PHILIPPINES

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Submitted by the Philippine NGO Coalition on the UNCRC

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About the Philippine NGO Coalition on the UN CRC

The Philippine NGO Coalition on the UN CRC (NGO Coalition) is a network of 17 local and international non-government organizations that monitors the implementation of the Convention on the Rights of the Child (CRC) in the country. It was founded in 1993. It has been submitting periodic reports to the UN Committee on the Rights of the Child since 1994, following the Philippines’ ratification of the UN CRC in 1990. It also submits information to or participates in other human rights reporting mechanisms such as the NGO alternative reporting for the International Covenant on the Economic, Social and Cultural Rights.

The NGO Coalition has seventeen members to date, namely, Asia Against Child Trafficking (Asia ACTS), Child Hope Asia, ChildFund International, Consuelo Foundation, ECPAT Philippines, The ERDA Group, John J. Carroll Institute of Church and Social Issues (JJCISI), Lunduyan Foundation, National Council for Social Development (NCSD), Open Heart Foundation, Philippines Against Child Trafficking (PACT), Plan Philippines, Salinlahi Alliance for Children’s Concerns, Save the Children, VIDES Philippines Volunteers Foundation Inc., Visayan Forum and World Vision Development Foundation.

Implementation of International Human Rights Obligations and follow-up to UPR recommendations from the 1st Cycle:

In the first session of the UPR in 2008, the Philippines accepted the recommendation made by Italy “to address legislative gaps in the field of children’s rights in order to fully comply with the 2005 recommendations of the Committee on the Rights of the Child.” One of the identified legislative gaps was the absence of a national law that will prohibit the use of corporal punishment in all settings including in the home, school, justice system and alternative care. Another legislative gap identified in the Concluding Observations was the lack of a law that will establish a “Comprehensive Juvenile Justice System and Delinquency Prevention Programme and raise the minimum age of criminal responsibility to an internationally acceptable level.”

1. Right to Life, Liberty and Security of the Person: Prohibition of Corporal Punishment in All Settings

The Committee on the Rights of the Child in General Comment No.8 (2006) defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.” Corporal punishment of children contradicts the right to be free from torture and other cruel, inhuman or degrading treatment or punishment enshrined in the Universal Declaration of Human Rights. It also violates CRC Article 19 and 28, which guarantee children’s right to physical integrity and protection from all forms of abuse, maltreatment, exploitation and violence by parents, guardians and others with parental authority over the child.

The Committee on the Rights of the Child in its Concluding Observations of 2005 recommended that the Philippines “prohibit by law all forms of corporal punishment in the home, in schools and in private and public institutions, in the juvenile justice system and the alternative care system” and that the State Party “sensitize and educate parents guardians and professionals working with and for children by carrying out public education campaigns about the harmful impact of violent forms of ‘discipline’ and promote positive, non-violent forms of discipline as an alternative to corporal
punishment.” The Committee in its Concluding Observations of 2009 called on the Government to enact the Anti-Corporal Punishment Bill filed in Congress.

In the Philippines, corporal punishment still prevails in homes, schools and communities as it is still viewed as a form of discipline and is reinforced by culture and tradition, i.e. that children are possession of adults, adults know what’s best for children, and that children “learn their lesson” when they are spanked, hit or yelled at. Studies over the last five years show the prevalence of corporal punishment in homes, schools and communities.

A study conducted by UNICEF, Plan International and the Council for the Welfare of Children in 2009 on child-friendly educational environments shows that verbal abuse by teachers, such as being called “tanga” (stupid), “bobo” (dumb), “tamad” (lazy), and “peste” (pests) was the most frequent form of violence experienced by children in the educational setting. The most common form of physical abuse is pinching. Other forms of physical punishment used by teachers on their students include: spanking, having them stand under the sun for long periods of time, throwing things at them, and locking them in enclosed places.1

A 2010 survey of 270 sixth grade students with an average age of 12 found that 61.1% of them had experienced physical punishment at home, 74.5% of whom had been pinched, 49.7% beaten, 13.9% slapped, 3.6% kicked and 3% punched. The most common reasons for being physically punished were disobedience, cited by 35.6% of children who had been punished, and pasaway or being naughty (35.3%), which includes causing younger siblings to cry, interrupting adult conversations by what was perceived to be meaningless or disrespectful chatter, play-fighting with other children or siblings, making noises and disrupting order in the house. Almost a third (32.9%) of the children said that they “felt nothing” after being physically punished, while 25% were angry, 14.5% felt lonely or sad and 7.2% felt hatred.2

The Department of Education (DepEd) has taken positive steps to address corporal punishment in public schools. It has recently met with several non-government organizations to solicit ideas for a department policy that will require the adoption of a child protection policy and code of conduct covering all school personnel, and the establishment of a mechanism for reporting, monitoring and responding to reported cases of violence in schools, including corporal punishment.

However, the Anti-Corporal Punishment Bill remains pending in Congress. Bills were re-filed at the House of Representatives and at the Senate when the Fifteenth Congress opened in 2010. The House of Representatives passed in July 2011 House Bill 4455, or the Positive and Non-Violent Discipline of Children Bill. The bill defines corporal punishment as “cruel and unusual punishment or act that subjects the child to indignities and other excessive chastisement that embarrasses or humiliates the child carried out to discipline, train or control, inflicted by an adult or by another child, who has been given or has assumed authority or responsibility for punishment or discipline” While this could have been a positive step, if enacted into law, this bill will actually undermine children’s  

protection against relatively milder and more common forms of corporal punishment such as spanking, hair pulling and ear twisting, and will only reaffirm existing laws that limit the forms of corporal punishment that can be prohibited to those that are “excessive” and “cruel.”

Likewise, the version of the Anti-Corporal Punishment Bill in the Senate (Senate Bill 873) has not moved in the Senate Committee on Youth, Women and Family Relations where it is filed because it has not been included among the Committee’s priorities.

**Recommendations:**

The Philippine NGO Coalition on the UNCRC therefore recommends that the State should prohibit by law all forms of corporal punishment in all settings in compliance with the recommendations of the Committee on the Rights of the Child, including through:

- adopting the definition of corporal punishment in CRC General Comment No.8 (2006)
- enacting the Anti-Corporal Punishment Bill by the Fifteenth Congress in 2012;
- funding and implementing a comprehensive education and training program for parents, caregivers and service providers on the positive and non-violent forms of discipline and child rearing by the end of 2012;
- enforcing existing policies on the elimination of corporal punishment in schools;
- and establishing functional and well-resourced Local Child Protection Councils for raising awareness, prevention, monitoring and reporting cases of violence against children.

2. **Administration of Justice, Including impunity and the Rule of Law: Juvenile Justice**

2.1. **Minimum Age of Criminal Responsibility**

Another legislative gap identified in the 2005 Committee on the Rights of the Child Concluding Observations was the lack of a law that will establish a “Comprehensive Juvenile Justice System and Delinquency Prevention Programme and raise the minimum age of criminal responsibility to an internationally acceptable level.” In 2006, the Juvenile Justice and Welfare Act (JJWA), or Republic Act 9344, was enacted, resulting in the release of hundreds of children and youth from deprivation of liberty all over the country. However, the JJWA has not been effectively implemented. However, the passage of this law was also met with much criticism from media, some politicians and law enforcement officials.

Presently, several bills have been filed in both houses of Congress, proposing to lower the Minimum Age of Criminal Responsibility (MACR) from 15 to 12 years old. At the House of Representatives, the (consolidated) substitute bill on the amendments that includes a provision setting the MACR at 12 years old has been approved at the House Committee on Revision of Laws, and is pending at the House Committee on Appropriations. Child rights advocates, including the Philippine NGO Coalition, have strongly opposed this proposal. Decreasing the current MACR which is set at 15 years old to 12 years old is retrogression in the Philippines’ commitment to the UN Convention on the Rights of the Child.

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The Concluding Observations of the Committee on the Rights of the Child (2009) lauds the adoption of the JJWA, “which raises the minimum age of criminal responsibility from nine (9) to fifteen (15) years and prohibits and criminalizes acts of torture and ill-treatment against children in conflict with the law.” However, it also raises concern over recent initiatives to lower the age of criminal responsibility of children.” It, thus, recommends that the State to take all necessary measures to ensure that the age of criminal responsibility is not lowered, and to consider the Committee on the Rights of the Child General Comment No. 10 (CRC/GC/10) to guide it in its implementation of Juvenile Justice.

General Comment No. 10 specifically states that, “States Parties are recommended to increase their low MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. At the same time, the Committee urges States Parties not to lower their MACR to the age of 12. A higher MACR, for instance, 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with Article 40 (3)(b)CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child’s human rights and legal safeguards are fully respected.

Moreover, scientific studies conducted by the Council for the Welfare of Children (CWC) and the Pamantasan ng Lungsod ng Maynila (PLM) in 1997 and the Philippine Action for Youth and Offenders (PAYO) in 2002, have shown that the age of discernment (i.e. the ability to tell right from wrong and the consequences of actions) of in-school children (CWC and PLM 1997) and out-of-school children (PAYO 2002) are 15 years old and 18 years old, respectively. Hence, the present MACR in RA 9344 was borne out of consideration for these two researches.

Recommendation:

The Philippine NGO Coalition on the UNCRC therefore recommends that the State should withdraw the bills proposing to lower the minimum age of criminal responsibility and comply with the recommendations of the Committee on the Rights of the Child in General Comment No.10 (2007) regarding minimum age.

2.2. Prevention, rehabilitation and reintegration of children in conflict with the law

In its 2009 Concluding Observation, the Committee on the Rights of the Child also expresses its concern at the slow pace of implementation of the law, the limited use of diversion, and the alleged widespread practice of pre-trial detention of children.

Since its enactment, many provisions of the JWA have not been implemented. Local Government Units (LGUs), the agencies given one of the most important roles in executing the law, have not been extensively trained and have not implemented prevention and community-based diversion programs in their communities. Furthermore, while the law states that every municipality/province should have its own youth detention home for CICL, these facilities are wanting in many areas all over the country. Rehabilitation programs in the jails and reintegration programs for CICL are also inadequate. Moreover the Juvenile Justice and Welfare Council (JJWC), the agency mandated to oversee the implementation of the JJWA, needs to be further strengthened.
There is a low level of knowledge of and a lack of capacity to implement the law among local officials, law enforcers and service providers. While the mandated local structures for implementation, the barangay (village) councils for the protection of children (BCPCs), have been established in 84% of barangays in the country, only 52% of these are assessed to be at ideal or mature status, which means that only these BCPCs have attained at least 51% of the requirements for a fully functional local CPC, which includes budget allocation, plans and programs and accomplishment reports. Only 15% are assessed to be at an ideal state, or which have attained almost all (at least 80%) of all requirements. The data imply that only 51% of BCPCs are likely to have significant programs. It cannot even be concluded that these programs include a comprehensive program on juvenile justice given the very broad mandate of the BCPC.

Non-government organizations working on the issue of Juvenile Justice have also reported cases of children caught offending who experience torture or maltreatment in the hands of law enforcers, village guards or community volunteers. It was explained that these children are tortured because they cannot be charged with crimes or put into jail under the JJWA. Children in conflict with the law have also been the subject of summary execution by vigilante groups in Davao City.

The Concluding Observations of the Committee on the Rights of the Child recommends that the State continue to implement training programs on relevant international standards and disseminate the provisions of the JJWA particularly to all professionals working with the juvenile justice system.

**Recommendation:**

The Philippine NGO Coalition recommends that the State should comply with the Committee on the Rights of the Child’s recommendations regarding juvenile justice, including through: clear parameters for the allocation of funds for juvenile justice prevention programs in communities; assistance to local governments in the development of comprehensive juvenile justice program; establishment of effective reintegration and rehabilitation programs for children; strengthened Juvenile Justice and Welfare Council structures and the promotion of restorative justice.

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4 Barangay refers to the basic political unit in the Philippines.