

Batang Bata Ka Pa: An Analysis of the Philippine Minimum Age of Criminal Responsibility in Light of International Standards

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I. INTRODUCTION.....	260
II. AN OVERVIEW OF THE PHILIPPINE JUVENILE JUSTICE AND WELFARE ACT OF 2006	261
A. <i>Brief History: From a Retributive Approach to a Restorative Approach</i>	
B. <i>The Minimum Age of Criminal Responsibility and the Doli Incapax Presumption of Non-Responsibility</i>	
III. INTERNATIONAL CHILDREN’S RIGHTS STANDARDS RELATING TO THE MACR	265
IV. ANALYSIS OF THE PHILIPPINE MINIMUM AGE OF CRIMINAL RESPONSIBILITY AND INTERNATIONAL STANDARDS.....	267
A. <i>The Minimum Age of Criminal Responsibility should be established by legislation and should not be lower than 12 years old</i>	
B. <i>It should be based on the emotional, mental, and intellectual maturity of the child</i>	
C. <i>Any adjustment in the age should not be to lower it, but to adjust it towards a higher level</i>	

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Cite as 62 ATENEO L.J. 259 (2017).

1. This phrase literally means “you are so young” or “you are still a child.” In the Philippine context, it is used both positively (i.e., said impressively to a young doctor who performs excellently) and negatively (i.e., said to a child when he or she does something only adults can or should do, like smoking or drinking, which is frowned upon depending on the circumstances).

- D. *There should be no exceptions to the Minum Age of Criminal Responsibility, i.e., it cannot be lowered in certain cases such as when the crime involved is a serious offense*
- E. *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*
- F. *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*

V. CONCLUSION273

I. INTRODUCTION

There is a constant debate on the issue of age limits of juvenile justice systems, especially on the minimum age of criminal responsibility (MACR). Article 40 (3) (a) of the Convention on the Rights of the Child (CRC)² directs State Parties to establish a “minimum age below which children shall be presumed not to have the capacity to infringe the penal law[.]” yet does not state an exact age.³ To clarify this vagueness, the Committee on the Rights of the Child (Committee) issued General Comment No. 10⁴ that stated that a minimum age below 12 is not internationally acceptable and recommended the ages of 14 or 16.⁵

The governing law on juvenile justice in the Philippines is Republic Act (R.A.) No. 9344 or the Juvenile Justice and Welfare Act of 2006.⁶ Said law sets the MACR at 15, and establishes a *doli incapax* presumption for the age range of above 15 to below 18 where criminal responsibility may attach

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

3. *Id.* art. 40 (3) (a).

4. Committee on the Rights of the Child, *General Comment No. 10 on Children's Rights in Juvenile Justice, Forty-Fourth Session*, U.N. Doc. CRC/C/GC/10 (Jan. 15–Feb. 2, 2007) [hereinafter General Comment No. 10].

5. *Id.* ¶ 30.

6. 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).

depending on a child's discernment.⁷ A 2012 amendment to this law introduced a new condition — children above 12 to 15 who commit serious crimes or are repeat offenders are automatically considered “neglected” and will be placed in a special detention center called the *Bahay Pag-Asa* (House of Hope).⁸ Recent attempts by legislators are being re-introduced to amend the law again, particularly to lower the minimum age of criminal responsibility to 9.⁹

The question to be answered is to what extent are the MACR and the *doli incapax* requirement in the Philippine Juvenile Justice and Welfare Act of 2006 compliant with international standards. The scope of this Essay will focus on the Philippine Juvenile Justice and Welfare Act of 2006 and the internationally accepted standards with regard to the MACR.

To provide an overall picture, the first Section begins with an overview of the Philippine Juvenile Justice and Welfare Act of 2006 and focuses on the MACR. The next Section proceeds to discuss the existing international children's rights frameworks relating to the MACR and the standards they provide. In the third Section, these standards will be analyzed with the Philippine MACR to determine which parts are compliant and which are not. Finally, the Essay concludes by answering to what extent the MACR set by Philippine law is compliant with international standards and how the law can be amended to ensure its compliance.

II. AN OVERVIEW OF THE PHILIPPINE JUVENILE JUSTICE AND WELFARE ACT OF 2006

A. *Brief History: From a Retributive Approach to a Restorative Approach*

“You’ll see blood like you’ve never seen in the free world ... so much blood,”¹⁰ said a 9-year-old child describing the situation of children in a

7. *Id.* § 6, paras. 1-2.

8. An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act No. 9344, Otherwise Known As the “Juvenile Justice and Welfare Act of 2006” and Appropriating Funds Therefor, Republic Act No. 10630, § 6 (2012).

9. See, e.g., Kathryn Baylon, *Alvarez Files Bill Lowering Age of Criminal Liability*, PHIL. DAILY INQ., July 6, 2016, available at <http://newsinfo.inquirer.net/794594/alvarez-files-bill-lowering-age-of-criminal-liability> (last accessed Aug. 10, 2017).

10. Translated from the Bisaya language in the Visayas region of the Philippines. *Bunso* is an award winning documentary by Ditsi Carolino, and produced by UNICEF and Consuelo Foundation. Review: ‘Bunso: The Youngest’, available

Philippine jail as captured in a 2005 documentary, *Bunso*¹¹ (The Youngest). This child was jailed for stealing goods from a store. Before 2006, a 9-year-old child in the Philippines could be held criminally responsible according to the 1930 Revised Penal Code of the Philippines.¹² Said child could also be sent to jail and incarcerated with adults.¹³ There was no comprehensive legislation on juvenile justice in the Philippines and several laws had to be applied depending on the age and crime committed.¹⁴ It was only in the 21st century that the Philippines decided to devote a criminal system solely for juveniles and, thus, the Juvenile Justice and Welfare Act of 2006 was introduced. This law incorporated principles of the CRC, specifically mentioning Article 40 in its declaration of state policies.¹⁵ It also introduced the principles of the best interests of the child and restorative justice, and specifically mandated that the state apply these principles in all its laws, policies, and programs applicable to children in conflict with the law.¹⁶ It clearly defined restorative justice as

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. It also enhances public safety by activating the offender, the victim[,] and the community in prevention strategies.¹⁷

This law was considered a milestone in children's rights legislation in the Philippines. One might say that it was prompted by international pressure to change the dire situation of children in the harsh justice system. Since the law's enactment, children were not allowed to be detained by adults and those who were, were supposed to be freed. It introduced the term "children in conflict with the law."¹⁸ Diversion became the standard instead

at <http://www.variety.com/2006/film/reviews/bunso-the-youngest-1200515123> (last accessed Aug. 10, 2017).

11. *BUNSO: THE YOUNGEST* (2005).

12. See An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 12 (1932).

13. *Id.* art. 80, para. 7.

14. See Nina Patricia Sison-Arroyo & Klarise Anne C. Estorninos, *In Defense of the Juvenile Justice and Welfare Act of 2006*, 56 *ATENEO L.J.* 881, 882 (2012).

15. See Juvenile Justice and Welfare Act of 2006, § 2 (d).

16. *Id.* § 2 (b) & (f).

17. *Id.* § 4 (q).

18. *Id.* § 4 (e).

of an exception, and the MACR was increased from 9 to 15.¹⁹ It decriminalized status offenses, clearly laid down the rights of children in conflict with the law, mandated detention as a last resort, and spared children from the death penalty.²⁰ It also established the Juvenile Justice and Welfare Committee to oversee and monitor the implementation of the juvenile justice system.²¹

The Juvenile Justice and Welfare Act of 2006, however, was not as effective as hoped for. Local government units found difficulties in implementing these completely new programs of diversion and intervention.²² Media started highlighting crimes committed by children.²³ Hence, in 2012, an amendment to this then six-year-old law was introduced. The amended Juvenile Justice and Welfare Act of 2006 retained the MACR at 15, yet imposed automatic detention for children above 12 to 15 who committed serious crimes or were repeat offenders.²⁴ In a way, the law lowered the MACR to 12. Many consider this a step backward²⁵ and the details of this will be discussed below.

19. *Id.* §§ 6 & 23.

20. *See* Juvenile Justice and Welfare Act of 2006, §§ 5, 36, & 58-59.

21. *Id.* § 8, para. 1.

22. Sadie Xinxin Yang, et al., Evaluation of the Intervention and Rehabilitation Program in Residential Facilities and Diversion Programs for Children in Conflict with the Law at 46, *available at* http://www.unicef.org/evaldatabase/files/Philippines_2015-004_Final_Report.pdf (last accessed Aug. 10, 2017).

23. *See, e.g.*, Maan Macapagal, 9-year-old boy killed by “batang hamog”, *available at* <http://news.abs-cbn.com/nation/metro-manila/11/02/12/9-year-old-boy-killed-batang-hamog> (last accessed Aug. 10, 2017); Mike Frialde, *Makati police renew drive against “batang hamog”*, PHIL. STAR, July 25, 2012, *available at* <http://www.philstar.com/breaking-news/2012/07/25/831397/makati-police-renew-drive-against-batang-hamog> (last accessed Aug. 10, 2017); GMA News Online, Pambabato ng isang batang hamog sa taxi driver, huli sa CCTV, *available at* <http://www.gmanetwork.com/news/video/112370/stateofthenation/-pambabato-ng-isang-batang--hamog-sa-taxi-driver-huli-sa--cctv> (last accessed Aug. 10, 2017).

24. Juvenile Justice and Welfare Act of 2006, § 20, para. 3 (as amended).

25. *See, e.g.*, Statement on the proposed amendments to Republic Act 9344, *available at* <https://hronlineph.com/2011/08/08/statement-statement-on-the-proposed-amendments-to-republic-act-9344-clan> (last accessed Aug. 10, 2017).

B. The Minimum Age of Criminal Responsibility and the Doli Incapax Presumption of Non-Responsibility

The amended Juvenile Justice and Welfare Act of 2006 states that it retained the MACR at 15. A child in conflict with the law below this age, however, is required to go through an intervention program.²⁶

In addition, the law sets a *doli incapax* presumption and treats children below 15 and children above 15 but below 18 who acted without discernment²⁷ in the same way. A child above 15 but below 18 who acted with discernment is required to go through diversion if the crime committed is generally punishable by not more than 12 years of imprisonment.²⁸ The Supreme Court of the Philippines further explained that “[d]iscernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.”²⁹ A local social worker from the Department of Social Welfare and Development (DSWD) determines whether the child acted with or without discernment.³⁰

The amended law added a new category — children above 12 to 15 who commit a serious crime³¹ or are repeat offenders (regardless of the crime

26. Juvenile Justice and Welfare Council, Revised Rules and Regulations Implementing the Republic Act No. 9344, as amended by R.A. 10630, Council Resolution No. 2 (2014). Rule 2 (18) defines intervention as “programmatic approaches or systematic social protection programs for children that are designed and intended to: (a) [p]romote the physical and social well-being of the children; (b) [a]vert or prevent juvenile delinquency from occurring; and (c) [s]top or prevent children from re-offending.” *Id.* at rule 2 (18).

27. Rule 38.a of the Revised Rules and Regulations Implementing the Republic Act No. 9344, as amended by R.A. No. 10630, defines discernment as the “capacity to understand the difference between right and wrong, and its consequences.” *Id.* rule 38.a.

28. *Id.* at rule 44.

29. *People v. Jacinto*, 645 SCRA 590, 617 (2011) (citing *Madali v. People*, 595 SCRA 274, 296-97 (2009) (citing the RULE ON JUVENILES IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC (Nov. 24, 2009))).

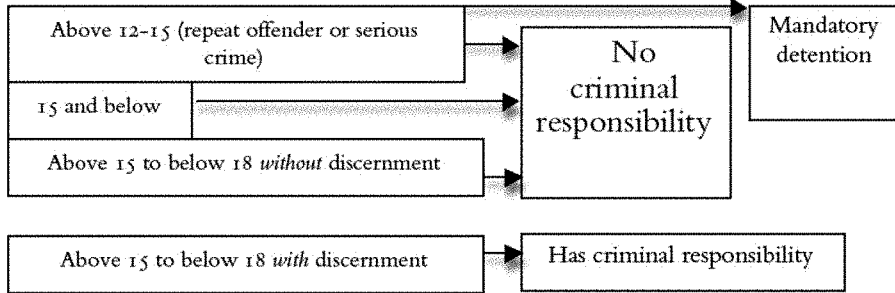
30. Revised Rules and Regulations Implementing the Republic Act No. 9344, as amended by R.A. 10630, rule 38.b.

31. The law enumerates these serious crimes as

parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is

committed) are automatically deemed neglected and are mandatorily placed in a special facility within the Bahay Pag-Asa.³² Bahay Pag-Asa is a youth home for detaining children in conflict with the law and children at risk. The figure below explains the MACR and the age limits of the new law:

Figure 1. The Minimum Age of Criminal Responsibility and Age Limits Under R.A. No. 10630



Arguably, by creating a new category for children above 12 to 15, the amended law did not retain the MACR at 15. It effectively lowered the MACR to 12. A discussion as to why will be argued more in depth in the succeeding Sections.

III. INTERNATIONAL CHILDREN’S RIGHTS STANDARDS RELATING TO THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Article 40 (3) (a) of the CRC requires the “establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law[.]”³³ The CRC does not specifically mention what the minimum age should be. Rule 4 of the Beijing Rules,³⁴ however, states that “the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental[,] and intellectual maturity.”³⁵ It

killed or raped[,] or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than twelve (12) years of imprisonment.

Juvenile Justice and Welfare Act of 2006, § 20-A, para. 1 (as amended).

32. See Juvenile Justice and Welfare Act of 2006, §§ 20, 20-A, & 20-B (as amended).

33. See CRC, *supra* note 2, art. 40 (3) (a).

34. 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].

35. *Id.* ¶ 4.1.

briefly talks about the importance of having an appropriate age, and mentions that, if there is none or if it is set too low, then responsibility would be meaningless.³⁶

General Comment No. 10 attempts to shed light on this in that a minimum age of below 12 is not internationally acceptable.³⁷ It does not say, however, that 12 should be the minimum age and goes on to say that it is merely the absolute minimum and recommended to continue to increase it.³⁸ It recommends the ages of 14 or 16 and urges countries that have a MACR above 12 not to lower it.³⁹ Before (and arguably even after) this General Comment, there was no consensus as to the exact minimum age and there were major differences in ages across the world, even those within the same continent.⁴⁰

Hence, international standards provide a useful guideline in order to analyze how state parties should set their MACR. The enumeration⁴¹ of standards is as follows:

- (1) The MACR should be established by legislation, and should not be lower than 12 years old;⁴²
- (2) It should be based on the emotional, mental, and intellectual maturity of the child;⁴³
- (3) Any adjustment in the age should not be to lower it, but to adjust it towards a higher level;⁴⁴
- (4) 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;⁴⁵

36. *Id.*

37. See General Comment No. 10, *supra* note 4, ¶¶ 32–33.

38. *Id.*

39. *Id.*

40. GERALDINE VAN BUEREN, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 27 (2006).

41. First compiled in the Sison–Arroyo & Estorninos Article, *In Defense of the Juvenile Justice and Welfare Act of 2006*, but slightly modified for this Article. See Sison–Arroyo & Estorninos, *supra* note 14, at 907.

42. See General Comment 10, *supra* note 4, ¶ 32.

43. *Id.*

44. *Id.*

45. *Id.* ¶ 34.

- (5) 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;⁴⁶ and
- (6) 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.⁴⁷

These guidelines will be used to analyze the Philippine MACR and its compliance to international standards as discussed in the next section.

IV. ANALYSIS OF THE PHILIPPINE MINIMUM AGE OF CRIMINAL RESPONSIBILITY AND INTERNATIONAL STANDARDS

A. The Minimum Age of Criminal Responsibility should be established by legislation and should not be lower than 12 years old

As discussed, the Committee categorically stated that 12 years of age is the absolute minimum age, and a lower MACR is not acceptable. There is no clear reason why the Committee chose 12 years old. Scholars say that it may have been due to the general average of countries at that time.⁴⁸

The amended Juvenile Justice and Welfare Act of 2006 of the Philippines establishes the MACR at 15. It improved the previous law by clearly defining what exactly 15 years old means: a “[c]hild who is above [15] years of age’ refers to a child who is at least [15] years and [one] day old.”⁴⁹ On this point alone, Philippine law is compliant with the international standard that the MACR is clearly established by legislation and is not lower than 12.

It can be argued, however, that the amendment actually lowered the MACR to 12 from 15. The amendment added that children who are above 12 to 15 years of age who commit serious offenses or are repeat offenders

46. *Id.* ¶ 30.

47. *Id.* ¶¶ 3, 6, 11, & 16.

48. DON CIPRIANI, CHILDREN’S RIGHTS AND THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY: A GLOBAL PERSPECTIVE 51 (2009).

49. Revised Rules and Regulations Implementing the Republic Act No. 9344, as amended by R.A. 10630, rule 2 (7).

will be mandatorily detained. It is important to note that the MACR is not just an age below which children should not have criminal responsibility but also “an age limit beneath which no treatment or penalty indicative of criminal responsibility can be applied by law.”⁵⁰ The new requirement of mandatory detention is a form of treatment or penalty indicative of criminal responsibility. Hence, the amendment essentially lowered the MACR to 12.

B. It should be based on the emotional, mental, and intellectual maturity of the child

The requirement that the MACR should be based on the emotional, mental, and intellectual maturity was set by the Beijing Rules even before the CRC came to be.⁵¹ These criteria show the importance of considering the psychological and socio-anthropological component of the juvenile justice system aside from the legal component. Many studies have shown that the part of the brain that is responsible for planning and impulse control, among others, is not fully developed until one is in their 20s.⁵² Hence, there is a need for a more lenient approach toward children who commit crimes.

The Philippine MACR was set at 15 because of certain studies. One study by Pamantasan ng Lungsod ng Maynila (which studied the age of discernment of Filipino children in school) set the age at 15.⁵³ Another study done by the Philippine Action for Youth Offenders, which studied the age of Filipino children out of school (a common status of youth in the Philippines), set the MACR at 18.⁵⁴ As a compromise, Philippine legislators settled for 15 also after studying the ages that different countries set.⁵⁵

This shows that the age of 15 was not chosen arbitrarily and was chosen using reliable studies. Hence, the law, setting the MACR at 15 is compliant

50. See CIPRIANI *supra* note 48, at 77.

51. See Beijing Rules, *supra* note 34, at 3.

52. Anthony L. Pillay, *Deliberating the minimum age of criminal responsibility*, 45 S. AFR. J. PSYCHOLOGY 143, at 145 (2015) (citing Sara B. Johnson, et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESC. HEALTH 216, 216-21 (2009)). See also Stephanie Rap, *A Children's Rights Perspective on the Participation of Juvenile Defendants in the Youth Court*, 24 INT'L J. CHILDREN'S RTS. 93, 100 (2016).

53. See generally PAMANTASAN NG LUNGSOD NG MAYNILA, BEYOND INNOCENCE: STUDY ON THE AGE OF DISCERNMENT OF FILIPINO CHILDREN (1998).

54. See generally PHILIPPINE ACTION FOR YOUTH OFFENDERS, ARRESTED DEVELOPMENT: THE LEVEL OF DISCERNMENT OF OUT-OF-SCHOOL CHILDREN AND YOUTH (2002).

55. See Sison-Arroyo & Estorninos, *supra* note 14, at 897 (citing S. JOURNAL Sess. No. 29, at 340, 13th Cong., 2d Regular Sess. (Oct. 10, 2005)).

with the requirement that it should be based on the emotional, mental, and intellectual maturity of the child.

However, noting again the amendment that created a new condition for those above 12 to 15, the age of 12 was not backed by any studies and was chosen merely as an attempt to compromise several versions of the law filed by different congresspersons and senators that proposed several ages ranging from 9 to 15.⁵⁶ Therefore, the law is only partly compliant with this requirement.

C. Any adjustment in the age should not be to lower it, but to adjust it towards a higher level

The Committee recommended that State parties, including those with MACRs at 12, continue to increase the age to a higher one.⁵⁷

Although several bills have attempted to lower the MACR, the 2012 amendment did not adjust the official MACR from 15. In this sense, the law is compliant with international standards. Again, it must be noted that the amended law, in a way, adjusted the age by creating an exception to the MACR for those above 12 to 15 who committed serious crimes and are repeat offenders. On that note, the law is not compliant. This issue will be discussed further in the next requirement.

D. There should be no exceptions to the Minimum Age of Criminal Responsibility, i.e., it cannot be lowered in certain cases such as when the crime involved is a serious offense

The Committee does not prohibit a different treatment towards children who commit serious offenses. What it prohibits, however, is the use of a lower age as an exception for children who commit serious offenses.⁵⁸

The amendment to the Philippine Juvenile Justice and Welfare Act of 2006 exempted children above 12 to 15 from criminal responsibility, but created an exception to the MACR. As discussed earlier, it essentially lowered the MACR because of the requirement of mandatory placement in a special facility. The CRC allows special protective measures for children under the age of the MACR, but only if it is in the best interests of the

56. The Author was present at the round table discussion with principle author Senator Francis “Chiz” Escudero at the Senate deliberating the final minimum age of criminal responsibility before R.A. No. 10630 was passed in 2012. No official minutes were made.

57. See General Comment No. 10, *supra* note 4, ¶ 32.

58. *Id.* ¶ 34.

child.⁵⁹ In the Philippines' case, however, detention is the first resort, and a child who committed a serious crime or a repeat offense is not qualified on a case-to-case best interests basis, but is already assumed to be in need of detention. This amounts to a violation of not only Article 40 but also Article 37 (b) which requires detention as a last resort.⁶⁰

This amendment is in clear violation of the standard that there should be no exceptions to the MACR such as a lower age for serious offenses.

E. 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

The Committee does not prohibit, but warns against, the setting of two age limits because of the possible discrimination that may occur in the exercise of discretion.⁶¹ The practice of setting two age limits with criminal responsibility depending on whether or not the child acted with discernment is called the *doli incapax* presumption of non-responsibility. *Doli incapax* means “incapable of evil.”⁶² This presumption acknowledges that even children who are above the minimum age may not be held criminally liable because of incapability of possessing criminal intention.⁶³

The Philippine Juvenile Justice Law sets this age range at above 15 to 18. A child above 15 but below 18 who acted with discernment is deemed criminally responsible. A child in the same age range who acted without discernment is deemed to have no criminal responsibility and is treated with the same process as those 15 and below.⁶⁴

The local social welfare officer from DSWD does the initial assessment of discernment using a discernment assessment tool.⁶⁵ The report of the social worker is then used by the police handling the case of the child to

59. *Id.* ¶ 31.

60. See CRC, *supra* note 2, art. 37 (b).

61. See General Comment No. 10, *supra* note 4, at ¶ 30.

62. Oxford University Press, *Doli Incapax*, available at https://en.oxforddictionaries.com/definition/doli_incapax (last accessed Aug. 10, 2017).

63. Paul Wagland & Kay Bussey, *Appreciating the wrongfulness of criminal conduct: Implications for the age of criminal responsibility*, 22 LEGAL & CRIMINOLOGICAL PSYCHOLOGY 130, 131 (2017).

64. See Revised Rules and Regulations Implementing the Republic Act No. 9344, as amended by R.A. 10630, rule 37.a.

65. *Id.* rule 38.c.

decide whether the child should go through intervention, diversion, or preliminary investigation.⁶⁶

The DSWD Guidelines state that the following should form part of the basis for discernment: facts and circumstances surrounding the case; educational level and performance of the child in school; appearance, attitude, and the child's demeanor before, during, and after the commission of the offense; and an assessment of a psychologist or psychiatrist.⁶⁷

In terms of law and policy requirements, Philippine law is compliant with the requirement to involve experts in order to prevent discrimination when there is a *doli incapax* presumption in the law.

Nevertheless, no presumption exists for those who are above 12 to 15 who commit serious crimes or are repeat offenders. The law assumes that they are in need of special care that can only be given through detention. This clearly discriminates against this category of children in conflict with the law, and is, thus, in violation of international standards.

F. 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

General Comment No. 10 says that the CRC's leading principles should be part of a comprehensive policy for juvenile justice, and this rule applies to the setting of a MACR.⁶⁸

In terms of considering the best interests of the child and the non-discrimination principle, Philippine legislators who kept the MACR at 15 years of age clearly had such in mind when they carefully used reliable nationwide studies and international standards to back up the age chosen.⁶⁹ Legislators took into account the cultural and societal context of the Philippines and made sure to use nationwide studies of both in school and out of school children. Although a *doli incapax* presumption was included in the law, as discussed previously, there were safeguards to ensure non-discrimination.

66. *Id.* rule 38.d.

67. Department of Social Welfare and Development, Guidelines for Social Workers in the Handling and Treatment of Children in Conflict with the Law, Administrative Order No. 10, Series of 2007 [DSWD A.O. No. 10, s. 2007], No. V (B) (2) (June 28, 2007).

68. See General Comment No. 10, *supra* note 4, at 12.

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

However, the condition imposed upon children above 12 to 15 years old did not take into account their best interests and also discriminated against this category of children. The requirement of mandatory detention is in violation of the CRC because, as stated earlier, it makes detention not the last, but the first resort, which is not in accordance with the best interests principle. It is also discriminatory because the age of 12 was set arbitrarily and was not backed up by any studies. Moreover, there is no substantial distinction between the two age ranges (12 to 15 and 15 to 18 years of age) if the ones aged above 12-15 are automatically assumed to be in need of detention. Hence, this provision is discriminatory against children above 12 to 15 years old who commit serious crimes or are repeat offenders.

In terms of promoting the rights to life, survival, and development, the increase of the MACR from 9 to 15 years old was clearly geared toward such.⁷⁰ However, essentially decreasing the MACR to 12 years of age is also against the right to life, survival, and development because mandatory detention is against these rights when there are no safeguards to ensure that the detention is not arbitrary, of last resort, or of the shortest period of time.⁷¹ This is especially true for the Philippines where most detention centers are in poor condition.

The right to be heard in line with the evolving capacities of the child was taken into account when the law increased the age from 9 to 15 years old, and even when it imposed the *doli incapax* presumption. This is seen from the above discussion that cites studies that researched on the age and maturity of children to arrive at the MACR. Children in conflict with the law even have a role in the formation of their intervention and diversion programs which can only be imposed with their consent.⁷² However, yet again, the provision on the children above 12 to 15 years of age does not take into account the right to be heard and the evolving capacities of the child as it does not give the child the right to express his or her own views, and mandatorily imposes detention.

In summary, this analysis shows that the Philippine Juvenile Justice and Welfare Act of 2006 was essentially compliant with international standards: the 15-year-old MACR was established by legislation; it was based on the emotional, mental, and intellectual maturity of the child; the measures

70. See Sison-Arroyo & Estorninos, *supra* note 14, at 905.

71. Barry Goldson & Ursula Kilkelly, *International Human Rights Standards and Child Imprisonment: Potentialities and Limitations*, 21 INT'L J. CHILDREN'S RTS. 345, 350 (2013).

72. See Revised Rules and Regulations Implementing the Republic Act No. 9344, as amended by R.A. 10630, rule 76.

against discrimination for the *doli incapax* presumption were set in place; and it took into account the leading principles of the CRC. The amendment in 2012, however, caused its non-compliance when it introduced the condition for children above the age of 12 until 15 who commit serious crimes or are repeat offenders. This condition was against the standard not to lower the age or have an exemption to the MACR. It was also discriminatory and took no account of either the best interests of the child or the rights to life, survival, and development, and the right to be heard. In fact, the law may have stated that the MACR is still at 15. But applying the true purpose of a MACR, it can be said that the new MACR is actually at 12 years old. The condition imposed may be couched in welfare protectionist wording, but that does not discount the fact that it imposed a penalty attributing criminal responsibility to children younger than 15 years old.

V. CONCLUSION

Marta Santos-Pais, a known child rights expert, stated that: “[i]t is [] critical to establish a legal minimum age of criminal responsibility in line with international standards” in order to ensure children’s rights in the juvenile system are ensured.⁷³ What is critical, however, is often what is hardest to do. The worldwide debate on the MACR seems to be unending and the Philippines is not spared from this. The Philippines took a progressive leap forward in 2006 when the legislature passed its first comprehensive policy on juvenile justice. The increase of the MACR from the age of 9 to 15 years of old was hailed as a concrete achievement in compliance with international standards. The 2012 amendment, however, added a discriminatory and violative condition imposed upon children above 12 to 15 who committed serious crimes or are repeat offenders. Because of that, what was once an essentially compliant law became subpar vis-à-vis international standards.

In order to make the law internationally compliant, a few critical things need to be changed such as removing said discriminatory and violative conditions that actually lower the MACR. This, however, is not the trend of current legislators who seem to be more focused on lowering the age and re-introducing jail time for minors, thinking this would help solve the problem of the alleged increase in crimes committed by children. Should these new amendments pass, the prior leap toward compliance with international standards would arguably have been useless. The amendments would instead be a bigger leap backward.

73. Marta Santos-Pais, *Children’s Rights, Freedom from Violence and Criminal Justice*, in CHILD-FRIENDLY JUSTICE: A QUARTER OF A CENTURY OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 23 (2015).