters, countries must ensure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse. In doing so, and in order to, inter alia, address sexual abuse, these services must safeguard the rights of adolescents to privacy, confidentiality, respect and informed consent, respecting cultural values and religious beliefs. In this context, countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents.

7.46. Countries, with the support of the international community, should protect and promote the rights of adolescents to reproductive health education, information and care and greatly reduce the number of adolescent pregnancies.

7.47. Governments, in collaboration with non-governmental organizations, are urged to meet the special needs of adolescents and to establish appropriate programmes to respond to those needs. Such programmes should include support mechanisms for the education and counselling of adolescents in the areas of gender relations and equality, violence against adolescents, responsible sexual behaviour, responsible family-planning practice, family life, reproductive health, sexually transmitted diseases, HIV infection and AIDS prevention. Programmes for the prevention and treatment of sexual abuse and incest and other reproductive health services should be provided. Such programmes should provide information to adolescents and make a conscious effort to strengthen positive social and cultural values. Sexually active adolescents will require special family-planning information, counselling and services, and those who become pregnant will require special support from their families and community during pregnancy and early child care. Adolescents must be fully involved in the planning, implementation and evaluation of such information and services with proper regard for parental guidance and responsibilities.

7.48. Programmes should involve and train all who are in a position to provide guidance to adolescents concerning responsible sexual and reproductive behaviour, particularly parents and families, and also communities, religious institutions, schools, the mass media and peer groups. Governments and non-governmental organizations should promote programmes directed to the education of parents, with the objective of improving the interaction of parents and children to enable parents to comply better with their educational duties to support the process of maturation of their children, particularly in the areas of sexual behaviour and reproductive health.

*Millennium Development Goals (2000).*

Goal 5: Improve maternal health
Target 5a: Reduce by three quarters the maternal mortality ratio

**Indicators:**
- 5.1 Maternal mortality ratio
- 5.2 Proportion of births attended by skilled health personnel

Target 5b: Achieve, by 2015, universal access to reproductive health

**Indicators:**
- 5.3 Contraceptive prevalence rate
- 5.4 Adolescent birth rate
- 5.5 Antenatal care coverage (at least one visit and at least four visits)
- 5.6 Unmet need for family planning

### II. DOMESTIC LAW

**Art. II**

**Sec. 13.** The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

**Sec. 15.** The State shall protect and promote the right to health of the people and instill health consciousness among them.

**Art. III**

**Sec. 1.** No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

**Art. XIII**

**HEALTH**

**Sec. 11.** The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

**Sec 12.** The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country’s health needs and problems.

**Art. XIV**

**EDUCATION**

**Sec. 1.** The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

**Sec. 2.** The State shall:

1. Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
2. Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;

**Art. XV**

**Sec. 3.** The State shall defend:

2. 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;

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**Art. 234.** Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years.
Art. 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases.

Contracting marriage shall require parental consent until the age of twenty-one.

Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code.


Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary. Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority.

Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

(5) To represent them in all matters affecting their interests;

(6) To demand from them respect and obedience;

(7) To impose discipline on them as may be required under the circumstances; and

(8) To perform such other duties as are imposed by law upon parents and guardians.


Art. 3. Rights of the Child. - All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

(4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life. 

Art. 8. Child’s Welfare Paramount- In all questions regarding the care, custody, education
and property of the child, his welfares shall be the paramount consideration.

Art. 11. Promotion of Health. - The promotion of the Child’s health shall begin with adequate pre-natal and post-natal care both for him and his mother. All appropriate measures shall be taken to insure his normal total development.

It shall be the responsibility of the health, welfare, and educational entities to assist the parents in looking after the health of the child.

Art. 12. Education. - The schools and other entities engaged in non-formal education shall assist the parents in providing the best education for the child.

Art. 13. Social and Emotional Growth. - Steps shall be taken to insure the child’s healthy social and emotional growth. These shall be undertaken by the home in collaboration with the schools and other agencies engaged in the promotion of child welfare.

Art. 14. Morality - High moral principles should be instilled in the child, particularly in the home, the school, and the church to which he belongs.

DUTIES OF PARENTS

Art. 46. General Duties. - Parents shall have the following general duties toward their children:

(1) To give him affection, companionship and understanding;
(2) To extend to him the benefits of moral guidance, self-discipline and religious instruction;
(3) To supervise his activities, including his recreation;
(4) To inculcate in him the value of industry, thrift and self-reliance;
(5) To stimulate his interest in civic affairs, teach him the duties of citizenship, and develop his commitment to his country;
(6) To advise him properly on any matter affecting his development and well-being;
(7) To always set a good example;
(8) To provide him with adequate support, as defined in Article 290 of the Civil Code; and
(9) To administer his property, if any, according to his best interests, subject to the provisions of Article 320 of the Civil Code.

Art. 47. Family Affairs. - Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him.

In cases involving his discipline, the child shall be given a chance to present his side.

Art. 48. Winning Child’s Confidence. - Parents shall endeavor to win the child’s confidence and to encourage him to conduct with them on his activities and problems.

Art. 76. Role of the Home. - The home shall fully support the school in the implementation of the total school program - curricular and co-curricular - toward the proper physical, social, intellectual and moral development of the child.


SEC. 17. Women’s Right to Health. –

(a) Comprehensive Health Services. – The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health
services and programs covering all stages of a woman’s life cycle and which addresses the major causes of women’s mortality and morbidity: Provided, That in the provision for comprehensive health services, due respect shall be accorded to women’s religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood, and the right of women to protection from hazardous drugs, devices, interventions, and substances.

Access to the following services shall be ensured:

1. Maternal care to include pre- and post-natal services to address pregnancy and infant health and nutrition;
2. Promotion of breastfeeding;
3. Responsible, ethical, legal, safe, and effective methods of family planning;
4. Family and State collaboration in youth sexuality education and health services without prejudice to the primary right and duty of parents to educate their children;
5. Prevention and management of reproductive tract infections, including sexually transmitted diseases, HIV, and AIDS;
6. Prevention and management of reproductive tract cancers like breast and cervical cancers, and other gynecological conditions and disorders;
7. Prevention of abortion and management of pregnancy-related complications;
8. In cases of violence against women and children, women and children victims and survivors shall be provided with comprehensive health services that include psychosocial, therapeutic, medical, and legal interventions and assistance towards healing, recovery, and empowerment;
9. Prevention and management of infertility and sexual dysfunction pursuant to ethical norms and medical standards;
10. Care of the elderly women beyond their child-bearing years; and
11. Management, treatment, and intervention of mental health problems of women and girls. In addition, healthy lifestyle activities are encouraged and promoted through programs and projects as strategies in the prevention of diseases.

(b) Comprehensive Health Information and Education. – The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education on all the above-stated aspects of women’s health in government education and training programs, with due regard to the following:

1. The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;
2. The formation of a person’s sexuality that affirms human dignity; and
3. Ethical, legal, safe, and effective family planning methods including fertility awareness.

Implementing Rules and Regulations of the Magna Carta of Women (2010).

SEC. 20. Women’s Right to Health

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B. Role of Agencies – To implement the provisions on comprehensive health services, government agencies shall perform the following roles and functions:

1. The DOH shall:
   a. Review and revise existing health programs, develop plans, policies, standards and guidelines in the implementation of said programs for women and girls that are gender-responsive, rights-based and culture-sensitive;
   b. Formulate standards and develop information, education, communication and advocacy strategies for the implementation of health programs for girls, female adolescents, women and older women;
   c. Provide support in the development of innovative projects, strategies, and approaches for girls, female adolescents, women and older women;
   d. Establish network and coordination mechanisms with other stakeholders particularly NGOs, private and commercial sectors;
e. Generate the necessary media participation and social marketing in support of women's health programs;

f. Provide technical assistance on the implementation of programs for women and girls to the sub-national offices, LGUs, development partners and other stakeholders;

g. Develop and institutionalize a sex-disaggregated report/databank on health-related concerns;

h. Monitor and evaluate health and nutrition programs for girls, female adolescents, women and older women; and

i. Coordinate with concerned agencies to review laws, programs, and services for the protection of women to reduce maternal mortality.

2. The DepEd shall, in coordination with DOH, provide functional girl-child and adolescent health services in every school.

3. The Philippine Health Insurance Corporation (PhilHealth) shall include maternal care and women's health services in its benefit packages.

4. In appropriate cases, the DOLE shall require workplaces to provide facilities such as breastfeeding areas, toilets and dressing room and seats appropriate for women and permit them to use such seats even when they are working, provided they can perform their duties without compromising their efficiency.

5. All government agencies with health-related programs and services, including nutrition, mental health, and care for the elderly shall review and revise existing programs and develop plans, policies, standards and guidelines in the implementation of said programs for women that are gender-responsive, rights-based and culture-sensitive, to ensure women's access to the programs and services identified in Section 15.A of these Rules and Regulations.

6. The LGUs shall:

a. Promulgate and implement gender-responsive, rights-based and culture sensitive local ordinances and policies that promote the comprehensive health of girls, adolescents, women and elderly women, such as a GAD Code and/or Reproductive Health Code;

b. Formulate a health human resource development plan that will ensure the following:

i. Sufficient number of skilled health professionals to attend to all deliveries; and

ii. Availability of qualified and capable health service providers, to include coordination with the academe, a human resource deployment program to meet LGU needs;

c. Develop health programs that:

i. Encourage constituents to access and demand services for women and girls;

ii. Involve women and girls in planning health programs and in decision-making;

iii. Allocate budget or resources for implementing programs for women and girls in the local level;

iv. Monitor progress of programs for women and girls through implementation review and research; and

v. Enhance parent effectiveness services and programs to include continuing education on gender-based violence such as domestic violence, rape, incest, prostitution, trafficking and other forms of violence against women and girls in every barangay;

d. Coordinate with DOH in the organization of inter-local health zones for the purpose of ensuring the provision of health services for neighboring communities;

e. Strengthen the local health board to respond to the health needs of girls, female adolescents, women and women senior citizens;

f. Develop/design an award system to encourage excellent performance in the promotion and implementation of women's health programs;

g. Organize communities with the private sector to implement health programs for women and girls; and

h. Continue dialogues to clarify implementation of laws in relation to pregnancy that endangers the life of the mother.

7. NGOs are encouraged to:

a. Strengthen advocacy for the promotion of the right to health of women;

b. Conduct appropriate research that can inform health policies and programs;

c. Participate in the formulation of health policies and programs which are culture- and gender-sensitive, genderresponsive, accessible, and affordable by national government agencies;

d. Assist local government units in the implementation of health programs;
e. Prepare culture- and gender-sensitive training modules and conduct corresponding trainings for LGU officials and health personnel; and
f. Assist in the dissemination of the Act and these Rules and Regulations.

C. Comprehensive Health Information and Education

1. Interpersonal communication is crucial to ensuring the success of community-based programs and projects and should therefore be utilized to the extent possible.

2. Health education shall be provided to women clients. Appropriate educational materials and media shall be used to reinforce the health messages during the conduct of these activities.

3. Health education programs shall include:
   a. Age appropriate adolescent health and sexuality education taught by trained educators in both public and private schools. The lessons shall emphasize responsibility and respect for others as overarching principles in sexual behavior, without prejudice to the primary right of parents to educate their children;
   b. Sexuality education for parents for them to be co-operators in adolescent health education and to enhance communication with their children;
   c. Programs for the elderly in every barangay to promote and maintain their well-being and social functioning;
   d. Trainings for health service providers/educators towards gender-responsive, culture-sensitivity, non-discrimination and non-judgmental behaviors and attitudes; and
   e. Teen centers that will provide health and sexuality education and counseling.

4. To promote health education, concerned agencies shall perform the following:
   a. The DepEd shall:
      i. Formulate standards and develop information, education, communication, and advocacy strategies for the integration of health and nutrition concepts for women and girls in all levels/categories of schools; and
      ii. Provide support in the development of innovative project, strategies and approaches for women and girls in learning institutions;
   b. The CHED shall:
      i. Ensure that state colleges, universities, and private institutions will integrate in their curriculum and in CHED's accreditation system, health education that is gender-responsive, rights-based and culture-sensitive;
      ii. Encourage state colleges, universities and private institutions to conduct capacity building sessions, such as gender-sensitivity and health and sexuality education for school personnel (faculty and non-teaching staff) and students to promote women's health;
      iii. Expand health services and guidance counseling on youth sexuality in state colleges, universities, and private institutions; and
      iv. Promote and provide funds for and disseminate research on gender issues and concerns.

5. Government agencies with health-related programs and services, including nutrition, mental health and care for the elderly are mandated to provide the necessary education and information relevant to their functions.

**Philippine AIDS Prevention and Control Act of 1998 (R.A. 8504).**

**Sec. 3. Definition of terms.** — As used in this Act, the following terms are defined as follows:

(i) “Prophylactic” — refers to any agent or device used to prevent the transmission of a disease.

**Sec. 10. Information on prophylactics.** — Appropriate information shall be attached to or provided with every prophylactic offered for sale or given as a donation. Such information shall be legibly printed in English and Filipino, and contain literature on the proper use of the prophylactic device or agent, its efficacy against HIV and STD infection, as well as the importance of sexual abstinence and mutual fidelity.

**Sec. 11. Penalties for misleading information.** — Misinformation on HIV/AIDS prevention and control through false and misleading advertising and claims in any of the tri-media or the
promotional marketing of drugs, devices, agents or procedures without prior approval from the Department of Health and the Bureau of Food and Drugs and the requisite medical and scientific basis, including markings and indications in drugs and devices or agents, purporting to be a cure or a fail-safe prophylactic for HIV infection is punishable with a penalty of imprisonment for two (2) months to two (2) years, without prejudice to the imposition of administrative sanctions such as fines and suspension or revocation of professional or business license.

Sec. 23. Community-based services. — Local government units, in coordination and in cooperation with concerned government agencies, non-government organizations, persons with HIV/AIDS and groups most at risk of HIV infection shall provide community-based HIV/AIDS prevention and care services.

Sec. 25. Control of sexually transmitted diseases. — The Department of Health, in coordination and in cooperation with concerned government agencies and non-government organizations shall pursue the prevention and control of sexually transmitted diseases to help contain the spread of HIV infection.