



**Position Paper of the
PHILIPPINE ACTION FOR YOUTH OFFENDERS (PAYO)
and the CHILD RIGHTS NETWORK (CRN)
on the LOWERING OF THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY**

The Philippine Action for Youth Offenders (PAYO) and the Child Rights Network (CRN) vehemently oppose the proposal to lower the Minimum Age of Criminal Responsibility (MACR) from 15 years old to 9 years old. This move undermines the best interest of the child and will not solve the problem of children committing crimes. It distracts us from the real reasons why children offend such as poor parenting and supervision, peer pressure, social isolation, family conflict, and poverty. Moreover, it is an impulsive reaction to public perception and media hype that the number of crimes committed by children has increased since the enactment of the law. This perception is unfounded. There is no clear evidence to back this claim and no attempt has been made to analyze the possible factors that influence the crimes committed by children.

Lowering the age of criminal responsibility will result to negative consequences for children and the public. It will increase the number of children detained for long periods of time, making them more likely to become hardened offenders. Detention/ Jail conditions in the Philippines are not rehabilitative. They are harsh: children have been reported to experience torture, physical, emotional, and sexual abuse while in detention. Research also shows that detaining or incarcerating children is more damaging to them than beneficial. It has a profoundly negative impact on young people's mental and physical well-being (i.e., depression and poor mental health), their education (i.e., learning disabilities not recognized or addressed), and their future employment (i.e., reduces their ability to remain in the workforce). Detention may also increase the likelihood that young people will recidivate, compromising public safety.¹ Incarcerating children goes against established principles of proportionality and fair treatment and contradicts the best interest of the child and the rights of the child to maximum survival and development. Lowering the MACR further reinforces the existing situation of syndicates using younger children in their criminal activities. Our focus should be on catching the adult syndicates instead of punishing the children, who are clearly the victims in this situation.

Emerging knowledge about cognitive, psychosocial, and neurobiological development in adolescence also provides evidence that young people should not be held to the same standards of criminal responsibility as adults. Steinberg, L., & Scott, E. (2003)'s study argued that "Adolescents' decision-making capacities are diminished as they are less able to resist

¹ The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities. A Justice Policy Institute Report by Barry Holman and Jason Ziedenberg



coercive influence and their character is still undergoing change.”² Another study by Steinberg L. (2008) on adolescent risk-taking found that risk-taking increases between childhood and adolescence due to changes in the brain’s socio-emotional system.³ The immaturity of young people due to their brain underdevelopment influences their decision making and susceptibility to perform risky activities. This, along with the influence of criminogenic environments where children reside (i.e., many CICL live in communities where crimes are rampant) and the CICL’s personal circumstance (i.e., poor, lacking in education, neglect/ abandonment, poor parental supervision) can be considered mitigating factors in their criminal culpability.

Our Congress took thirteen years to craft the Juvenile Justice and Welfare Act of 2006 (JJWA). In 2013, it was amended to improve provisions on the administration of the Juvenile Justice and Welfare Council (JJWC), handling repeat offenders and children at risk of offending, and providing intervention and rehabilitative services for CICL. The MACR was preserved at 15 years old. It is imprudent to cast aside all the years of diligent study and in-depth discussions to formulate a Restorative Juvenile Justice system in the Philippines without careful research and in consideration of the current facts and laws promoting and protecting the rights of children.

There are indeed challenges in implementing the JJWA and these must be effectively addressed. However, difficulties in implementing the law cannot be used to justify the amendment; otherwise, the rights of children will be compromised merely on the basis of expediency. This does not mean ignoring the complaints of duty bearers tasked to implement the law. There are legitimate concerns that must be attended to by means of thorough study of processes to assist CICL and children at risk. What is glaring, however, is the lack of evidence-based information to support the moves to lower the MACR and the negative impact of criminalizing children. Lowering MACR is a violation of the right of the child to genuine protection

Any attempt to amend the JJWA should be carefully studied and must ensure consonance with the Philippines’ commitments to international agreements, such as the UN Convention on the Rights of the Child (CRC), the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). The CRC’s General Comment No. 10 clearly states that:

“ Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity... From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable... 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

² Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58(12), 1009-1018

³ Steinberg, L. (2008). A social neuroscience perspective on adolescent risk-taking. *Developmental Review*, 28, 78-106



Article 40 (3) (b) of 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."

President Rodrigo Duterte, in his inaugural speech clearly said that "... Let me reiterate that the Republic of the Philippines will honor treaties and international obligations." We will hold the President to this promise to ensure that the CRC and the other abovementioned international agreements are respected and upheld.

At this time, let us focus our efforts on fully implementing the JJWA, supporting and capacitating duty bearers so they can effectively execute their responsibilities under the law. Let us support programs that strengthen families and teach parents how to effectively raise their children without the use of corporal punishment and violence which have been found to increase delinquent behaviors in children. Moreover, effective programs and services to prevent young people from offending or re-offending, to facilitate diversion of CICL, and to restore those who have been harmed through restorative justice practices must be established.

In the true spirit of our Constitution, our legislators must recognize the vital role of the youth in nation-building and promote and protect their physical, moral, spiritual, intellectual, and social well-being.

The **Philippine Action for Youth Offenders (PAYO)** is a coalition of 16 civil society organizations and several individuals working together for the realization of a just and humane society for children in conflict with the law (CICL). Upholding the principles of Restorative Justice, it promotes and protects the rights of CICL through advocacy, lobbying, training, research, and networking.

The **Child Rights Network (CRN)** is an alliance of government and non-government organizations advocating for the passage of national laws that will protect and fulfill the rights of Filipino children. CRN member-organizations adhere to the United Nations Convention on the Rights of the Child (UNCRC) which was ratified by the Philippine government in July 1990. The Network aims to generate support for children's issues among different stakeholders, including children, legislators and decision-makers in the national government.



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