

**PHILIPPINE ALTERNATIVE  
REPORT ON THE  
IMPLEMENTATION OF THE  
U.N. CONVENTION ON THE  
RIGHTS OF THE CHILD  
(UNCRC)**

**Submitted by:**

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## **Introduction:**

During the past monitoring period (1992), the NGO report on the United Nations Convention of the Rights of the Child (UNCRC) was mainly prepared by mostly Manila-based NGOs and the NGOs based in other regions of the country were only informed of the report after it was already submitted. This present report is an attempt of the Visayas and Mindanao-based NGOs to come up with their own report on the CRC.

Around forty NGOs particularly those concerned with children came up with this report after the conduct of consultation workshops on the UNCRC held on June 16-18, 1997 and September 9-11, 2004, consultations on different themes such as Child Abuse (January 1998), Juvenile Justice (October 1998), Child Support (June 2000), all held in Cebu City. In the first workshop, speakers knowledgeable on the subject were invited to input on CRC and workshops followed after every topic. During the workshops, different groups were tasked with coming up with findings and recommendations for a particular subject matter in relation with the rights granted under the CRC. Consultations on the different themes then followed sometime in 1998 to 2000. Sometime 2000, an update was done, most of which was on the advocacy efforts of the NGOs particularly on the area of juvenile justice, after several consultations were done.

After the state party report on the implementation of UNCRC was submitted in 2003, another workshop was conducted in 2004, this time to come up with a section by section analysis of the state party report to update the last report prepared after the 1987 consultation.

The following summarizes the findings during the consultation workshops conducted:

***Popularization of CRC.*** Based on the consultations, it can generally be said that the UNCRC has been popularized in the country but most of these were done by NGOs. As for government, although they have materials funded by the UNICEF, the remotest areas are not reached by such information.

***Implementation of the CRC by the government.*** The Philippine government through Congress has enacted laws implementing some provisions of the CRC such as R.A. 7610, R.A. 7658, Implementing Rules and Regulations on Juvenile Justice (based on P.D. 603), Inter-country Adoption Code, Anti-trafficking in Persons Act, Anti-Violence Against Women and Their Children Act, and others. These laws, however, have not been effective in addressing the problem of violation of child rights particularly child abuse and exploitation. It is obvious that these laws are hurriedly enacted just to comply with the provisions in the CRC. Thus, there are defects or gaps in the law itself which hinder its full implementation.

One concern is regarding juvenile justice. Until now, there is yet no comprehensive law on juvenile justice that implements the international standards. There are some rules made by the Supreme Court and other administrative agencies to address

the matter but these are not enough. There are other existing laws, some of the provisions of which are contrary to the UNCRC which have not been amended by Congress.

Aside from the laws, government has been implementing various programs to comply with the provisions of the UNCRC as stated in its report. However, most of the programs are not government initiated. Most of the time, NGOs initiate the programs and government agencies are only asked to participate. In the state report though, it appears that the government has claimed the accomplishments of the NGO as their own.

***Children's plight.*** Lastly, the plight of the children in the Philippines is closely related with the crisis of Philippine society which is reflected in the family. This crisis in the family at times lead to exploitation of children in labor and prostitution. It is also important to note that because of this crisis, family members seek employment abroad. Thus, children are separated from their parents. This should be a major concern of the government since they are encouraging Overseas Filipino Workers (OFWs) because of their contribution to the economy through their remittances.

### **Philippine Situation:**

A woman was carrying her baby in her arms when suddenly she was attacked by her husband who was drunk. In order to save and defend herself, being a battered wife as she is, she tried to ward off his track and made the baby as her shield. Frail and fragile, the baby died as a result of the blow. The couple buried the child and moved to Manila. No one filed any case against the couple.

This is the sad plight of the children. They are the first one to be sacrificed by even their own mother, who is supposed to be their protector. This happens not only when the mother is a battered wife, but also whenever there is any crisis in the family in general, a reflection of the crisis of Philippine society.

The crisis of the Philippine society is real. In the rural areas, there is massive dislocation and displacement of farmer families brought about by land use conversion from agricultural to industrial. As of November 1995, some 53,000 hectares of land have been applied for conversion. When these families move to the urban areas to find jobs, the situation is even worse, 80% of them end up in slums. Thus, they make up 70% of the urban poor families. (IBON)

Others join the ranks of the working class. However, the wages earned are barely enough to feed their families. In Metro Manila for example, the minimum wage at present (2004) is only P263 per day. (Source: Department of Labor and Employment). The poverty threshold (as of 2002) or the minimum income required to meet food and non-food requirement for a family of six is P266 per day (Source: National Statistical Coordination Board). Considering the inflation rate, it could be higher.

Under the government's Philippines 2000 (during the time of President Ramos) which is still continued until the present administration, the country is geared towards globalization heavily dependent on foreign direct investments. In order to attract these investors, the government seeks to it that labor is cheap and docile, among other things. Recently, the government has instituted contract arrangements like labor-only contracting and job-sharing which means lower wages, no security of tenure and no protection of the rights of the workers.

Displaced from agriculture and industry, the family worker takes his chance abroad and becomes an Overseas Filipino Worker (OFW). The Philippine Overseas Employment Administration (POEA) estimates that as of December 2001, 7.41 million Filipinos (around 10% of the population) work and live abroad. In the 1990s, an average of 800,000 left each year. In 2003, 867,976 left abroad for more than 100 destinations.

This trend results in millions of families being separated and if nothing is done regarding the matter, in the long run it might lead to the disintegration of the family.

The present crisis of the society and family takes a toll on the children. Because of the insufficiency of wages of their parents to answer the needs of the family, the children's needs are oftentimes sacrificed including their health and education. The children's dependence and helplessness makes them vulnerable to various forms of abuse such as child labor and prostitution. The details will be taken up later on this report.

### **General Comments on the State Party Report:**

***a) Includes NGO Accomplishments.*** The State report includes the NGO, religious and other group's accomplishments in implementing the UNCRC instead of focusing on its own programs and activities. The state report is supposed to report government's compliance with the UNCRC. Although the report specifically names the NGOs, religious groups and other organizations, still, it gives an impression that the government is the one initiating, leading and even funding these programs of the NGOs when these are initiatives of the NGOs which they have coordinated with government. For instance, the Child Basic Sector.

***b) Does not reflect local situation.*** The report generally does not reflect what is happening particularly at the provincial, municipal and barangay (village) levels such as in the allocation of budget for children, the local situation is not reflected. Most of the programs mentioned do not include data at the local levels.

***c) Many GO programs success depends on NGOs.*** Many of the programs of the government such as the organizing of the Local Councils for the Protection of Children, particularly the Barangay Council for the Protection of Children (BCPC) which is included in the report is successful only in areas where there are NGOs who are pushing for it.

**d) Programs and bodies created are only at the national level.** Many programs/bodies created by government are probably implemented only at the national level since the local levels are not aware of it such as the Special Committee for the Protection of Children, Philippine Plan of Action for Children, Child 21, Unlad Kabataan Programme (UKP), Program on community-based rehabilitation, among others. There is no data on how many have been covered under the programs.

**e) National policies effect on children are generally disregarded.** The effect of national policies on children, i.e., privatization, globalization, and the proposed constitutional amendments have not been considered in the report. These policies would definitely affect the provision of services for children. For example, with privatization and globalization, education, health and basic social services may be improved but may not anymore be affordable to a majority of the population.

**f) Compliance with the Committee Recommendations in 1995 were not given an emphasis.** The report does not emphasize what the government has done regarding the recommendations of the committee in its first report. This includes the existing discrimination against children born out of wedlock, the lack of a comprehensive juvenile justice system and the lack of a monitoring system for the UNCRC. Although there are already some improvements like the passage of R.A. 9255 on illegitimate children and the SC Rules on Juveniles in Conflict with the Law, still, these measures are not enough.

### **General measures of implementation:**

***a) Measures undertaken to harmonize national law and policy with the provisions of the Convention.*** The Philippine government, particularly Congress, has enacted some laws implementing provisions of the CRC such as R.A. 7610 (Special Protection Act) and R.A. 7658 (Child Labor), Children's Television Act, Family Courts Act, R.A. 9208 (Anti-Trafficking of Persons Act), R.A. 9231 (Amending R.A. 7658), R.A. 9255 (Amending Family Code on Illegitimate Children) and R.A. 9262 (Anti-Violence Against Women and Children Act) which basically address protection rights of the child, i.e., protection from physical, sexual, psychological and economic abuse. The Inter-country Adoption Code and the Domestic Adoption Law are the laws implementing CRC provisions on adoption and placement. Most of these laws are enacted when the schedule for CRC monitoring is near. For instance, the recent laws R.A. 9208, R.A. 9231, R.A. 9255 and R.A. 9255 were enacted only in 2003-2004.

Even with these laws, it is perceived that there is insufficient legislation to fully implement the UNCRC. One of these is the international standard when it comes to the matter of juveniles in conflict with the law. The bill providing for a Comprehensive Juvenile Justice System and Delinquency Prevention Program has been pending in Congress since 1999 and until now, after five years and three congresses, the law has not been passed.

Even with the laws enacted, implementation is another thing. Some factors affecting implementation is the lack of political will, graft and corruption and defects in the law itself. The Philippines is known to be one of the most corrupt countries in the world where police, prosecutors, judges and other government officials can be bought or bribed.

Another reason why implementation is difficult is that the laws are too general. If the law is too general, the implementor will have difficulty in implementation because it gives him too much leeway and leave decisions to him. Particularly as regards R.A. 7610, it is not clear whether the penalties imposed should be that provided by the said law if the act being complained of also falls under the Revised Penal Code. There have been not much jurisprudence on the implementation of these recent laws.

There are still provisions under existing laws which are contrary to provisions in the CRC. There are provisions in Family Code which states that the illegitimate child will have a right to inherit only one-half of the share of the legitimate child. This is contrary to the non-discrimination provision in the CRC. The provision in the Family Code that states that the illegitimate child will use the family name of the mother, which is contrary to the right to a name and identity has recently been corrected by R.A. 9255. If the father acknowledges the child, the child can already use the father's surname.

It is recommended by the NGO coalition that a systematic review of the Philippine laws vis-à-vis the provisions of CRC should be undertaken by Congress so that they can also systematically enact the appropriate laws and not just pay attention to these when it is reporting year or when the committee is about to examine the state party report.

**b) Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.** The mechanisms for coordinating policies and monitoring CRC are not felt at the grassroots. There may be mechanisms at the national level (mostly inter-agency committees such as the Special Committee for the Protection of Children mentioned in the report) as created by laws but their presence are felt only in Metro Manila. It is basically, only the Department of Social Welfare and Development (DSWD) and the local social welfare and development offices that the communities can approach when it comes to children's concerns.

P.D. 603 or the Child and Youth Welfare Code enacted as early as 1975, provides for the organization of a local Council for the Protection of Children. The said council, among other things, is tasked to coordinate with the Council of the Welfare of Children and Youth in drawing and implementing plans for the promotion of child and youth welfare. However, there are only a few local government units who are aware of this provision.

The local councils for the protection of children from the provincial, municipal to the barangay levels mentioned in the report are mostly only organized on paper but are not functioning. There are only functional structures when the NGOs are pushing for it and are supporting these structures (i.e., the barangay council for the protection of children.)

There is no Child Ombudsman to monitor the implementation of the CRC. The Child Basic Sector mentioned in the report is actually implemented by a group of NGOs. Thus, children participating in local policy making bodies are usually only in areas where the NGOs implementing this project are and not in all areas. Are the children members of the Child Basic Sector Council supposed to act as child "ombudspersons" as mentioned in the report? It is not necessary that the Child Ombudsman should be a child. The other mechanisms mentioned in the state party report such as the Barangay Human Rights Action Council (BHRAC) are basically non-existent in most parts of the Visayas and Mindanao.

Aside from P.D. 603, other laws concerning children such as R.A. 7610, R.A. 7658, and recent laws R.A. 9208, R.A. 9255, R.A. 9231 and R.A. 9262 are not also known to the communities. It cannot also be denied that laws protecting the rights of children are not fully implemented and enforced. Even the Philippine Plan of Action for Children (PPAC) and Child 21 which are supposed to be the country's guide on CRC implementation is not known to many.

Budget allocation for children's programs is also a concern. Although there has been an increase in the total amount according to the government report, there is a need to examine if the allocation was really spent on children and not the other social services. Another observation is that when it comes to programs for children, government has been heavily dependent on UNICEF and other foreign funding agencies, such that only the areas covered by UNICEF (the so-called Country Program for Children (CPC) V areas) have a lot of programs for the children while the other areas have very limited interventions.

The recommendation of the NGO Coalition is for the government to issue comprehensive guidelines for the implementation of CRC covering national and local levels and providing the necessary budget for its implementation at all levels. The Office of the Child Ombudsman to monitor implementation of the UNCRC which is not necessarily composed of children should be established.

**Definition of the child:**

Based on the definition under CRC that a child is a person below 18 years old, the Philippines can be considered a young country. Based on the 2001 estimates, 33.7 Million out of the total population of 77.13 Million (or around 44%) are children.

The definition of a child is provided under R.A. 7610 which includes those below eighteen years old and those above eighteen years of age if he or she is physically, psychologically incapable of protecting himself, which provision would be advantageous for disabled persons. This definition is also in consonance with the Convention. However, some laws define youth as persons below 35 years old, others define it as below 24 years old. Sometimes, "youth" and "child" are used interchangeably. Thus, there is confusion. This has also an implication on the participation rights of the child.

In any of the definitions, however, it does not indicate the lower limit, whether the unborn child in the mother's womb can be already considered a child. Under the provisions of the existing Civil Code, though, the unborn child is protected. Under Section 41 of the Civil Code, personality begins upon conception provided that the child is actually born and if he is a pre-mature child (below seven months in the womb), he should be alive for 24 hours outside the mother's womb. Furthermore, under the Revised Penal Code, abortion is considered a crime. Under the preamble of the CRC, unborn children are supposed to be protected, but the CRC itself does not provide a lower limit to the age of a person to be already considered a child. The NGOs feel that there is a need to define the lower limit of the age of a child to include the unborn.

Minimum age for employment under R.A. 7658 is fifteen (15) but if the employment is hazardous, only those eighteen or above can be accepted. There are exceptions, however, to the minimum age and these are (1) when the employment is for entertainment such as movie industry and (2) when the employment is for a family enterprise and only members of the family are employees. The requirement for the two instances is always that the child's development is not affected and that there should be a permit from the Department of Labor and Employment (DOLE). Under R.A. 9231, additional requirements were provided such as the number of hours work and the prohibition of work during nighttime. The problem is that the enforcement of the law is not strict. The problem may also be cultural because child work is considered a value and children are treated as additional breadwinners.

Age for sexual consent is not clearly defined. Under R.A. 7610, it is implied that the age for sexual consent is eighteen (18) years because of the definition of child in relation with the provision on sexual abuse. This also coincides with the age of marriage which is also eighteen (18). Thus a child below 18 who gets pregnant cannot marry the father. Parental consent for marriage is even necessary even if the person is already 18 to 21 years of age.

However, under the Revised Penal Code (prior to R.A. 7610), various crimes such as statutory rape and consented abduction, which are abuses against minors, the requirement is that the child is less than twelve (12) years old. There are other crimes defined under the Revised Penal Code which applies to children (below 18 years of age)

such as simple seduction. R.A. 7610 does not also provide for the repeal of these provisions of the Revised Penal Code, thus, there is confusion. There is a need to amend the law in order to clarify the age of sexual consent, which must be differentiated from the age of marriage.

Age of criminal liability is nine years old. This is a very low age for criminal liability. The bill which increased the age of criminal liability to twelve years old has not yet been passed. A child nine to fifteen years old may be criminally liable if it can be proven that he is acting with discernment.

It is recommended that age of sexual consent be clearly defined and in so defining, clarify related laws on marrying age, age for statutory rape and other sexual abuse being committed against children. The juvenile justice bill increasing the age of criminality to twelve years old should immediately be passed.

### **General Principles:**

a) ***Non discrimination.*** As already mentioned earlier, there is still discrimination in the law as regards illegitimate children. Under the Family Code, they can only inherit one-half of the share of one legitimate child. There has been no law enacted to correct such discrimination. The difficulty of passing such legislation which erases the distinction of legitimate and illegitimate lies more on the Filipino culture which is highly religious. The mother of the child who is without a husband is seen as a disgrace in society and this extends to the child him/herself.

It is recommended that this provision on illegitimate children and the distinction as to their right to inherit be repealed. There should be no distinction as to their inheritance rights as well as other rights such as the use of their father's family home. Children should not even be classified as legitimate and illegitimate. They should be referred to as "children" with the same rights.

R.A. 7610 penalizes discrimination against children of indigenous communities. However, in reality, these children are still discriminated specially in terms of social services due to the fact that they are located in farflung areas. There is a need to examine the programs mentioned in the government report such as TEEP if it really serves the indigenous cultural communities.

Another group of children who are discriminated in terms of services are the children with disabilities. There are insufficient services for these children. The community-based approach for these children as mentioned in the government report is almost non-existent at the local level.

Government should exert more efforts to reach out to children with disabilities and children of indigenous communities so that they will not be deprived of the basic services that they need.

b) ***Best interest of the child.*** A law, P.D. 603 (Child and Youth Welfare Code), already existing even before the CRC provides for the best interest of the child principle. Article 8 of the said law states that “in all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.” The law is vague, however, as to who will set the standards of what is the best interest of the child, is it the parents, state or the child? In reality, it is eventually for the courts to decide should there be any conflict on what really would be for the best interest of the child.

A significant development is the enactment by the Supreme Court of the Rule on Examination of a Child Witness which provides child-sensitive approaches to child witnesses in the courtroom so that the children will not be intimidated and will be able to tell their story. Under the said rule the “best interest of the child” was defined. The Supreme Court has also applied the principle of “best interest of the child” in some cases for custody.

c) ***The right to life, survival and development.*** P.D. 603 enumerates the rights of the child and these include the right to be born well, the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention and all the basic physical requirements of healthy and vigorous life. The said law also provides for development rights such as the right to a well-rounded development, education, to full opportunities and recreation.

In the past few years, it is true that there have been major improvements in the health situation of the Filipino children which is basically due to UNICEF interventions like immunizations and other health services. However, these efforts need to be sustained since children are born every hour of the day.

Even with free tuition fees in the public schools, children are forced to drop out of school because they cannot afford other contributions in school, to buy books and uniforms. Although the country registers a high rate of literacy, children's participation and survival in school fall below expectation.

Children are also forced to leave school and work because their parents are not earning enough. Child labor in the country has increased from 2.2 Million in 1991 to 5 Million in 1994 (DOLE) which figure coincides with UNICEF and ILO figures estimating 5 to 5.7 million Filipino working children. A survey by the National Statistics Office (NSO) reveals that there were about 3.7 million working children aged 5-17 years.

Aside from leaving school and working, children are proliferating in the streets. Some earn their living on the streets while others also make the streets their home. The NSO survey reveal that apart from the 3.7 million working children, there were 409,849 children living away from home. Almost 47% of this were working as service workers, 9% are housekeeping and 7.4% are looking for work.

These street children are very vulnerable and prone to abuse and exploitation. Many end up as prostitutes.

d) ***Respect for the views of the child.*** There are some provisions in the existing laws that respects certain views or opinion of the child. This includes the provision in the Family Code that in cases were the parents are separated, the children seven years old and above can choose the parent where he wants to stay. In cases of adoption, children ten years old and above are required to give their consent. Some provisions of P.D. 603 also grants child participation in family affairs.

Other than Bill of Rights in the Philippine Constitution which applies to all citizens including children, there is no law that specifically provides that the views of the child should be respected in general. In criminal cases against the parents, the child's views are not considered. There are times that it is traumatic for the child to be the cause of his parent's imprisonment or meted out the death penalty. Thus, what he does is to withdraw the case instead of coming up with a rehabilitation scheme for both the child and the parent. There are times when it is the parents that are so eager to settle the case like child abuse or rape cases, i.e., accepting certain sum of money from the offender, without considering the opinion as well as the best interest of the child.

Children/youth are not anymore represented in Congress since the party list was implemented. The different sectors are supposed to be represented through the party list system. But since the children/youth does not have a political party, they are not represented.

The state report stated that there is a Child Basic Sector which is represented in the National Anti-poverty Council. However, this Child Basic Sector is actually a project of a group of NGOs on child rights participation. Thus, the children represented are coming from the areas where these group of NGOs have existing projects.

Although the children/youth is represented in local government bodies such as local councils (sanggunians), and there are youth committees or commissions in both national and local government bodies, some are already eighteen years old and above because 35 years old is still considered youth. If the representative is really a child, the question is if there is really genuine participation and not merely a token participation since children are generally not trained to speak up their minds at home and in school.

In the schools, elementary and high school students do not usually have a student council or if there is, they are not given rights to participate in decision-making processes of the school.

### **Civil Rights and Freedom:**

The civil rights and freedom granted under the CRC are generally provided under the Philippine Constitution as rights of all Filipino citizens. Presumably, children are also granted the same rights as they are also human beings and Filipino citizens. However, P.D. 603 which enumerates and defines the rights of the child does not specifically mention and include civil rights and freedom. Most of the rights fall under survival, protection and development rights. Thus, there is a perception that civil rights and freedom are not very important and there is a tendency to ignore these rights. Even with the provisions in the constitution, human rights continue to be violated and children are among the first ones to be affected.

It is therefore recommended that a Bill of Rights for Children be enacted by Congress to specifically include civil rights and freedom.

a) ***Name and Nationality.*** As already mentioned, there is no specific provision of Philippine laws that recognizes the right of a child to a name and nationality. There is a provision, though under the Family Code that the legitimate child has a right to use the name of his mother and father, while the illegitimate child shall only use the name of his mother. This was recently corrected by the enactment of R.A. 9255 amending such provision of the Family Code. Illegitimate children may now also bear the name of their father as long as he or she is recognized or there is enough proof that he is really the child of the father. There is still a problem of birth registration since the programs of government on this is not widely disseminated.

In the Philippines, nationality of the child follows the nationality of the parent. Thus, children born of Filipino parents are considered as Filipino citizens.

However, because of the phenomenon of workers going abroad to earn their livelihood, it cannot be avoided that children are born abroad of Filipino parents who may be illegal aliens. Thus, these children are not registered in the appropriate agencies because their parents do not want their status to be known. These children, as far as the Philippines is concerned, are therefore non-existent and their rights are not protected. The right to a name and nationality as well as identity is deprived of the children. An example is the Pipino case in Japan where the Filipino father was apprehended as a drug dealer and it was then that a child was found to exist. The parents are illegal aliens who are not even married to each other and both have their own families in the Philippines.

It is recommended that the proper government agencies and embassies where there are migrant workers should monitor these cases and provide support services for these children born without any identity.

b) ***Preservation of Identity.*** In the Philippines, there are provisions in the law which respects the identity of the child such as provisions against simulation of birth under the Revised Penal Code. This provision, however, is not strictly enforced and there are many cases of simulation of birth certificates by couples who want to adopt a child. Instead of

undergoing the process of adoption which needs court hearings and is more expensive, the practice is that upon the birth of the child, his birth certificate already reflects the names of the “adopting” parents. The problem in these cases of simulation is that the birth certificate itself of the child may be declared null and void. In cases where birth certificate is necessary to establish the age of the child such as in cases of child abuse or statutory rape, the accused could go scott free because of the annulment of the birth certificate.

The Domestic Adoption Law has provided a moratorium for cases of simulation of birth as long as the child will be legally adopted. However, it is doubtful if many of those who have simulated the births of their “adopted” children would avail of the moratorium.

Simulation of birth certificates is very common in hospitals, and there are few cases, if any, filed with the court on simulation of birth certificate. The problem in these cases is that there are no complainants, and no one is interested in filing these cases. No agency is tasked to monitor these cases.

It is therefore recommended that amendments on the law be made to assign the monitoring and filing of cases for simulation of birth certificates to a government agency such as DSWD so that the law could be fully enforced.

There may also be violations of this right provided under other laws. An example is in adoption cases. Under the law, once the court has granted adoption, this will entitle the adopted person to the issuance of an amended birth certificate wherein the adopted parents' names shall appear as the parents of the adopted child. His family is thus changed to the family name of the adopter. Thus, his identity is not preserved. This is also applicable in inter-country adoption.

c) ***Freedom of Expression.*** Philippine law does not specifically provide for recognition of the right of a child to expression as already mentioned earlier. However, it is the culture of the Filipino that children are not allowed to argue with their parents and are not asked their opinion on various issues and concerns. Children are generally not represented in governance.

Although there are youth representatives to various bodies such as sanggunians (local councils) where the Sanggunian Kabataan is represented, and the National Anti-Poverty Commission (NAPC), the representation may be token since the education system and the culture does not encourage or empower the children to be prepared for genuine participation.

Some bodies like the Commission on Youth are not composed of children since youth refers to those below thirty-five years of age. Thus, even if persons are eighteen years and above, they can be youth representatives in these bodies.

The non-recognition of this right to expression is also the reason why children are bound to be abused by their own parents physically and even sexually, as they cannot voice out their opinion. In cases of incest, sometimes the child thinks that this is the usual duty of a child to his father.

There is therefore a need to educate the children themselves of their right to expression and to empower the children so that they will be capacitated to genuinely participate in decision-making and governance.

d) ***Access to Appropriate Information.*** Similar to the other civil rights, this is not also specifically provided for under the laws but is provided under the Philippine Constitution. Most of the time this right of the child is not given any importance and oftentimes ignored. On the other hand, Philippines have no laws on the internet and information in the internet can be accessed by the child, even inappropriate ones such as pornographic materials.

There is a need to enact a law to regulate the internet such that information and materials harmful to children may be avoided.

e) ***Freedom of Thought, Conscience and Religion.*** Also similar to other civil rights, no specific recognition as to the freedom of the child to thought, conscience and religion is provided under existing laws. Only the constitution provides for this. It is also the culture of the Filipino that children usually follow their parents' religion. They are usually baptized early in life when they could not yet choose what they would like to be. The right to religion of school children though, has been recognized by the Supreme Court in a case involving Jehovah's witness. According to the Supreme Court reversing its former decision on the matter, refusal of schoolchildren belonging to the Jehovah's witness religion to salute the flag by reason of their religion, in violation of a circular of the Department of Education, Culture and Sports, is considered as part of their right to religion.

f) ***Freedom of Association and Peaceful Assembly.*** The same is also true for freedom of association and peaceful assembly, it is only recognized in the Philippine Constitution as a right applicable to all citizens. It is not unusual for the youth in the country to form their own organizations and to hold assemblies and activities in school and in the community. In fact, the youth have a Sangguniang Kabataan at the barangay level. This is a recognition that the children have freedom of association. However, most of these youth organizations are usually composed of the older children and even those eighteen years old and above. Children below eighteen years old are not encouraged to join organizations except boys and girls scouts in school. Most high school and elementary schools do not have student councils or if there is any, they are not represented in decision-making processes.

The problem with children and youth organizations is that some of them (specially the fraternities) are doing harmful activities like rumbles, hazing, using illegal drugs and the like. There seems to be no agency monitoring these youth organizations except if they are school-based. In this case, it is the school that disciplines the organizations.

Government has to assign an agency to encourage but at the same time monitor the youth organizations so that they will not be involved in anti-social activities and instead their energies will be directed at something useful in the community.

g) ***Protection of Privacy.*** It is also the same as the other civil rights which are recognized for all citizens in the Philippine Constitution, but because of the Filipino culture, where parents are very much concerned with their children, they do not usually give privacy to their children. For child abuse cases, trafficking in persons and children in conflict with the law, the law provides for confidentiality. However, reporters do not usually respect this as there is no strict enforcement.

h) ***The Right not to be Subjected to torture or other cruel, inhuman or degrading treatment or punishment.*** It is still the same as with the other rights mentioned above that only the Constitution recognizes such right. There are also provisions in P.D. 603 penalizing parents who inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him. The penalties for these offenses have been increased by virtue of R.A. 7610 (child abuse). However, even with these laws, many parents and teachers still inflict corporal punishment. In fact child deaths have been reported due to corporal punishment.

### **Family Environment and Alternative Care:**

The right of the child to a family environment is very much affected by the increasing trend of Filipinos working abroad. From 3,694 workers deployed in 1969, almost half a million Filipino overseas employment contracts were processed in 1983. Today, the Philippines is the Number One exporter of labor in the world. It is also the top supplier of crew members to the world's shipping industry. In 2003, it has deployed 867,969 Overseas Filipino Workers (OFWs), 651,938 are land-based. For the first half of 2004 (January to June), there are already 492,485 OFWs deployed.

The government report does not mention the concern of children of migrant workers. This needs to be included because of the policy of government of encouraging Overseas Filipino Workers (OFWs). Thus, parental guidance and authority, which is supposed to be exercised jointly by both parents are sometimes exercised only by one parent as the other is earning his living abroad. Sometimes, both parents are working abroad, and the grandparents and other relatives take care of the children.

a) **Parental guidance.** Both P.D 603 and the New Family Code provide for parental guidance. It is clear under the law, that parents are given the authority to provide parental guidance. Under P.D. 603, parents have the duty to extend to the child the benefits of moral guidance, self-discipline and religious instructions, supervise the child's activities including recreation, advice him properly, set a good example and inculcate in him the value of industry, thrift and self-reliance.

This is reiterated in the Family Code which provides that parental authority shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. Among the duties of parents under the Family Code are to give children advice and counsel, moral and spiritual guidance and to impose discipline on them. In the absence of the parents or if the parents are unfit, the Family Code provides for substitute parental authority in the person of the (1) grandparent; (2) eldest brother or sister; and (3) actual custodian. This is in accordance with the Filipino custom of extended family.

The laws providing for parental guidance are general and thus difficult to enforce. There are no clear measures or indicators whether or not the parental guidance given is appropriate enough. A possible problem is the culture of the Filipino that how you raise your child is a private or domestic matter and the state cannot interfere.

The different programs on parental guidance (ERPAT, PES, UKP) are not consistently implemented, most are only implemented in major cities and the municipalities near the major cities only. Pre Marital Counseling is implemented in getting a marriage license but attendance is merely for compliance. Solo parent act is not disseminated.

b) **Parental responsibilities.** Philippine laws recognize the natural right and duty of parents over their children which should be supported by the state. Parental authority and responsibility may not be renounced or transferred except in cases authorized by law. This would imply that the parents have the primary responsibility of taking care of their children. The emphasis of the laws, however, is on the right or authority of parents, rather than the responsibility. The Family Code and P.D. 603 provides that parents shall exercise joint parental authority over their children. The term used is "authority" rather than "responsibility." The same laws at the same time, also provide for parental responsibilities which include parental guidance as stated in the next preceding paragraph. Aside from those already mentioned earlier, parents have the duty to keep the child in their company, to support, educate and instruct them, protect, preserve and maintain their physical and mental health at all times, to furnish them with good and wholesome educational materials, and represent them in all matters affecting their interest.

As for state support, family planning programs are also being promoted by government agencies such as Department of Health and the Population Commission. Under the Family Code, it is required that parties eighteen years to below twenty-five years of age should undergo marriage counseling before they get married.

These family planning programs, and marriage counseling, however, focus more on birth control. The state also provides for day care centers in each barangay. The Labor Code provides that companies should provide day care centers for the children of their employees. However, this law is not strictly enforced.

Under the Family Code, Civil Code and P.D. 603, parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority.

Under P.D. 603, parents can also be criminally liable for abandonment, neglect, exploitation of the child and their parental authority terminated or suspended. The problem is the Filipino culture which values unity in the family regardless of whether or not the needs of the child can be met.

It is recommended that the laws should emphasized parental responsibility rather than authority. Also, there should be an enforcement mechanism on this.

c) ***Separation from parents.*** There are laws that govern separation of children from their parents. These include provisions in the Family Code providing the instances when parental authority may be suspended or terminated. This includes adoption of the child, appointment of a general guardian, judicial declaration of abandonment, final judgment of a competent court divesting the party of parental authority and judicial declaration of absence or incapacity of the parent. The grounds for the court to suspend parental authority include the following: conviction of a crime that carries with it penalty for civil interdiction, treats the child with excessive harshness or cruelty, gives the child corrupting orders, compels the child to beg, or subjects the child to acts of lasciviousness. The court shall deprive the parent permanently of parental authority if he subjects the child or allow him to be subjected to sexual abuse.

Provisions in PD 603 also provide for involuntary commitment of a child who is declared abandoned, abused and neglected child, and terminating parental authority over him.

In cases of separation or annulment of marriage, the custody of the child is given to the parent with whom he chooses if seven years old and above, unless unfit. If below seven years old, the child's custody is given to the mother, unless unfit. He or she has the right to visit the parent that was not given the custody. At the same time, the other parent is given visitation rights.

However, in the Philippines, with the increasing number of Overseas Filipino Workers (OFWs) being encouraged by government, many children are separated from their parents.

It is recommended that there should be a policy that those hiring Filipino workers abroad should also provide for the travel as well as sustenance and all other provisions for his family as well.

d) **Family reunification.** There are no laws treating this matter. As already mentioned earlier, with the globalization trend, increasing OFWs, and children born of parents with different nationalities, or children of prostitutes with foreigners, this should be treated in the laws.

e) **Recovery of maintenance for the child.** The Family Code provides that children whether legitimate or illegitimate are entitled to support from their parents. It is also under RA 7610 refusal to give support to the child may be considered as a form of child abuse. Under the new law R.A. 9262 (Anti-Violence Against Women and their Children Law), deprivation of support may constitute economic abuse and is penalized.

Although it is clear in the law that the child has a right to be supported by her/his parents, it is the implementation and enforcement that is the problem. Even if the court has already ordered for the payment of support, the order is difficult to enforce.

A big problem on the recovery of support is when the child is illegitimate. If the father does not acknowledge the child, it is difficult to ask for support as paternity has to be established first. In order to establish paternity, there should be a written instrument or document to prove this. The only reliable way to establish the paternity of the child is through a DNA test which is quite expensive and not accessible particularly in the provinces.

Another problem in the recovery of maintenance is when the parent works abroad or is a foreigner particularly if they have abandoned the family and already have another family abroad. Even if there is already an order of the court to give support, the enforcement is quite difficult especially if there are no properties in the Philippines.

Other modes of execution for orders of support aside from those in the Rules of Court must be explored. An office of child support enforcement can be created with the specific function of enforcing support orders. Some aggressive techniques include garnishment of wages and income tax refunds, revocation of licenses, direct contact with local and foreign employers, providing translated copies of outstanding court orders, warrants, criminal enforcement proceedings and others. The possibility of reciprocal agreements with other countries for children whose parents are foreigners or are residing abroad should also be explored.

f) **Children deprived of a family environment.** There are no provisions of law on this matter except for abandoned, neglected and abused children which was already mentioned earlier. These children are placed under the custody of DSWD and foster-parents and may later on be placed for adoption. However, foster care is not widely available and is successful mostly in areas where NGOs are implementing it. There is

also a lack of child-caring institutions and other alternative care services. Most are run by NGOs.

g) **Adoption.** The Philippines has a Domestic Adoption Law and an Inter-Country Adoption Code. In adoption cases as already mentioned earlier, the Philippines apply the clean-break theory wherein the birth certificate of the child is amended and the names of the parents and of the child are changed to that of the adopting parents. This practice would be traumatic for the child as the continuity is not considered. His culture and identity is totally changed especially if the adopting parents are foreigners. The openness theory is thus being advocated, where the child does not lose his identity and continuity of his culture.

Inter-country adoption is supposed to be the last resort. However, the reality is that the Filipino family or couple prefer 0-3 years old children, they do not want to adopt children who are already 10 to 17 years old. Thus, these children are already placed for inter-country adoption.

h) **Illicit transfer and non-return.** No laws regarding this matter except for R.A. 7610 on child trafficking and the recently passed Anti-trafficking in persons act which includes the children.

i) **Abuse and neglect, including physical and psychological poverty and social reintegration.** After the ratification of the CRC, the Philippines adopted R.A. 7610 which provides for special protection against child abuse, exploitation and discrimination and providing for penalties for violation.

The law defines child abuse and specific acts such as child prostitution, child trafficking, child pornography and other acts of abuse. The law is however, vague since all other forms of abuse are lumped together and the elements of the crime defined are not clear. There has been no jurisprudence on how to interpret the law in the light of the existing provisions of the Revised Penal Code that may have similar elements. Thus, there are conflicting opinions. For instance, in cases of the infliction of slight physical injuries to children, some prosecutors do not consider it as child abuse under R.A. 7610 but consider it as slight physical injuries only (under the Revised Penal Code) thus, the penalties are lighter.

The prosecution of child abuse cases under R.A. 7610 is quite difficult. There are many inadequacies and gaps in the law such as there is no provision about sexual abuse. It is lumped under child prostitution which is different since this involves commercial sex and does not include ordinary sexual abuses. Even incest is not defined.

There is a need to amend or codify the laws to have a clear definition of crimes against children.

j) ***Periodic review of placement.*** This is not provided for under the Inter-Country Adoption Code. It places the child adopted to the custody of the foreign country. In some cases, the receiving country makes the review of placement, however, others do not provide this service. This is therefore a gap in the said law which should be answered by the legislature.

### **Basic Health and Welfare:**

These rights are progressively implementable under the CRC. This means that the enforcement of these rights would depend on the capacities of the states. There is thus an excuse for developing countries like the Philippines not to fully enforce these rights as they have no financial capacity. These are basic needs affecting the child's very life and survival, thus, these rights should have been prioritized and immediately demandable. In the Philippines, the laws granting these rights are there as mentioned earlier. However, the situation will show that the basic health and welfare services are very inadequate.

Social services are not government's priorities. The combined budget allocations for health and housing services are lower than military spending. Education budget is higher since it prepares the young to be pool of cheap labor. The chunk of government's expenses goes to the payment of debt.

For one, the national budget for health and social services are not given priority. In 1995-2001, appropriation for debt service is higher compared to social services. Health only receives 5% of the budget.

a) ***Survival and Development.*** The laws are there. P.D. 603 provides for these rights of the child, but the data would show that there is a very big gap as far as implementation is concerned. There have been recent improvements though on this area, such as having been declared as polio-free and the decrease in infant mortality. But still, much has to be done in terms of malnutrition, and other health services.

b) ***Disabled Children.*** Although there are laws and programs for children with disabilities as stated by the report, it is inadequate, particularly on early detection and support services for these children, particularly outside Metro Manila. P.D. 603 provides for the commitment of disabled children including mentally retarded, physically handicapped, emotionally disturbed and mentally ill children. The said law also provides for training opportunities for disabled children. The problem is the implementation of the law. There are few facilities provided by government for the disabled children.

c) ***Health and health services.*** As already mentioned earlier, the laws are there. P.D. 603 provides for the right of the child to health. However, data shows otherwise. The report mostly deals with the laws and programs like on breastfeeding, Generics Act, Compulsory Immunization but there is no concrete data for instance on the percentage of mothers who are actually breastfeeding and children actually served. Though there have been significant improvement in the health status like in the data on under-five mortality

and being declared as polio-free, still, access to health services especially in far-flung areas remain.

d) ***Social Security and child care services and facilities.*** There is no law on social security and insurance for children. The Social Security Service Law, however, already includes illegitimate children as beneficiaries of the member.

e) ***Standard of living.*** This is also provided by law, it is the implementation that is inadequate. This should also be taken in the light of the situation of the Filipino family as a whole where majority is below the poverty line, as already mentioned earlier.

### **Education, leisure and cultural activities:**

a) ***Education, including vocational training and guidance.*** Although there is a law on free education, the reality is otherwise. In public schools, only the tuition fee is free. Other school supplies, uniforms and school needs, are shouldered by the parents. Thus, some children who cannot afford these things are forced to drop out of school. As already discussed, the drop-out rate as well as participation rates elementary and high school students are high. Many of the programs mentioned in the report have limited coverage such as Government Assistance to Students and Teachers in Private Education (GASTPE), Educational Service Contract (ESC) and Tuition Fee Supplement (TFS), UKP, among others. Cohort survival rates as stated in the report is still a cause for concern.

b) ***Aims of Education.*** Education under the CRC is aimed at developing the child's personality, talents and mental and physical abilities to the fullest extent is not met by the educational system. Education in the Philippines is commercialized and is aimed at providing skilled labor to industry rather than to develop the child's personality, and respect for cultural identity. Because the background of education in the Philippines is colonial, there are still traces of this in the school curriculum.

c) ***Leisure, recreation and cultural activities.*** This right is provided under P.D. 603. However, it is not implemented as can be seen by the data on child labor. Child laborers are obviously deprived of their right to leisure, recreation and cultural activities.

### **Special Protection Measures:**

a) ***Children in situations of emergency.*** R.A. 7610 has provisions affecting children in situations of emergency. However, it is limited to children in situation of armed conflict. There is no provision in the law on refugee children. The state party report regarding refugee children is limited to the external refugees. It seems that these external refugees (mostly Vietnamese) are more well-off and are given more services than our internal refugees. The refugee children in their own land like those who are victims of

demolitions, who are displaced due to conversion of agricultural lands to industrial or other natural or man-made disasters have been left out.

***Children in armed conflicts, including physical and psychological recovery and social reintegration.*** R.A. 7610 has provisions dealing with children in situation of armed conflict. It deals with evacuation of children during armed conflict, rights of children arrested for reasons related to armed conflict and submitting the names of children residing in barangays affected by armed conflict.

Aside from the suspension of sentence and rehabilitation of children arrested by reason of armed conflict, there is no provision for the rehabilitation, physical and psychological recovery and social reintegration of other children affected by the armed conflict.

It was estimated by the military in 2000 that some three percent (3%) of the 9,000 to 10,000 fighters of NPA are children. Though the armed forces do not directly recruit children, there are para-military units recruiting children. Some civilian/citizen's anti-crime groups are also accredited by the PNP to bear arms. Is there any monitoring by PNP if these groups are not recruiting minors?

The armed conflict situation particularly in the Mindanao area is also a cause for concern. MILF (Moro Islamic Liberation Front) have also been reported to have trained children including girls. With the conflict in Mindanao at present, the distinction between combatants and civilians is blurred and there is a great possibility that children could be used in actual combat. Aside from these, many families including children have been displaced. Many children have lost their parents, or are caught in the crossfire.

The insurgency problem in many areas has remained because of the basic problems of society like poverty and lack of social services. Unless government will improve services in the depressed areas to improve the economic and social conditions, armed conflict will always be there and innocent children will continue to bear the brunt of the conflict.

It is therefore recommended that government implement measures to improve the economic and social conditions and to provide rehabilitation, physical and psychological recovery and social reintegration of other children affected by the armed conflict, not only those that have been arrested.

b) ***Children in conflict with the law.*** The Philippine law on juvenile justice is quite outdated. It follows the ordinary procedures of the justice system which is basically not child-sensitive. The youthful offender undergoes the same process and trial as the adult offender except that his sentence is suspended. There are no special courts for youthful offenders that are specially trained on the matter, unlike in other countries where there are special panels created for child offenders. At present, what the Philippines has are

designated Family Courts which is not only for children but for cases involving family affairs like declaration of nullity of marriage, annulment, adoption among others.

Recently, the Supreme Court issued Rules on Juveniles In Conflict with the law which provides for Diversion proceedings before the arraignment and provides other disposition measures after the suspension of sentence. However, the scope of diversion is very limited as it only applies to offenses punishable by not more than six months imprisonment which constitutes only around five percent of the CICL cases.

***The administration of juvenile justice.*** P.D. 603 or the Child and Youth Welfare Code provides for a system of juvenile justice wherein youthful offenders are given a chance to be rehabilitated instead of imposing the sentence for their criminal offense. The administration of justice is basically the same as that of the adults as there are no special courts for juveniles alone. Although there are courts recently designated as family courts, it is not exclusive for juveniles.

The only difference between the adult offender and the youthful offender is that the sentence of the youthful offender is suspended automatically and he will be placed in a rehabilitation center for the youth managed by the Department of Social Welfare and Development (DSWD) or will be subject to other disposition measures such counseling, trainings.. If he behaves well, he will be recommended for release and all his records will be destroyed. This will give him a chance to a new life without the stigma of being an ex-convict. If he is found to be incorrigible, his suspended sentence will be imposed.

The law, however, provides that suspension of sentence, however, does not apply to a youth offender who has once enjoyed suspension of sentence or one who has been convicted of an offense punishable by death or life imprisonment. This disqualification is not consistent with the provisions of the CRC whose purpose is that the child should be given a chance to be rehabilitated. This provision is also contrary to the best interest of the child principle.

<p>It is therefore recommended that the law providing for a Comprehensive Juvenile Justice System and Delinquency Prevention Program be immediately passed by congress.</p>
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***Children deprived of their liberty including any form of detention, imprisonment or placement in custodial settings.*** The said law (P.D. 603) also provides that there should be a detention home for the youth, separate from that of the adults.

This detention home is where the youthful offender stays while the case is still pending before the courts. P.D. 603 was enacted as early as 1975 but the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders was only enacted on February 20, 1995. According to the said rules, the Department of Interior and Local Government (DILG) shall establish the youth detention homes in cities and provinces which shall be distinct and separate from the jails thereat and that these homes shall have a home-like environment.

Unfortunately, this provision has not been implemented. There are no separated detention homes for the youth in most cities and provinces. They are placed together with the adult detention prisoners. They are just given separate quarters within the same detention center which is accessible to all.

Thus, the purpose of separating them so that they will not be influenced by the adult offenders, is not attained. Also, because of the length of time for the case to be determined, sometimes the child is already above twenty one years of age at the time his case is decided and thus, cannot anymore avail of rehabilitation. Most of the children in conflict with the law are thus confined in the detention center with the adults for a longer period of time than they stay in the rehabilitation center.

The recommendation is for the strict implementation by the Local Government Units of the provision of P.D. 603 that there should be a separate detention home for the children in conflict with the law.

***The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment.*** Capital punishment and life imprisonment is not specifically prohibited under P.D. 603. Under the Revised Penal Code, he is given the benefit of a mitigating circumstance and the imposable penalty is lowered by two degrees if the person is under fifteen and over nine years of age found to be acting with discernment. Thus, he will never be imposed the death penalty or life imprisonment. For those over fifteen and under eighteen, the sentence is only lowered by one degree. Thus, if the penalty provided for the crime committed is death, the imposable penalty will be reclusion perpetua (life imprisonment). There have been instances, however, where children are found in the death row. This may be because they were not able to present their birth certificates. Due to the lobbying by the NGOs, the sentences of these children in death row were commuted and is under review.

The recommendation is that there should be monitoring by the courts so that children should not reach the death row.

As already mentioned, the sentencing of juveniles is suspended unless he is disqualified as already mentioned earlier, and he will be committed to the custody or care of the DSWD. He will be discharged upon recommendation of DSWD even before reaching twenty-one years of age if it is found that he has behaved properly. Otherwise, he is returned to the committing court for the pronouncement of judgment of conviction.

If the youth offender is under twenty one years at the time of conviction, he shall be committed to the proper penal institution and as far as practicable be completely segregated from adult offenders and grouped according to age levels, pathological or behavioral tendencies or other suitable criteria to ensure his speedy rehabilitation.

The law also provides that in lieu of confinement in a regular penal institution, a youth offender may be made to serve his sentence in an agricultural and forestry prison camp. Again, the problem here is the implementation. The above provisions are not

implemented. At present convicted youthful offenders are confined in the regular penal institution together with the adults.

***Physical and psychological recovery and social reintegration.*** Aside from the rehabilitation of a youthful offender upon suspension of his sentence, as mentioned above, no provision in the law provides for physical and psychological recovery and social reintegration. The rehabilitation center where a youthful offender is confined, may not provide the necessary support for the psychological recovery and social reintegration of the youthful offender.

The provision that the case records of the youthful offenders are privileged and confidential and that he shall not be liable or guilty for perjury, concealment, or misrepresentation by failure of his failure to disclose or acknowledge the criminal case against him or recite any fact related thereto in response to any inquiry made to him for any purpose may help in his social reintegration but this is not enough.

It is therefore recommended that a system or process of social reintegration of the youthful offender to the mainstream be established such as providing him with psychological as well as physical treatment.

***c) Children in situations of exploitation, including physical and psychological recovery and social reintegration.*** R.A. 7610 is an attempt by the government to enact a law covering all forms of child abuse and exploitation including child labor, child prostitution, child trafficking, and other forms of abuse. The said law also treats children in situations of armed conflict.

The problem with the law is that it is too general that its enforcement becomes difficult. There are very few successful cases in the country dealing with violation of R.A. 7610. Thus, there have been few convictions of employers violating the law on child labor as well as those engaged in child prostitution.

The law also gives several people the personality to sue in behalf of the child such as the barangay captain, three concerned citizens residing in the place where the abuse took place and social worker of child-caring institutions.

However, it is only DSWD that is given the authority to take protective custody of the abused child. The difficulty is that there are few DSWD personnel and at times when there is urgent need, the DSWD is not readily available. The recommendation is for the other persons authorized to file a case to be also authorized to take protective custody of the abused child, not only DSWD personnel.

The recommendation is for the review and amendment of the existing law (R.A. 7610) to have clearer definitions of offenses covered under the term "child abuse" and to make it more responsive to the needs of abused children.

***Economic exploitation, including child labor.*** As already mentioned earlier, R.A. 7610 as amended by R.A. 7658 prohibits child labor which includes children below 15 years of age. From 15 to below 18 years old, children are not allowed to work in hazardous employment such as mining. Recently, another law (R.A. 9231) amending R.A. 7610 was enacted providing for limitations in the hours of work for working children. This law, however, is not strictly enforced. There are many situations of child labor in hazardous industries which are not being checked by the government.

One of this is the case of small-scale gold mining in Mt. Diwalwal in Davao. Children are engaged in mining. Many cases of child labor in small industries especially those contracted out exist in the country such as manufacturing of firecrackers. The problem in these cases is that the parents themselves allow their children to engage in these hazardous work because of poverty.

There is a need for more education and information campaign on the issue of child labor and for the Department of Labor and Employment to monitor the different firms if they are hiring children and to have strict enforcement of the law.

The laws and government programs are largely focused on the worst forms of child labor. Most children are in the agricultural and informal sector as stated in the report. However, they are not covered in the law and government programs are not implemented in these areas. Child domestic helpers were not emphasized but is also an issue. There is no mechanism to monitor this.

***Drug abuse.*** The Comprehensive Dangerous Drugs Act was enacted in 2002 and before that, there was already a Dangerous Drugs Act of 1972, yet this law needs enforcement. Few big time drug lords have been convicted. It is only the users who are arrested including minors. The law provides for rehabilitation of drug dependents.

These dependents will not be held criminally liable if they voluntarily submit themselves to treatment. However, most of them do not submit themselves for treatment as they cannot afford to pay the drug rehabilitation centers. These centers have no budget from the government, thus, they have to collect contributions for the food and other needs of the drug dependents.

<p>The recommendation is for government to give budget to drug rehabilitation centers and for strict enforcement of the law especially the big time drug dealers.</p>
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With the new law, the penalties have been increased and drug testing is required for certain groups of persons. However, the stiffer penalties did not solve the problem but in fact made it worse. Law enforcers who have quotas on the drug cases they filed could easily plant the evidence since even .01 gram of illegal drugs has already a high penalty. Many of the victims of the planting of evidence are minors.

Another problem is that the enforcers of the law themselves are involved in drugs, that is why the drug problem would remain a problem. Also, some government officials in dealing with the problem resort to exposure tactics without due process of the law.

***Sexual exploitation and sexual abuse.*** As already mentioned, earlier, R.A. 7610 is there to address the problem of sexual exploitation and sexual abuse of children. However, the said law does not specifically deal with sexual exploitation and abuse other than those mentioned under child prostitution.

There is no clear provision dealing with sexual exploitation and abuse not related to prostitution such as incest. There are also provisions in the Revised Penal Code which penalizes sexual exploitation of minors, but most of the offenses cover minors up to twelve years old only. For sexual offenses against minors twelve to eighteen years old, the penalties are very low.

The promotion of tourism in the country particularly in the Visayas, has led to an increase in prostitution, children included. The operators recruit children from the provinces enticing them to the city in the pretext of employing them as waitresses or domestic helpers. When they reach the city, they are forced into prostitution.

According to a recent survey though, by Valenzona and Associates "Survey on the Demographic Origin of Commercial Sex Workers (CSW) in the City of Cebu", it was found that 60% of the 75 respondents CSW 18 years and below, either left home in good terms or never left home at all. More than fifty percent of them were recruited by friends.

***Other forms of exploitation.*** Other forms of exploitation are also provided under RA 7610. The problem again is that the law is vague and thus, as already earlier mentioned, difficult to implement. These forms of exploitation should be well-defined so that it would not be difficult to prosecute these cases.

***Sale, trafficking, and abduction.*** As already mentioned earlier, child trafficking is penalized under RA 7610. The said law is too general and thus, there is difficulty in the prosecution of these cases. With the recent enactment of R.A. 9208, which includes trafficking of women and children, it is hoped that the enforcement will not be too difficult.

d) ***Children belonging to a minority or an indigenous group.*** RA 7610 also has provisions dealing with children of indigenous cultural communities. However, the law is very general. Aside from guaranteeing the rights of children belonging to this group and non-discrimination of these children, there is no other provision on the matter. The implementing rules on this matter providing for penalties for discrimination is not clear.

## **The Right to Environment**

Although the right to environment is not specifically provided for under the Convention on the Rights of the Child, but may fall under the right to health, special attention is given to this right in this report. In the Philippines, the right not only of children, but also of future generations yet unborn, to a balanced and healthful ecology has been recognized by the Supreme Court.

In the celebrated case of *Oposa, et.al. vs. Factoran*, the Supreme Court sometime in 1994, recognized the personality of minor children to sue in their own behalf as well as in behalf of the future generations based on their right to environment. In the said case, the children sued the Secretary of the Department of Environment and Natural Resources (DENR) for issuing Timber License Agreements (TLA) in excess of the forest cover of the country. The clearing of the forests would largely affect the children since this will result in water shortage, oxygen depletion, flooding, soil erosion in the future.

This is a significant development and milestone not only in environmental law but in child rights as well since children are given importance. The Philippines is one of the first countries where the right to environment of the children including those unborn are recognized.

Even with this recognition of the right to environment and the different laws that we have, the Philippines continue to be beset with environmental problems like pollution and environmental degradation. One tragedy that happened in 2000 was in Payatas where the garbage dump covered and killed several residents, many of the victims were children. Street children are exposed daily to toxic and hazardous wastes, scavenging in dumpsites and roaming in the streets exposed to air pollution from motor vehicles. Environmental data show that forest cover, mangroves, corals, biodiversity has continuously decreased through the years.

The first to be affected by these environmental problems are the children because their immune systems and physical make-up are not yet fully developed, thus, they are more vulnerable. They will also be the one to suffer when the natural resources such as potable water will already be depleted.

<p>It is therefore recommended that environmental laws be strictly enforced by government. Secondly, that in all types of development particularly those that would affect the environment, the particular effects on the children should be considered and that a precautionary approach be taken.</p>
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## **CONCLUSION AND RECOMMENDATIONS**

In addressing the issue of child's rights in the Philippines, it is important that this be taken in the light of the overall socio-economic and political conditions in the country. With a country beset with economic problems, especially with the continuous devaluation of the peso and high inflation rate, where around thirty percent (30%) of the people live below poverty line (Source: National Statistical Coordination Board), it is not surprising that the situation of child abuse and exploitation is rampant.

However, this present crisis, should not be made as an excuse for the exploitation of children and a reason why government should not prioritize their needs. The government should not only answer the economic crisis but should undertake measures to protect the children.

The Philippines being a signatory of the UNCRC, is bound to implement the rights provided therein. Although laws have been passed involving these rights, not only are they not implemented due to lack of priority and budget of the government, but because the laws themselves are defective. The defect in the laws may also be the reason why it is difficult to implement. Furthermore, laws are also inadequate to protect the children from exploitation and to grant them the rights as defined under the CRC.

In summary, our recommendations are as follows:

1. A systematic review of Philippine Laws vis-à-vis the provisions of the UNCRC and other related international instruments to which the Philippines is a signatory, should be undertaken by congress so that they can systematically enact the appropriate laws and not just pay attention to these when it is reporting year or when the UN committee is about to examine the state party report. The appropriate laws could include:
  - a) Immediate passage of the law providing a Comprehensive Juvenile Justice System and Delinquency Prevention Program which scope is even before time a crime is committed, up to when a crime is committed to the rehabilitation and reintegration of the child in conflict with the law to the community.
  - b) Enact a policy that those hiring Filipino workers abroad should also provide for the travel, sustenance and provisions for his family as well;
  - c) Repealing the provision in the Family Code regarding the classification of children into legitimate and illegitimate as this violates the non-discrimination principle;
  - d) Codify the criminal laws on children including clear definitions of different criminal offenses against children (i.e. incest);
  - e) Creation of the Office of Child Ombudsman to monitor the implementation of the UNCRC;
  - f) Creation of Child Support Enforcement Agency and to explore more aggressive techniques of enforcing orders for child support as well as

- reciprocal agreements with other countries especially those with OFWs regarding child support;
- g) Amend R.A. 7610 to be more responsive to the needs of abused and exploited children such as giving authority to persons who may file child abuse cases to get the custody of the child.
  - h) Clearly define the age of sexual consent and in so defining, clarify related laws on marrying age, age for statutory rape and other sexual abuse being committed against children.
  - i) Laws regulating internet and cellphone since pornographic materials and inappropriate information are easily accessible to children from these sources
  - j) Enact law on Children Basic Sector not just E.O.
  - k) Enact laws for internal refugees, they should be afforded the same treatment and services of external refugees
  - l) Enact a Bill of Rights of Children to specifically include civil and political rights;
  - m) Add provisions in the Family Code to include parental responsibility aside from the provision on parental authority;
2. That the government exert efforts to implement existing laws on children and to implement programs for the full implementation of the UNCRC:
- a) That comprehensive guidelines be provided and budget be allocated to the concerned government agencies for the implementation of the Philippine Program of Action for Children (PPAC) not only in the national but also at the local levels;
  - b) That adequate budget be allocated to DSWD so that it can do its duties and functions as provided by the laws on children particularly the filing of cases for abandoned, neglected and abused children.
  - c) That LGUs allocate budget for a separate detention home for the youthful offender as provided under the law;
  - d) That the government more efforts and provide programs to reach out to children with disabilities and children of indigenous communities so that they will not be deprived of the basic services that they need.
  - e) That the proper government agencies and embassies where there are migrant workers should monitor possible cases of children of migrant workers who may possibly be illegal aliens and provide support services for these children born without any identity
  - f) That government assign an agency to encourage but at the same time monitor the youth organizations so that they will not be involved in anti-social activities and instead their energies will be directed at something useful in the community
  - g) Assign the monitoring and filing of cases for simulation of birth certificates to a government agency such as DSWD so that the law could be fully enforced;
  - h) That the government launch an information and education campaign on the UNCRC as well as the laws on children particularly at the local level;

- i) That the local government units constitute the local councils for the welfare of children up to the barangays level.
  - j) That the Child's Rights be incorporated by the Department of Education in the curriculum of elementary schools, to include and emphasize their right to expression and to empower the children so that they will be capacitated to genuinely participate in decision-making and governance;
  - k) That government implement measures to improve the economic and social conditions and to provide rehabilitation, physical and psychological recovery and social reintegration of other children affected by the armed conflict, not only those that have been arrested;
  - l) That environmental laws be strictly enforced by government. Secondly, that in all types of development particularly those that would affect the environment, the particular effects on the children should be considered and that a precautionary approach be taken
  - m) That courts should monitor cases brought before them so that children should not reach the death row.
3. Government should work together with the NGOs for the following:
- a) Information dissemination and education on the CRC to LGUs, NGOs and POs;
  - b) The government agency concerned to authorize or deputize NGOs for government functions such as arresting child abusers and taking protective custody of the abused child;
  - c) Rehabilitation and care of children in conflict with the law and children in situation of armed conflict;
  - d) Provide more venue for child participation;
  - e) Trainings of law enforcers, prosecutors and judges;
  - f) Services to protect and rehabilitate child victims of abuse;
  - g) Other services that the government cannot provide for the children.
4. Government should implement economic reform programs and laws that generally affect the poor and marginalized such as poverty reduction and economic reform measures and implementation of genuine agrarian reform

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