In Defense of the Juvenile Justice and Welfare Act of 2006

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I. INTRODUCTION

The Juvenile Justice and Welfare Act of 2006[1] (JJWA) is the first comprehensive legislation addressing the administration of juvenile justice in

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the Philippines. Prior to its enactment, the age of criminal responsibility of children, their treatment during arrest, detention, and judgment, and other procedural matters involving children suspected or found guilty of committing a crime were dealt with by different laws and rules, such as the Revised Penal Code,[2] The Child and Youth Welfare Code,[3] The Family Courts Act of 1997,[4] The Comprehensive Dangerous Drugs Act of 2002,[5] the Rule on the Examination of a Child Witness,[6] and the Rule on Commitment of Children.[7]

Prior to R.A. 9344,[8] a child in conflict with the law was generally treated in the same manner as an adult suspected of or adjudged as having committed a crime. The child had to undergo the regular criminal procedure from inquest or preliminary investigation, to trial and judgment, and he or she could be detained in jail pending trial. But pre-existing legislation already recognized to a certain extent that children should be afforded special protection when they come in conflict with the law. The Revised Penal Code, for instance, provided that children nine years of age or less were incapable of committing a crime and thus, were absolutely exempted from criminal liability.[9] Children between nine and 15 years old were imputed with conditional responsibility; that is, they could be held criminally liable if

1. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds therefor and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344 (2006).
2. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).
3. THE CHILD AND YOUTH WELFARE CODE, Presidential Decree No. 603 (1974).
4. An Act Establishing Family Courts, Granting them Exclusive Original Jurisdiction over Child and Family Cases, Amending Batas Pambansa Bilang 129, as Amended, Otherwise Known as The Judiciary Reorganization Act Of 1980, Appropriating Funds therefor and for Other Purposes [Family Courts Act of 1997], Republic Act No. 8369 (1997).
5. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act Of 1972, as Amended, Providing Funds therefor, and for Other Purposes [Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165 (2002).
6. RULE ON EXAMINATION OF A CHILD WITNESS, A.M. No. 004-07-SC, Dec. 15, 2000.
7. RULE ON COMMITMENT OF CHILDREN, A.M. No. 02-1-19-SC, Apr. 15, 2002.
8. Juvenile Justice and Welfare Act of 2006.
9. REVISED PENAL CODE, art. 12, ¶ 2.

they acted with discernment.[10] The Child and Youth Welfare Code allowed certain procedural adjustments, including the suspension of sentence instead of pronouncement of judgment, and the commitment of a child to the custody and care of the Department of Social Welfare and Development (DSWD), any training institution operated by the government, duly licensed agencies, or any other responsible person in lieu of prison.[11]

Six years since the JJWA took effect, several issues have been raised concerning the wisdom of the law and the challenges in its implementation. Several bills in both the Senate and the House of Representatives seek to amend the law. The most controversial aspect is the Minimum Age of Criminal Responsibility (MACR), which the JJWA has raised from above nine to above 15 years old. Majority of the bills propose to lower the MACR. But do the issues justify an amendment of the law or are they more about society's openness to administer justice in a manner that goes against the grain of traditional views and practices?

II. SALIENT FEATURES OF THE JUVENILE JUSTICE & WELFARE ACT OF 2003

The Philippines took a progressive step from a largely retributive towards a more restorative[12] and child-oriented juvenile justice system when it enacted R.A. 9344. The law adopts measures for dealing with children in a manner appropriate to their well-being without resorting to judicial

10. *Id.* art. 12, ¶ 3 & LUIS B. REYES, THE REVISED PENAL CODE BOOK ONE 215 (1993).

11. THE CHILD AND YOUTH WELFARE CODE, art. 192.

12. According to R.A. 9344,

> 'Restorative Justice' refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community; it seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society.

Juvenile Justice and Welfare Act of 2006, § 4 (q). *See also* Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, E.S.C. Res. 2000/14, at 37, U.N. Doc. E/2000/INF/2/Add.2 (July 27, 2000). It defines a "restorative process" as "any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party." *Id.*

proceedings.[13] This is in consonance with the United Nations Convention on the Rights of the Child[14] (CRC), which provides that —

> 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.[15]

A. Child in Conflict with the Law

R.A. 9344 introduces the term "child in conflict with the law" (CICL), which is defined as "a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws."[16] The old terminologies were "youthful offender" and "juvenile delinquent," which tend to stigmatize the child as a criminal. According to the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),[17] the predominant view of experts is that "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."[18] The commentary to the United Nations Standard Minimum Rules on the Administration of Justice (Beijing Rules)[19] indicates that research has provided evidence of the detrimental effects of labelling children as delinquent or criminal.[20]

The change in language signifies a shift in the way Philippine law views children who are accused of, alleged as, or adjudged as having committed a crime, as demonstrated by the Senate deliberations on the matter:

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13. *See* Juvenile Justice and Welfare Act of 2006, § 2 (b).

14. Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

15. *Id.* art. 40 ¶ 1.

16. Juvenile Justice and Welfare Act of 2006, § 4 (e).

17. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, U.N. Doc. A/RES/45/112 (Dec. 14, 1990).

18. *Id.* ¶ 5 (f).

19. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985) [hereinafter The Beijing Rules].

20. U.N. OFFICE ON DRUGS AND CRIME, COMPENDIUM OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE 57 (2006) [hereinafter COMPENDIUM IN CRIMINAL JUSTICE].

> Senator Revilla stressed that a minor offender should not be put to jail with an adult criminal under any circumstance or situation. He noted that over the years, there had been different terms used to call children who commit crimes of any nature: during the Marcos regime, they were called 'youthful offenders;' after a decade, they were called 'juvenile delinquents;' and in the '90s, 'children in conflict with the law.' He asked the reason for the change in the term to describe the same group of children. Senator Pangilinan replied that the terms used are consistent with international treaties/conventions. For instance, he pointed out that under the UN Convention on the Rights of the Child, the Riyadh Guidelines, the Beijing Rules, the term 'children in conflict with the law' is being used. Also, he reasoned that language changes.[21]

In another instance, the Senate deliberations show that

> [w]ith regard to the title of the bill ... it sets a highly conservative and traditional perspective but the paradigm of the juvenile justice system that is being promoted is restorative justice outside the criminal justice system. [Senator Miriam Defensor Santiago] pointed out that a new system is needed where the main concern is the child's welfare and best interest, and not criminal justice, and that a paradigm shift should be made from criminal justice to child welfare and restorative justice. The proposed OJJDP, she said, should fall under the DSWD and its members should include institutions whose primary thrust is protecting, nurturing and educating the children.
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> She observed that the term 'delinquency prevention' should not be used because it tends to label children as 'delinquents' if they undergo such program; hence, more neutral terms like 'child intervention,' 'child restoration,' 'child protection,' or 'child welfare programs' should be considered. With such terms, there is no need to emphasize the aim of delinquency prevention, she said.[22]

R.A. 9344 defines the term "child" as a person below 18 years old.[23] It does not adopt the definition under the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,[24] which considers as children not only those who are under 18 years of age but also those who are 18 years old or over but who are incapable of fully taking care of and protecting themselves due to a physical or mental condition.[25]

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21. S. JOURNAL Sess. No. 29, at 338, 13th Cong., 2d Reg. Sess. (Oct. 10, 2005).

22. S. JOURNAL Sess. No. 35, at 421, 13th Cong., 2d Reg. Sess. (Nov. 9, 2005).

23. Juvenile Justice and Welfare Act of 2006, § 4 (c).

24. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992).

25. *Id.* § 3 (a).

B. Presumption of Minority

R.A. 9344 recognizes that in most situations, a CICL does not have a birth certificate or other documentary proof of age. In such instances, the law exercises caution in protecting the rights of the child by providing that minority is presumed until otherwise proven.

> Given the fact that there are minors who had been sentenced to death, Senator Pimentel asked how the bill would safeguard these youthful offenders from execution. In response, Senator Pangilinan stated that there are youthful offenders in the death row because the courts had been unable to determine with certainty that they are indeed minors since they cannot present proof by means of their birth certificates, records, or testimonies. He said that because of this experience, the Committee has included in the bill Section 7 on *Determination of Age* which provides that the Child in Conflict with the Law enjoys the presumption of minority. He affirmed that the burden of proof that the offender is no longer a minor lies with the prosecution.[26]

C. Minimum Age of Criminal Responsibility

The most controversial, and perhaps among the most significant, provision of the law is Section 6,[27] which raises the age of criminal responsibility from above nine to above 15 years old.[28] The Act says that children 15 years of age and under are exempt from criminal liability. Those above 15 but below 18 years old are likewise exempt from criminal liability unless they acted with discernment.[29] "Above 15" is interpreted as 15 years old and one day.[30] "Discernment" is defined by the implementing rules and regulations of the law as "the mental capacity to understand the difference between right and wrong and its consequences."[31]

It is the responsibility of the local social welfare and development officer to make an initial assessment of discernment.[32] The offended party may question such determination by filing the appropriate case with the prosecutor.[33]

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26. S. JOURNAL Sess. No. 39, at 468, 13th Cong., 2d Reg. Sess. (Nov. 22, 2005).
27. Juvenile Justice and Welfare Act of 2006, § 6.
28. *Id.*
29. *Id.*
30. REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC, § 4 (a) (Dec. 1, 2009).
31. Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, Republic Act No. 9344, rule 34 (a) (2006).
32. *Id.* rule 34 (b).
33. *Id.* rule 34 (f).

D. Intervention

Although a CICL who is 15 years old or younger is exempt from criminal responsibility, he may nevertheless be held civilly liable and has to undergo an intervention program. Children who are above 15 but below 18 years of age who acted without discernment shall likewise be exempt from criminal liability and be subjected to an intervention program.[34] Under the Rules,

> [i]ntervention refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.[35]

E. Diversion

If a child above 15 but below 18 years old commits an offense punishable by not more than 12 years imprisonment and he or she acted with discernment, the child shall undergo diversion.[36] Instead of formal court proceedings, the responsibility and treatment of a CICL is determined through an alternative child-appropriate process, such as mediation, family conferencing, or conciliation.[37] After the child is found responsible for an offense through the diversion proceedings, he or she is required to undergo a diversion program, which shall provide adequate socio-cultural and psychological responses and services for the child.[38] Restitution of property, reparation of the damage caused, attendance in trainings and seminars, participation in community-based programs, and counseling are some examples of diversion programs.[39]

Diversion may be conducted at all levels including the Katarungang Pambarangay, police investigation, inquest or preliminary investigation, and judicial proceedings depending on the imposable penalty for the crime.[40] Where the imposable penalty is six years imprisonment or less, the law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the Local Council for the Protection of Children (LCPC) shall conduct the

34. Juvenile Justice and Welfare Act of 2006, § 6.

35. Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, rule 4 (l).

36. Juvenile Justice and Welfare Act of 2006, § 23 and Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, rules 41 & 42.

37. Juvenile Justice and Welfare Act of 2006, §§ 4 (i) & 23.

38. *Id.* § 31.

39. *Id.*

40. *Id.* § 24.

diversion.[41] In victimless crimes where the imposable penalty is six years or less, it is the local social welfare and development officer, in coordination with the Barangay Council for the Protection of Children (BCPC), which shall design the appropriate diversion and rehabilitation program.[42] Where the imposable penalty is more than six years imprisonment, it is the prosecutor or judge who may resort to diversion measures.[43]

F. Detention as a Last Resort

R.A. 9344 provides that detention should be considered only as a last resort.[44] Pending trial, alternative measures are preferred, such as close supervision, intensive care or placement with a family or in an educational setting or home,[45] or release on recognizance.[46] If detention is necessary, the child may be detained but only for the shortest appropriate period of time.[47] The appropriate period depends on the principle of proportionality, which is one of two principles underlying the aims of juvenile justice; the first being the promotion of the juvenile's well-being.[48] The principle of proportionality dictates that

> the response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).[49]

Whenever detention is necessary pending trial it should never be in jail.[50] It should always be in youth detention homes established by the local government; and in the absence of such, the child 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.[51] Moreover, children should never be detained with adult

41. *Id.* § 23(a).

42. *Id.* § 23(b).

43. Juvenile Justice and Welfare Act of 2006, § 23 (c) and Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, rule 24 (3).

44. Juvenile Justice and Welfare Act of 2006, § 5 (c).

45. *Id.* § 36.

46. *Id.* § 35.

47. *Id.* § 5 (c).

48. COMPENDIUM IN CRIMINAL JUSTICE, *supra* note 20, at 55.

49. *Id.*

50. Juvenile Justice and Welfare Act of 2006, § 36.

51. *Id.*

offenders and persons of the opposite sex.[52] The prohibition extends not only to detention facilities but also to rehabilitation and training facilities.[53]

After the court convicts or sentences a CICL, the law allows alternatives to imprisonment. The CICL may apply at any time for probation[54] or the court may order the CICL to serve his or her sentence in an agricultural camp and other training facilities of the Bureau of Corrections in lieu of confinement in a regular penal institution.[55]

G. Decriminalization of Certain Offenses

The law prohibits status offenses, which are offenses which discriminate only against a child, such as curfew violations, truancy, and parental disobedience.[56] Thus, conduct not punishable when done by adults cannot be made punishable when done by children.[57]

The law also exempts children from the crimes of vagrancy, prostitution, mendicancy, and sniffing of rugby.[58] Instead of penalizing children for these acts, they will undergo counseling and treatment.

H. Automatic Suspension of Sentence

If a child is under 18 years old during the time of the commission of the offense and he or she is found guilty, the court will not yet pronounce a judgment of conviction but will instead determine civil liability and automatically suspend sentence.[59] The suspension of sentence was an available remedy prior to R.A. 9344 but it was not applied automatically. Under the new law, it necessarily applies without requiring the child to file a motion, but it is not without limits. If the child is convicted of an offense punishable by *reclusion perpetua* or life imprisonment, he can benefit from it provided that he avails of it only once.[60] Nevertheless, a child who is not entitled to it may avail himself or herself of other benefits, such as probation or adjustment of penalty.[61]

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52. *Id.* § 21
53. *Id.* § 46.
54. *Id.* § 42.
55. *Id.* § 51.
56. Juvenile Justice and Welfare Act of 2006, § 4 (r).
57. *Id.* § 57.
58. *Id.* § 58.
59. *Id.* § 38.
60. REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, § 48.
61. *Id.*

Note that the Revised Supreme Court Rule on Children in Conflict with the Law places a ceiling for the application of the automatic suspension of sentence, which is 21 years old at the time of pronouncement of judgment.[62] This is contrary to R.A. 9344, which does not provide such limit.[63] However, the Supreme Court seemed to have modified its Rule in *People v. Jacinto*[64] where it held that automatic suspension of sentence should extend even to one who has exceeded 21 years old at the time of pronouncement.[65]

I. Exemption from the Application of the Death Penalty

The Constitution of the Philippines prohibits the imposition of the death penalty unless Congress enacts a law imposing it for compelling reasons involving heinous crimes.[66] Pursuant to this, the Death Penalty Law was enacted, which imposed the capital punishment on certain crimes categorized as heinous, such as treason, murder, kidnapping and serious illegal detention.[67] A subsequent law designated death by lethal injection as the method for carrying out the capital punishment.[68] However, R.A. 9344 exempted children from the application of the death sentence.[69] A few months after Congress passed R.A. 9344, it enacted Republic Act No. 9346,[70] which suspended the death penalty in the Philippines.

J. Roles of the Local Government Units

R.A. 9344 heavily relies on the local government units (LGU) for the implementation of several aspects of the law. This is but logical and strategic because the thrust of the law is to provide community-based programs for CICL. It is the LGU that has the direct contact with the local community and it is usually the LGU personnel, such as barangay peacekeeping officers

62. *Id.*

63. Juvenile Justice and Welfare Act of 2006, § 38.

64. People v. Jacinto, 645 SCRA 590 (2011).

65. *Id.* at 621.

66. PHIL. CONST. art. III, § 19.

67. An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, other Special Penal Laws, and for Other Purposes, Republic Act No. 7659 (1993).

68. An Act Designating Death by Lethal Injection as the Method of Carrying Out Capital Punishment, Amending for the Purpose Article 81 of the Revised Penal Code, as Amended by Section 24 of Republic Act No. 7659, Republic Act No. 8177 (1996).

69. Juvenile Justice and Welfare Act of 2006, § 59.

70. An Act Prohibiting the Imposition of Death Penalty in the Philippines, Republic Act No. 9346 (2006).

and local social workers who are the first responders in situations involving CICL. Hence, each LGU from the barangay to the provincial level is mandated to formulate a Comprehensive Juvenile Intervention Program (Local Intervention Program) to cover a period of at least three years.[71] The Local Intervention Program should be consistent with the National Intervention Program, which includes policies, programs and activities intended to reduce the commission of crimes by children who are potentially and actually in conflict with the law.[72] All sectors concerned, particularly the child-focused institutions, NGOs, people's organizations, educational institutions and government agencies involved in delinquency prevention shall participate in the planning process and implementation of the Local Intervention Programs.

The LCPC is identified by R.A. 9344 as the primary agency to coordinate with and assist the LGUs in the adoption and implementation of their Local Intervention Programs.[73] To strengthen the implementation of the LCPC's programs, the law requires each barangay, municipality, and city to allocate one percent of its annual internal revenue allotment for that purpose.[74] This is different from the budget of LGUs for social services.[75]

The LGUs are also required to appoint a duly licensed social worker tasked to assist CICL.[76]

They are further mandated to establish youth detention homes.[77] The latter has actually been their obligation even before R.A. 9344 under the Family Courts Act of 1997.[78]

III. RESPONSE TO PREVAILING ISSUES

R.A. 9344 has received much attention due to certain questions regarding the wisdom of the law as well as problems in its implementation. The main criticism is that the MACR is too high. Those who push for the lowering of the MACR argue that there has been an alleged increase in the number of crimes committed by children since the advent of the JJWA. The other common argument is that children who are exempt from criminal liability

71. Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, rule 18.a.

72. *Id.* rules 18.b & 19.a.

73. Juvenile Justice and Welfare Act of 2006, § 15.

74. *Id.*

75. Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, Rule 15.b.

76. Juvenile Justice and Welfare Act of 2006, § 16.

77. *Id.* § 49.

78. Family Courts Act of 1997, § 8.

are released to their families and communities without undergoing the necessary intervention programs due to the lack of institutions or systems.[79] These reactions are reflected in the bills pending with the House of Representatives as well as the Senate. They are discussed hereunder, in an effort to provide some guidance in arriving at a possible resolution to the debate. While the proposed amendments include finer points in the law, which clarify certain provisions, the discussion here focuses mainly on matters pertaining to the MACR.

House Bill No. 6052[80] lowers the MACR from above 15 to above 12 years old; and children who are above 12 but below 15 years old are exempt from culpability unless they acted with discernment. The said Bill presumes discernment when the crime committed is murder, parricide, homicide, kidnapping, robbery, drug trafficking, infanticide, illegal detention, destructive arson, carnapping, or an offense that is punishable with 12 years imprisonment. Children who are above 15 but below 18 years of age, on the other hand, are absolutely presumed with discernment regardless of the crime.

The debate has not gained as much impetus in the Senate. Two bills proposed amendments, only one of which touches upon the MACR. Senate Bill No. 43 proposes to lower the MACR to above 11 years old.[81]

A. International Standards on the Minimum Age of Criminal Responsibility

On whether the MACR is too high, there should be certain standards against which one can compare the present minimum age before a reasonable conclusion can be made. While there is no agreement as to the exact desirable minimum age of criminal responsibility internationally, one can look to international laws and standards for parameters in determining the same.

Article 40 (3) of the CRC requires State Parties to establish through legislation "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."[82] It does not, however, indicate what the minimum age should be. At what age children may be held

79. *See* H.B. No. 467, explan. n., 15th Cong., 1st Reg. Sess. (2010); H.B. No. 2611, explan. n., 15th Cong., 1st Reg. Sess., (2010); H.B. No. 2894, explan. n., 15th Cong., 1st Reg. Sess. (2010); and H.B. No. 3423, explan. n., 15th Cong., 1st Reg. Sess. (2010).

80. H.B. No. 6052, 15th Cong., 2d Reg. Sess. (2011). This House Bill has been submitted by the Committee on Revision of Laws and the Committee on Appropriations in substitution of House Bills No. 467, 1495, 2611, 2894, 3077, and 3423.

81. S.B. No. 43, 15th Cong., 1st Reg. Sess. (2010).

82. CRC, *supra* note 14, art. 40 (3) (a).

culpable for crimes is left to the discretion of the State Parties. Consequently, the minimum age varies across different national legal systems. Each country applies any or a combination of a wide range of approaches, including an absolute minimum below which the child is conclusively presumed to be incapable of committing a crime; an age of penal majority below which there is a burden on the prosecution to prove that the CICL acted with discernment; and a minimum age for deprivation of liberty.[83]

On defining minimum ages in general where the CRC does not set a clear line, the Committee on the Rights of the Child[84] has emphasized that the standards of reference should be the basic principles within the CRC, specifically the principle of non-discrimination (Article 2), best interests of the child (Article 3), the right to life and maximum survival and development (Article 6), and respect for the child's evolving capacities (Article 5).[85]

Although the CRC does not set a specific minimum age for criminal responsibility, the Committee on the Rights of the Child has nevertheless commented that a minimum age below 12 years old is considered as not internationally acceptable[86] and a minimum of 14 to 16 years old is commendable.[87] It has further urged States with minimum ages at below 12 to raise it to 12 and to continue to increase it a higher age level.[88] For State Parties that currently have their MACR at an age higher than 12 years old, it recommends that the age should not be lowered to 12 years old.[89] Thus —

> 32. Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is

83. ANGELA MELCHIORRE, AT WHAT AGE? 10 (2d ed. 2004).

84. This is the United Nations body that monitors and reports on the implementation of the CRC.

85. UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 1 (3rd ed. 2007) [hereinafter IMPLEMENTATION HANDBOOK FOR THE CRC].

86. Committee on the Rights of the Child, General Comment No. 10 on Children's Rights in Juvenile Justice, 44th Sess., CRC/C/GC/10, at 11 (Jan. 15-Feb. 2, 2007) [hereinafter CRC General Comment No. 10].

87. *Id.* at 10.

88. *Id.* at 11.

89. *Id.*

> considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.
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> 33. At the same time, the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the MACR set in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above MACR.
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> ...
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> 38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.[90]

The Committee has also remarked that the practice of some countries of imposing two minimum ages is confusing and tends to be discriminatory in its application. The Committee does not categorically recommend against such a dual system, but it does suggest that measures should be in place to avoid discrimination, such as involving a psychological expert in the assessment of maturity —

> Quite a few States parties use two minimum ages of criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but below the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a psychological expert, and results in practice in the use of the lower minimum age in cases of serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices.[91]

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90. *Id.* at 11-12.

91. *Id.* at 10-11.

Finally, the Committee has expressed its concern about the practice of lowering the MACR for serious offenses. It recommended that there should be no such exception. All children below the age limit for culpability should be exempt from penal responsibility regardless of the nature of the offense, thus —

> 34. The Committee wishes to express its concern about the practice of allowing exceptions to a MACR which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States parties set a MACR that does not allow, by way of exception, the use of a lower age.[92]

The Committee has regarded the United Nations rules as sources of further guidance on the implementation of the Article.[93] In particular, Rule 4 of the Beijing Rules provides that criminal responsibility should not begin at too low an age level and it should be based on the emotional, mental, and intellectual maturity of the child.[94] The commentary to Rule 4 states that —

> [t]he minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.) Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.[95]

Each national jurisdiction should take effort to legislate the implementation of the Beijing rules, including the minimum standards on the age of criminal responsibility for juveniles.[96]

B. Analysis of the Philippine MACR

Does the Philippines comply with international laws and standards in its interpretation of the minimum age for imposing penal liability on children?

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92. CRC General Comment No. 10, *supra* note 86, at 11-12.

93. IMPLEMENTATION HANDBOOK FOR THE CRC, *supra* note 85, at 603.

94. The Beijing Rules, *supra* note 19, rule 4.1.

95. COMPENDIUM IN CRIMINAL JUSTICE, *supra* note 20, at 54.

96. The Beijing Rules, *supra* note 19, rule 2.3.

An analysis of the current MACR as provided in R.A. 9344 leads to the conclusion that it is considerably compliant.

The Philippines was way below the internationally acceptable lower age limit for criminal responsibility under the old regime, when a child may be held criminally liable the day after he or she turned nine years old. It is precisely to comply with the State's obligations under the CRC and other international standards that the MACR was raised to above 15 years old. This was a long-awaited development, especially after the Philippines had been criticized by the Committee on the Rights of the Child for having maintained the age of criminal responsibility at a very low age and for having failed to pass the then proposed bill on the comprehensive juvenile justice system —

> The Committee notes with deep concern that adequate legislation governing juvenile justice is lacking and that a proposed bill on the Comprehensive Juvenile Justice System and Delinquency Prevention Programme has been pending in Congress since 1999. While noting that an Administrative Order issued in February 2000 designated Regional Trial Courts as Family Courts, the Committee is concerned about the lack of child-sensitive and adequately trained juvenile courts.
>
> Furthermore, the Committee is concerned about the very low minimum age of criminal responsibility (9 years). Referring to the provisions on youth detention homes of the Child and Youth Welfare Code and the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (Presidential Decree No. 603), the Committee is concerned about the inadequate implementation of these provisions and the placement of persons below 18 years of age together with adults in detention.[97]

In this regard, the Committee recommends to the State party in particular that, among others, it —

> (a) Adopt, as a matter of urgency, a proposed bill on Comprehensive Juvenile Justice System and Delinquency Prevention Programme and raise the minimum age of criminal responsibility to an internationally acceptable level;
>
> (b) Ensure that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions, and that persons below 18 years of age are not detained with adults.[98]

During the drafting of R.A. 9344, the MACR was originally set at above 12 following the international average of 12.5 years old. There were proposals to raise it to below 18 years old to be consistent with the age of

97. Committee on the Rights of the Child, Concluding Observations of the CRC on the Second Periodic Report of the Philippines, 39th Sess., Sept. 21, 2005, CRC/C/15/Add.259, at 24 (Sept. 21, 2005).

98. *Id.*

emancipation. Eventually, it was pegged at the current cut-off based on *Beyond Innocence*, a 1997 study by the Pamantasan ng Lungsod ng Maynila that established the age of discernment for Filipino children at 15 years old. Upon the suggestion of Senator Miriam Defensor-Santiago, the MACR was calibrated according to age categories; thus, the dual treatment of absolute exemption for children 15 years old or younger, and conditional exemption for those above 15 but below 18 years old provided they acted without discernment.

> Asked why the proposed Act increased the minimum age of criminal responsibility from nine years old to 12 years old, Senator Pangilinan informed the Body that other countries like China, Vietnam and Germany have higher age of discernment at 14 years. He said that the international average is 12.5 years. He disclosed that a study undertaken by the Pamantasan ng Lungsod ng Maynila in 1998 of 1,368 children, ages 7 to 15 years, from six regions showed that the age of discernment for Filipino children is 15 years. To be more consistent with international standards and based on that local study, he explained that the bill pegged the age of discernment at 12 years.[99]

In another discussion,

> Senator Pimentel asked to be clarified why raising the age of criminal responsibility for Children in Conflict with the Law from 15 years old to 18 years old seems to be encountering a problem. Senator Pangilinan replied that at present, the age of criminal responsibility is 9 but the original report pegged it at 12. He explained that after the interpellations and other inputs, the Committee agreed to peg it at age 15. He informed the Body that the Committee secured data indicating that in the Philippines, the age of discernment is 15, and so, it was made as a basis for setting the age of criminal liability.
>
> Senator Pangilinan stated that the age of discernment is the ability to distinguish between right and wrong, therefore, it would be unjust to make one criminally liable if he is unable to tell the difference. However, Senator Pimentel pointed out that while the age of discernment is based on the chronological years of a person when he is able to distinguish between right and wrong, there are circumstances that would militate in favor of raising that age to below 18. He noted that an 18-year old already qualifies to work as a soldier, vote or even get married. As such, he said that any attempt to give people the benefit of the doubt as to whether they acted with discernment should start at age below 18. He asked Senator Pangilinan to share studies showing that the age of discernment should be pegged at 15 as he did not want this matter to be fixed arbitrarily. Senator Pangilinan said he would provide Senator Pimentel with a study commissioned by the Council for the Welfare of Children and undertaken by the Pamantasan ng Lungsod ng Maynila. Asked whether there were other studies conducted overseas supporting the idea that the age of criminal responsibility should

99. S. JOURNAL Sess. No. 29, at 340.

> be pegged at 15, Senator Pangilinan replied that he could present Senator Pimentel with a matrix of a survey of ages of criminal responsibility in other parts of the world which showed that age 12 is the average international standard. He pointed out that this was the reason why the committee report initially recommended 12 as the age for discernment. Moreover, he admitted that he had been in a bind on whether to accept the international standard or put in a higher age as a result of the local study which bad been the Committee's other basis for determining the age of discernment.
>
> On whether the Committee considered the suggestion of Senator Defensor Santiago that the treatment of juvenile offenders be calibrated according to different age categories, Senator Pangilinan replied in the affirmative. He explained that the Committee adopted the amendment that a child above 15 but below 18 years old would also be exempt from criminal liability if he/she did not act with discernment.[100]

The hybrid system in R.A. 9344 is unclear as to whether the disputable presumption for the upper age limit is in favour of the CICL, in which case they are presumed to have acted without discernment unless proven otherwise. But Section 3 of the Act provides for a liberal construction of its provisions in favour of the CICL in case of doubt and it is a well-settled rule that penal statutes shall be construed strictly in favour of the accused. Accordingly, CICL within the range of conditional criminal responsibility should be presumed to have acted without discernment unless there is evidence to the contrary.

As previously discussed, the use of two age limits is considered by the Committee on the Rights of the Child as confusing and may be discriminatory in practice. Caution should be exercised in the determination of discernment in order to avoid discrimination. It is of concern that local social welfare development officers may not possess the necessary expertise to determine discernment despite specialized training. R.A. 9344 addresses this by considering the assessment of the social worker as merely initial or preliminary. Moreover, the DSWD has rolled out since 2010 its Self-Instructional Manual for Social Workers in Assessing Discernment of Children in Conflict with the Law and has been training social workers to enhance their competence.

On a larger perspective, it is significant that Philippine laws lack consistency in fixing the minimum protective age for minors: the absolute MACR is above 15, the minimum employable age is at exactly 15 years old, the age of sexual consent is much lower at 12 years old, and the marrying and voting age is the highest at 18 years old. The justification for the disparity in treatment is unclear. While the age at which a child is capable of discernment appears to be the logical common factor among the different

100. S. JOURNAL Sess. No. 39, at 467-68.

areas of acquisition of rights and loss of protection, the dissimilarities in treatment indicate that there may be some other basis for establishing the minimum ages. In addition to Senator Pimentel's comment cited earlier, Senator Miriam Defensor-Santiago raised a similar observation when she argued for setting the MACR to below 18 years old —

> Proceeding to another matter, Senator Defensor noted that the age of discernment in the full exercise of citizenship rights or for full emancipation has been pegged by the Constitution at 18. She pointed out that for purposes of contracting marriage, entering into a contract, engaging in business, exercising suffrage, gaining employment[,] and all other acts pertaining to the exercise of rights by a citizen, laws have pegged the age of discernment at the same age. However, she pointed out that the Revised Penal Code pegs the age of discernment in the commission of a criminal offense at 9 while the bill pegs it at 12. She expressed concern that even with such an increase, a huge disparity would continue to exist between discernment in understanding the consequences of a criminal act, on the one hand, and discernment in exercising the acts of citizenship, on the other. She maintained that such a disparity is unreasonable and must be bridged. She suggested that if the age of discernment for emancipation purposes is 18, then the age of discernment in understanding a crime should also be 18 instead of 12.[101]

Thus, the MACR as it presently stands is compliant with international standards — it is established through legislation; it is higher than the lowest allowable age of 12 years old; it is based on the emotional, mental, and intellectual maturity of the child as determined by local studies on discernment; it applies absolutely to all children below the age limit regardless of the nature of the offense; and there are some legislated measures to avoid discrimination in the application of the dual age limit. But is it consonance with the core principles of the CRC?

The best interest of the child dictates 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."[102]

There is no precise definition of the principle within the CRC although the general parameter is that State Parties should "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."[103] Hence, there is a balancing of interest involved as emphasized by the use of the phrase "primary consideration." This is in recognition of the fact that there may be other

101. S. JOURNAL Sess. No. 29, at 385.

102. CRC, *supra* note 14, art. 3 (1).

103. *Id.* art. 3 (2).

competing or conflicting human rights interests.[104] The Implementation Handbook of the CRC indicates that "the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what the best interests of a child are in a particular situation, as well as to determining the best interests of children as a group."[105]

On the issue of primary consideration, it is apparent that the well-being of all children was a primary consideration in crafting the legislation as evidenced by the congressional deliberations on R.A. 9344 cited earlier.

Whether the MACR is discriminatory, the discussion hinges on the categorization of children as to who are entitled to absolute exemption on one hand and conditional exemption on the other. The specific issue on point is whether there is a substantial distinction between the two age ranges. Arguably, there is no discrimination because the distinction is founded on a scientific determination of the age of discernment. And as explained previously, some measures are in place to avoid discrimination in the assessment of maturity for the higher age range.

With respect to the right to maximum survival and development, the CRC requires State Parties to ensure that children live their lives to the fullest extent possible —

> In its second paragraph, article 6 of the Convention on the Rights of the Child goes beyond the fundamental right to life to promote survival and development 'to the maximum extent possible.' The concept of 'development' is not just about the preparation of the child for adulthood. It is about providing optimal conditions for childhood, for the child's life now.
>
> The Committee on the Rights of the Child has emphasized that it sees child development as a holistic concept, embracing the whole Convention. Many of the obligations of the Convention, including in particular those related to health, leisure and play (articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum development of the child, and individual articles expand on the concept of 'development.'[106]

Scientific research would best assess whether holding a child criminally liable at a certain age promotes the right to life, maximum survival, and development. To the author's knowledge, the study relied upon by legislators in setting the current MACR has not been refuted and it is consistent with research in other jurisdictions that recognize that there is less culpability in juveniles owing to their lack of maturity. Based on those

104. IMPLEMENTATION HANDBOOK FOR THE CRC, *supra* note 85, at 38.

105. *Id.* at 37.

106. *Id.* at 93.

findings, raising the Philippine MACR to what it is now is a move towards promoting the child's right to life, and maximum survival and development.

In *Roper, et. al. v. Simmons*,[107] the United States Supreme Court relied on science to address the issue of whether it is violative of the constitutional prohibition against cruel and unusual punishment to impose the death penalty on a child older than 15 but younger than 18 who committed murder, thus —

> Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.' It has been noted that 'adolescents are overrepresented statistically in virtually every category of reckless behaviour.' In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.
>
> The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.
>
> The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.
>
> These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.' Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, '[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the

107. Roper, et. al. v. Simmons, 543 U.S. 551 (2005).

> impetuousness and recklessness that may dominate in younger years can subside.'[108]

In London, a study by Elly Farmer from the National Clinical Assessment & Treatment Service, states that exposure of children to the harshness of the adult-formulated justice system can be damaging —

> Although many young people involved with the YJS are not tried in adult courts or detained, contact with the YJS of even the most minimal kind, such as being charged with an offence, appears to increase re-offending.
>
> ...
>
> Similarly, if others label an individual as delinquent, they tend to treat him or her as such (for example, searching for confirmation or restricting positive opportunities), thereby also increasing the risk of reoffending.[109]

C. Alleged Increase in Crimes Committed by Children

The proponents of lowering the MACR argue that there has been an increase in crimes committed by children since the enactment of the law. The theory is that children have been emboldened to commit crimes because they know that under R.A. 9344 they are exempt from culpability and accorded more leniency than adults. The statistics from 2006 to 2010, however, do not show an increasing trend, especially for children within the age bracket of nine to 15.[110] If it were accurate to claim that more children commit crimes because of the high MACR, the statistics should have reflected an increase in the number of reported crimes committed by children within the age of absolute exemption, i.e., 15 years old or younger. The numbers show otherwise. Crimes committed by children ages nine to 15 increased from 2006 to 2007 but the numbers have been decreasing since then. The reported crimes committed by children younger than nine years old decreased from 2006 to 2007, increased from 2007 to 2009, then decreased again the year after. The highest number of reported crimes involved children 16 to 17 years of age. Within that age range, the numbers plunged from 1,649 in 2006 to 756 in 2007 then increased the following years.

With respect to whether there is a correlation between the increase in the MACR and the number of crimes registered, nothing conclusive can be

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108. *Id.* at 569-70 (citations omitted).

109. Elly Farmer, *The Age of Criminal Responsibility : Developmental Science and Human Rights Perspectives,* 6 JOURNAL OF CHILDREN'S SERVICES 86, 90 (2011).

110. Atty. Tricia Clare Oco, Executive Director, Juvenile Justice and Welfare Council (JJWC), Presentation at the Children's Legal Advocacy Network's (CLAN) Symposium on the Proposed Amendments of the Juvenile Justice and Welfare Act of 2006 or RA 9344 at the Philippine Christian University (PCU) Auditorium (May 3, 2012) (undated slide presentation on file with AKAP).

drawn from the statistics. Without any analysis on the possible factors that influence the frequency of crimes committed by children, the numbers may be interpreted in any way. At best, these tend to dispel the growing perception that crimes committed by children have been increasing at an alarming rate more so if compared with the number of crimes committed by adults. The total number of crimes committed by adults and children from 2006 to 2010 is 1,043,683. Only 12,919 were committed by children, or about 1.2% of the nationwide total.

Even assuming that there has been an increase in crimes committed by children, holding younger children criminally liable should not be the immediate response as it is not necessarily the appropriate solution. This goes back to the necessity of determining scientifically at what age children can be said to have developed the full capacity to be held responsible for their acts. It would also necessitate a careful evaluation of what form of response would promote the best interest of the child.

It has also been alleged that there are more instances of adults using children to perpetrate crimes. Suffice it to say that there are no statistics on the matter. Granted that there is truth to the allegation, lowering the MACR will only expose younger children to adult criminals who will take advantage of them. The more appropriate response is to penalize the adults, the real culprits, for committing one of the worst forms of child labor. Section 12-D of Republic Act No. 7610, as amended by Republic Act No. 9231,[111] punishes 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."[112] Moreover, if the child is 15 years old or younger, the fact that he or she is used to aid in the commission of a crime is an aggravating circumstance that will increase the penalty for crimes punishable under the Revised Penal Code.[113]

D. Absence or Lack of Intervention and Diversion Programs

Another criticism against R.A. 9344 is the absence or lack of intervention and diversion programs. While this argument is often raised, it has not been supported by any research. Nonetheless, however accurate it may be, it cannot be used to justify the lowering of the age of criminal responsibility. In the first place, how can one argue that the law does not effectively address

111. 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," Republic Act No. 9231 (2003).

112. *Id.* § 3.

113. REVISED PENAL CODE, art. 14, ¶ 20.

youth offending if there has been no serious attempt to implement intervention and diversion, which are the cornerstones of the law? The Department of the Interior and Local Government issued a circular instructing all LGUs to carry out their mandates under R.A. 9344, in particular: establish LCPCs and allocate one percent of their annual internal revenue allotment for the strengthening of programs and projects of the council; appoint licensed local social welfare and development officers; establish youth homes for CICL; and institute programs for intervention, diversion, and rehabilitation of CICL.[114] If these are not being done, the solution is certainly not for younger children to be held criminally liable or placed behind bars but for the LGUs to comply.

It is striking that in interviews with eight NGOs that implement programs for CICL, all NGOs complained of a lack of support and commitment from the LGUs.[115] A frequent complaint was that the BCPCs have not been created or are not functional, and little or no funds are allocated towards the implementation of the law, leaving the NGO sector to shoulder the burden of supporting CICL. Accordingly, barangays see the law as an additional responsibility which they do not wish to take on. Most NGOs complained that judges do not properly apply R.A. 9344, either due to ignorance, or because they disagree with it. Several NGOs also complained that police mistreat CICL, and fail to respect the principles of restorative justice underlying R.A. 9344. At least two NGOs said that an important part of their work was negotiating with judges and prosecutors to secure the release of CICL into their care for diversion programs. All NGOs complained of the cultural barriers to the full implementation of R.A. 9344. They reported that the popular view is that children who commit crimes should be punished.

On the other hand, information from five LGUs,[116] not necessarily where the NGOs interviewed are located, indicates that the common

114. Department of the Interior and Local Government, Memorandum Circular No. 2009-124 [DILG Memo. Circ. 2009-124] (Sept. 1, 2009).

115. Luke Brown, unpublished research conducted for the Ateneo Human Rights Center (on file with AKAP). The interviews were conducted in July 2011 as part of the research by Luke Brown, an intern of the Ateneo Human Rights Center who was then a law student at the McGill University in Canada. The NGOs that he interviewed were: Association Compassion Asian Youth, Ahon sa Kalye Ministries Inc., Center for Restorative Action, Children's Legal Rights and Development Center Inc., Educational Research and Developmental Assistance Foundation Inc., Pangarap Foundation Inc., Parenting Foundation of the Philippines Inc., and Virlanie Foundation Inc. *Id.*

116. Based on anonymous interviews conducted with representatives of the local social welfare and development offices of Mandaluyong, Manila, Navotas, Pasay, and Taguig by the following interns of the Ateneo Human Rights

sentiment is that the law placed substantial responsibilities on their shoulders without taking into consideration the limited number of local government personnel who are already overburdened with multiple tasks, especially social workers; the time and effort required to come into compliance with the law in terms of competency development and establishment of structures or institutions; and the difficulty of juggling priority programs in the midst of other competing concerns that are of equal importance. All five LGUs reportedly comply with the fund allocation required by the law. Four interviewees commented, however, that the budget is not enough while one disclosed that the funds are underutilized and mostly spent on seminars. All interviewees confirmed that their respective LGUs have juvenile intervention programs in place, although the scope and extent of the programs vary across the five LGUs.

Supposing that LGUs fully implement comprehensive juvenile intervention programs that are adequately funded, there are no agreed parameters for evaluating whether those programs are working. The NGOs suggest the following standards in determining success —

(1) The child does not reoffend;

(2) The child experiences a change in mindset and attitude, which includes positive goals like education or employment;

(3) The child is reintegrated into his or her community, which includes acceptance by the community; and

(4) The child's family is equipped to rear him or her responsibly.[117]

The NGOs identified the following key factors for the success of a juvenile intervention program[118] —

1. Time investment

Most of the NGOs stressed the obvious point that no child's life can be transformed overnight. Not only is a significant amount of time required to carry out the diversion/intervention program itself (most of the NGO programs ran from six months to one year), additional time is required for periodic follow-up after the child completes the program. They pointed out that a project can only be said to be successful when the NGO eventually minimizes contact with the child, and the child does not subsequently return to criminal activities.

Center: Jaymie Ann Reyes, Rose Angelique Dizon, Julianne Alberto, Glenda Rumohr, Christian delos Santos, and Jason Mendoza (on file with AKAP).

117. Brown, *supra* note 115.

118. *Id.*

2. Formation of a trust relationship between the NGO and the child

No project will be successful unless the child trusts the staff of the NGO and opens up to them. One NGO explained that they start working with the CICL while the child is still in detention in order to form a strong trust relationship before the child is released. Several of the NGOs (especially the ones operating shelters) stated that they try to create a family or community atmosphere among staff and beneficiaries, in order to foster a sense of trust.

3. The involvement of the victim

Restorative justice requires the involvement of the victim in devising a program for the child's rehabilitation.[119] This is important for a variety of reasons, including the need for the program to have legitimacy in the eyes of the victim and the community. If the community sees that the victim is satisfied by the intervention or diversion program, the CICL is less likely to be stigmatized in his or her community. The involvement of the victim also helps the child understand the consequences of his or her actions.

4. The involvement of the CICL's family and community

A successful project also involves the family and community of the child. At the very least, a child's reintegration into society requires the cooperation and support of his or her family and community. Thus, several NGOs engage in family counseling — bringing the child together with the family — to help pave the way for the child's reintegration into the family. Certain NGOs also run advocacy campaigns in the communities to convince them of the value of restorative justice programs for CICL, in an attempt to overcome the belief that punitive measures against the child are necessary.

IV. CONCLUSION

R.A. 9344 is not a perfect legislation but it is on the right track when it increased the MACR and introduced child-oriented systems of administering

119. It should be noted, however, that while it is beneficial to involve the victim, the participation of the victim is not mandatory as provided in Rule 43.c of the Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006 —

> The child and his/her family shall be present in the conduct of these diversion proceedings. The offended party may participate in the diversion proceedings. The absence of the offended party in the diversion proceedings or his/her disagreement in its conduct shall not prevent the proceedings from being conducted. The Punong Barangay shall, however, endeavor to obtain the participation and the consent of the offended party in the formulation of the diversion program.

Rules and Regulations Implementing the Juvenile Justice and Welfare Act of 2006, Rule 43.c.

justice. Such changes are consistent with international obligations under the CRC and other U.N. standards, as well as learned scientific studies on adolescent development.

In summary, any attempt to change the MACR should be in accordance with the following guidelines as provided by the CRC and United Nations standards —

(1) The MACR should be established by legislation;

(2) It should be based on the emotional, mental, and intellectual maturity of the child;

(3) It should not be lower than 12 years old;

(4) Any adjustment in the age should not be to lower it but to adjust it towards a higher level;

(5) There should be no exceptions to the MACR, i.e. it cannot be lowered in certain cases such as when the crime involved is a serious offense;

(6) Where there are two age limits — a lower age range for absolute exemption and a higher age range for conditional exemption — measures, such as requiring the involvement of psychological experts, should be in place to prevent discrimination in the determination of discernment or maturity for the higher age range; and

(7) The determination of the minimum age should be consistent with the best interest of the child, should not be discriminatory, should promote the right to life and the right to maximum survival and development, and should respect the evolving capacities of the child.

It cannot be denied that there are challenges in implementing the law. This is expected of a legislation that requires society and the state to alter the way they view juvenile offending and related behaviour. Difficulties in implementing the law, however, cannot be used to justify the lowering of the MACR; otherwise, the rights of children will be compromised merely on the basis of expediency. This is not to say that complaints of duty bearers tasked to implement the law are to be ignored as there are legitimate concerns that may be addressed through a re-examination of the law. What is glaring, however, is the lack of evidence-based information to support the moves to lower the MACR. Any attempt to adjust the MACR and amend other aspects of R.A. 9344 should always be in consonance with the guidelines set out in the CRC and related U.N. principles, and should be founded on rigorous scientific research that complies with internationally acceptable standards. The conditions are not ripe to introduce any

amendments at this point. The gears should be shifted towards implementation rather than revision.