

Legal Options to Address the Gap Between the Age of Compulsory Schooling and Minimum Age for Work in the Philippines

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I. INTRODUCTION

A. Background

The International Labour Organization (ILO) estimates that there are 168 million child laborers within the age range of five to 17 years old worldwide.¹ The number represents almost 11% of the global child

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population within this age group.² Of these, more than half or 85 million are engaged in hazardous work.³ A large number is concentrated in the Asia Pacific at 77.7 million and in Sub-Saharan Africa at 59 million.⁴ Some 12.5 million are found in Latin America and the Caribbean and 9.2 Million in the Middle East and North Africa.⁵ While the child labor population remains overwhelming, globally, it has declined significantly over a 12-year period since 2000.⁶ ILO statistical efforts have documented a decrease by almost one-third of the baseline number, or about 78 million less child laborers.⁷

In the Philippines, the 2011 Survey on Children⁸ estimates that 5.49 million children are working, 58.40% or 3.21 million of which are engaged in child labor.⁹ Of these, 54.50% or 2.99 million work in hazardous environments.¹⁰

The effective abolition of child labor is a universal aim. Among the main legally binding international instruments that pursue this goal is the ILO Convention Concerning Minimum Age for Admission to Employment (C138 or the Convention),¹¹ which was adopted on 26 June 1973 and entered into force on 19 June 1976.¹² Countries that ratify the Convention undertake to raise the minimum age of employment progressively until total

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1. INTERNATIONAL LABOUR ORGANIZATION, MARKING PROGRESS AGAINST CHILD LABOUR — GLOBAL ESTIMATES AND TRENDS 2000-2012 15 (2013) [hereinafter ILO, MARKING PROGRESS].
2. *Id.*
3. *Id.*
4. *Id.* at 17.
5. *Id.*
6. *Id.* at 15.
7. ILO, MARKING PROGRESS, *supra* note 1, at 15.
8. Philippine Statistics Authority, The number of working children 5 to 17 years old is estimated at 5.5 million (Preliminary Results of the 2011 Survey on Children), *available at* <http://webo.psa.gov.ph/content/number-working-children-5-17-years-old-estimated-55-million-preliminary-results-2011-survey> (last accessed Aug. 27, 2015).
9. *Id.*
10. *Id.*
11. Convention concerning Minimum Age for Admission to Employment, *opened for signature* June 26, 1973, 1015 U.N.T.S. 297 [hereinafter C138].
12. *Id.*

abolition of child labor is achieved.¹³ The Convention leaves it to each country to prescribe the minimum age at which a child is allowed to work. But as a general standard, the age level should be consistent with the fullest mental and physical development of young persons,¹⁴ “shall not be less than the age of completion of compulsory schooling[,] and, in any case, shall not be less than 15 years.”¹⁵

The Committee of Experts in the Application of Conventions and Recommendations (CEACR)¹⁶ directs States to link the age of entry into employment with the age of completion of compulsory education.¹⁷ Setting the minimum age of employment lower than the age of completion of mandatory schooling will result in children leaving school and opting to work when already of age, thus depriving them of an opportunity to be educated and trained.¹⁸ If it is higher, children who complete their education, even if already skilled and capable of working, have to wait until they reach the minimum age before they may be lawfully employed. This “opens the door for economic exploitation of children.”¹⁹

The Philippines is bound by the provisions of C138 having ratified it on 4 June 1998.²⁰

According to the 1987 Philippine Constitution, elementary education is compulsory.²¹ Typically, a child completes elementary education at 12 years old.²² On the other hand, the Special Protection of Children Against Child Abuse, Exploitation And Discrimination Act or Republic Act (R.A.) No.

13. *Id.* art. 1.

14. *Id.*

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

16. International Labour Conference, 101st Session, 2012, *Giving Globalization a Human Face, General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, ILC.101/III/1B at 2.

17. *Id.*

18. *Id.* at 163 (citing Record of Proceedings, ILC, 57th Session, 1972, *Appendix IV: Minimum Age for Admission to Employment (first discussion)*, at 537, ¶ 8).

19. *Id.* at 165.

20. International Labour Organization, *Ratifications of C138 — Minimum Age Convention, 1973 (No. 138)*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283 (last accessed Aug. 27, 2015).

21. PHIL. CONST. art XIV, § 2 (2).

22. Philippine Statistical Authority, *The Educational Attainment of the Household Population (Results from the 2010 Census)*, available at <https://psa.gov.ph/content/educational-attainment-household-population-results-2010-census> (last accessed Aug. 27, 2015).

9231²³ sets the minimum age of employment at 15 years old.²⁴ Thus, a child who has completed elementary education would have to wait three years before he or she could be lawfully engaged in work. The CEACR observed this gap and commented that

the Committee must emphasize the necessity of linking the age of admission to employment (15 years) to the age limit for compulsory education (12 years). If compulsory schooling comes to an end before a young person is legally entitled to work, there may be an enforced period of inactivity. The Committee therefore considers it desirable to ensure that compulsory education is up to the minimum age for employment, as provided under paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). Considering that compulsory education is one of the most effective means of combating child [labor], the Committee requests the Government to take the necessary measures to raise the age of completion of compulsory schooling to 15 years. It also urges the Government to pursue its efforts to increase school enrolment and attendance rates among children under 15 years of age, and to continue to provide information on the results achieved in this regard.²⁵

Subsequently, the Philippines reported to the CEACR that the enactment of the Enhanced Basic Education Act of 2013, or R.A. No. 10533,²⁶ has addressed the discrepancy. R.A. No. 10533 recalibrated the duration of compulsory education to cover basic education, which encompasses one year of kindergarten, six years of elementary education, and six years of secondary education.²⁷ In response to the report, the CEACR requested the Philippines to “indicate clearly the age of completion of compulsory schooling under the terms of the Enhanced Basic Education Act.”²⁸ The Philippines is yet to submit its report, which is due in 2016, in

23. 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).

24. *Id.* § 2.

25. International Labour Organization, Observation (CEACR) — adopted 2011, published 101st ILC session (2012), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699948 (last accessed Aug. 27, 2015).

26. An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor and for Other Purposes, [Enhanced Basic Education Act], Republic Act No. 10533 (2013).

27. *Id.* § 4.

28. International Labour Organization, Direct Request (CEACR) — adopted 2013, published 103rd ILC session (2014), available at <https://www.ilo.org/dyn/norm>

reply to this request.²⁹ Based on the provisions of the Enhanced Basic Education Act, a person who completes basic education is typically 18 years old given that the entrant age to compulsory schooling is five years old and the duration of basic education is 13 years.³⁰

The Enhanced Basic Education Act has apparently created uncertainties regarding its implications on addressing the age gap, raising, in particular, the following questions:

- (1) Are the Enhanced Basic Education Act of 2013 and its Implementing Rules and Regulations (IRR)³¹ unconstitutional in extending the scope of compulsory education beyond the range established by the 1987 Philippine Constitution? If unconstitutional, what is the implication of this on the validity of the Act and its IRR?;
- (2) What is the effect of R.A. No. 10533 on the minimum age of admission to employment? Does raising the age of completion of compulsory education have the effect of increasing the minimum age to 18 years old?;
- (3) Do the Act and its IRR eliminate the gap between the two age limits?; and
- (4) Is the Philippines compliant with the requirements of C138 given that the age of completion has already been raised?

B. Methodology

The sources of data for this Article are desk research, key informant interviews, and consultations with stakeholders. Key informants³² from the

lex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3148723 (last accessed Aug. 27, 2015) [hereinafter ILO, CEACR Direct Request].

29. See International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations, *available at* <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm> (last accessed Aug. 27, 2015).

30. Enhanced Basic Education Act, § 4. See Official Gazette, The K to 12 Basic Education Program, *available at* <http://www.gov.ph/k-12> (last accessed Aug. 27, 2015).

31. Rules and Regulations Implementing the Enhanced Basic Education Act of 2013, Republic Act No. 10533 (2013) [hereinafter Enhanced Basic Education Act IRR].

32. The Key Informants are the following:

legislative department were interviewed to obtain their views on the issues and to gather their insights on the possible legal options that may effectively resolve the problem. The preliminary findings of the research were presented in a consultation³³ held on 27 May 2015 where representatives of the

Name of Informant	Designation	Date of Interview	Location of Interview
Aguirre, Dino	Legal Consultant, Office of Senator Angara	15 June 2015	Meeting Room 5, GSIS Building, Pasay City
Baguisi, Alain	Labor Head, Office of Senator Angara	15 June 2015	Meeting Room 5, GSIS Building, Pasay City
De Castro, Celeste	Secretary of the House Committee on Labor	20 May 2015	Ramon V. Mitra Building, Batasan Complex, Quezon City
Ricafort, Jiji	Secretary of the House Committee on Basic Education	20 May 2015	Ramon V. Mitra Building, Batasan Complex, Quezon City
Villaluz, Aline Ruth	Secretary on House Committee on Constitutional Amendments	14 May 2015	Ramon V. Mitra Building, Batasan Complex, Quezon City
Villarba, Hazel	Legal Staff, Office of Senator Angara	15 June 2015	Meeting Room 5, GSIS Building, Pasay City

33. The List of Participants in the Consultation on 27 May 2015 held in Subic, Olongapo City, Zambales, Philippines are the following:

Name of Participant	Agency
Myra Doncila	Associated Labor Unions Trade Union Congress of the Philippines — NAGKAISA
Ulysses Lustria, Jr.	Department of Agriculture
Usec. Alberto Muyot (reactor)	DepEd
Anna Marie Baligod-San Diego	DepEd Bureau of Secondary Education
Roger Masapol	DepEd Central Office
Fe Perlata	DepEd Naga
Helen Bose	DepEd Region 3
Eva Dollosa	DepEd Region 6
Maria Cristina Bahinting	DepEd Region 6
Ronaldo Sevilla	DepEd Region 4A
Rosalinda Sanchez	DepEd Region 4
Aurora Halcon	DOLE National Capital Region
Criste Perfecto	DOLE Region 10
Leilani Reynoso	DOLE Region 3

Department of Labor and Employment (DOLE) and the Department of Education (DepEd) gave their feedback and suggestions. Opinions of key informants and participants in the consultation are cited, when relevant. The findings were further validated in a consultation held on 28 July 2015 with representatives of the National Child Labor Committee (NCLC) and others from the government and private sectors.³⁴

Mary Agnes Capigon	DOLE Region 6
Nicanor Bon	DOLE Bureau of Working Conditions
Joselito Manabat	DOLE Bureau of Workers with Special Concerns
Maribeth Casin	DOLE Bureau of Workers with Special Concerns
Ginette Lopez	DOLE Bureau of Workers with Special Concerns
Rey Jose Soriano	DOLE Occupational Safety and Health
Florence Pasos	Educational Research and Development Assistance
Brenalyn Peji	Institute for Labor Studies
Emy India	Laura Vicuna
Buenaluz Guagano	Technical and Skills Development Assistance
Leonora Quarte	Trade Union Congress of the Philippines

34. The List of Participants in the Validation Session on 28 July 2015 held at the International Labour Organization, RCBC Plaza, Makati City:

Name of Participant	Agency
Erlinda Aguilar	Council for the Welfare of Children
Ulysses Lustria, Jr.	Department of Agriculture - Planning and Monitoring Service
Mauro Mabutol	Department of Agriculture - Planning and Monitoring Service
Sorayda Rangiris	DepEd - Legal Affairs
Mely Lim	DepEd - Bureau of Alternative Learning System
Anna Marie Baligod-San Diego	DepEd Bureau of Secondary Education
Benito Basil	Department of Interior and Local Government - National Barangay Operations Office
Rosalie Paje	Department of Health - Family and Health Office
Joana Kim Ong	Department of Justice
Nicanor Bon	DOLE Bureau of Working Conditions
Diane Alavado	DOLE Bureau of Working Conditions
Maribeth Casin	DOLE Bureau of Workers with Special Concerns
Aurora Halcon	DOLE National Capital Region
Gerry Malagpo	DOLE National Capital Region
Joseph Santos	DOLE Region 3

In determining the constitutionality of the extension of the duration of compulsory education, this Article analyzes the intention of the Constitution based on its text and also the deliberations of its framers. The principles of statutory construction are applied in determining the effect of Enhanced Basic Education Act on the minimum employable age set by Special Protection of Children Against Abuse, Exploitation and Discrimination Act or R.A. No. 7610,³⁵ as amended by R.A. No. 9231, and in verifying whether Enhanced Basic Education Act closed the age gap. With respect to determining whether the Philippines is compliant with C138, this Article employs a comparative analysis of the provisions of the Convention, CEACR Recommendations and Direct Requests, and the relevant domestic laws.

In the course of the analysis, there are discussions on the feasibility and practicality of increasing the minimum employable age to the level of the completion age. For this purpose, this Article looks into the available information on the standards in the region of the Association of Southeast Asian Nations (ASEAN) as well as other countries. Some extrapolations are

Greg Sigul, Jr.	DOLE Region 3
Nelia Granadillos	DOLE Occupational Safety and Health
Winnie Recio	DOLE Region 4A
Julius Cainglet	Federation of Free Workers
Brenalyn Peji	Institute for Labor Studies
Mercedez Juncia	Laura Vicuna
Edgardo Aranjuez II	National Economic Development Authority – Social Development Staff
Aleli Joy Gonzales	National Economic Development Authority – Social Development Staff
Marie Elaine Ceralde	National Economic Development Authority – Social Development Staff
Ismael Ballano	National Bureau of Investigation – Violence Against Women and Children’s Desk
Buenaluz Gaugano	Technical and Skills Development Assistance – Public Information Office
Rafael Mapalo	Trade Union Congress of the Philippines
Roland Pacis	Visayan Forum
Jayson Befus	World Vision
Ruth Georget	International Labour Organization
Giovanni Soledad	International Labour Organization
Teresita Victoria	International Labour Organization

35. 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).

made from local statistics on child labor generated by the Philippine Statistics Authority over the course of three timeframes.

II. CONSTITUTIONALITY OF THE PROVISION ON COMPULSORY SECONDARY EDUCATION IN THE ENHANCED BASIC EDUCATION ACT OF 2013

A. *Compulsory Education in the 1987 Constitution*

The promotion and protection of the right of citizens to quality and accessible education at all levels is a policy enshrined in the 1987 Philippine Constitution.³⁶ Pursuant to this, the Constitution provides that elementary education is compulsory; thus, the State shall “[e]stablish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, *elementary education is compulsory for all children of school age*[.]”³⁷

While free public education extends up to the high school level, compulsory education only covers the elementary level.³⁸ Establishing a compulsory elementary education is consistent with Article XIII, paragraphs 1 and 2 of the International Covenant on Economic, Social and Cultural Rights,³⁹ which states that “[p]rimary education shall be compulsory and available free to all[.]”⁴⁰ as well as Article 26, Section 1 of the Universal Declaration of Human Rights,⁴¹ which states that “[e]lementary education shall be compulsory.”⁴²

Much deliberation took place among the members of the Constitutional Commission on whether elementary education should be made compulsory.⁴³ The majority opined that it is necessary to stop the decline in the country’s literacy rate, and they recognized that the retrogression in literacy “has a chain reaction to the problems of involuntary child labor, child prostitution[,] and the host of other social ills that arise from ignorance.”⁴⁴ In interpreting the “compulsory” character of the provision,

36. PHIL. CONST. art. XIV, § 1.

37. PHIL. CONST. art. XIV, § 2 (2). (emphasis supplied).

38. PHIL. CONST. art. XIV, § 2 (2).

39. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

40. *Id.* art. 13, ¶ 2 (a).

41. Universal Declaration of Human Rights, *opened for signature* Dec. 10, 1948, U.N. G.A. Res. 217A (III), UN Doc A/810 at 71 (1948).

42. *Id.* art. 26 (1).

43. IV RECORD OF CONSTITUTIONAL COMMISSION 268 (1986).

44. *Id.* at 264.

they considered it as a “soft mandate” because it does not carry with it any sanction or penalty.⁴⁵ It merely imposes a “moral suasion” without precluding Congress from enacting laws that may impose reasonable sanctions,⁴⁶ “in the event that circumstances should justify the imposition of a penalty.”⁴⁷ This is in deference to the natural right of parents to rear their children. Commissioner Felicitas S. Aquino introduced the natural right of parents as a condition because

however strong its interest in universal compulsory education, the State’s interest is not absolute to the exclusion of all the other interests. It is consistent in jurisprudence that the children are not mere creatures of the State. Those who nurture them and those who direct their destinies have the primary right to develop them for additional obligations.⁴⁸

The minority disagreed with the use of the word “compulsory,” arguing that there is no point in referring to it as such if the Constitution does not provide any sanction.⁴⁹ In addition, they contended that parents do not need to be compelled by the State to send their children to school because parents already have an inner compulsion to do so.⁵⁰ Expounding on this, Commissioner Bernardo M. Villegas said —

We do not have to compel parents. That is anthropologically and culturally established that as part of the Asian region, parents have already an inner compulsion to send their children to school. The only reason why literacy has dropped in a very alarming way in the last few years is economic: [e]ither they are needed by their parents to help out in the farm or their parents do not have the money, not necessarily for tuition, but for transportation and all the other items that have been enumerated.⁵¹

In the same vein, Commissioner Ponciano L. Bennagen maintained that

[a]ll empirical studies on Filipino values point to education as one of the leading values that are upheld by Filipino families because they look at education as a vehicle for social mobility although this is not exactly supported by data. ... [O]utside of the legal compulsion, there is a psychological compulsion amongst parents to send their children to school limited only by the inadequacy of the State and sometimes the family itself to meet this high value that is placed on education as a vehicle for upward mobility.⁵²

45. *Id.* at 266.

46. *Id.* at 265-66.

47. *Id.* at 266.

48. *Id.* at 264.

49. IV RECORD OF CONSTITUTIONAL COMMISSION, *supra* note 43, at 265.

50. *Id.* at 267.

51. *Id.*

52. *Id.*

The debate was resolved in favor of making elementary education compulsory, subject to the natural right of parents to rear their children, with 15 votes in favor, 13 against, and one abstention.⁵³

Several years before the passage of the constitutional provision on compulsory education, Congress had enacted statutes that penalize the failure of parents to send their children to school. According to Presidential Decree (P.D.) No. 603,⁵⁴ which was legislated in 1974, “[c]riminal liability shall attach to any parent who ... [n]eglects the child by not giving him the education which the family’s station in life and financial conditions permit.”⁵⁵ The impossible penalty is “imprisonment from two or six months or a fine not exceeding five hundred pesos or both, at the discretion of the Court unless a higher penalty is provided for in the Revised Penal Code [(RPC)] or special laws[.]”⁵⁶

The RPC,⁵⁷ which took effect in 1932, penalizes the crime of parental indifference committed by “parents who shall neglect their children by not giving them the education which their station in life requires and financial condition permits.”⁵⁸ The penalty for this crime is imprisonment of one month and one day to six months and a fine not exceeding five hundred pesos.⁵⁹

The members of the Constitutional Commission are presumed to have known the existing penal sanctions when they drafted the 1987 Constitution. In fact, Commissioner Florenz D. Regalado referred to the RPC felony of indifference of parents during the deliberation on compulsory education.⁶⁰ Thus, the provisions of P.D. No. 603 and the RPC on the failure of parents to provide education to their children may be viewed as examples of circumstances that justify the imposition of reasonable penalties consistent with the intention of the framers of the Constitution.

Based on the provisions of P.D. No. 603 and the RPC, although the failure of parents to send their children to school is punishable, the family’s financial restrictions justify non-compliance. Another exemption to the

53. *Id.* at 269.

54. The Child and Youth Welfare Code [CHILD AND YOUTH WELFARE CODE], Presidential Decree No. 603 (1974).

55. *Id.* art. 59 (4).

56. *Id.* art. 60.

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

58. *Id.* art 277, ¶ 2.

59. *Id.* art 277, ¶ 1.

60. IV RECORD OF CONSTITUTIONAL COMMISSION, *supra* note 43, at 268.

parental obligation to provide education is when compulsory education impinges on the right to free exercise of religion.⁶¹

B. Compulsory Education Under the Enhanced Basic Education Act of 2013

The Enhanced Basic Education Act expands the duration of compulsory education to cover kindergarten, elementary, and secondary education. Section 4 of the Act does so in the following manner —

The enhanced basic education program encompasses at least one (1) year of kindergarten education, six (6) years of elementary education, and six (6) years of secondary education, in that sequence. Secondary education includes four (4) years of junior high school and two (2) years of senior high school education.

Kindergarten education shall mean one (1) year of preparatory education for children at least five (5) years old as a prerequisite for Grade I.

Elementary education refers to the second stage of compulsory basic education which is composed of six (6) years. The entrant age to this level is typically six (6) years old.

Secondary education refers to the third stage of compulsory basic education. It consists of four (4) years of junior high school education and two (2) years of senior high school education. The entrant age to the junior and senior high school levels are typically [12] and [16] years old, respectively.⁶²

The Implementing Rules and Regulations of the Act expounded on the compulsory nature of basic education by stating that “[i]t shall be compulsory for every parent or guardian or other persons having custody of a child to enroll such child in basic education, irrespective of learning delivery modes and systems, until its completion, as provided for by existing laws, rules[,] and regulations.”⁶³

The Enhanced Basic Education Act is a consolidation of House Bill No. 6643⁶⁴ and Senate Bill No. 3286.⁶⁵ The House Bill did not state that basic

61. See generally *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) & *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

62. Enhanced Basic Education Act, § 4, ¶¶ 1-4 (emphasis supplied).

63. Enhanced Basic Education Act IRR, § 7.

64. An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor and for Other Purposes, H.B. No. 6643, 15th Cong., 3d Sess. (2012).

65. An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor and for Other Purposes, S.B. No. 3286, 15th Cong., 3d Sess. (2012).

education is compulsory. It is the Senate Bill that provided that kindergarten and high school education are components of compulsory basic education.⁶⁶

In addition to expanding the duration of compulsory schooling, the Enhanced Basic Education Act extended high school by two years.⁶⁷ The high school level is now divided into four years of junior high school (Grades 7 to 10) and two years of senior high school (Grades 11 to 12).⁶⁸ The new curriculum for high school introduces optional courses or career pathways, which prepare the students for the world of work. Technology and Livelihood Education courses are offered in junior high school.⁶⁹ In senior high school, students choose from three areas of specializations or tracks, namely: Academic, Technical-Vocational-Livelihood, and Sports and Arts.⁷⁰ During this period, students may pursue earn-while-you learn opportunities to provide them actual experience and exposure in their chosen field.

C. Constitutionality of the Enhanced Basic Education Act of 2013

The enactment of Enhanced Basic Education Act has created a situation where a statute extended the duration of compulsory education to a period beyond what the Constitution has specified. Is this valid? A fundamental principle of statutory construction is that every statute is presumed valid.⁷¹ Until and unless the Supreme Court declared such law unconstitutional, a statute is considered operative and must be complied with. At least four petitions have been filed with the Supreme Court questioning the constitutionality of the Enhanced Basic Education Act, and asking for the issuance of restraining orders to stop the implementation of the Act.⁷² The

66. *Id.* § 4.

67. Enhanced Basic Education Act, § 4.

68. *Id.*

69. Official Gazette, *supra* note 30.

70. *Id.*

71. RUBEN E. AGPALO, STATUTORY CONSTRUCTION 66 (6th ed. 2009) (citing *Salas v. Jarencio*, 46 SCRA 734 (1970); *Morfe v. Mutuc*, 22 SCRA 424 (1968); & *Peralta v. Commission on Elections*, 82 SCRA 30 (1978)).

72. Vince Alvic Alexis F. Nonato, *Parents, teachers in fifth petition vs K to 12*, BUSINESSWORLD, June 22, 2015, available at <http://www.bworldonline.com/content.php?section=Nation&title=parents-teachers-in-fifth-petition-vs-k-to-12&id=110089> (last accessed Aug. 25, 2015). The first petition, entitled *Council of Teachers and staff of Colleges and Universities of the Philippines (CoTeSCUP), et al. v. Secretary of Education, et al.*, dated 11 March 2015, mainly argues that the Act does not provide sufficient standards to afford full protection to teachers against work displacement. The second petition, entitled *Antonio F. Trillanes IV, et al. v. Hon. Paquito N. Ochoa, Jr., et al.* dated 6

petitions filed by the National Union of Progressive Lawyers⁷³ and the Suspend K-12 Coalition,⁷⁴ respectively, question the Act for having expanded the duration of compulsory education.

From a practical standpoint, the Supreme Court will most likely carefully tread down the path of declaring the Act unconstitutional considering that it has been in place for two years and has been rolled out nationwide. This is apparent in the fact that although petitions have been filed earlier, together with applications for injunction and temporary restraining order (TRO), the Supreme Court has not issued a TRO to suspend the implementation of the Act.

From a legal perspective, the constitutional provision on compulsory education should be interpreted as setting a lower limit and not a prohibition against aspiring for a universal education for Filipino children up to a higher level. While it is unconstitutional for Congress to enact a law setting a lower standard, for instance, providing that compulsory education is only up to kindergarten, it is within the tenets of the Constitution for the legislature to extend the duration of compulsory education beyond the constitutionally specified period. A restrictive interpretation of the provision will defeat the aim of the Constitution to “[e]stablish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society.”⁷⁵ The provision should be interpreted with sufficient flexibility to make it responsive to the needs of the times. As the Court held in *Roman Cath. Apostolic Adm. of Davao, Inc. v. Land Reg. Com., et al.*,⁷⁶

[a]lthough the meaning or principles of a constitution remain fixed and unchanged from the time of its adoption, a constitution must be construed as if intended to stand for a great length of time, and it is progressive and not static. Accordingly, it should not receive too narrow or literal an interpretation but rather the meaning given it should be applied in such manner as to meet new or changed conditions as they arise.⁷⁷

May 2015, primarily questions the lack of consultation prior to the enactment of the law and the lack of resources to ensure quality and accessible education. *Id.*

73. Lira Dalangin-Fernandez & Brian Maglungsod, NUPL, Suspend K12 Coalition filed 3rd petition vs K-to-12, as 4th suit set for Friday, available at <http://www.msn.com/en-ph/news/national/nupl-suspend-k12-coalition-file-3rd-petition-vs-k-to-12-as-4th-suit-set-for-friday/ar-BBkLIIm> (last accessed Aug. 27, 2015).
74. Rey E. Requejo, *Group asks SC to stop K-12*, MANILA STAND. TODAY, May 29, 2015, available at <http://manilastandardtoday.com/2015/05/29/group-asks-sc-to-stop-k-12/#.VWhwu41sJQk.facebook> (last accessed Aug. 27, 2015).
75. PHIL. CONST. art IV, § 2 (1).
76. *Roman Cath. Apostolic Adm. of Davao, Inc. v. Land Reg. Com., et al.*, 102 Phil. 596 (1957).
77. *Id.* at 628 (citing *United States v. Lassic*, 313 U.S. 299 (1941)).

As demonstrated during the committee deliberations on the Act, there is a necessity to expand compulsory education up to the high school level because the Philippines has been left behind by the rest of the world, except for three other countries, in adopting a 12-year basic education. The former system was short by two years compared to the global standard. This concern was raised in an inter-committee meeting in the 15th Congress, in the following manner —

[I]mperative reforms all across the education sector is best underscored by the 2011 Global Competitiveness Report from the World Economic Forum. ... [T]he Philippines has moved by ... [10] points, but still ranks 75, and ... there are many ASEAN countries above us.

There is a study on quality of education and the Philippines ranked fifth among the eight ASEAN countries. And we are the last in the quality of science and [mathematics] education, and capacity for innovation.

Although [the Philippines is] really putting emphasis on addressing the inputs in education[,] ... this is not enough. The department believes that [our basic education system must be transformed] so that our graduates could really be at par with other countries, and this is [through] K to 12 Basic Education Program.

The inadequacy of [the] current system is represented by the fact that [the Philippines is] the last country in Asia and one of the three countries with only 10-year basic education. It means that [the Philippine education system is] delivering a 12-year curriculum within 10 years. And this is a congested curriculum, and that is one of the main reasons why [Filipino] students could not master the basic competencies.⁷⁸

Historically, laws have been passed setting an educational standard higher than what is provided in the Constitution. In the 1935 Constitution, education was not compulsory at any level.⁷⁹ Despite this, the Educational Act of 1940 provided for compulsory attendance in elementary schools,⁸⁰ which was later reinforced by the Elementary Education Act of 1953.⁸¹ Education was also not compulsory at any level in the 1973 Constitution,⁸²

78. Committee on Education, Arts, and Culture Joint with Committee on Ways and Means, Committee on Finance, and Committee on Science and Technology, at 20-21, 15th Cong., 2d Sess. (Feb. 16, 2012).

79. 1935 PHIL. CONST. art. XIV, § 5 (superseded 1971).

80. An Act to Provide for the Revision of the System of Public Elementary Education in the Philippines Including the Financing Thereof [Educational Act], Commonwealth Act No. 586, § 5 (1940).

81. An Act to Declare the Policy on Elementary Education in the Philippines [Elementary Education Act], Republic Act No. 896, § 5 (1953).

82. See 1973 PHIL. CONST. art. XV, § 8 (superseded 1987).

and yet elementary education remained compulsory under the Education Act of 1982.⁸³

D. Constitutionality of the IRR of the Enhanced Basic Education Act of 2013

As regards the validity of the IRR, the basic rule in administrative law is that, “to be valid, administrative rules and regulations must be issued by authority of a law and must not contravene the provisions of the Constitution.”⁸⁴ The IRR of the Enhanced Basic Education Act complies with both conditions. First, the DepEd Secretary, the Commission on Higher Education Chairperson, and the Technical Education and Skills Development Authority Director-General issued the IRR of the Act under the authority of Section 16 of the law.⁸⁵ Second, Section 7 of the IRR is consistent with the provisions of the Act in declaring that basic education, which includes high school, is compulsory.⁸⁶ Consequently, it is also constitutional for the same reasons that the Act is considered to be so, as “[r]ules and regulations issued by administrative or executive officers in accordance with, and as authorized by, law have the force and effect of law or partake the nature of a statute.”⁸⁷

E. Effect of Enhanced Basic Education Act on Special Protection of Children Act

Prior to the Enhanced Basic Education Act, the entrant age to the elementary level was seven years old, which puts the age of completion of compulsory education at 12 years old.⁸⁸ Currently, the Act fixes the entrant age to kindergarten at six years old.⁸⁹ With one year of kindergarten, six years of elementary school, and six years of high school, the typical age at which basic compulsory education is completed is 18 years old.⁹⁰ Does the Enhanced Basic Education Act have the effect of raising the minimum age

83. An Act Providing for the Establishment and Maintenance of an Integrated System of Education [Education Act], Batas Pambansa Blg. 232, § 20 (1) (1982).

84. AGPALO, *supra* note 71, at 59 (citing Department of Agrarian Reform v. Sutton, 473 SCRA 392, 399 (2005)).

85. Enhanced Basic Education Act of 2013, § 16.

86. Enhanced Basic Education Act IRR, § 7.

87. AGPALO, *supra* note 71, at 42 (citing Victorias Milling Company, Inc. v. Social Security Commission, 4 SCRA 627 (1962)).

88. Department of Education, Culture and Sports, Guidelines for Enrollment and Organization of Classes in Elementary and Secondary Schools, DECS Memorandum Order No. 110, Series of 1988 [DECS Memo. Order No. 110, s. 1988] (1988).

89. Enhanced Basic Education Act of 2013, § 4.

90. *Id.* See Official Gazette, *supra* note 30.

for admission to employment to the same level, i.e., 18 years old, as the age of completion of compulsory education?

A statute is amended only by a subsequent law which provides for such amendment.⁹¹ Where there is no express stipulation, a law may be considered impliedly amended by another, provided that the two laws cover the same subject and the particular provisions in question cannot be reconciled with each other,⁹² thus —

An amendment by implication is neither presumed nor favored. On the contrary, every statute should be harmonized with other laws on the same subject, in the absence of a clear inconsistency between them. The legislative intent to amend a prior law on the same subject is usually shown by a statement in the later act that any provision of law which is inconsistent therewith is modified accordingly. The absence of such a provision in the statute does not, however, mean that the subsequent law may no longer operate to amend or modify a prior act on the same subject; it so operates as long as there is an irreconcilable repugnancy between them.⁹³

The Enhanced Basic Education Act does not expressly amend R.A. No. 9231 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. The repealing clause in the former specifies the laws that it intends to repeal or modify, and the enumeration does not include R.A. 9231.⁹⁴ There is a general statement repealing or modifying all other laws that are inconsistent with R.A. No. 10533,⁹⁵ however, implied amendment does not apply in this case. First, R.A. No. 9231 and R.A. No. 10533 do not deal with the same subject. On the one hand, R.A. No. 9231 provides for the “special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labor and its worst forms[.]”⁹⁶ Setting the minimum age of employment is one of the protective measures instituted by this law.⁹⁷ While compulsory education is one of the most effective means of combating child labor, R.A. No. 9231 does not make any direct reference to it. R.A. No. 9231 only states that

91. AGPALO, *supra* note 71, at 529–30.

92. *Id.* at 530.

93. *Id.* (citing *People v. Olarte*, 108 Phil. 756 (1960); *Manila Railroad Co. v. Rafferty*, 40 Phil. 224 (1919); & *Garcia Valdez v. Soteraña Tuason*, 40 Phil. 943 (1920)).

94. Enhanced Basic Education Act of 2013, §18.

95. *Id.*

96. R.A. No. 9231, § 1.

97. *Id.* § 2.

working children should have access to training and education.⁹⁸ On the other hand, R.A. No. 10533 seeks to “establish, maintain[,] and support a complete, adequate, and integrated system of education relevant to the needs of the people, the country[,] and society-at-large.”⁹⁹ The employment of children is not within its scope.

Even assuming that the two statutes cover the same matter, the situation does not meet the second requisite of an implied repeal. The two laws are not repugnant with each other. A minimum employable age that is lower than the age of completion does not rule out the possibility that children who are already allowed to work will stay in school until they complete their basic education. Work and school are not strictly incompatible. R.A. No. 9231 recognizes this by allowing children below 15 years old to work under strict conditions, at the time when the age of completion of compulsory education was still 12 years old.¹⁰⁰

In sum, since R.A. No. 10533 does not expressly amend the minimum age of employment in R.A. No. 9231 and the conditions for an implied repeal are not present, the minimum employable age stands at 15 years old. R.A. No. 10533 does not have the effect of raising the minimum age to the same level at which compulsory education is completed under the new educational system. This interpretation is consistent with the Department of Justice’s (DOJ) opinion on the matter.¹⁰¹

F. Compliance with C138

Article 2 of C138 provides the basic standards for a minimum age of admission to employment which ratifying States should adopt in their national laws, thus:

- (1) Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

...

98. *Id.* § 4.

99. Enhanced Basic Education Act of 2013, § 2.

100. R.A. No. 9231, § 2.

101. See Department of Justice, DOJ Opinion No. 33, Series of 2015 (Apr. 27, 2015).

- (3) The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.¹⁰²

Based on Article 2, the requisites for setting the minimum age at which a child is allowed to work are: first, the minimum age shall not be less than the age of completion of compulsory schooling; and second, it shall not be less than 15 years old.

Prior to R.A. No. 10533, the three-year variance was between a minimum age of employment that was higher than the age of completion of compulsory schooling. On the other hand, the new educational system puts the minimum age of employment three years less than the age of completion. Despite this, the DOJ considers the Philippines as still compliant with C138 because it is of the opinion that what is controlling is the age limit of 15 years old and not the completion of compulsory schooling.¹⁰³ It points out that Article 7 (2) of C138 actually contemplates a situation where work is allowed for those who are at least 15 years old but have not completed their education.¹⁰⁴

Article 7 of C138 provides as follows —

- (1) National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:]
- (a) not likely to be harmful to their health or development; and
 - (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training [programs] approved by the competent authority or their capacity to benefit from the instruction received.
- (2) *National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in subparagraphs (a) and (b) of paragraph 1 of this Article.*
- (3) The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.¹⁰⁵

To emphasize, children who are at least 15 years old but have not yet completed schooling may be permitted to work provided that two

102. C138, *supra* note 11, art. 2 (1) & (3) (emphasis supplied).

103. Department of Justice Opinion No. 33, s. 2015.

104. *Id.*

105. C138, *supra* note 11, art. 7 (emphasis supplied).

conditions are met: (a) the work is not likely to be harmful to their health or development; and (b) it does not prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority, or their capacity to benefit from the instruction received.

In compliance with the first condition, R.A. No. 9231 prohibits the employment of children in hazardous work.¹⁰⁶ The Philippines is in the process of reviewing DOLE Department Order No. 4, series of 1999,¹⁰⁷ which lists down the types of work that are considered as such.¹⁰⁸

What appears to lack sufficient safeguards — which may bring into question the Philippines' compliance with CI38 — is the aspect of school attendance or participation in vocational or training programs in relation to work hours. A review of R.A. No. 9231 shows that while it aims to ensure access to education and training, the provisions on work hours tend to negate this objective. It provides that “[n]o child shall be deprived of formal or non-formal education”¹⁰⁹ and in “all cases of employment allowed in [the law], the employer shall provide a working child with access to at least primary and secondary education.”¹¹⁰ It provides further that DepEd “shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral[,] and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.”¹¹¹ The following provisions of R.A. No. 9231 on work hours, however, do not provide sufficient opportunity for working children to attend school or training:

- (1) A child [15] years of age but below [18] shall not be allowed to work for more than eight [] hours a day, and in no case beyond [40] hours a week;¹¹²
- (2) [N]o child [15] years of age but below [18] shall be allowed to work between 10 o'clock in the evening and six o'clock in the morning of the following day.¹¹³

106. R.A. No. 9231, § 3.

107. Department of Labor and Employment, Hazardous Work and Activities to Persons Below 18 Years of Age, Department Order No. 4, Series of 1999 [DOLE D.O. No. 4, s. 1999] (Sep. 4, 1999).

108. *Id.* § 3.

109. R.A. No. 9231, § 4.

110. *Id.*

111. *Id.*

112. *Id.* § 3.

113. *Id.*

Because the law allows the child to work up to eight hours a day, and until 10 o'clock at night, it opens the door for employers to maximize and take advantage of that latitude. It is after all legal to do so. In theory, the child has the option to pursue non-formal schooling under the DepEd's Alternative Learning System or other forms of training. However, it will be difficult for the child to benefit meaningfully from the instruction he or she receives if the child works eight hours a day. Such an arrangement may leave even a full-grown adult too exhausted to study and learn effectively. Additionally, allowing the child to work as late as 10 o'clock in the evening is likely to be harmful to the child's health and development. Thus, R.A. No. 9231 must be amended to shorten the hours of work and to adjust the start of the night work prohibition to an earlier hour.

Finally, the CEACR, in its Direct Request to the Philippines, emphasized that the State should move towards linking the minimum employable age with the completion age for schooling, thus —

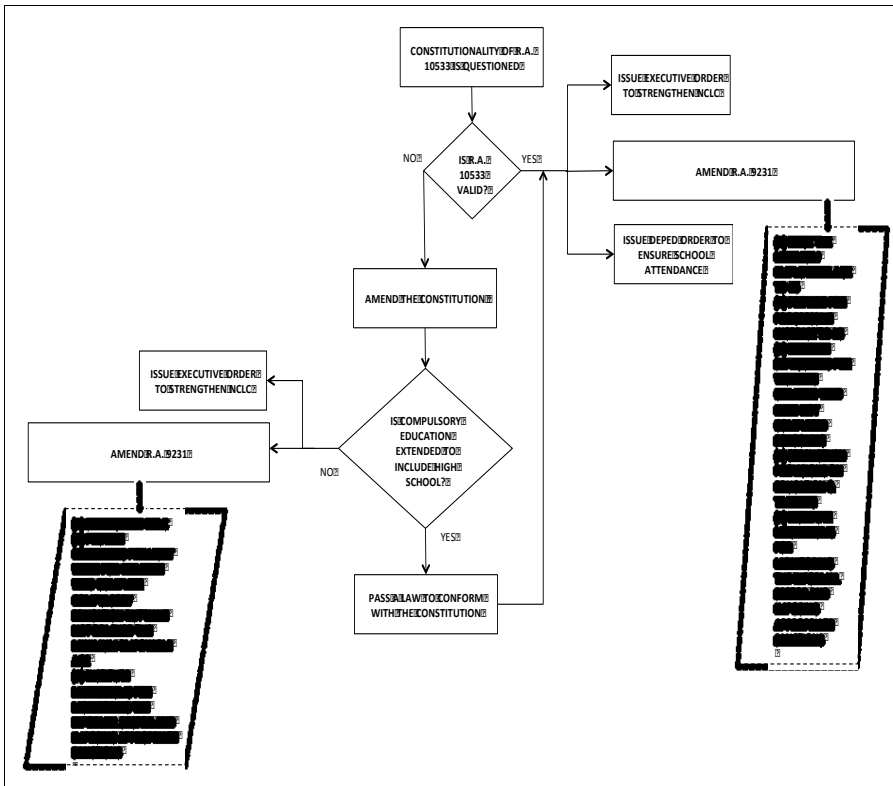
The Committee once again emphasizes the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work. It points out that, if the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work. ... [I]f compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children. *The Committee requests the Government to indicate clearly the age of completion of compulsory schooling under the terms of the Enhanced Basic Education Act.*¹¹⁴

III. LEGAL OPTIONS IN BRIDGING THE AGE GAP

The decision of the Supreme Court on the pending cases questioning the constitutionality of the Enhanced Basic Education Act will determine whether the Act, or its specific provision on compulsory education, is valid. If the Act or the questioned provision is declared unconstitutional, the situation will revert to the status quo prior to the law, i.e., the age of completion is lower than the minimum age of employment. If it is constitutional, it creates a reverse gap where children 15 years old to below 18 years old are allowed to work even if they have not yet completed compulsory schooling. Thus, regardless of the outcome of the cases pending with the Supreme Court, there will still be a gap between the minimum employable age and the age of completion. The following flowchart and discussion explore the legal options to eliminate the gap under either scenario.

114. See ILO, CEACR Direct Request, *supra* note at 28.

Flowchart of Possible Legal Options



A. If the Extended Compulsory Education Violates the Constitution

If the Enhanced Basic Education Act or its specific provision on compulsory education is declared unconstitutional, then the extension of compulsion will be void and the age of completion will be relaxed back to 12 years old. Only an amendment of the Constitution can extend the duration of compulsory education so that the completion age will not be less than the minimum employable age.

A constitutional amendment, however, is difficult to initiate. A vote of three-fourths of all the members of Congress is required to propose an amendment.¹¹⁵ In the alternative, two-thirds of all the members of Congress may call a constitutional convention or, through a majority vote, leave it to the electorate to decide whether a constitutional convention should be called.¹¹⁶ Amendments proposed directly by Congress or through a constitutional convention must be ratified by a majority of the electorate in a

¹¹⁵ PHIL CONST. art. XVII, § 1.

¹¹⁶ *Id.* § 3.

plebiscite.¹¹⁷ A third mode of revising the Constitution is through the people's initiative, which is triggered by a petition of at least 12% of the total number of registered voters, where every legislative district is represented by at least three percent of its registered voters.¹¹⁸

If the Constitution is amended to extend compulsory education up to high school, whether up to junior or senior high, Congress should pass a new law that will readjust the duration of compulsory education accordingly and facilitate its implementation and enforcement.

It appears that generating the requisite numbers to support a constitutional change is unlikely to happen soon as it is not a priority of the present Congress.¹¹⁹ Moreover, the public is generally wary about any move to alter the Constitution because it is viewed as a strategy to extend the term of those in power beyond the constitutional limits.¹²⁰

In the absence of a constitutional amendment, the age gap will remain and the period of enforced inactivity will subsist. Measures should be taken to prevent the exploitation of children who fall within the age gap. The immediate solution is to lobby with the President to issue an Executive Order to strengthen the NCLC. This will give the NCLC the mandate, and the necessary funds, to implement its programs, which are not provided for under R.A. No. 9231. At present, the members of the NCLC operate under a Memorandum of Agreement and they source the funds for NCLC from their respective agency allocations. This situation has clipped the wings of NCLC. In obtaining the necessary resources, it has to compete with the other priorities of the member-agencies.

To further strengthen the NCLC, R.A. No. 9231 should be amended to give the NCLC the legal mandate to address child labor as well as provide the appropriations to support its programs. Compared to the issuance of an Executive Order, the amendment of R.A. No. 9231 is the more robust approach to strengthening the NCLC and its programs. An Executive Order, on one hand, while it may have the force and effect of law, is a presidential prerogative, which may be superseded by the act of one person — the same president who issued it or a new president.¹²¹ A statute, on the

117. *Id.* § 4.

118. *Id.* § 2.

119. Interview with Aline Ruth Villaluz, Secretary of the House Committee on Constitutional Amendments, in the Ramon V. Mitra Building, Batasan Complex, Quezon City (May 14, 2015) (on file with Author).

120. See Philippine Star, *Again, Cha-cha*, PHIL. STAR, Oct. 1, 2011, available at <http://www.philstar.com/opinion/732323/editorial-again-cha-cha> (last accessed Aug. 27, 2015).

121. See *Philippine Association of Service Exporters, Inc. v. Torres*, 225 SCRA 417, 428 (1993).

other hand, is an act of legislature, which continues to operate unless repealed or altered by Congress in accordance with the procedure prescribed by the Constitution and the rules of the Senate and the House of Representatives.¹²²

To address the period of enforced inactivity and prevent the exploitation of children who have completed compulsory education but are not old enough to work, R.A. No. 9231 should be amended to allow children within the age gap to engage in light work, consistent with the conditions laid out in Article 7 of C138. In particular, (a) the youngest age for light work should be 13 years old; (b) the work is not likely to be harmful to their health or development and it is not such as to prejudice their attendance at school or their participation in vocational orientation or training programs; (c) the work does not affect their capacity to benefit from the instruction received; and (d) the amendment should prescribe the type of work, as well as the conditions and hours of work. But because C138 sets the lower limit for light work at 13 years old, the 12-year olds will still have to wait for a year before they may be allowed to do light work.

Further, R.A. No. 9231 should provide a comprehensive framework for monitoring and addressing child labor in the informal sector. As noted by the Author in another study, the lack of clear legal provisions that impose sanctions on violations of child labor laws in the informal economy is a critical gap considering that almost half of the labor force is from this sector.¹²³

The amendment of R.A. No. 9231 will entail the same procedure as enacting a new law altogether.¹²⁴ To begin the process, a bill or proposed legislative measure must be signed by a member or members of Congress and filed with the Secretary of the House of Representative or the Senate, depending on where the bill originates.¹²⁵ The bill goes through three readings.¹²⁶ After approval on the third reading, the bill is transmitted to the

122. AGPALO, *supra* note 71, at 66-67.

123. NINA PATRICIA D. SISON-ARROYO, A LEGAL REVIEW OF NATIONAL LAWS AND REGULATIONS RELATED TO CHILD LABOUR AND FORCED LABOUR IN THE PHILIPPINES 52 (2013).

124. See PHIL. CONST. art. VI, §§ 26-27; JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY, 782-94 (2009); AGPALO, *supra* note 71, at 5-10; Senate of the Philippines, Legislative Process, available at <http://www.senate.gov.ph/about/legpro.asp> (last accessed Aug. 27, 2015); & House of Representatives of the Philippines, Legislative Process, available at <http://www.congress.gov.ph/legisinfo/?l=process> (last accessed Aug. 27, 2015).

125. AGPALO, *supra* note 71, at 6.

126. *Id.* at 6-7 & PHIL. CONST. art. VI, § 26 (2).

House of Representatives if it originated from the Senate, or to the Senate if it originated from the House.¹²⁷ If the bill is approved without any amendments after three readings by the other chamber, it will be transmitted to the President who may either approve or veto it.¹²⁸ If the reviewing chamber introduces any revision to the bill, a Conference Committee consisting of members nominated from both chambers will resolve the disagreeing provisions and may recommend new provisions.¹²⁹ The Conference Committee will then submit a report to both chambers.¹³⁰ If the report is approved, the Conference Committee's version of the bill is adopted and transmitted to the President for approval.¹³¹ The bill becomes a law once the President approves it and it is published in accordance with the prescribed requirements.¹³²

B. If the Extended Compulsory Education does not Violate the Constitution

If the Supreme Court finds that the Act, or its specific provision on compulsory education, does not violate the Constitution, then the same is valid. Consequently, the age of completion is pushed up three years higher than the minimum age of employment; hence, a reverse gap is created. Amending Enhanced Basic Education Act to reduce the age of completion down to 15 years old is not a viable option to eliminate this gap. Congress will not back-pedal on the age of completion too soon after enacting a law that increased it. The current administration will also not consider lowering the age of completion just so it will coincide with the minimum age of employment because it is not consistent with the government's reform agenda of ensuring a basic education that works and a curriculum that is comparable with the rest of the world.¹³³

A possible solution is to amend R.A. No. 9231 to increase the minimum employable age to 18 years old. In doing so, the Philippines will be one of four countries in the ASEAN region with a minimum employable age that is consistent with the age of completion of compulsory education, the others being Cambodia, Singapore, and Thailand. But 18 years old is a relatively high minimum standard compared to other countries. It is four years higher than the modal minimum age among 59 mostly low-income countries

127. AGPALO, *supra* note 71, at 7.

128. *Id.* at 7-9 & PHIL. CONST. art. VI, § 27.

129. AGPALO, *supra* note 71, at 7-9.

130. *Id.*

131. AGPALO, *supra* note 71, at 9-10.

132. *Id.* & PHIL. CONST. art. VI, § 27 (1).

133. Alberto Muyot, Department of Education Undersecretary, at the Education and Child Labour Consultative Conference, in Subic Holiday Villas, Olongapo City, Zambales, Philippines (May 27, 2015).

worldwide.¹³⁴ It will place the Philippines at par with Indonesia, which has the highest minimum employable age in the region.¹³⁵ Malaysia set theirs at 16 years old;¹³⁶ Cambodia, Thailand, and Vietnam at 15 years old;¹³⁷ Brunei Darussalam, Laos, and Singapore at 14 years old;¹³⁸ and Myanmar at 13 years old.¹³⁹ The table below provides for a comparison of the minimum employable age and age of completion among ASEAN countries.

Table 1. Minimum Employable Age and Age of Completion of Compulsory Education in the ASEAN Region.¹⁴⁰

Country	Minimum Age of Employment	Starting Age of Schooling	Duraion of Compulsory Education	Age of Completion of Compulsory Education
Brunei Darussalam	14	6	9	15
Cambodia	15	6	9	15
Indonesia	18	7	8	15
Lao PDR	14	6	4	10
Malaysia	16	6	5	11
Philippines	15	5	13	18
Singapore	14	6	8	14
Thailand	15	6	9	14
Vietnam	15	6	8	14

From the viewpoint of the House Committee on Labor, increasing the minimum employable age to 18 years old should be in the legislative agenda,

134. Eric V. Edmonds & Maheshwor Shrestha, *The Impact of Minimum Age of Employment Regulation on Child Labor and Schooling: Evidence from UNICEF MICS Countries (An Unpublished Working Paper of the National Bureau of Economic Research)* 6, available at <https://www.dartmouth.edu/~eedmonds/documents/minage.pdf> (last accessed Aug. 27, 2015).

135. II FRIEDRICH EBERT STIFTUNG, *LABOUR LAWS AND PRACTICE IN ASEAN 119-20* (2013).

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.* See United Nations Educational, Scientific and Central Organization, *Education for All Global Monitoring Report*, available at <http://en.unesco.org/gem-report/node/6#sthash.bpqjPBL.dpbs> (last accessed Aug. 27, 2015).

however, there has been little support for it.¹⁴¹ Of recent years, there has been only one bill proposing to increase the minimum age to 18 years old and it is limited to domestic work.¹⁴² The DOJ likewise sees no urgency in increasing the age since it is of the opinion that the Philippines is compliant with C138 and R.A. No. 9231 provides sufficient safeguards for children employed at or above 15 years old,¹⁴³ as earlier discussed.

While increasing the minimum employable age to 18 years old will eliminate the gap, the immediate effect of this may be a sudden swelling of the number of children at or above 15 years old who are engaged in child labor. Based on the surveys conducted by the Philippine Statistics Authority in 1995, 2001, and 2011, an average of 4.35 million children ages five to 17 years old were working, 47% of which were 15 to 17 year olds.¹⁴⁴ Assuming that the numbers will stay within the average for the next few years, annually, more or less two million children within the age range of 15 to 17 years old will be working.¹⁴⁵ These children who may be lawfully engaged in work now will potentially become engaged in child labor once the minimum age is increased to 18 years old. The table below provides for excerpts from the 1995, 2001, and 2011 surveys on working children conducted by the Philippine Statistics Office.

141. Interview with Celeste de Castro, Secretary of the House Committee on Labor, in Ramon V. Mitra Building, Batasan Complex, Quezon City (May 20, 2015) (on file with Author).

142. Based on a survey of enrolled bills from the 13th to the 16th Congress spanning from 2004 to the present. *See generally* House of Representatives, House Bills and Resolutions, *available at* <http://www.congress.gov.ph/download/?d=billstext> (last accessed Aug. 27, 2015) & Senate of the Philippines, Bills, *available at* http://senate.gov.ph/lis/leg_sys.aspx?congress=14&type=bill, (last accessed Aug. 27, 2015).

143. Department of Justice, *supra* note 101.

144. *See* Philippine Statistics Authority, Statistics on Filipino Children (Results from the 1995 Survey on Working Children), *available at* <http://webo.psa.gov.ph/content/statistics-filipino-children-results-1995-national-survey-working-children> (last accessed Aug. 27, 2015); Philippine Statistics Authority, Philippine Survey on Children 2001 (Preliminary Results), *available at* <http://webo.psa.gov.ph/content/philippine-survey-children-2001-preliminary-results> (last accessed Aug. 27, 2015); & Philippine Statistics Authority, *supra* note 8.

145. *Id.*

Table 2. Excerpts from the 1995, 2001, and 2011 Surveys
on Working Children.¹⁴⁶

	1995	2001	2011	Average
Total No. of Children	22.38 million	24.8 million	29.01 million	23.39 million
Total No. of Working Children	3.57 million (15.95%)	4.01 million (16.16%)	5.49 million (18.92%)	4.3 million ⁵ (17.01%)
Working Ages 10-14 years old	1.60 million (44.70%)	1.92 million (48%)	2.47 million (45%)	1.99 million (45.9%)
Working Ages 15-17 years old	1.76 million (49.30%)	1.84 million (46.00%)	2.56 million (46.6%)	2.03 million (47.36%)

The problem is already difficult to address as it is.¹⁴⁷ Choosing to leave school before completing compulsory education is largely an economic decision. In a 2012 study, the high cost of education is among the major reasons for non-attendance in school of secondary-aged children, next only to lack of interest,¹⁴⁸ to wit —

Lack of personal interest is a major reason cited, as well as cost issues. While it may be tempting to view lack of personal interest as lack of parental interest to send their children to school, field work suggests that most parents interviewed would want their children to be in school, and complete their schooling, but that poverty is the heart of many of the most important cultural barriers to schooling, including the lack of interest.

Poverty also weighs significantly on the decision to enter, delay, or drop out of school, and it also affects academic performance. The routes of influence of poverty are rather numerous, including indirect effects in terms or overall pressures on the resources and time of parents who are poor.¹⁴⁹

146. Philippine Statistics Authority, *supra* note 144. On the one hand, percentages on the “Total No. of Working Children” row are based on the total no. of children. On the other hand, percentages on the two lower rows, covering “Working Ages 10-14 Years” and “Working Ages 15-17 Years.” *Id.*

147. Maribeth Casin, Chief of the Young Workers Development Division, Department of Labor and Employment, at the Education and Child Labour Consultative Conference, in Subic Holiday Villas, Olongapo City, Zambales, Philippines (May 27, 2015) (on file with Author).

148. Jose Ramon G. Albert, et al., Profile of Out-of-School Children in the Philippines (Discussion Series No. 2012-1 of the Philippine Institute for Development Students) 8-9, available at <http://dirp4.pids.gov.ph/ris/dps/pidsdps1201.pdf> (last accessed Aug. 27, 2015).

149. *Id.*

The practical consideration then is how the State will effectively enforce the high minimum age and reduce the incidence of child labor given the numbers and the realities on the ground. To strike the balance between the need to reconcile the discrepancy and the feasibility of enforcing a high minimum standard, a possible solution is a graduated increase in the minimum employable age consistent with the principle of progressive elimination of child labor. As an initial step, R.A. No. 9231 may be amended to increase the minimum age to 16 years old. An increase by one year will make the minimum age coincide with the entrant age for senior high school. At the current minimum, the child will have just begun or will be in the process of completing Grade 10 or the last level of junior high school. The discussion groups during the validation session all advocated for this approach viewing it as more feasible than increasing the minimum age to 18 years old. The following table summarizes the salient points of the discussion.

Table 3. Summary of the Outputs of the Discussion Groups During the Validation Session

Guide Questions	Group 1	Group 2	Group 3
What measures may be taken to ensure that children 15 to 18 years old will choose to stay in school and complete schooling rather than leave school to work?	<ul style="list-style-type: none"> - Ensure the smooth implementation of the Enhanced Basic Education Act - Continue to promote the Abot Alam Program, Alternative Learning System (ALS), and institutionalize the different Alternative Delivery Modes (ADMs) of DepEd - Institutionalize the implementation of the Conditional Cash Transfer (CCT) Program to include more safeguards and 	<ul style="list-style-type: none"> - Make learning more relevant - Create schools where people live - Create more mobile teachers and classrooms - Use of technology - Create more incentives for both learners and teachers - Adopt local government models that can be applied nationally - Increase school grant of Pantawid Pamilya Program - Modify public perception using mass media - Tie up with broadcast media on using popular media like <i>telenovela</i> or others that have 	<ul style="list-style-type: none"> - Feeding program - Incentives for work after leaving school, e.g., dual training system with companies - Partnership with TESDA - Motivational activities, e.g., how to make school more fun - Training for teachers, e.g., more “exciting” teachers - Life skills to be taught by school counselors - Career counseling - Better monitoring of early signs of child labor; build capacity of teachers to detect

	<p>accountability mechanisms</p> <ul style="list-style-type: none"> - Provide employment opportunities to parents of child laborers or working children - DepEd to issue guidelines on handling child laborers or working children in school - Strengthen BCPC and ensure that child labor issues are included in its work plan such as monitoring the attendance of the child labor or working child in school - Development of peer to peer programs, activities, or projects that will keep children in school - Scholarship program to help children access education such as transportation and boarding allowance, if necessary - Capacity-building for school personnel such as classroom adviser; guidance counselor/teacher on how to convince children to stay in school rather 	<p>commercial appeal</p> <ul style="list-style-type: none"> - Strengthen assessment of children's potentials, personalities, interests, and skills so as to make the program more responsive - Harmonize government programs like the Special Program for Employment of Students (SPES) 	<ul style="list-style-type: none"> - Scale-up ALS, e.g., home study - Ensure Pantawid Pamilya Program covers up to senior high school - Strengthen other livelihood assistance and financial assistance programs - Enforcement of Magna Carta for Women, e.g., letting pregnant girls return to school
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Should the minimum age of employment be increased to 18 years old? Why or why not?	<p>than work</p> <ul style="list-style-type: none"> - No, it should be progressively increased to 16 but there should be stronger protection for working children 	<ul style="list-style-type: none"> - In an ideal situation, yes. However, government needs to review its regulation on employing children below 18 - Strictly implement the law on hazardous work for children - Hazardous work is non-negotiable 	<ul style="list-style-type: none"> - Gradually (progressively) raise to 18, with an initial increase to 16 - Problem with immediately raising to 18: <ul style="list-style-type: none"> (a) Readiness of agencies to protect additional child laborers; (b) Capacity of government to monitor;
What steps, if any, do you suggest the government should take to address the gap between the minimum age of employment and the age of completion of compulsory education?	<ul style="list-style-type: none"> - Same as answers to Guide Question No. 1. There is also a need to clarify what is hazardous work, hours of work, and time of the day should a child work. 	<ul style="list-style-type: none"> - Close in the gap by increasing the minimum age of employment to 16 years - Review the laws and harmonize policies and programs - Benchmark on experiences of other countries 	<ul style="list-style-type: none"> - Strengthen the education provisions in R.A. No. 9231 - Strengthen the NCLC into a council through an Executive Order or through an amendment of R.A. No. 9231 - Review penalty provisions - Decrease work hours - Strengthen monitoring of informal sector - Conduct a comparative study of countries — best practices, experiences, consequences between gradual and immediate increase of minimum age of employment

In addition, the amendment may include a clause that will give the NCLC or other appropriate body the authority to progressively increase the

minimum employable age until it coincides with the age of completion of compulsory schooling. The clause should set sufficient standards in order to avoid any undue delegation of legislative powers. The standards may include time limits within which the adjustment should be made, requirements for consultation prior to the adjustment, and conditions to be considered in raising the age. The purpose of such a clause is to allow for a subsequent increase in the minimum employable age, when the conditions are ripe, without need of going through the tedious process of passing another law all over again.

R.A. No. 9231 should be further amended to ensure compliance with Article 7 of C138, which allows the employment of children who are at least 15 years old but have not completed their compulsory schooling. As previously discussed, the work hours must be adjusted to lessen the maximum allowable hours of work and to move the night work prohibition to an earlier cut-off time.¹⁵⁰

An equally critical issue is how to guarantee that children will choose to stay in school rather than work. Even if education is compulsory up to high school, parents will not be able to send their children to school if they lack the resources.¹⁵¹ Enhanced Basic Education Act attempts to address this problem by extending financial assistance.¹⁵² This is limited, however, to qualified students who complete junior high school.¹⁵³ Additional safeguards will have to be formulated to ensure school attendance. For example, programmatic measures may be developed at the regional level to address the needs of the communities a depending on their context.¹⁵⁴

Finally, the strengthening of the NCLC as well as monitoring and imposing the appropriate sanctions on child labor in the informal sector are key to the effective elimination of child labor. The same strategies previously mentioned on advocating for the issuance of an Executive Order and the amendments to R.A. No. 9231 to address the informal economy must also be pursued.

150. C138, *supra* note 11, art. 7 (1) (a) & (b).

151. *Id.*

152. Enhanced Basic Education Act of 2013, § 10 & Enhanced Basic Education Act IRR, rule VI.

153. *Id.*

154. Alberto Muyot, Department of Education Undersecretary, at the Education and Child Labour Consultative Conference, in Subic Holiday Villas, Olongapo City, Zambales, Philippines (May 27, 2015).

IV. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

The gap between the minimum age of admission to employment and the age of completion of compulsory education will remain regardless of how the Supreme Court will resolve the cases questioning the constitutionality of the Enhanced Basic Education Act. If the Act is declared unconstitutional, the system reverts to the status quo prior to the law wherein the age of completion was lower than the minimum employable age. If the Act is found valid, it creates a reverse gap wherein children are allowed to work before they complete compulsory basic education. The first scenario seems unlikely because the Act is consistent with the aim of the Constitution to provide quality, complete, and integrated education. Meanwhile, the Act is presumed valid until such time that the Supreme Court declares otherwise.

The Act extended compulsory education to include kindergarten and high school, consequently increasing the age of completion to 18 years old. It is for the best interest of the children that they remain in school until they complete the required curriculum. But with a lower minimum employable age of 15 years old, children may choose to walk away from school and step into the world of work even before they finish schooling. Raising the minimum employable age to make it the same as the age of completion of compulsory schooling, however, sets too high a standard considering the practical realities on the ground, including the high cost of education, limited resources to send children to school, lack of interest, want of sense of urgency among policy makers, and lack of capacity of the government to absorb the number of 15 to 17 year olds who may be potentially engaged in child labor if the necessary safeguards and programs are not in place and fully implemented.

In summary, assuming the constitutionality of the Enhanced Basic Education Act, the possible immediate courses of action to address the age gap and strengthen the protection for children, especially those within the gap, are as follows:

- (1) As an immediate step, the State should respond to the CEACR's Direct Request to the Philippines "to indicate clearly the age of completion of compulsory schooling under the terms of the Enhanced Basic Education Act."¹⁵⁵ The information will allow CEACR to provide the State with further guidance on how it fares as against the standards set by C138 and recommend the courses of action that the State should pursue;
- (2) DepEd should issue guidelines to regional offices for the formulation of region-specific safeguards or programmatic measures to guarantee

155. International Labour Organization, *supra* note at 28.

access to and completion of basic education for those who are at or above the minimum age; and

- (3) The NCLC should lobby for the issuance of an Executive Order to give it the mandate and budget to oversee the implementation and enforcement of R.A. No. 9231 and the Philippine Program Against Child Labor.

For the long term, a comprehensive review of R.A. No. 9231 should be undertaken to identify all the aspects of the law that may be strengthened through an amendment. At a minimum, the amendment should:

- (1) Increase the minimum employable age to 16 so that it will coincide with the age of completion for junior high school;
- (2) Provide sufficient standards for NCLC or other appropriate body to gradually increase the minimum age of employment to 18 years old when the circumstances warrant;
- (3) Establish measures designed to keep the children in school until completion, which may include a reduction in the allowable hours of work and an adjustment of the night work prohibition to provide an earlier starting hour for the ban, and the introduction of a more comprehensive financial assistance program;
- (4) Strengthen the NCLC by providing it with the legal mandate and budgetary allocation to address child labor; and
- (5) Institutionalize a comprehensive framework for monitoring child labor in the informal sector and imposing the appropriate sanctions.