

The Philippines and the Convention on the Rights of the Child: Evaluating Compliance with Respect to the International Standards for Procedural Rules Involving Children

Sedfrey M. Candelaria* and Rosalyn C. Rayco**

INTRODUCTION	1017
I. GENERAL RIGHTS OF THE CHILD	1019
A. <i>The Convention on the Rights of the Child as a Treaty</i>	
B. <i>Fundamental Principles of the CRC</i>	
C. <i>Characteristics of the CRC</i>	
D. <i>Specific Provisions</i>	
E. <i>Duty to Comply and Report</i>	
II. THE RESPONSIBILITY OF THE COURTS IN RELATION TO THE CRC.	1040

* '80, LL.B., Ateneo de Manila University School of Law (1984); LL.M., The University of British Columbia (1990). The Author is Associate Dean for Students Affairs and professorial lecturer on Constitutional Law, Public International Law, Political Law Review, International Economic Law, Children's Rights Law, and Indigenous Peoples' Rights at the Ateneo de Manila University School of Law; Member of the GRP (Government of the Republic of the Philippines) Negotiating Panel for talks with the CPP/NPA/NDP (Communist Party of the Philippines/New People's Army/National Democratic Front); Head, Research and Linkages Office and the Department of Special Areas of Concern of the Philippine Judicial Academy, Supreme Court of the Philippines; Head, Children's Rights and Indigenous Peoples' Desk, Ateneo Human Rights Center. President, CASA/GAL Foundation of the Philippines, Inc. The author's previous works published in the *Journal* include *Introducing the Indigenous People's Rights Act*, 47 ATENEO L.J. 571 (2002); *The Rights of Indigenous Communities in International Law*, 46 ATENEO L.J. 273 (2001); *The Legal Characterization of the Asia-Pacific Economic Cooperation (APEC) and the Individual Action Plans in International Law*, 44 ATENEO L.J. 405 (2000); *The IMF and the Philippines: Anatomy of a Third World Debt*, 36 ATENEO L.J. 18 (1992).

** '06 J.D. cand. Ateneo School of Law. Member, Board of Editors, *Ateneo Law Journal*. She is the author of *Supreme Court and the Genosa Case: Defining Battered Woman Syndrome vis-à-vis Self-Defense in the Philippine Legal System*, 49 ATENEO L.J. 314 (2004) and co-author of the *Davide Impeachment Case: Restructuring Judicial Supremacy Over Constitutional Questions*, 49 ATENEO L.J. 806 (2004) with Ms. Maricris Ang et. al.

A. <i>General Duties of and Implications to the Courts under the CRC</i>	
B. <i>Article 37: The Duty of the Courts with Respect to Torture, Degrading Treatment and Deprivation of Liberty</i>	
C. <i>Article 40: The Courts and the Administration of Juvenile Justice</i>	
III. IMPLEMENTATION OF THE RIGHTS OF THE CHILD IN THE PHILIPPINE SETTING	1052
A. <i>Domestic Laws and Rules in Relation to the Rights of the Child</i>	
B. <i>A Brief Look at the Juvenile Justice System in the Philippines</i>	
C. <i>Comparative Study of the Domestic Laws vis-à-vis the CRC</i>	
CONCLUSION	1074

To look into some aspects of the future, we do not need projections by supercomputers. Much of the next millennium can be seen in how we care for our children today. Tomorrow's world may be influenced by science and technology, but more than anything, it is already taking shape in the bodies and minds of our children.¹

INTRODUCTION

Universal concern for the promotion and protection of children's rights for the last decade had been emphatically expressed in various international *fora*. This has also influenced development in the Philippines. As a member of the United Nations, and signatory of the Convention on the Rights of the Child (CRC) and other international human rights instruments, the Philippines has the responsibility of ensuring the recognition, protection and implementation of children's rights within its jurisdiction, without discrimination.

Since ratifying the Convention in 1990, the Philippines has taken numerous positive steps towards the fulfillment of the aims and objectives of the CRC. With respect to national legislation, a reading of the existing laws will show that Congress now addresses several children's issues. These laws encompass a broad number of issues such as abuse, exploitation, and discrimination of children, trafficking of children, child labor, violence

Cite as 49 ATENEO L.J. 1016 (2005).

1. Kofi Annan, Secretary General of the United Nations, Convention on the Rights of the Child, UNICEF Website at <http://www.unicef.org/crc/crc.htm> (last accessed April 16, 2005).

against children, adoption, and other situations involving children.² In addition, the executive department has issued various executive orders and proclamations in order to give teeth to the implementation and enforcement of these laws.³

Undeniably, children are involved in numerous proceedings before the courts, whether as a party to the proceedings, a child witness, a victim of

-
2. See *e.g.* An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Republic Act No. 9262 (2004); An Act Allowing Illegitimate Children to Use the Surname of Their Father, Amending for the Purpose Article 176 of Executive Order No. 209, Otherwise Known as the "Family Code of the Philippines," Republic Act No. 9255 (2004); 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); An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes, Republic Act No. 8552 (1998); An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Batas Pambansa Blg. 129, as amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefore and for Other Purposes, Republic Act No. 8369 (1997); An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as The Revised Penal Code and for Other Purposes, Republic Act No. 8353 (1997); Directing National Government Agencies and Government Owned and Controlled Corporations to Provide Day Care Services for their Employees' Children under Five Years of Age, Executive Order No. 340 (1997); An Act Creating the National Youth Commission, Establishing a National Comprehensive and Coordinated Program on Youth Development, Appropriating Funds Therefor, and for Other Purposes, Republic Act No. 8044 (1995); An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children, and for Other Purposes, Republic Act No. 8043 (1995); An Act Prohibiting the Employment of Children Below 15 Years of Age in Public and Private Undertakings, Amending for this Purpose Section 12, Article VIII of Republic Act No. 7610, Republic Act No. 7658 (1993); An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes, Republic Act No. 7610 (1992).
 3. *People v. Abadies*, 384 SCRA 442, 452-53 (2002). See *e.g.* Creating a Committee for the Special Protection of Children from All Forms of Neglect, Abuse, Cruelty, Exploitation, Discrimination and Other Conditions Prejudicial to Their Development, Executive Order No. 275 (1995).

crime, or a juvenile in conflict with the law. Clearly, there is a need for adequate procedural rules, which are as important as the existence of substantive laws addressing the needs of children. At present, there are Supreme Court issuances that provide for procedural guidelines in proceedings involving children.⁴ These rules exist; however, the question that arises is whether or not they are adequate, and if adequate, whether or not they are effective. This Article aims to address these questions through an evaluation of the existing procedural rules concerning children to determine the Philippines' compliance with the minimum international standards regarding children's rights.

Part I of this Article will briefly discuss the rights of every child, as enumerated in the CRC. Emphasis will be given to the fundamental rights of every child, the characteristics of the CRC, and certain specific provisions. For clarity, the rights of the child have been grouped as follows: protection, survival, developmental and participation rights. Part II will discuss the role of the courts in regard to proceedings involving children and will focus on certain provisions of the CRC where the courts have a specific responsibility in this respect. Part III will be a study of the Philippines' compliance with the provisions of the CRC regarding the procedural requirements and guidelines set down by the said instrument, and by other international documents. This Article will review existing legislation and issuances that relate to procedural requirements in actions involving children, with the aim of determining if there are any standards that are deficient or if there are any gaps in procedural requirements in relation to the CRC.

I. GENERAL RIGHTS OF A CHILD

A. *The Convention on the Rights of the Child as a Treaty*

The Convention on the Rights of the Child (CRC)⁵ was adopted by the General Assembly of the United Nations on 20 November 1989, and has been hailed as a landmark human rights document, marking a "turning point in the international law of children's rights."⁶ It entered into force and

-
4. See *infra* RULE ON JUVENILES IN CONFLICT WITH THE LAW; RULE ON EXAMINATION OF CHILD WITNESS; Rules of Court.
 5. Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.
 6. THE RIGHTS OF THE CHILD: INTERNATIONAL INSTRUMENTS xvi (Maria Rita Saulle ed., 1994).

became legally binding on September 1990. At present, it is the most universally accepted and widely ratified human rights instrument in history.⁷

The CRC's basic premise is that children are born with fundamental freedoms and the inherent rights of all human beings. It serves as a universal benchmark for the determination of minimum standards in the implementation and protection of children's rights. "The Convention collates rights previously found in separate instruments into one integrated document, elaborating and developing these rights according to the special needs and interests of children."⁸ It reaffirms the fact that children, because of their vulnerability, need special care and protection, and places special emphasis on the primary caring and protective responsibility of the family.⁹

1. Geneva Declaration of 1924

The Geneva Declaration of 1924,¹⁰ adopted by the Fifth Assembly of the League of Nations, was the first international instrument to recognize the rights and welfare of children. It "affirmed, among other principles, that the child must be given the means requisite for her or his normal development, both materially and spiritually, and satisfaction of her or his primary needs; thus it paid special attention to the specific requirements of children."¹¹ However, the Geneva Declaration "was brief and only aspirational, since it merely invited the member states to be 'guided by its principles in the work of child welfare.'"¹²

2. Declaration of the Rights of the Child

In 1959, the Declaration of the Rights of the Child¹³ was adopted by the United Nations General Assembly. However, "[s]ince it had the limited status of a declaration, it did not attempt to claim that the 'rights' listed

7. Every country in the world, except the United States and Somalia, has ratified the Convention.

8. Per Miljeteig-Olssen, *Advocacy of Children's Rights — The Convention as More than a Legal Document*, 12 HUMAN RIGHTS QUARTERLY 148, 148 (1990).

9. See Convention on the Rights of the Child, *supra* note 5, at Preamble.

10. Declaration of Geneva, Council of the League of Nations Assembly, Geneva, Mar. 1924.

11. THE RIGHTS OF THE CHILD: INTERNATIONAL INSTRUMENTS, *supra* note 6, at xiii.

12. JANE FORTIN, CHILDREN'S RIGHTS AND THE DEVELOPING LAW 36 (1998).

13. Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

constituted legal obligations. Instead, States were merely required to take note of the principles contained therein, on the basis that they were universally accepted as being applicable to all children.”¹⁴

3. Other Human Rights Instruments

a. Universal Declaration of Human Rights

In 1948, after the end of World War II, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR),¹⁵ which has been recognized as the first international instrument to define human rights. Through the UDHR, there was recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.¹⁶ Pertinently, it proclaimed that childhood is entitled to special care and assistance.¹⁷

b. International Covenant on Civil and Political Rights¹⁸ and International Covenant on Economic, Social and Cultural Rights¹⁹

It has been said that the “rights conferred by the CRC are already granted by other instruments of international humanitarian law, first and foremost the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).”²⁰ This is due to the fact that the principles found therein apply to all human beings, children being no exception thereto.

14. FORTIN, *supra* note 12, at 36. (“Declarations are statements of moral and ethical intent and hence, are not legally binding instruments.”).

15. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

16. *Id.* at Preamble.

17. *Id.* at art. 25, ¶2.

18. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

19. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

20. Miljeteig-Olssen, *supra* note 8, at 148.

Specifically, the ICCPR declares that the family is entitled to protection by the society and State, and recognizes the right to marry and to found a family.²¹ States are obligated to ensure the necessary protection of any children, in case of dissolution of the marriage. The ICCPR also states the fundamental principle of non-discrimination against children, and further assures the right of every child to have a name and nationality.²²

The ICESCR, on the other hand, declares that the widest possible protection and assistance shall be accorded to the family, particularly for its establishment and while it is responsible for the care and education of dependent children. Likewise, special measures of protection and assistance should be taken on behalf of children, without discrimination. The ICESCR recognizes the right of children to be protected from economic and social exploitation, and the obligation of States to set minimum age limits, below which child labor should be prohibited and punishable by law.²³

B. Fundamental Principles of the CRC

While it is true that the CRC must be understood and taken as a whole, there are, however, certain articles of the CRC that have been elevated to the status of general principles. These principles “are not subject to derogation in times of emergency.”²⁴

1. Non-Discrimination

The Convention unequivocally declares that no child should suffer discrimination.²⁵ This principle of non-discrimination has been identified

21. International Covenant on Civil and Political Rights, *supra* note 18, at art. 23.

22. *Id.* at art. 24.

23. International Covenant on Economic, Social and Cultural Rights, *supra* note 19, at art. 10.

24. IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 19 (1998) [hereinafter IMPLEMENTATION HANDBOOK]. See Committee on the Rights of the Child, *Report on the Second Session*, at ¶67, U.N. Doc. CRC/C/10 (Oct. 19, 1992).

25. Convention on the Rights of the Child, *supra* note 5, at art. 2. See U.N. ESCOR, *Report of the Intergovernmental Expert Group Meeting to develop guidelines on justice in matters involving child victims and witnesses of crime*, at 9-10, U.N. Doc. E/CN.15/2005/14/Add.1 (2005).

“as a general principle of fundamental importance for implementation of the whole Convention.”²⁶ Undeniably, this “implies an *affirmative obligation* on the part of the State to take whatever measures are necessary to enable individuals to enjoy and exercise the relevant rights.”²⁷

Discrimination refers to “any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”²⁸ It is paramount that the rights in the Convention apply equally to all children all over the world. The principle of non-discrimination, however, does not bar the legitimate differentiation in treatment of individual children;²⁹ thus, the CRC recognizes that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.”³⁰ In this connection, the CRC states frequently that States need to identify the most vulnerable and disadvantaged children within their borders and take affirmative action to ensure that the rights of these children are realized and protected.³¹

2. Best Interests of the Child

The Convention has highlighted the principle that the best interests of the child shall be the primary consideration in all actions concerning children.³² This concept “has been the subject of more academic analysis than any other concept included in the CRC. In many cases, its inclusion in national legislation pre-dates ratification of the Convention, and the concept is by no

26. IMPLEMENTATION HANDBOOK, *supra* note 24, at 19.

27. Philip Alston, *The Legal Framework of the Convention on the Rights of the Child*, BULLETIN OF HUMAN RIGHTS 91/2: THE RIGHTS OF THE CHILD (United Nations) (1991)(emphasis supplied).

28. Human Rights Committee, *General Comment 18, “Non-Discrimination”* (1989), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 26, U.N. Doc. HRI/GEN/1/Rev.2 (Mar. 29, 1996).

29. IMPLEMENTATION HANDBOOK, *supra* note 24, at 30-31.

30. Convention on the Rights of the Child, *supra* note 5, at Preamble.

31. See Convention on the Rights of the Child, UNICEF Website at <http://www.unicef.org/crc/crc.htm> (last accessed April 16, 2005).

32. See Convention on the Rights of the Child, *supra* note 5, at art. 3.

means new to international human rights instruments,"³³ as it is actually echoed in other such instruments.³⁴

This principle relates to decisions by courts of law, administrative authorities, legislative bodies and both public and private social-welfare institutions. While a definition of *best interests* of the child or criteria by which *best interests* should be judged have yet to be formulated or proposed, it is understood that "the general values and principles of the Convention should be applied to the context in question."³⁵ However, "[i]nterpretations of the best interest of children cannot trump or override any of the other rights guaranteed by other articles in the Convention."³⁶ Thus, it has been stressed that "the principle should be applied along with the other general principles in all those instances in which the Convention does not set a precise standard."³⁷

3. Maximum Extent of Available Resources

States have the overall obligation to implement all the rights in the CRC by taking all appropriate measures; and particularly with respect to economic, social and cultural rights, such measures should be undertaken to the maximum extent of their available resources and within the framework of international cooperation.³⁸ This concept of *progressive realization of economic,*

33. IMPLEMENTATION HANDBOOK, *supra* note 24, at 39.

34. Declaration of the Rights of the Child, *supra* note 13, at Principle 2. ("The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."); Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981; Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, G.A. Res. A/RES/41/85 3, 95TH plenary meeting (December 1986) [hereinafter Declaration on Social and Legal Principles].

35. IMPLEMENTATION HANDBOOK, *supra* note 24, at 40.

36. *Id.* at 37.

37. *Id.* at 40.

38. Convention on the Rights of the Child, *supra* note 5, at art. 4.

social and cultural rights is also reflected in the ICESCR,³⁹ where it has been explained that,

[w]hile such concept recognizes that full realization will not be achieved in a short period of time, it must be read in the light of the overall objective, and understood to impose an obligation to move as *expeditiously and effectively as possible* towards the goal of full realization of the rights in question.⁴⁰

It was recognized, however, that the Committee on the Rights of the Child (Committee) was in no position to specify particular solutions or models for implementation, given the wide range of systems adopted by different States. It was thus stressed that the Convention was to serve as a benchmark for domestic legislation. What is necessary is the assurance that domestic legislation is compatible with the Convention and that there is proper coordination of policy affecting children.

4. Evolving Capacities of the Child

States Parties are obligated to respect the responsibilities, rights and duties of parents or persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his or her rights.⁴¹ It has been explained that, under this article, “[c]hildren’s rights will gain autonomy, but they will be especially meaningful in the context of the rights of parents and other members of the family to be recognized, to be respected, to be promoted. And this will be the only way to promote the status of, and respect for, the family itself.”⁴²

Parents are expected to provide appropriate direction and guidance to the child, but are required to “act in a manner that takes into consideration the evolving capacities of the child, his or her age and maturity.”⁴³ It has been observed that the concept of *evolving capacities of the child* is “an

39. IMPLEMENTATION HANDBOOK, *supra* note 24, at 55. See International Covenant on Economic, Social and Cultural Rights, *supra* note 19, at art. 2, ¶1.

40. Committee on Economic, Social and Cultural Rights, *General Comment 3, “The Nature of States Parties’ Obligations”* (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 57-58, U.N. Doc. HR1/GEN/1/Rev.2 (Mar. 29, 1996). (emphasis supplied).

41. Convention on the Rights of the Child, *supra* note 5, at art. 5.

42. Committee on the Rights of the Child, *Report on the Seventh Session*, at ¶183 *et seq.*, U.N. Doc. CRC/C/34 (Nov. 8, 1994).

43. MANUAL ON HUMAN RIGHTS REPORTING 446 (1997).

acknowledgement that children's development towards independent adulthood must be respected and promoted throughout childhood."⁴⁴

C. Characteristics of the CRC

1. Indivisibility of Rights

All the rights enumerated in the Convention — the civil and political rights as well as the economic, social and cultural rights — are indivisible and interrelated, with a focus on the child as a whole.⁴⁵ The CRC sets up a “holistic approach for the consideration of the human rights of children.”⁴⁶ In other words, the Convention is indivisible, and its articles are interdependent, and equal importance should be attached to each and every right recognized therein.⁴⁷ This is a necessary consequence of the concept that human rights are indivisible and interdependent. As it has been observed,

[u]nlike other international human rights treaties, notably the ICCPR and the ICESCR, the Convention contains both sets of rights in one single document. Like them, it reflects the assumption that it is appropriate to require States not only to protect children and promote their fundamental freedoms, but also to devote resources to ensuring that they realize their potential for maturing into a healthy and happy adulthood.⁴⁸

Hence, this objective can only be achieved by understanding and implementing the Convention as a whole and not by merely focusing on one article in isolation of the others. The interpretation of the Convention's provisions must be “in the broader context of the realization of children's rights and taking due consideration the international obligations arising from the Convention.”⁴⁹

44. IMPLEMENTATION HANDBOOK, *supra* note 24, at 80.

45. See Convention on the Rights of the Child, UNICEF Website at <http://www.unicef.org/crc/crc.htm> (last accessed April 16, 2005).

46. Committee on the Rights of the Child, *Report on the Eleventh Session*, at 46, U.N. Doc. CRC/C/50 (Mar. 22, 1996).

47. Committee on the Rights of the Child, *General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under art. 44, ¶1(b), of the Convention on the Rights of the Child*, at ¶9, U.N. Doc. CRC/C/58 (Nov. 20, 1996).

48. FORTIN, *supra* note 12, at 37.

49. *Report on the Eleventh Session*, *supra* note 46, at 46.

2. Culture-Sensitive

The CRC recognizes the importance of respect for cultural values of the child's community. The Preamble of the CRC expressly states that it takes due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child.⁵⁰ A cursory reading of the provisions in the CRC will show the intent of the drafters to give due regard to and respect for the child's cultural background, needs, and upbringing.

D. Specific Provisions

1. Definition of the Child

A child has been defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."⁵¹ It has been said that "[s]etting an age for the acquisition of certain rights or for the loss of certain protections is a complex matter. It balances the concept of the child as a subject of rights whose evolving capacities must be respected with the concept of the State's obligation to provide special protection."⁵²

It is important to note that while this article defines the *end* of childhood, the wording of the article avoids setting a *starting point* for childhood. This is because the Convention "endorses a flexible and open solution, leaving to the national legislation the specification of the moment when childhood or life begins."⁵³ In doing so, the CRC intentionally avoided, "in view of the prevailing diversity of national legal solutions, a single solution common to all states."⁵⁴ This was necessary in order "to avoid taking a position on abortion and other pre-birth issues, which would have threatened the Convention's universal acceptance."⁵⁵

Ultimately, the upper age limit is provided for by the Convention, however, it allows for the child's majority to be attained earlier under domestic laws. In this connection, it was cautioned that "[s]uch expression should in no way be interpreted as a general escape clause, nor should it allow ages to be established which might be contrary to the principles and

50. Convention on the Rights of the Child, *supra* note 5, at Preamble.

51. *Id.* at art. 1.

52. IMPLEMENTATION HANDBOOK, *supra* note 24, at 1.

53. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 413.

54. *Id.* at 413.

55. IMPLEMENTATION HANDBOOK, *supra* note 24, at 3.

provisions of the Convention.”⁵⁶ The Convention emphasizes that States substituting an earlier age for specific purposes must do so in the context of the Convention’s guiding principles.

2. Survival Rights

The Convention identifies and upholds the basic survival rights of every child, which include “not only the right to life itself, but also the right to all those rights which sustain life,”⁵⁷ such as an adequate standard of living, health, parental care and support, and social security.

Every child has the inherent right to life, survival, and development.⁵⁸ The right to life is upheld as a universal human rights principle, while the right to survival and development is protected to the maximum extent possible. The expression *inherent right to life* cannot properly be understood in a restricted manner, and the protection of this right requires the adoption of positive measures.⁵⁹ The measures to be undertaken by States must be “designed to protect life, including by increasing life expectancy, diminishing infant and child mortality, combating disease and rehabilitating health, providing adequate nutritious foods and clean drinking water.”⁶⁰

On the other hand, the term *development* should be interpreted in a broad sense, referring to every aspect of a child’s growth — physical, mental, emotional, cognitive, social and cultural development. The concept of development is not just about the preparation of the child for adulthood; it is about providing optimal conditions for childhood, for the child’s life *now*.⁶¹

Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development.⁶² This right includes the right to nutrition, housing, and maintenance. The parents, and those responsible for the child, have the primary responsibility for ensuring this right. In this connection, the child has a right to the highest standard of

56. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 414.

57. FORTIN, *supra* note 12, at 38.

58. See Convention on the Rights of the Child, *supra* note 5, at art. 6.

59. Human Rights Committee, *General Comment 6, Article 6* (Sixteenth session, 1982), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 6, U.N. Doc.HRI/GEN/I/Rev.2 (Mar. 22, 1996).

60. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 424.

61. IMPLEMENTATION HANDBOOK, *supra* note 24, at 94.

62. Convention on the Rights of the Child, *supra* note 5, at art. 27.

health and medical care attainable.⁶³ This is because the “healthy development of the child is of basic importance. The ability to live harmoniously in a changing total environment is essential to such development.”⁶⁴

The right to be cared for by the parents implies a more active involvement. This right upholds a general principle running throughout the Convention — that in ordinary circumstances, children are best off with their parents.⁶⁵ Every child has a right to know his or her parents, which necessarily includes genetic parents and birth parents, as well as psychological parents of the child.⁶⁶ Also, the child has the right to live with his or her parents unless this is deemed to be incompatible with the child’s best interests. The child also has the right to maintain contact with both parents if separated from one or both.⁶⁷

Furthermore, the child has the right to benefit from social security including social insurance.⁶⁸ This “concerns financial support for children provided by the State, in the event that adults who have responsibility for children are unable to provide for them.”⁶⁹

It has been stated that “the State has good cause to invest in children, since they represent its future security.”⁷⁰ The purpose of this article is to ensure that the child has some form of financial support for his or her survival and development, especially in the event that their parents cannot provide for them.

3. Protection Rights

The Convention is replete with provisions on the child’s protection rights, “which guard the child from abuses of power by individuals and the State.”⁷¹ These include the child’s right to be protected in his or her name, nationality

63. *Id.* at art. 24.

64. IMPLEMENTATION HANDBOOK, *supra* note 24, at 316.

65. *Id.* at 107.

66. *Id.* at 105 (Genetic parents are important for medical reasons; birth parents refer to the mother who gave birth and the father who claimed paternity; and psychological parents are those who cared for the child for significant periods during infancy and childhood).

67. Convention on the Rights of the Child, *supra* note 5, at art. 9.

68. *Id.* at art. 26.

69. IMPLEMENTATION HANDBOOK, *supra* note 24, at 347.

70. *Id.* at 351.

71. FORTIN, *supra* note 12, at 38.

and identity; and protection from all forms of abuse and maltreatment by parents or legal guardians. Further, every child has a right to be protected against drug abuse, abduction, sale, trafficking, illicit transfer, and exploitative labor. Finally, protection is given to children under special circumstances: deprivation of family environment, disability, armed conflict, displacement, and children in conflict with the law.

a. Right to Name, Nationality and Identity

The State has the obligation to protect, and if necessary, re-establish basic aspects of the child's identity.⁷² The three elements of identity particularly specified are nationality, name and family relations, as recognized by law. The Convention recognizes the importance of universal registration, as well as the right of every child to a name and nationality, and to know and be cared for by their parents.⁷³ Universal registration is important because it is the State's first official acknowledgment of the child's existence; it is an essential element of national planning for children; and it is a means for securing the children's other rights.⁷⁴ On the other hand, the *right to acquire nationality* implies a right to all the benefits derived from nationality.⁷⁵ Hence, it has been expounded that,

[w]hile the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both parents.⁷⁶

b. Right to Protection Against All Forms of Abuse, Maltreatment and Exploitation

72. Convention on the Rights of the Child, *supra* note 5, at art. 8.

73. *Id.* at art. 7.

74. IMPLEMENTATION HANDBOOK, *supra* note 24, at 98-99.

75. *Id.* at 102.

76. Human Rights Committee, *General Comment 17, "Article 24,"* (1989), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 25, U.N. Doc. HR1/GEN/1, Rev.2 (Mar. 29, 1996).

Growing awareness exists in all countries of the extent of violence against children in their homes, in institutions and in the community.⁷⁷ Hence, under the Convention, the State is mandated to protect the child from all forms of abuse, neglect, maltreatment or exploitation by parents or others responsible for the care of the child and establish appropriate social programs for the prevention of abuse and the treatment of victims.⁷⁸ This was because the prevention of child abuse and neglect is considered "as a 'general preventive measure' which could contribute to the prevention of the future use of violence."⁷⁹

Undeniably, children have the right to be protected from narcotic drugs and psychotropic substances;⁸⁰ sexual exploitation and abuse, including unlawful sexual activity and practices, pornography and prostitution;⁸¹ abduction, sale, and trafficking;⁸² all other forms of exploitation prejudicial to the child's welfare;⁸³ illicit transfer;⁸⁴ and exploitative labor.⁸⁵ It has been recognized that "drug abuse has emerged as a global menace to very large numbers of young people and, increasingly, children — including permanent damage incurred in the prenatal stages of life,"⁸⁶ thus "threatening both the child's development and nations' economic prosperity and social order."⁸⁷

With respect to sexual exploitation, particularly child prostitution and child pornography, States have been tasked to "take action...to prevent such situations...to reinforce the system of children's rights protection, and to ensure the physical and psychological recovery and social reintegration of child victims of any such form of exploitation."⁸⁸ The exploitative use of children in prostitution and pornography is linked to the sale and traffic of children, hence the clear need to address the latter. Article 35 of the

77. IMPLEMENTATION HANDBOOK, *supra* note 24, at 237.

78. Convention on the Rights of the Child, *supra* note 5, at art. 19.

79. *Report on the Second Session*, *supra* note 24, at ¶61 *et. seq.*

80. Convention on the Rights of the Child, *supra* note 5, at art. 33.

81. *Id.* at art. 34.

82. *Id.* at art. 35.

83. *Id.* at art. 36.

84. *Id.* at art. 11.

85. *Id.* at art. 32.

86. See *World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s*, CF/WSC/1990/WS-001, ¶ 20(7) (Sept. 30, 1990).

87. IMPLEMENTATION HANDBOOK, *supra* note 24, at 447.

88. *Report on the Eleventh Session*, *supra* note 46, at 46.

Convention ensures "double protection for children: the main forms of child trafficking are dealt with in other provisions of the CRC, but blanket action on abduction, sale or traffic 'for any purpose or in any form' is also required by this article."⁸⁹ Also in this connection, States Parties are obligated to prevent children from being wrongfully taken or from being retained outside their jurisdiction.⁹⁰ This article is primarily concerned with parental abduction or retention⁹¹ and acknowledges that the most effective means of implementing its provisions is to sign and implement the relevant international treaties.⁹²

Also, the child has the right to be protected from economic exploitation and from work that threatens his education, health, physical, mental, spiritual, moral or social development.⁹³ Child labor has been considered as "the single most important source of child exploitation and child abuse in the world today."⁹⁴ In particular, "groups of vulnerable children have been made to suffer: the girl child, the disabled, minority ethnic groups, orphans, displaced and refugee children."⁹⁵ Hence, States Parties must "formulate standards or revise legislation in force with a view to ensuring the legal protection of the child from any form of exploitation."⁹⁶ Under this article, States are required to set a minimum age for admission to employment in light of other international instruments.

c. Protection Rights of Children Under Special Circumstances

The State is obliged to provide special protection for a child temporarily or permanently deprived of the family environment and to ensure that the

89. IMPLEMENTATION HANDBOOK, *supra* note 24, at 443. The other provisions referred to are the following: art. 11 (regarding incidents where children are taken across borders); art. 32 (regarding economic exploitation of children); art. 38 (regarding armed conflict); art. 21 (regarding inter-country adoption); art. 6 (regarding use of children for organ transplants).

90. Convention on the Rights of the Child, *supra* note 5, at art. 11.

91. IMPLEMENTATION HANDBOOK, *supra* note 24, at 139.

92. *Id.* at 140. The most important of these treaties is the Hague Convention on the Civil Aspects of International Child Abduction, 1343 U.N.T.S. 89 (Oct. 25, 1980).

93. Convention on the Rights of the Child, *supra* note 5, at art. 32.

94. INTERNATIONAL LABOR ORGANIZATION, CHILD LABOR: TARGETING THE INTOLERABLE, 3-4 (1996)

95. Committee on the Rights of the Child, *Report on the Fourth Session*, at 57-58, U.N. Doc. CRC/C/20, annex VI (Oct. 25, 1993).

96. Committee on the Rights of the Child, *Report on the Fifth Session*, at 38-43, U.N. Doc. CRC/C/24 (Mar. 8, 1994).

appropriate alternative family care or institutional placement is available in such cases.⁹⁷ The reason behind such special protection is that “[t]he loss of family attachments and identity, together with the instabilities and disruption of a new placement, can impede their physical, intellectual and emotional development.”⁹⁸ “It should be noted that this provision refers to family, and not parents. While it may be in the child’s best interest to be removed from his or her parents, the State should first seek placement in the child’s wider family, before looking for alternatives.”⁹⁹ A hierarchy of options is available: first, family relatives; second, substitute family through fostering or adoption; and third, an appropriate institution.¹⁰⁰

Further, recognition is given to the special circumstance of children with disability. A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.¹⁰¹ The inclusion of this provision as a specific ground for protection reflects the growing understanding and acknowledgement of the links between disability and human rights.¹⁰² Thus, it has been stated that, “it is now very widely accepted that human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programs.”¹⁰³

Finally, the Convention addresses the rights of those children who require special protection measures, particularly the displaced children or refugee children, children involved in armed conflict, and children in conflict with the law. The CRC ensures that children have special protection in certain situations where they are particularly at risk.

The Convention provides that special protection shall be granted to children considered as a refugee or seeking refugee status.¹⁰⁴ This is in recognition of the fact that refugee children are among the most vulnerable

97. Convention on the Rights of the Child, *supra* note 5, at art. 20.

98. IMPLEMENTATION HANDBOOK, *supra* note 24, at 259.

99. *Id.*

100. Declaration on Social and Legal Principles, *supra* note 34, at art. 4.

101. Convention on the Rights of the Child, *supra* note 5, at art. 23.

102. IMPLEMENTATION HANDBOOK, *supra* note 24, at 294.

103. Committee on Economic, Social and Cultural Rights, *General Comment No. 5, “Persons with Disabilities”* (Eleventh session, 1994), at 19, U.N. Doc E/1995/22 (1995), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 66, U.N. Doc. HRI/GEN/1/Rev.2.

104. Convention on the Rights of the Child, *supra* note 5, at art. 22.

groups in the world.¹⁰⁵ Because of their vulnerability, unaccompanied children seeking asylum should not be refused access to the territory.¹⁰⁶ With respect to armed conflict, all feasible measures shall be undertaken to ensure that children under 15 years of age have no direct part in hostilities, nor recruited for the armed forces, and protection shall be given to children who are affected by armed conflict.¹⁰⁷ It is recognized that there is a “need to ensure an effective protection of children in a period of armed conflict, in the overall framework of the realization of all the rights of the child, inherent to his or her dignity and essential to the full and harmonious development of his or her personality.”¹⁰⁸ The Convention states that a child in conflict with the law has a right to be treated in a manner consistent with the child’s dignity and worth, and which takes into account the child’s age and desirability of promoting his or her reintegration into society.¹⁰⁹ A more in-depth study of the rights of a child in conflict with the law will be discussed later in this Article.

4. Development Rights

Under the CRC, the child is assured of certain social rights that can be categorized as development rights — right to information, education, leisure, and recreation.

The State shall ensure the accessibility to children of information and materials, from a diversity of sources, and it shall encourage the mass media to disseminate information which is of social and cultural benefit to the child, and take steps to protect him or her from harmful materials.¹¹⁰ This article is particularly focused on the role of the mass media in relation to children’s rights but includes a general obligation on States Parties to ensure that the child has access to information and material from diverse sources — especially those aimed at promoting well-being and physical and mental health.¹¹¹

The child has a right to education, and the State’s duty is to ensure that primary education is free and compulsory, to encourage different forms of

105. IMPLEMENTATION HANDBOOK, *supra* note 24, at 284.

106. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, GUIDELINES ON POLICIES AND PROCEDURES IN DEALING WITH UNACCOMPANIED CHILDREN SEEKING ASYLUM (1997).

107. Convention on the Rights of the Child, *supra* note 5, at art. 38.

108. *Report on the Second Session*, *supra* note 24, at 20-21.

109. Convention on the Rights of the Child, *supra* note 5, at art. 40.

110. *Id.* at art. 17.

111. IMPLEMENTATION HANDBOOK, *supra* note 24, at 211.

secondary education accessible to every child and to make higher education available to all on the basis of capacity.¹¹² In this relation, education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent; prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.¹¹³

The Convention underscores the fact that "education is recognized to be essential to all children."¹¹⁴ All ratifying nations must plan for progressive provision of education, and they must ensure that this is done to the maximum extent of available resources.¹¹⁵ Ultimately, the fundamental purposes of education are the following: "to develop children's full potential, to prepare children for 'responsible life in a free society' and to enshrine the values of respect for all others and for the natural environment."¹¹⁶

The child has the right to leisure, play and participation in cultural and artistic activities.¹¹⁷

Rest includes the basic necessities of physical or mental relaxation and sleep, *leisure* is a wider term implying having the time and freedom to do as one pleases, *recreational activities* embrace the whole range of activities undertaken by choice for the purposes of pleasure and *play* is arguably the most interesting in terms of childhood, in that it includes activities of children which are not controlled by adults and which do not necessarily conform to any rules.¹¹⁸

5. Participation Rights of the Child

Through the CRC, it is clear that "[t]he civil rights guaranteed for everyone in the International Bill of Human Rights likewise apply to children."¹¹⁹ These participation rights include right to opinion, freedom of expression

112. Convention on the Rights of the Child, *supra* note 5, at art. 28.

113. *Id.* at art. 29.

114. IMPLEMENTATION HANDBOOK, *supra* note 24, at 369.

115. *Id.* at 374.

116. *Id.* at 391.

117. Convention on the Rights of the Child, *supra* note 5, at art. 31.

118. IMPLEMENTATION HANDBOOK, *supra* note 24, at 417. (emphasis supplied).

119. *Id.* at 169 (The International Covenant on Economic, Social and Civil Rights, together with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights make up the International Bill of Human Rights.).

and right to information, right to freedom of thought, conscience and religion, right to association, right to privacy.¹²⁰

a. Right to Opinion, Freedom of Expression and Right to Information

Under the CRC, children have the right to participate in all matters affecting them, and children who are capable of forming their own views have a right to express these views; such views being given due weight in accordance with the age and maturity of the child.¹²¹ Children have the right to be heard on their opinions and to have their views taken seriously. This article is said to embody one of the basic challenges of the Convention because it affirms that the child, as a fully-fledged person, is entitled to participate in decision-making processes affecting his life.

It should be noted that the article does not set any lower age limit, as children can and do have views at a very early age. The child should not be “envisaged as a passive human being or allowed to be deprived of such right or intervention, unless he or she would clearly be incapable of forming his or her views.”¹²² Hence, the right has been interpreted to include “situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age.”¹²³ This is simply because the standard by which the views are to be taken into consideration will be based on the age and maturity of the child.

The UDHR and the ICCPR guarantee the right to freedom of expression.¹²⁴ Under the CRC, the child has the right to express his or her views, and the right to seek, receive and impart information through any media.¹²⁵ In this connection, the child has the right of access to information and material from a diversity of sources.¹²⁶ Thus, “constitutional and/or legal provisions should further indicate how these rights specifically apply to

120. See Convention on the Rights of the Child, *supra* note 5, at arts. 12-16. See also U.N. ESCOR, *Report of the Intergovernmental Expert Group Meeting to develop guidelines on justice in matters involving child victims and witnesses of crime*, at 10-11, U.N. Doc. E/CN.15/2005/14/Add.1 (2005).

121. See *id.* at art. 12.

122. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 426.

123. *Id.*

124. Universal Declaration of Human Rights, *supra* note 15, at art. 19; International Covenant on Civil and Political Rights, *supra* note 18, at art. 19.

125. Convention on the Rights of the Child, *supra* note 5, at art. 13.

126. *Id.* at art. 17.

children, which mechanisms have been established to protect them in an effective manner and which remedies are provided in case of their violation.”¹²⁷

b. Right to Freedom of Thought, Conscience, and Religion

A child is ensured the right to determine and practice any belief, and States are obligated to respect the rights of parents or guardians to provide direction in the exercise of this right.¹²⁸

With respect to the right to freedom of thought and conscience, there are generally no restrictions to the child’s rights, “except that it requires respect for the rights and duties of parents and others to provide direction to the child in the exercise of the right, consistent with the child’s evolving capacities.”¹²⁹

The child’s right to religion is considered an absolute right, subject only to limited restrictions as prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The right to freedom of religion “shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”¹³⁰ The terms *religion* and *belief* are to be broadly construed, protecting theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.¹³¹

c. Right to Association

Children have a right to meet with others, and to join or form associations.¹³² The importance of this article is its emphasis on children as holders of fundamental civil rights, including the right to engage in peaceful activities as a group.¹³³

127. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 433.

128. Convention on the Rights of the Child, *supra* note 5, at art. 14.

129. IMPLEMENTATION HANDBOOK, *supra* note 24, at 178-79.

130. International Covenant on Civil and Political Rights, *supra* note 18, at art. 18(1).

131. Human Rights Committee, *General Comment 22, Article 18* (Forty-eighth session, 1993), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 35-36, U.N. Doc. HRI/GEN/I/Rev.2.

132. Convention on the Rights of the Child, *supra* note 5, at art. 15.

133. IMPLEMENTATION HANDBOOK, *supra* note 24, at 192.

d. Right to Privacy

Children have the right to protection from arbitrary or unlawful interference with privacy, family, home, or correspondence, or attacks on honor and reputation.¹³⁴ The protection of the child's privacy includes privacy in institutions, including privacy in juvenile justice, child protection and other proceedings, the home, including places of alternative care, and various categories of residential institutions, boarding schools, places of detention, long-stay hospitals, and so forth. They also have the right not to have their correspondence — letters and other forms of communication, including telephone calls — interfered with arbitrarily or unlawfully, in their family or wherever else they may be.¹³⁵

E. *Duty to Comply and Report*

1. Duty-Holders

The CRC seeks to improve the situation of children all over the world. States Parties have the primary responsibility under the Convention to ensure the realization of the objectives and principles embodied therein, by undertaking all appropriate legislative, administrative and other measures of implementation.¹³⁶ The rights of children must be a primordial consideration in the formulation of a country's national plans and programs. Governments of ratifying states have to undertake affirmative action and leadership to achieve the objective of translating child rights principles to actual practice.

Thus, the governments of States Parties, being the duty-holders under the CRC, are obligated to report their progress regarding the realization, promotion, and protection of child rights. These governments, in particular, the three branches of government — the legislature, the executive and the judicial branches, have the responsibility to set and meet the standards for the realization and protection of children's rights.

Among these responsibilities are the following: developing a comprehensive national agenda; developing permanent bodies or mechanisms to promote coordination, monitoring and evaluation of

134. See Convention on the Rights of the Child, *supra* note 5, at art. 16. See also U.N. ESCOR, *Report of the Intergovernmental Expert Group Meeting to develop guidelines on justice in matters involving child victims and witnesses of crime*, at 11-12, U.N. Doc. E/CN.15/2005/14/Add.1 (2005).

135. IMPLEMENTATION HANDBOOK, *supra* note 24, at 204.

136. See Convention on the Rights of the Child, *supra* note 5, at art. 4.

activities throughout all sectors of government; ensuring that all legislation is fully compatible with the Convention by incorporating it into domestic law or ensuring that its principles take precedence in cases of conflict with national legislation; making children visible in policy development processes throughout government by introducing child impact assessments; analyzing government spending to determine the portion of public funds spent on children and to ensure that these resources are being used effectively; ensuring that sufficient data are collected and used to improve the situation of all children in each jurisdiction; raising awareness and disseminating information on the Convention by providing training to all those involved in government policy-making and working with or for children; involving civil society — including children themselves — in the process of implementing and raising awareness of child rights; and setting up independent statutory offices — ombudspersons, commissions or other institutions — to promote and protect children's rights.¹³⁷

2. Distinction between Self-Executing and Non-Self Executing Rights

Self-executing rights refer to those rights that are demandable without the need of any legislative act. Non-self-executing rights, on the other hand, are those rights that require legislation in order to implement the same.

Several provisions in the CRC embody fundamental principles that must always be taken into consideration in any action regarding children. Some rights in the Convention are recognized to be inherent human rights that are demandable by all, especially children. There are, however, numerous provisions that require implementing legislation before the subject rights can be demanded by the child. In fact, the Convention requires State Parties to undertake the necessary measures, including legislative measures, to implement the rights recognized therein.¹³⁸

3. Monitoring by the International Community

It is essential to monitor the realization of all the rights within the Convention for all children, without discrimination.¹³⁹ In this connection, States Parties are under the obligation to make the rights contained in the Convention widely known to both children and adults.¹⁴⁰ This is in recognition of the importance of dissemination of the rights and principles of the Convention to all sectors of the population.

137. See *Report on the Fifth Session*, *supra* note 96, at 38-43.

138. See *Convention on the Rights of the Child*, *supra* note 5, at art. 4.

139. IMPLEMENTATION HANDBOOK, *supra* note 24, at 26.

140. See *Convention on the Rights of the Child*, *supra* note 5, at art. 42.

Furthermore, the Convention provides for the establishment of a Committee on the Rights of the Child.¹⁴¹ Its function is to “provide an international mechanism for monitoring progress on implementation of the CRC and, as thus, is considered as the highest international authority for interpreting the Convention.”¹⁴² States Parties are under the obligation to report to the Committee within the number of years prescribed by the Convention and to make their reports available to the public in their respective countries.¹⁴³

It must be stressed that while there is no correct or incorrect method of implementing the CRC, it is of fundamental importance that States Parties use the CRC as the benchmark for the formulation of national policies. The key role of the Committee is to ensure the realization of the rights of the child by monitoring compliance. The Committee helps raise awareness of the plight of children all over the world and urges countries to prioritize children’s rights.

II. THE RESPONSIBILITY OF THE COURTS IN RELATION TO THE CRC

A. *General Duties of and Implications to the Courts under the CRC*

Translating child rights principles into practice requires action and leadership by governments. All sectors of the government of States Parties are tasked with the responsibility of ensuring that the Convention is properly implemented. This involves not only the dissemination of information regarding the rights of children and the corresponding duties of the parents and the State, but also the actual positive acts by the government to carry out and fulfill the aims and objectives of the Convention.

The legislative, executive and judicial branches of the government have their respective functions and responsibilities in this regard. While this is a joint effort for all interested parties, the Convention has seen it fit, in certain instances, to expressly indicate the role of the courts in implementing its provisions.

1. General Principles

The courts must always be guided by the fundamental principles of the Convention. Any act of the courts in relation to any proceeding that would effect a child must be with due regard to the fundamental principles of best

141. *Id.* at art. 43.

142. IMPLEMENTATION HANDBOOK, *supra* note 24, at 571.

143. Convention on the Rights of the Child, *supra* note 5, at art. 44.

interests of the child,¹⁴⁴ non-discrimination,¹⁴⁵ and respect for the child's opinion.¹⁴⁶

The courts of law are specifically mandated by the Convention to consider the best interests of the child in any action affecting their rights.¹⁴⁷ The bottom line is that "[p]rinciples relating to the best interests of the child and prohibition of discrimination in relation to the child should be incorporated into domestic law, and it should be possible to invoke them before the courts."¹⁴⁸

Another important principle is the respect for the child's opinion, which is related to the right of the child to participate in the proceedings. Every child has a right to be heard in any judicial and administrative proceedings affecting him or her.¹⁴⁹ The actual judicial and administrative proceedings that may involve children are very diverse.

This covers a very wide range of court hearings and also formal decision-making affecting the child, including all civil proceedings such as divorce, custody, care and adoption proceedings, name-changing, judicial applications relating to place of residence, religion, education, disposal of money and so forth, judicial decision-making on nationality, immigration and refugee status, and criminal proceedings; it also covers States' involvement in international courts. Arguably, it covers criminal prosecutions of the parents, the outcome of which can affect children dramatically.¹⁵⁰

Further, this includes situations when the child "initiates them, for instance, by introducing a complaint as a victim of ill treatment, and when the child intervenes as a party to the proceeding..."¹⁵¹ In this regard, the Committee has proposed the consideration of the best interests and other general principles in relation to many issues, such as testimony before a court, situations of detention, institutionalization, as well as in relation to the right of the child to testify in court.¹⁵²

144. *Id.* at art. 3.

145. *Id.* at art. 2.

146. *Id.* at art. 12.

147. *Id.* at art. 3(1).

148. IMPLEMENTATION HANDBOOK, *supra* note 24, at 43.

149. *See* Convention on the Rights of the Child, *supra* note 5, at art. 12(2).

150. IMPLEMENTATION HANDBOOK, *supra* note 24, at 150.

151. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 428.

152. *See* IMPLEMENTATION HANDBOOK, *supra* note 24, at 151.

Hence, it is increasingly recognized that courts and other formal decision-making bodies need to adapt to enable children to participate. For court hearings, this could include innovations such as more informality in the physical design of the court and the clothing of the judges and lawyers, the videotaping of evidence, sight screens, separate waiting rooms and the special preparation of child witnesses.¹⁵³ “States are left with the discretion as to how the child’s views should be heard; but where procedural rules suggest that this be done through a representative or an appropriate body, the obligation is to transmit the views of the child.”¹⁵⁴ In other words, a child has a right to be heard either directly, or through a representative, and in either case, he or she has the right to transmit his views and feelings to the courts.

2. Certain Provisions in Relation to the Courts

a. Separation from Parents

Children may only be separated from their parents after a determination that this is in line with the best interests of the children. This is subject to review by the courts.¹⁵⁵ However, the courts, in deciding this issue must be guided by the two essential principles: “first, that children should not be separated from their parents unless it is necessary for their best interests and, second, that all procedures to separate children from their parents on that ground must be fair.”¹⁵⁶

b. Protection from All Forms of Violence

Every child has a right to be protected from all forms of violence. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.¹⁵⁷

153. *Id.*

154. *Id.*

155. Convention on the Rights of the Child, *supra* note 5, at art. 9(1).

156. IMPLEMENTATION HANDBOOK, *supra* note 24, at 119.

157. Convention on the Rights of the Child, *supra* note 5, at art. 19(2).

c. Alternative Care, Periodic Review of Placement, Treatment and Rehabilitative Care for Victims

Children have a right to life, and as already discussed previously, this includes the basic rights of survival and development. In this connection, children have a right to be cared for, and in the absence of their parents or guardians, they have a right to appropriate alternative care, provided through the programs of the State.

Such alternative care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."¹⁵⁸

Furthermore, it is the right of children placed by the State for reasons of care, protection or treatment to have all aspects of that placement reviewed regularly.¹⁵⁹ This review should be conducted by the courts. The State is also mandated to promote the physical and psychological recovery and social reintegration of a child victim of abuse, neglect, exploitation, torture or armed conflicts in an environment which fosters the health, self-respect and dignity of the child.¹⁶⁰

B. Article 37: The Duty of the Courts with Respect to Torture, Degrading Treatment and Deprivation of Liberty

Article 37 of the CRC mandates that the State is to protect children from torture or other cruel, inhuman or degrading treatment; capital punishment or life imprisonment for offenses committed by persons below the age of 18; and unlawful or arbitrary deprivation of liberty. Every child deprived of liberty has the right to be treated with humanity and respect, to be separated from adults, to maintain contact with family members and to have prompt access to legal assistance.¹⁶¹

The standards for the implementation of this Article can be found in the following United Nations instruments: the United Nations Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),¹⁶² the United

¹⁵⁸ *Id.* at art. 20(3).

¹⁵⁹ *Id.* at art. 25.

¹⁶⁰ *Id.* at art. 39.

¹⁶¹ *Id.* at art. 37.

¹⁶² United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

Nations Rules for the Protection of Juveniles Deprived of their Liberty,¹⁶³ and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).¹⁶⁴ These instruments “complemented and provided guidance for the implementation of the rights recognized by the Convention and confirmed that there was no possible conflict between human rights and juvenile justice.”¹⁶⁵

1. Torture as a Concept

There is an absolute prohibition on torture, and cruel, inhuman or degrading treatment or punishment.¹⁶⁶ This prohibition applies to all children, wherever they are.¹⁶⁷ By presenting it as a general and absolute right, the Convention shows that any of the forms of treatment or punishment covered by this article should be combated at all moments and in all circumstances, including within family life or in the school system.¹⁶⁸

Torture has been defined as:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction.¹⁶⁹

The aim of this prohibition is to uphold and protect the dignity and integrity of every individual. In this regard, every State is duty-bound to

163. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990) [hereinafter UN Rules for Protection of JDL].

164. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

165. Committee on the Rights of the Child, *Report on the Tenth Session*, at ¶214, U.N. Doc. CRC/C/46 (Dec. 18, 1995).

166. See Convention on the Rights of the Child, *supra* note 5, at art. 37(1).

167. IMPLEMENTATION HANDBOOK, *supra* note 24, at 491.

168. MANUAL ON HUMAN RIGHTS REPORTING, *supra* note 43, at 440.

169. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at art. 1, G.A. Res. 39/46, 1465 U.N.T.S. 85 (1984).

ensure this protection through legislative and other measures. No derogation of this prohibition can be allowed, and it has been affirmed that it remains in force and effect even in situations of public emergency.

2. Corporal Punishment, Solitary Confinement, Life Imprisonment and Death Penalty

It has been made clear that the prohibition on torture and cruel, inhuman or degrading treatment or punishment extends to corporal punishment.¹⁷⁰ This is further echoed in the United Nations rules and guidelines relating to juvenile justice.¹⁷¹ The prohibition includes excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.¹⁷² In fact, the Convention even goes beyond this by requiring protection of children from “all forms of physical and mental violence.”¹⁷³ Likewise, it was recognized that “prolonged solitary confinement of the detained or imprisoned person”¹⁷⁴ may amount to the prohibited acts under this article.

With respect to the death penalty, the international standard is that it should not be imposed on children. This prohibition must be expressly confirmed in domestic legislation.

3. Deprivation of Liberty

a. Arrest, Investigation, and Prosecution

Of all phases of the juvenile justice procedure, it is on arrest and immediately thereafter, while in police custody, that an accused juvenile is most likely to become the victim of torture and other forms of cruel treatment.¹⁷⁵ Clearly,

170. Human Rights Committee, *General Comment 20*, “Article 7” (1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 30, U.N. Doc. HR1/GEN/1/Rev.2, at 30 (Mar. 29, 1996).

171. The Beijing Rules, *supra* note 162, at rule 17.3; UN Rules for Protection of JDL, *supra* note 163, at rule 67; The Riyadh Guidelines, *supra* note 164, at ¶21(h), ¶54.

172. *General Comment 20*, *supra* note 170, at 30.

173. IMPLEMENTATION HANDBOOK, *supra* note 24, at 493.

174. *General Comment 20*, *supra* note 170, at 31.

175. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, at 8, available online at <http://www.unicef-icdc.org/publications/pdf/digest3e.pdf> (last accessed Apr. 16, 2005).

there is a real need to protect the rights of every child during this crucial period. It is necessary that specialized training should be given to law enforcement officials who are involved in the administration of juvenile justice,¹⁷⁶ especially to the police who are the "first point of contact with the juvenile justice system."¹⁷⁷

The ICCPR mandates that "in criminal cases any person arrested or detained has to be brought 'promptly' before a judge or other officer authorized by law to exercise judicial power."¹⁷⁸ This is also applicable when it is a child who is arrested, such that it is prescribed that "a judge or competent official or body shall, without delay, consider the issue of release."¹⁷⁹

b. Pre-trial Detention and Imprisonment

Among the most widely flouted international rules regarding juvenile justice is the imprisonment of minors. It is massively violated in this context: the justifications for its use are too often at best questionable; the conditions of detention are frequently inhumane; and the period of such detention may extend to weeks, months or even years.¹⁸⁰

The clear standard reiterated in international instruments is that detention should be used as a measure of last resort and for the shortest possible time.¹⁸¹ This rule applies to all forms of detention, including detention pending trial. Under the ICCPR, the Human Rights Committee expressed its disapproval of pre-trial detention for juveniles¹⁸² and stated that "pre-trial detention should be an exception."¹⁸³

If possible, alternative measures should replace detention because of the danger of "criminal contamination"¹⁸⁴ that it poses to detained children. If detention is necessary, the juvenile is entitled to all the rights and guarantees

176. The Beijing Rules, *supra* note 162, at rule 12.1.

177. *Id.* at Rule 12, Official Commentary.

178. Human Rights Committee, *General Comment 8*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 8, U.N. Doc. HRI/GEN/I/Rev.2

179. The Beijing Rules, *supra* note 162, at rule 10(2).

180. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 8.

181. The Beijing Rules, *supra* note 162, at rule 13; UN Rules for Protection of JDL, *supra* note 163, at rule 17.

182. IMPLEMENTATION HANDBOOK, *supra* note 24, at 497.

183. *General Comment 8*, *supra* note 178 at 8.

184. The Beijing Rules, *supra* note 162, at rule 13, Official Commentary.

of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations¹⁸⁵ and the ICCPR.¹⁸⁶ Likewise, the child shall receive all the care, assistance and protection they may require in view of their personal circumstances.¹⁸⁷

In relation to sentences for criminal offenses, international concern was expressed regarding custodial sentences for children and the existence of lengthy and indeterminate sentences. In case of imprisonment, there must be segregation of children from adult offenders and non-discrimination between and among children. This is to prevent any possible negative influence that may result when minor offenders and adult offenders are not segregated from one another.

c. Detention Outside Juvenile Justice System

The provisions in the CRC limiting restriction of liberty apply to all instances of restriction of liberty, including, for example, in health and welfare institutions and in relation to asylum-seekers and refugee children.¹⁸⁸ The policy of the United Nations High Commissioner for Refugees is that refugee children should not be detained.¹⁸⁹ Strong efforts must be made to have them released from detention and placed in other accommodation.¹⁹⁰ Neither should deprivation of liberty be used for children in need of protection. This refers to children who may have been abandoned or subject to ill-treatment. And mentally ill children should never be detained in prison.

185. Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

186. See International Covenant on Civil and Political Rights, *supra* note 18, at arts. 9 & 10, ¶¶2(b) & 3.

187. The Beijing Rules, *supra* note 162, at rule 13.5, Official Commentary. ("Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).").

188. IMPLEMENTATION HANDBOOK, *supra* note 24, at 498.

189. *Id.*

190. United Nations High Commissioner on Refugees, REFUGEE CHILDREN: GUIDELINES ON PROTECTION AND CARE, 86-88.

4. Treatment When Deprived of Liberty

There is the right of children deprived of liberty to be treated with humanity and respect, to be separated from adults, to maintain contact with family members and to have prompt access to legal assistance.¹⁹¹ Children in detention or deprived of their liberty should not, as a guiding rule, lose their fundamental rights. They cannot be denied for any reason related to their status the civil, economic, political, social or cultural rights to which they are entitled.¹⁹² They must still be treated with humanity and respect, taking into account the needs of persons of his or her age. Such children, when deprived of liberty, must not only be registered for their own protection, but should also be segregated from adults.

C. Article 40: *The Courts and the Administration of Juvenile Justice*

The Convention covers the rights of the child in conflict with the law and prescribes the treatment that is due him or her from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence.¹⁹³ Ultimately, the Convention prescribes a distinctive system of juvenile justice for children,¹⁹⁴ and calls for the adoption of a "child-oriented system."¹⁹⁵ Again, the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Riyadh Guidelines were instrumental in the determination of the appropriate standards for the juvenile justice system. The standards for juvenile justice are enumerated and comprehensively discussed in these documents.

In both binding and non-binding international law, juvenile justice and its associated fields (such as prevention of delinquency and conditions of detention) are the subject of provisions whose comprehensive and detailed nature has no equal in the overall field of children's rights.¹⁹⁶ The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the

191. Convention on the Rights of the Child, *supra* note 5, at art. 37.

192. *See* UN Rules for Protection of JDL, *supra* note 163, at rule 13.

193. *See* Convention on the Rights of the Child, *supra* note 5, at art. 40. *See* U.N. ESCOR, *Report of the Intergovernmental Expert Group Meeting to develop guidelines on justice in matters involving child victims and witnesses of crime*, at 12-13, U.N. Doc. E/CN.15/2005/14/Add.1 (2005).

194. IMPLEMENTATION HANDBOOK, *supra* note 24, at 540.

195. Committee on the Rights of the Child, *Report on the Ninth Session*, at 64, U.N. Doc. CRC/C/43, annex VIII (June 9, 1995).

196. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 3.

circumstances of both the offenders and the offense.¹⁹⁷ Every accused child has a right to be treated with dignity. The State is to ensure that: no child is accused by reason of acts or omissions not prohibited by law at the time committed; every accused child is informed promptly of the charges, presumed innocent until proven guilty in a prompt and fair trial, that the child receives legal assistance and is not compelled to give testimony or confess guilty; and, that alternatives to institutional care are available.¹⁹⁸

1. Positive Aims of Juvenile Justice

The CRC is explicit on the child's right to be treated in a manner consistent with promotion of sense of dignity and worth. This applies to all children, especially to children who find themselves in the juvenile justice system, and particularly to the children in conflict with the law (CICL). There is a clear prohibition against *ex post-facto* law, which has been recognized as a generally accepted principle in international criminal law. Furthermore, the CRC guarantees the following rights to a child in conflict with the law: presumption of innocence, informed of charges and legal assistance; speedy and impartial trial; no compulsion to give testimony, or confess guilt; examination of adverse witnesses; to obtain participation of witnesses; review by higher court; the right to free assistance of interpreter; and privacy.

The juvenile justice is therefore not founded — contrary to a widespread misconception — on a 'lenient' approach as such but on responses to juvenile offending that: encourage a process of behavioral change by helping the child or young person to feel accountable for his or her actions and understand their impact on others; foster integration rather than alienation; hence, avoid the involvement of the formal court system and, above all, to purely punitive responses such as deprivation of liberty wherever possible, and give special importance to constructive community-based solutions.¹⁹⁹

2. System of Juvenile Justice

a. Age of Criminal Responsibility and Minimum Age for Criminal Majority

A balance must be found between protection and responsibility, particularly with regard to the minimum age for criminal majority.²⁰⁰ If this is too high, there is a risk that the law will be widely flouted and brought into disrepute;

197. The Beijing Rules, *supra* note 162, at rule 5.1.

198. Convention on the Rights of the Child, *supra* note 5, at art. 40.

199. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 4.

200. IMPLEMENTATION HANDBOOK, *supra* note 24, at 551.

too low and the law risks being savagely harsh.²⁰¹ The lack of due process guarantees is indeed the main concern arising from the establishment of “too high” a minimum age.²⁰² Aside from this, there must be no discrimination in the age, for example between girls and boys, or between different regions in the country.²⁰³

The CRC does not set a minimum age of criminal responsibility; it only requires the “establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”²⁰⁴ While “there is no clear international standard regarding the age at which criminal responsibility can be reasonably imputed to a juvenile,”²⁰⁵ the highest possible minimum age has been encouraged by the Committee on the Rights of the Child. Also, “it has been stressed that the age of criminal responsibility must be consistent throughout a State’s jurisdiction.”²⁰⁶ According to the Beijing Rules, “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.”²⁰⁷

It has been recognized that the minimum age of criminal responsibility differs widely owing to history and culture.²⁰⁸ In fact, the minimum ages of criminal responsibility among States range from as young as 7 to 18 years of age.²⁰⁹ According to the Beijing Rules, “the modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behavior.”²¹⁰

b. Diversion from Judicial Proceedings

Diversion proceedings evolved due to the desire to change the adversarial nature of criminal proceedings and to focus on alternative forms of rehabilitation. “In a gradually increasing number of countries, the attempt is made to find viable and constructive ways of avoiding a child or young

201. FORTIN, *supra* note 12, at 439.

202. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 5.

203. IMPLEMENTATION HANDBOOK, *supra* note 24, at 552.

204. Convention on the Rights of the Child, *supra* note 5, at art. 40.

205. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 4.

206. IMPLEMENTATION HANDBOOK, *supra* note 24, at 12.

207. The Beijing Rules, *supra* note 162, at rule 4.

208. *Id.*

209. See UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 5.

210. The Beijing Rules, *supra* note 162, at rule 4, Commentary.

person coming into contact with the justice system ‘unnecessarily.’”²¹¹ International instruments dealing with the rights of CICL, including the CRC, widely encourage diversion from judicial proceedings.

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practiced on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social services) may be the optimal response.²¹²

The police and prosecution agencies should have the power to dispose of cases, at their discretion, without need of formal hearing.²¹³ Likewise, community diversion programs are highly encouraged.

Diversion may be used at any point of decision-making — by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils.²¹⁴ However, it must be noted at the onset that diversion can only take place with the consent of the juvenile offender.²¹⁵

Examples of diversion have ranged across states, depending on the circumstances of the case. Diversion can occur at the level of police apprehension, where a warning or what is known as a “police caution”²¹⁶ is given to the juvenile offender. On the other hand, diversion can take place upon a “full-fledged screening process”²¹⁷ conducted before court appearance. This is usually done by a social worker. Furthermore, “there are now several examples of bodies being set up as a recognized substitute for the formal court system, and which are mandated to deal with young people whose offense is not classified as serious and who admit to having committed

211. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 10.

212. The Beijing Rules, *supra* note 162, at rule 11, Official Commentary.

213. *Id.*

214. *Id.*

215. *Id.* (“However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes.”).

216. See UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 10. (“The real efficacy of this kind of action is, however, widely questioned.”).

217. *Id.*

that offense.”²¹⁸ These alternatives to the courts have been conceptualized in various ways, such as the “children’s hearings system” in Scotland and the “welfare approach” in the Philippines and Latin America.²¹⁹

Also, however, there is recognition that there is no substitute to court proceedings, and that these alternatives to the courts are only in certain cases, such as when the juvenile has admitted to committing the offense, and for such offenses that are not considered as serious.²²⁰

3. Other Dispositions

The CRC requires that alternatives to institutional care must be available, to ensure that sentencing is consistent with the aims of juvenile justice and the general principles of the Convention.²²¹ Emphasis is given to the juvenile’s care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care. The well-being of the juvenile shall be the guiding factor in the consideration of her or his care.²²²

III. IMPLEMENTATION OF THE RIGHTS OF THE CHILD IN THE PHILIPPINE SETTING

A. Domestic Laws and Rules in Relation to the Rights of the Child

I. Special Protection of Children Against Abuse, Exploitation and Discrimination Act

In 1992, Congress passed Republic Act No. 7610,²²³ also known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. It is declared therein that it is the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions; to intervene on behalf of the child when the parent, or person having care or custody of

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 11.

²²¹ IMPLEMENTATION HANDBOOK, *supra* note 24, at 553.

²²² The Beijing Rules, *supra* note 162, at rules 17 & 18.

²²³ An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes, Republic Act No. 7610 (1992).

the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts are committed by the said parent or person having care and custody of the same; and to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The said law also states that the best interests of children shall be the paramount consideration in all actions concerning them and that every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

2. Rule on Juveniles in Conflict with the Law

At present, the Rule on Juveniles in Conflict with the Law²²⁴ governs proceedings involving children in conflict with the law and prescribes guidelines for the treatment, procedure and placement of children in the criminal law system. These Rules were issued by the Supreme Court in February 2002 and implement Presidential Decree No. 603²²⁵ and other laws. It supersedes the Rules and Regulation on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders²²⁶ and, with respect to children offenders, the Revised Rules on Criminal Procedure for Children in Conflict with the Law.²²⁷ However, both these laws are supplementary on those areas not covered by the Rule on Juveniles in Conflict with the Law (such as the procedure for preliminary investigation and bail).²²⁸

3. Rule on Examination of a Child Witness

The Supreme Court has also issued the Rule on Examination of a Child Witness.²²⁹ This Rule governs the examination of child witnesses who are

224. Proposed Rule on Juveniles in Conflict with the Law, A.M. No. 02-I-18-SC (2002) [hereinafter RULE ON JUVENILES IN CONFLICT WITH THE LAW].

225. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

226. Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders, Council for the Welfare of Children, Department of Social Welfare and Development (1995).

227. Revised Rules on Criminal Procedure for Children in Conflict with the Law (1932).

228. BREAKING RULES: CHILDREN IN CONFLICT WITH THE LAW AND THE JUVENILE JUSTICE PROCESS, 18 *available online at* <http://www.childprotection.org.ph/monthlyfeatures/archives/sep2k4a.html> (last accessed Apr. 16, 2005).

229. Rule on Examination of Child Witness (2000) [hereinafter RULE ON EXAMINATION OF A CHILD WITNESS].

victims of crime, accused of a crime, and witnesses to crime, and applies in all criminal proceedings and non-criminal proceedings involving child witnesses. This rule ensures an environment that allows children to give reliable and complete evidence, minimize trauma, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.²³⁰

The objective of this Rule is to ensure that the justice system treats every juvenile in conflict with the law in a manner that recognizes and upholds his human dignity and worth, and instills in him respect for the fundamental rights and freedom of others.²³¹ The Rule considers his developmental age and the desirability of his reintegration into and assumption of a constructive role in society in accordance with the principle of restorative justice.²³² This Rule shall be interpreted liberally to promote the best interests of the child.²³³

4. Rules of Court (ROC)

The Rules of Court were promulgated by the Supreme Court pursuant to the provisions of the Constitution.²³⁴ The Rules of Court are composed of the following main parts: The 1997 Rules of Civil Procedure,²³⁵ Special Proceedings, The Revised Rules of Criminal Procedure,²³⁶ The Revised Rules on Evidence, and Legal Ethics. These rules collectively govern the civil and criminal actions and special proceedings in all courts, except as otherwise provided by the Supreme Court.

230. *People v. Baring*, 374 SCRA 696, 709 (2002), citing RULE ON EXAMINATION OF A CHILD WITNESS, §2.

231. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §2.

232. *Id.* at §2.

233. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §3.

234. PHIL. CONST, art. VIII, §5(5) (“Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”).

235. These rules became effective July 1, 1997, per resolution of the Supreme Court in Bar Matter No. 803, adopted in Baguio City on April 8, 1997.

236. These rules became effective December 1, 2000, per A.M. No. 00-5-03-SC.

5. Other Laws

There are also other pertinent laws that are of particular importance to children. For example, there is the Civil Code,²³⁷ which contains provisions regarding children, The Family Code,²³⁸ which basically covers persons and family relations, including obligations toward children; The Family Courts Act of 1997,²³⁹ which created the courts with exclusive original jurisdiction over child cases; The Probation Law;²⁴⁰ and the Special Treatment of Minor Detainees and Jail Decongestion,²⁴¹ which calls for the segregation of the minor detainees from the adult detainees.

Recognition of the importance of such laws has been underscored by the Supreme Court. In a case, the Court had the occasion to state that,

[f]or its part, the Supreme Court has issued Administrative Circular No. 23-95 enjoining trial courts to act with dispatch on all cases involving children, including but not limited to pedophilia, child labor and child abuse cases. xxx Our duty does not end here though. As the highest court of the land, it is incumbent upon us to give life to all these covenants, agreements, and statutes by enriching and enhancing our jurisprudence on child abuse cases, bearing in mind always the welfare and protection of children.²⁴²

B. A Brief Look at the Juvenile Justice System in the Philippines

To date, the Philippines has submitted two reports²⁴³ to the Committee, in compliance with its reporting obligation as a State Party.²⁴⁴ As of this writing, the second periodic report has yet to be scheduled for discussion, however, discussion is expected to be during the 39TH session of this year.

237. An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386 (1950).

238. The Family Code of the Philippines, Executive Order No. 209 (1987).

239. An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Bilang 129, as Amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 8369 (1997) [hereinafter FAMILY COURTS ACT].

240. Establishing a Probation System, Appropriating Funds Therefor and for Other Purposes, Presidential Decree No. 968 (1976) [hereinafter PROBATION LAW].

241. Special Treatment of Minor Detainees and Jail Decongestion, Administrative Circular No. 04-2002 (2002).

242. *People v. Abadies*, 384 SCRA 442, 452-53 (2002).

243. The two reports are the initial report (U.N. Doc. CRC/C/3/Add. 23) and the second periodic report (U.N. Doc. CRC/C/65/Add.31).

244. See Convention on the Rights of the Child, *supra* note 5, at art. 44.

The concluding observations of the Committee to the Philippine initial report are instructive. Therein, the Committee positively noted that the Philippines was firmly committed to the promotion and protection of the rights of the child.²⁴⁵ Several factors, however, were enumerated which could impede the implementation of the Convention, to wit: geographical and cultural diversity, economic and social disparities, political instability, and natural disasters.²⁴⁶

The justice system of the Philippines is composed of what are known as the five pillars: the community, police, prosecution, courts and correction. Research has shown that three types of offenses were found to be common among Philippine children: property, drug-related offenses and sexual offenses.²⁴⁷

The criminal justice system in the Philippines — characterized by very poor and inadequate facilities, inhumane conditions, inefficient handling and resolution of cases, among others — has often failed for adult offenders and more so for children who have come into contact with the law.²⁴⁸ At present, the Philippines does not have legislation that specifically deals with the juvenile justice system. Instead, there are several laws that collectively make up the rules and guidelines governing the procedures and rights of children in conflict with the law.

C. Comparative Study of the Domestic Laws vis-à-vis the CRC

I. Age of Criminal Responsibility

In the international sphere, there is no defined minimum age of criminal responsibility. States are left with the discretion of determining this age, guided by vague international standards that the minimum age should not be too high nor too low, within their respective jurisdictions through appropriate legislation.

In the Philippines, a juvenile in conflict with the law is defined as “a person who at the time of the commission of the offense is below eighteen years of age but not less than nine years of age.”²⁴⁹ In this jurisdiction, the age of criminal responsibility is the age when a juvenile who is nine years or

245. Committee on the Rights of the Child, *Report on its Eighth Session*, at ¶4, U.N. Doc. CRC/C/SR/ 185-188.

246. *Id.* at ¶5-7.

247. BREAKING RULES, *supra* note 228, at 24.

248. *Id.* at 1.

249. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §1.

over but under 15 years commits an offense with discernment.²⁵⁰ Discernment means the mental capacity to understand the difference between right and wrong and its consequences.²⁵¹ It is declared that a minor under nine years of age at the time of the commission of the offense is exempt from criminal liability.²⁵²

A minor nine years and above but under 15 years of age at the time of the commission of the offense shall be committed to the care of his parents or relative, in the sound discretion of the court and subject to its supervision. If it is proven that the said minor has acted with discernment, he shall be proceeded against in accordance with the Rule on Juveniles in Conflict with the Law.²⁵³ In other words, the age of criminal responsibility in the Philippines is nine years of age, provided the minor acted with discernment.

It is important to note, however, that the Committee disapproves of instances where a criterion of an arbitrary nature, such as discernment, is used in the determination of criminal responsibility among children.

In relation to non-discrimination, particular concern was expressed about instances where criteria of a subjective and arbitrary nature (such as with regard to the attainment of puberty, *the age of discernment* or the personality of the child) still prevailed in the assessment of the criminal responsibility of children and in deciding upon the measures applicable to them.²⁵⁴

2. Arrest, Investigation and Pre-trial Detention

To reiterate, the international standard is that the "arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."²⁵⁵

a. Arrest

Involvement in juvenile justice processes has a profound effect on children. This is why it is important that the least possible harm be inflicted upon children, especially in cases of the initial contact with law enforcement agencies.²⁵⁶ International standards require that upon apprehension, the

250. *Id.* at §4(m).

251. *Id.* at §4(n).

252. *Id.* at §5.

253. *Id.*

254. Committee on the Rights of the Child, *Report on the Tenth Session*, at 36, U.N. Doc. CRC/C/46 (Dec. 18, 1995). (emphasis supplied).

255. Convention on the Rights of the Child, *supra* note 5, at art. 37(b).

256. See The Beijing Rules, *supra* note 162, at rule 10, Official Commentary.

juvenile's parents or guardian should be immediately notified, and the judge or other competent official or body should consider the issue of release without delay.²⁵⁷

In the Philippines, the guidelines in taking a juvenile into custody are outlined in the Rule on Juveniles in Conflict with the Law.²⁵⁸ Usually, the arresting officer is a police officer or a *barangay tanod*.²⁵⁹ Essentially, the person taking the juvenile into custody must observe certain safeguards such as giving proper identification to the juvenile, properly informing the juvenile the reasons for taking him or her into custody, avoiding vulgar or profane words or sexual advances, as well as avoiding displaying any instrument of force or restraint or subjecting the juvenile to greater restraint than is necessary or violence or force for the apprehension. Furthermore, the parents of the juvenile must be notified and the juvenile must be given immediate physical or mental examination and held in quarters separate from the opposite sex and adult offenders.

In case of an arrest and the taking into custody of a juvenile without a warrant, resort must be made to the provisions of the Revised Rules of Criminal Procedure.²⁶⁰ According to the Revised Rules of Criminal Procedure, the juvenile must be informed by the officer or private individual of the latter's authority or intention, respectively, to arrest the former and the reason for the arrest. In case of a lawful arrest without a warrant involving an offense which requires a preliminary investigation, the juvenile will be proceeded against in accordance with the Revised Rules of Criminal Procedure. In other words, an information or complaint may be filed against the juvenile without need of preliminary investigation, unless before the said information or complaint is filed, the juvenile requests for a preliminary investigation. In which case, the juvenile will be required to sign a waiver of the provisions of Article 125 of the Revised Penal Code,²⁶¹ in the presence of counsel. Notwithstanding the waiver, the juvenile is entitled to bail.

b. Investigation

257. *Id.* at rules 10.1 & 10.2.

258. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §6.

259. BREAKING RULES, *supra* note 228, at 29.

260. See Revised Rules of Criminal Procedure, rule 113, §§5, 8 & 9. (In essence, §5 provides the instances when there is a lawful arrest without a warrant, §8 provides the method of arrest by an officer without a warrant, and §9 provides the method of arrest by a private person.)

261. An Act Revising the Penal Code and Other Penal Laws, Act No. 3815, art. 125 [REVISED PENAL CODE]. Article 125 penalizes any delay in the delivery of detained persons to the proper judicial authorities.

In the initial investigation by the police, the same must be conducted in the presence of the parents or guardian of the juvenile, or in their absence, in the presence of a social welfare officer or counsel of the juvenile's choice.²⁶² In the Philippines, all police stations in cities should have a Women's and Children's Desk (WCD) officer, previously called the Child and Youth Relations Section (CYRS) or, if outside a city, a Child and Youth Relations Officer (CYRO).²⁶³ In the meantime, a social welfare officer will be assigned to the juvenile. The responsibility of the said social welfare officer is to undertake a preliminary background investigation of the juvenile,²⁶⁴ as well as the preparation of a case study report²⁶⁵ to be submitted to the Family Court.

While under investigation, the law is clear that the child should not be subjected in a humiliating and degrading manner. In fact, even the fingerprinting and photographing of the juvenile are subject to certain guidelines, such as the confidentiality of the files of juvenile offenders, separation of the files of juvenile offenders from those of adult offenders, and the removal and destruction of the files of juvenile offenders under certain circumstances.²⁶⁶

Generally, a criminal action may be filed against a juvenile before the prosecutor or municipal trial court in cases where a preliminary investigation is required.²⁶⁷ In other cases, it may be filed directly before the Family Courts. The filing of the civil action shall be governed by the Revised Rules of Criminal Procedure.²⁶⁸ In cases requiring preliminary investigation, the Revised Rules of Criminal Procedure and the Rule on Examination of a Child Witness are applicable to juvenile offenders.²⁶⁹

262. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §8.

263. BREAKING RULES, *supra* note 228, at 30.

264. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §10.

265. *Id.* at §19.

266. See *id.* at §9. (The files will be removed and destroyed in the following instances: (1) if the case against him is not filed, or dismissed, or (2) when the juvenile reaches 21 years of age and there is no record that he committed an offense after reaching 18 years of age.)

267. *Id.* at §11.

268. See Revised Rules of Criminal Procedure, rule 111.

269. *Id.* at rule 112, §3.

3. Arraignment, Pre-trial and Trial

International standards dictate due process, fairness, expediency, and due regard for the best interests of the child in proceedings involving children.²⁷⁰

In the Philippines, any criminal or civil action involving a juvenile in conflict with the law shall be tried and instituted in the Family Court of or nearest the place where the offense is committed or where any of its essential elements occurred.²⁷¹ By law, the filing of a case should be done within 12 to 36 hours depending on the gravity of the offense.²⁷² Once filed, the Court is guided by the principle that all hearings shall be conducted in a manner conducive to the best interests of the juvenile and in an environment that will allow him to participate fully and freely in accordance with the Rule on Examination of a Child Witness.²⁷³

The Revised Rules of Criminal Procedure shall govern the arraignment and pre-trial of the juvenile in conflict with the law.²⁷⁴ Any agreements or admissions made during the pre-trial conference must be in writing and signed by the juvenile, his parents or guardian and his counsel, otherwise the same is inadmissible.

All juveniles in conflict with the law have the right to bail for offenses not punishable by death, *reclusion perpetua* or life imprisonment when evidence of guilt is strong.²⁷⁵ This is the same rule applicable to adult offenders. Before final conviction, juveniles may be released on recognizance to the custody of their parents, for offenses falling under the Revised Rules of Summary Procedure²⁷⁶ or when the juvenile does not pose a threat to public safety.²⁷⁷

270. THE BEIJING RULES, *supra* note 162, at rule 14, Official Commentary (“The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as ‘due process of law’. In accordance with due process, a ‘fair and just trial’ includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc.”).

271. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §14.

272. BREAKING RULES, *supra* note 228, at 30.

273. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §29.

274. See Revised Rules of Criminal Procedure, rules 116 & 117 (arraignment) and rule 118 (pre-trial).

275. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §§16 & 17.

276. *Id.* at §15.

277. *Id.* at §16.

4. Rules on Evidence

a. Competence of a Child as Witness

According to the Revised Rules on Evidence, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses.²⁷⁸ Among the disqualifications to become witnesses are children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.²⁷⁹

Before the Supreme Court issued the Rule on Examination of a Child Witness, specific criteria to test the competency of a child as a witness in court had been identified through case law. To be a competent child witness, the following criteria must be met: (a) capacity of observation; (b) capacity of recollection and (c) capacity of communication.²⁸⁰ Of course, even then, commentaries elucidated that "a child of any age may be permitted to testify so long as the trial judge is satisfied that the child possesses the ability to observe, recollect and communicate."²⁸¹ It is likewise true that a very early case decided by the Supreme Court ruled that

[t]here is no rule defining any particular age at which children may be said to be capable or incapable of receiving accurate impressions and to relate them truthfully. In each instance, the possession or lack of intelligence of an infant to be a witness is to be determined by such examination as the trial judge deems necessary for the purpose.²⁸²

However, this was further clarified by the issuance of the Rule on Examination of a Child Witness, and at present, every child is presumed qualified to be a witness.²⁸³ In fact, the Supreme Court had the occasion of stating that, "indeed, the time when [we] degrade a child witness testimony is now *passé*."²⁸⁴

In case of doubt as to the competency of the child, a competency examination shall be conducted upon the motion of a party or *motu proprio*. The questions asked at the competency examination shall be appropriate to

278. Revised Rules on Evidence, rule 130, §20.

279. *Id.* at rule 130, §21(b). See e.g. *People v. Virtucio*, 326 SCRA 198, 205 (2000).

280. *People v. Pruna*, 390 SCRA 577, 592 (2002); *People v. Acbangin*, 337 SCRA 454, 462 (2000); *People v. Galas*, 262 SCRA 381, 392 (1996); *People v. Nang*, 289 SCRA 16, 31 (1998). See also 2 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 608 (2001 ed.).

281. APOSTOL, SERGIO A.F., ESSENTIALS OF EVIDENCE 108 (1991).

282. *U.S. v. Buncad*, 25 Phil. 530, 536 (1913).

283. RULE ON EXAMINATION OF A CHILD WITNESS, §6.

284. *People v. Hermosa*, 364 SCRA 648, 660 (2001)

the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.²⁸⁵ It is categorically provided that the age of the child by itself is not a sufficient basis for a competency exam.²⁸⁶

As stated by the Supreme Court in a case, “[t]he determination of the competence and credibility of a child as a witness rests primarily with the trial judge as he had the opportunity to see the demeanor of the witness, his apparent intelligence or lack of it, and his understanding of the nature of the oath.”²⁸⁷

b. Examination of Child Witness

Innovations in court hearings and proceedings have been recommended in the international level, such as “more informality in the physical design of the court and the clothing of the judges and lawyers, the videotaping of evidence, sight screens, separate waiting rooms and the special preparation of child witnesses.”²⁸⁸ This standard has been adopted and expanded in the Philippine setting. With the issuance of the Rule on Examination of a Child Witness, remarkable developments have taken place in the judicial setting. The existing rules on evidence in the Philippines have been modified to benefit and aid the child witness or child accused, in recognition of the special needs of the child and as a tool for the furtherance of justice.

The examination of a witness must be done in open court, and the same is true whether the witness is a child or an adult.²⁸⁹ However, in the case of the child, the court may order that the testimony be taken during a time of day when the child is well-rested.²⁹⁰

In due regard to the best interests of the child, every child witness is entitled to an interpreter, facilitator, or support persons, under certain circumstances. Every child is entitled to an interpreter, if he or she cannot communicate by reason of his developmental level, fear, shyness, disability,

285. RULE ON EXAMINATION OF A CHILD WITNESS, §6(e).

286. *Id.* at §6(a).

287. *People v. Bisda*, 408 SCRA 454, 478 (2003); *People v. Pruna*, 390 SCRA 577, 592 (2002); *People v. Garigadi*, 317 SCRA 399, 415 (1999).

288. IMPLEMENTATION HANDBOOK, *supra* note 24, at 151.

289. RULE ON EXAMINATION OF A CHILD WITNESS, §8; Revised Rules on Evidence, rule 132, §1.

290. RULE ON EXAMINATION OF A CHILD WITNESS, §14.

or other reason, or if he cannot understand the language.²⁹¹ The interpreter may even be another witness or family member of the child. Furthermore, the child is entitled to a facilitator, which may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative, if the child is unable to understand or respond to the questions asked.²⁹² The support persons may be any one or two persons chosen by the child who can provide him emotional support during the proceeding, who may accompany the child to the witness stand and hold the child's hand or take other appropriate steps to provide emotional support, or at the very least, must remain within the view of the child during his or her testimony.

Other innovations include the use of emotional security items and testimonial aids. The child is permitted to have an emotional security item of his or her choosing.²⁹³ The Court is allowed the use of testimonial aids such as dolls or drawings to assist the child in his testimony.²⁹⁴

For the benefit of the child, separate waiting areas and comfortable courtroom environments are highly encouraged.²⁹⁵ Children may be allowed to testify from a place other than the witness chair, provided that the opposing party has a frontal or profile view of the child during the making of the testimony, and the judge need not wear his judicial robe. Taking due regard of the child's developmental level, there may be allowed a reasonable period of recess during testimony.²⁹⁶ Other than in cases of official in-court identification, the child need not even look at the accused. Screens, one-way mirrors, and other devices may be used to shield the child from accused²⁹⁷ and even live-link television testimony can be allowed in criminal cases where the child is a victim or a witness.²⁹⁸

The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness.²⁹⁹ The court shall exercise control over the same,³⁰⁰ allow children to testify in narrative

291. *Id.* at §9.

292. *Id.* at §10.

293. *Id.* at §17.

294. *Id.* at §16.

295. *Id.* at §11 & 12.

296. *Id.* at §15.

297. *Id.* at §26.

298. *Id.* at §25.

299. *People v. Escultor*, 429 SCRA 651, 665 (2004), citing *People v. Daganio*, 374 SCRA 365, 371 (2002). See *People v. Perez*, 397 SCRA 12, 19 (2003).

300. RULE ON EXAMINATION OF A CHILD WITNESS, §19.

form,³⁰¹ allow leading questions in all stages of the examination,³⁰² ensure that objections to questions are couched in a manner so as to not mislead, confuse, frighten or intimidate the child,³⁰³ and may even prohibit a counsel from approaching a child if it appears that the child is fearful of or intimidated by the counsel.³⁰⁴

The modifications in the rules of evidence are quite notable here. For example, before the issuance of the Rule on Examination of a Child Witness, leading questions were not allowed except in certain cases, such as when the witness is a child of tender age.³⁰⁵ Now, leading questions are allowed in all stages of the examination, if it will further the ends of justice, and regardless of the age of the child, whether he or she be of tender age or not.

Evidence is deemed to be admissible when it is relevant and competent.³⁰⁶ The rule for sufficiency of evidence is that in civil cases, a preponderance of evidence is necessary, while in criminal cases, proof beyond reasonable doubt is the necessary.³⁰⁷ In case of testimony of a child, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.³⁰⁸ The Supreme Court in several cases has confirmed this.³⁰⁹

5. Imprisonment

The rule is that imprisonment must be a measure of last resort. This rule applies whether or not it is detention pending trial, during trial or after judgment has been rendered. The guidelines for imprisonment of juveniles can be found in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. This United Nations document sets out guidelines of almost every aspect of detention, including the treatment toward the juvenile during imprisonment, the separation of juvenile

301. See e.g. *People v. Canete*, 400 SCRA 109, 122 (2003), citing RULE ON EXAMINATION OF CHILD WITNESS, §19-21.

302. RULE ON EXAMINATION OF A CHILD WITNESS, §20.

303. *Id.* at §21.

304. *Id.* at §18.

305. Revised Rules on Evidence, rule 132, §10(c).

306. *Id.* at rule 128, §3; RICARDO J. FRANCISCO, EVIDENCE 21 (1996).

307. Revised Rules on Evidence, rule 133, §§1 & 2.

308. RULE ON EXAMINATION OF A CHILD WITNESS, §22.

309. See *People v. Tadeo*, 371 SCRA 303 (2001); *People v. Rama*, 350 SCRA 266 (2001).

offenders from adult offenders and from the opposite sex, the nature of the facilities and the period of imprisonment.

The juvenile charged with having committed a delinquent act, held for trial or while the case is pending appeal, if unable to furnish bail or is denied bail, shall, from the time of his being taken in custody, be committed by the Family Court to the care of the Department of Social Welfare and Development, a youth detention center, a local rehabilitation center recognized by the government.³¹⁰ In their absence, the juvenile shall be detained in the provincial, city or municipal jail.³¹¹ Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.³¹²

a. Separation of Minors from Adult Offenders

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.³¹³

In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.³¹⁴

The Rules on Juveniles in Conflict with the Law states that the juvenile should be held in secure quarters separate from that of the opposite sex and adult offenders.³¹⁵ In recognition of the special needs of juveniles in conflict with the law as well as a way to correct the appalling conditions of the Philippine jails, the Supreme Court has also issued a circular calling for the

310. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §18.

311. *Id.*

312. UN Rules on Protection of JDL, *supra* note 163, at rule 31.

313. *Id.* at ¶28.

314. *Id.* at ¶29.

315. *See* RULE ON JUVENILES IN CONFLICT WITH THE LAW, §§6(f) & 18.

decongestion of the jails and the separation of the juvenile offenders from the adult offenders.

b. Others

The juvenile in conflict with the law who has undergone preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment, if he agrees voluntarily in writing to abide by the same or similar disciplinary rules imposed upon convicted prisoners, subject to certain exceptions.³¹⁶

In the conduct of proceedings from initial contact with the juvenile in conflict with the law to the final disposition of the case, there shall be no branding or labeling of the latter as a young criminal, juvenile delinquent, prostitute, vagrant, or attaching to him in any manner any derogatory name. Likewise, no discriminatory remarks and practices shall be allowed, particularly with respect to the juvenile's social or economic status, physical disability or ethnic origin.³¹⁷

6. Diversion in Court

Diversion refers to an alternative child-appropriate process of determining the responsibility and treatment of a juvenile in conflict with the law on the basis of his social, cultural, economic, psychological or educational background without resorting to formal court adjudication.³¹⁸ Diversion is in line with the objective that the juvenile justice system should be restorative rather than retributive.³¹⁹

The Rule on Juveniles in Conflict with the Law mandates the creation of a Diversion Committee in each Family Court.³²⁰ Where the maximum imposable penalty is imprisonment of not more than six months, and the complaint or information is filed with the Family Court, the cases shall not be set for arraignment; instead, it shall be referred to the Diversion

³¹⁶ *Id.* at §35.

³¹⁷ *Id.* at §39.

³¹⁸ *Id.* at §4(f).

³¹⁹ *Id.* at §4(o) (Restorative Justice is a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender, and the community and the reassurance to the offender that he can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.).

³²⁰ *Id.* at §21.

Committee. The Diversion Committee is tasked to determine whether the juvenile can be diverted and referred to alternative measures or services offered by non-court institutions,³²¹ by taking into consideration certain factors, such as the juvenile's record, the indifference or hostility of the juvenile, and the juvenile's relationship with his peers. The Court will either approve or disapprove the recommendation of the Diversion Committee.

The Diversion programs shall be distinct to each juvenile in conflict with the law for a specific period. The program includes, among other things, written or oral reprimand or citation, guidance and supervisions orders, counseling, training, return of property and institutional care and custody.³²² Once the juvenile is given the benefit of a diversion program, he or she must sign an undertaking and the Family Court must approve the same. The juvenile is then subject to certain terms and conditions enumerated in the law.³²³ At the end of the diversion period, there will be a determination if the undertaking has been complied with, and thus, depending on the results of such determination, the juvenile may be granted a closure order terminating the diversion program, or an extension in the diversion period for his or her further rehabilitation.³²⁴

7. Guarantees

The Convention sets out the minimum list of guarantees that must be available to children alleged as or accused of criminal acts.³²⁵ These include the following: the presumption of innocence, the right to be informed of the charges and legal assistance, the right to a speedy and impartial trial, non-compulsion to give testimony, or confess guilt, examination of adverse witnesses and participation of witnesses, review by a higher court, free assistance to an interpreter, and privacy. These basic procedural safeguards can also be found in the Beijing Rules.³²⁶

From the start of the proceedings against the child, at the point of initial investigation by the police, the juvenile has a right to be informed of his constitutional rights during custodial investigation.³²⁷ In all criminal proceedings in the Family Court in the Philippines, the judge is tasked with

321. *Id.* at §20.

322. *See id.* at §22.

323. *See id.* at §24.

324. *See id.* at §25.

325. Convention on the Rights of the Child, *supra* note 5, at art. 40, ¶2(b).

326. The Beijing Rules, *supra* note 162, at rule 7.1.

327. *See* RULE ON JUVENILES IN CONFLICT WITH THE LAW, §8.

the responsibility of ensuring that the rights of the juvenile in conflict with the law are protected.³²⁸ In addition to the minimum guarantees prescribed by the Convention, the Rule on Juveniles in Conflict with the Law require the following rights to be observed: the right to be present at every stage of the proceedings, to testify as a witness on his own behalf, to cross-examine the witnesses against him, non-compulsion to be a witness against himself, and that his or her silence shall not prejudice him, and to be accorded the rights provided for in the Rule on Examination of Child Witness.³²⁹ Ultimately, these rights are to guarantee that the fundamental precepts of due process and fair trial are observed in all proceedings involving children.

a. Right to be Presumed Innocent

Every person who is charged with a crime has the right to be presumed innocent.³³⁰ This applies all persons, especially to children, without discrimination. The Committee on the Rights of the Child has expressed concern regarding legislation that enables silence to be interpreted as supporting a finding of guilt.³³¹ The Philippines has categorically provided that the child's silence shall not prejudice him.³³² This right is enshrined in the Philippine Constitution and in the Revised Rules of Criminal Procedure.

b. Right to be Informed of Charges and Legal Assistance

Every person is entitled to be informed of the charges against him, in a language known and understood by him. The child has this same right to be directly informed of the charges against him or her. When in the best interests of the child, the same cannot be done directly, then the child should be informed through his or her parents or guardians. This provision is reproduced verbatim in the Rule on Juveniles in Conflict with the Law.

The Beijing Rules provide that legal assistance is available in all stages of the proceedings.³³³ The same is likewise true in the Philippines, as stated in the fundamental law and in the Revised Rules of Criminal Procedure.

328. *See id.* at §26.

329. *See id.* at §26.

330. Convention on the Rights of the Child, *supra* note 5, at art. 40(b)(i); Universal Declaration of Human Rights, *supra* note 15, at art. 11; and International Covenant on Civil and Political Rights, *supra* note 18, at art. 14(2).

331. IMPLEMENTATION HANDBOOK, *supra* note 24, at 547.

332. *See* RULE ON JUVENILES IN CONFLICT WITH THE LAW, §26(e).

333. The Beijing Rules, *supra* note 162, at rule 15.1.

c. Right to Speedy and Impartial Trial

International law insures the right to speedy disposition of cases.³³⁴ This provision upholds the right of an accused to a trial without delay. Also, every child has the right to participate in the proceedings, and to have the presence of his or her parents or guardians. "The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically."³³⁵

In the Philippines, the right to a speedy trial is guaranteed to all accused, whether adult or juvenile.

d. No Compulsion to Give Testimony, or Confess Guilt;
Examination of Adverse Witnesses; Right to Obtain
Participation of Witnesses

These rights are echoed in other international documents.³³⁶ In the Philippine setting, these rights are upheld in the fundamental law, particularly in the Bill of Rights of the Philippine Constitution. Furthermore, these rights can be found in the Revised Rules of Criminal Procedure. These laws apply to children and adults without distinction. The Rule on Juveniles in Conflict with the law states clearly that these rights are guaranteed to every child in conflict with the law.³³⁷

e. Review By Higher Court

The review by a higher court is essential in due process. This provision is amply protected under Philippine law, not only under the fundamental law, but also in the Rule on Juveniles in Conflict with the Law.³³⁸

f. Interpreter and Facilitator

334. *Id.* at rule 20; Universal Declaration of Human Rights, *supra* note 15, at art. 10; International Covenant on Civil and Political Rights, *supra* note 18, at art. 14.

335. The Beijing Rules, *supra* note 162, at rule 20, Official Commentary.

336. Universal Declaration of Human Rights, *supra* note 15, at art. 11; International Covenant on Civil and Political Rights, *supra* note 18, at art. 14.

337. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §26 (e), (f), (g).

338. *Id.* at §26(i).

The right to an interpreter is particularly important when it concerns children who speak a different language. This right can also be found in the ICCPR.³³⁹ Furthermore, this rule likewise applies to disabled children.³⁴⁰ In the Philippines, this right is found in the Rule on Examination of Child Witness.³⁴¹ The innovations in the proceedings involving children include allowing the use of interpreters and facilitators.

An interpreter is permitted when a child does not understand or is unable to communicate in English or Filipino due his or her developmental level, shyness, fear, disability or other similar reasons.³⁴² Subject to certain conditions, the interpreter may even be a witness, in the action involving the child, or a family member. On the other hand, a facilitator may be allowed if the child is unable to understand or respond to the questions asked. The facilitator may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative. In such a case, the parties shall pose the questions to the child only through the facilitator.³⁴³

g. Court Appointed Special Advocate or Guardian Ad Litem

In line with the best interests of the child, another innovation introduced by the Rule on Examination of a Child Witness is the provision for a guardian *ad litem*.³⁴⁴ He or she may or may not be a member of the Bar; however, preference is given to the parents of the child. Only witnesses in the same proceeding involving the child are disqualified from becoming such.

While the guardian *ad litem* does not participate in the proceedings, he or she is entitled to notice and may file certain motions; and if also a lawyer, he or she may object during trial to questions propounded to the child. Also, the Rule grants the guardian *ad litem* certain rights, duties, responsibilities and functions,³⁴⁵ which are in furtherance of the best interests of the child.

339. See International Covenant on Civil and Political Rights, *supra* note 18, at art. 14(3)(f).

340. IMPLEMENTATION HANDBOOK, *supra* note 24, at 549.

341. Compare RULE ON JUVENILES IN CONFLICT WITH THE LAW, §26(j) with RULE ON EXAMINATION OF A CHILD WITNESS, §9.

342. RULE ON EXAMINATION OF A CHILD WITNESS, §9.

343. *Id.* at §10.

344. *Id.* at §5.

345. See *id.* at §§5(b)(1) to (9).

(b) The guardian *ad litem*:

(1) Shall attend all interviews, depositions, hearings, and trial proceedings in which a child participates;

h. Privacy

The child is granted the right to privacy. In this connection, the child has the right to the protection of the law against such interference or attacks.³⁴⁶ This is in recognition of the fact that young persons are particularly susceptible to stigmatization,³⁴⁷ and prevent the harming effects associated with labeling.

In the Philippines, the right of the juvenile to privacy shall be protected at all times.³⁴⁸ All measures necessary to promote this right shall be taken, including the exclusion of the media³⁴⁹ and the public, during trial.³⁵⁰ The importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case must be stressed.³⁵¹

All records and proceedings involving juveniles in conflict with the law, until final disposition of the case shall be considered privileged and confidential.³⁵² This extends to the use and maintenance of separate police

-
- (2) Shall make recommendations to the court concerning the welfare of the child;
 - (3) Shall have access to all reports, evaluations, and records necessary to effectively advocate for the child, except privileged communications;
 - (4) Shall marshal and coordinate the delivery of resources and special services to the child;
 - (5) Shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which the child is involved;
 - (6) Shall assist the child and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;
 - (7) May remain with the child while the child waits to testify;
 - (8) May interview witnesses; and
 - (9) May request additional examinations by medical or mental health professionals if there is a compelling need therefor.

346. Convention on the Rights of the Child, *supra* note 5, at art. 16(2).

347. The Beijing Rules, *supra* note 162, at rule 8, Official Commentary.

348. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §8.

349. See *id.*

350. RULE ON EXAMINATION OF A CHILD WITNESS, §31.

351. The Beijing Rules, *supra* note 162, at rule 8, Official Commentary.

352. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §36; RULE ON EXAMINATION OF A CHILD WITNESS, §31.

blotters, and the adoption of a system of coding to conceal material information. In this connection, a person who has been in conflict with the law as a juvenile shall not be held guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.³⁵³ The records may also be ordered sealed, under certain conditions.³⁵⁴

8. Sentencing and Other Dispositions

The Beijing Rules set out a non-exhaustive series of possible sentencing options — reflected more summarily in the CRC — that avoid deprivation of liberty.³⁵⁵ International norms set down two main principles in relation to sentencing: the “last resort principle”³⁵⁶ and the “shortest possible time” principle.

The ‘last resort’ principle as applied to sentencing means that deprivation of liberty must not be imposed unless the objectives of the measure — principally rehabilitation in the case of juveniles — could not, in the opinion of the judge, be achieved in a non-custodial setting. Similarly, the ‘shortest possible time’ should generally be interpreted as the period within which that custodial treatment may be expected to secure the rehabilitation of the juveniles concerned.³⁵⁷

Likewise, the Beijing Rules provide a long list of principles that competent authority should be guided with in case of disposition.³⁵⁸ The Official

353. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §37.

354. See *id.* at §38.

355. UNICEF INNOCENTI DIGEST 3 — JUVENILE JUSTICE, *supra* note 175, at 12. (These include care, guidance, and supervision orders; probation; community service orders; financial penalties, compensation and restitution; intermediate treatment and other treatment orders; orders to participate in group counseling and other similar activities; and orders concerning foster care, living communities or other educational settings.)

356. *Id.*

357. *Id.*

358. The Beijing Rules, *supra* note 162, at rule 17.1, which provides:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

Commentary of the Beijing Rules states that “[i]t is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles.” In this relation, there are a wide variety of disposition measures that can be made applicable to children.³⁵⁹ Unless the circumstances show it is necessary, no juvenile shall be removed from parental supervision.³⁶⁰

This, however, does not detract from the fact that in certain cases, juveniles really should be subject to imprisonment, particularly when what is involved is a serious offense. When the juvenile is adjudged to be properly subject to imprisonment, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty come into play. This particular document sets out the minimum conditions of imprisonment of juveniles. However, capital punishment and corporal punishment should not be imposed upon juveniles.³⁶¹ Also, competent authority shall have the power to discontinue the proceedings at any time.³⁶²

Family Courts were established in the Philippines in 1997, which were effectively granted exclusive original jurisdiction over child cases.³⁶³ In the said law, the declared state policy is the protection of the rights and promotion of the welfare of children and the provision of a system of adjudication for youthful offenders, taking into account their peculiar circumstances.³⁶⁴

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

359. *Id.* at rule 18.1.

360. *Id.* at rule 18.2.

361. *Id.* at rules 17.2 & 17.3. See also Official Commentary: (“The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the ICCPR. The provision against corporal punishment is in line with article 7 of the ICCPR and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.”).

362. *Id.* at rule 17.4.

363. See FAMILY COURTS ACT.

364. *Id.* at §2.

The Court is guided by certain principles in judging the juvenile such as proportionality, best interests of the child, detention and imprisonment as a last measure of resort, and the non-imposition of corporal punishment.³⁶⁵ The promulgation of sentence is governed by the Revised Rules of Criminal Procedure.³⁶⁶

The child is entitled to an automatic suspension of sentence.³⁶⁷ Exceptions to the benefit of suspended sentence are the following: a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen years of age or over.

After the suspension of the sentence, the child shall be entitled to a disposition conference to determine the proper disposition measures best suited to the rehabilitation and welfare of the juvenile.³⁶⁸ Before the age of 18, the juvenile may be given a final discharge if he or she has behaved properly and has shown the capability to be a useful member of community,³⁶⁹ otherwise, the juvenile may be brought before the court for the execution of his judgment. On the other hand, upon reaching the age of 18, the Family Court shall determine whether the juvenile's case should be dismissed or the judgment should be executed. Also, the juvenile may be released on probation, as an alternative to imprisonment, if he or she qualifies under the Probation Law.³⁷⁰

CONCLUSION

The danger of children being involved in the juvenile justice system without adequate protection should be a primordial concern of policy-makers in view of the appalling conditions of children in conflict with the law. From the moment a child is apprehended, to the time the child is imprisoned, the threat of abuse against and criminal contamination of the child exists. In this light, the United Nations has committed itself to pay particular attention to juvenile justice, with the realization that "proper implementation [of the CRC] not only gives children's rights real meaning, but also increases the

365. See RULE ON JUVENILES IN CONFLICT WITH THE LAW, §30.

366. *Id.* at §31; see Revised Rules of Criminal Procedure, rule 120.

367. RULE ON JUVENILES IN CONFLICT WITH THE LAW, §32.

368. *Id.*

369. *Id.* at §33.

370. See PROBATION LAW.

likelihood that the children themselves will have real meaning in their lives and be less likely to become involved in crime.”³⁷¹

In the Philippines, the system of dealing with children in conflict with the law is subsumed in the criminal justice system. The question that arises is whether the system as a whole adequately protects the rights of these children. The juvenile justice system was designed with good intentions to protect the child, but it is the fundamental premise of the system that must be addressed. Truly, “[i]n the hands of our courts, child offenders are made to go through a justice system that is retributive rather than restorative.”³⁷²

Some of the principal subjects of concern that the Committee emphasized in response to the initial Philippine Report are the minimum age of criminal responsibility, the administration of juvenile justice, including deprivation of liberty and criminalization of vagrancy. Concern has been expressed regarding “the present organization of the system of administration of juvenile justice and its lack of compatibility with the principles and provisions of the Convention and other international standards relating to juvenile justice.”³⁷³ In fact, the Philippines is among 21 States that have been asked by the Committee to undertake comprehensive reform of its juvenile justice system.³⁷⁴

It is instructive to realize that the comparative review of Philippine law and rules in relation to international standards on juvenile justice shows the need for a comprehensive juvenile justice system which allows for wider opportunities for diversion, a systematic delivery of services in favor of the juveniles in conflict with the laws and a reconsideration of the age of

371. *Statement by Defence for Children International (non-governmental organization in special consultative status with the Economic and Social Council, Eleventh United Nations Congress on Crime Prevention and Criminal Justice*, at 2, U.N. Doc. A/CONF.203/17/NGO/5 (Apr. 18-25, 2005).

372. Katherine G. Adraneda, *To adequately protect Filipino children's rights juvenile justice system needs to be restorative rather than retributive*, CYBERDYARYO, Dec. 6, 2001, at http://www.cyberdyaryo.com/features/t2001_1206_03.htm (last accessed Apr. 16, 2005).

373. *Report on its Eighth Session*, supra note 245, at ¶17.

374. See Defence for the Children International, *JUVENILE JUSTICE: THE “UNWANTED CHILD” OF STATE CRC RESPONSIBILITIES I* (2005). (“By comprehensive reform, the Committee is not referring to a few areas that need improvement, but to a system so replete with difficulties that a major overhaul is required. The problems are mixtures of overcrowding, the mingling of minors with adults, physical abuse by police or by staff in detention facilities, long delays in pre-trial (or pre-charge) confinement, unhealthy detention conditions, and many other problems of similar degrees of seriousness.”).

criminal responsibility, among others. These changes would require law and policy reform initiatives in the immediate future.