

Philippine Laws and International Guidelines for **Protection of Children Against Worst Forms of Child Labor**

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Acknowledgement



On behalf of the **American Bar Association Rule of Law Initiative (ABA ROLI)**, I am delighted to share this collection of Philippine laws and international conventions ratified by the Philippine Government on the rights of children.

This compilation is published as part of the “**Project Against Child Exploitation**” (ProjectACE) of ABA ROLI, implemented in collaboration with World Vision Development Foundation, Inc., with the objective to strengthen the capacity of the Philippine government to address the worst forms of child labor including online sexual exploitation, and violations of acceptable conditions of work.

Sadly, child labor remains an increasing global challenge with the latest estimates indicating that 160 million children were in child labor globally at the beginning of 2020, which translates to 1 in 10 of all children worldwide, nearly half of whom were in hazardous work that directly endangers their health, safety and moral development.¹

We are in a critical period in global history, when the coronavirus pandemic has had and continues to have a devastating impact on the health, economy, and livelihood of hundreds of millions across the planet. As is often the case in times of crises, the impacts are not felt equally across society, with the most damaging impacts felt in the poorest communities, who are less resilient to income shocks due to the lack of savings and access to social protection, including health insurance and unemployment benefits. Although children are generally not at high risk from the COVID-19 virus, millions of already vulnerable children have disproportionately felt the impact of the related lockdowns, school closures, and business closures including increased risk of abuse and exploitation, online sexual exploitation, child labor, forced labor and human trafficking, particularly girls. A recent report by the International Labor Organization on global trends in child labor paints a disturbing picture - that progress in addressing child labor has stalled for the first time in two decades

In the Philippines, the Philippine Statistics Authority’s (PSA) latest survey is a decade old and is thought not to reflect the current situation - reports that 3.3 million out of 36 million children in the Philippines, aged 5 to 17 years old, were working.² Of the 3.3 million children, 2.1 million or 63 percent, were engaged in child labor. The number of children in hazardous child labor was estimated at 2 million.

¹https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_797515.pdf

²Philippine Statistics Authority, 2011 Survey on Children, 9 December 2015, available at <https://psa.gov.ph/content/estimated-number-working-children-5-17-years-old-who-worked-during-past-week-was-33-million>. Accessed: April 3, 2021 (Comment: This survey was conducted in 2011. It is unclear whether these numbers are still representative of the child labor situation in the Philippines in 2021.)

ABA ROLI hopes this publication will serve as a valuable resource to guide the frontliner labor inspectors, social workers and others in the community who are working to help address and respond to the increasing risks to children vulnerable to abuse and exploitation.

I would like to acknowledge the work of the ABA ROLI Program Manager, Atty. Liezl Z. Parajas, Atty. Ivy-Ron Quinto, ABA ROLI Program Officer, Ms. Audrey Anonuevo, ABA ROLI Administrative Office and Irish Cariaga, ABA ROLI Intern, for their efforts in compiling the contents of this resource.

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Message



We thank the US Department of Labor for its continued support to World Vision since 2003 for programs to combat child labor, and in particular for the current Project Against Child Exploitation (Project ACE) to support the capacity building efforts of the government of the Philippines and at least one other country in Asia to address Worst Forms of Child Labor, including the Online Sexual Exploitation of Children (OSEC) and violations of acceptable conditions of work.

Project ACE values collaboration to address the worst forms of child labor, including OSEC and will build on the Philippine Government's many years of collaboration in addressing exploitative labor abuses. The project is funded by the United States Department of Labor under Cooperative Agreement IL-34007-19-75-K from 2019 –2023. It aims to impact child labor programs across the Philippines but with particular focus in two key areas - Quezon City and Cagayan De Oro City.

We thank our implementing partner, the American Bar Association Rule of Law Initiative (ABA ROLI), for this compendium of relevant laws and guidelines as a resource material for labor inspectors and major stakeholders, social workers and local government officials with whom Project ACE has partnered with and is providing capacity building for the prevention, detection, case handling and rescue of victims of the worst forms of child labor in the Philippines.

World Vision places children at the center of all our work to transform communities for good. We empower children to know their rights and work toward their own well-being. And we work with their families and communities to ensure that all children are protected and that their futures are not stolen by labor exploitation.

World Vision has been in the Philippines for 65 years and our work contributed to the elimination of child labor. We call on you to be part of World Vision's "It Takes A World" (ITAW) campaign, a global movement that aims to protect children from abuse and exploitation. In the Philippines, ITAW focuses on ending OSEC, a grave issue that threatens the future of the most vulnerable children in the country especially during this time of pandemic.

Together, we can create a safer world for children. Together, let us bring hope, joy and justice for all children. Together, let us stand Against Child Exploitation!

Mabuhay!

Mr. Rommel V. Fuerte

National Director, World Vision Development Foundation Inc.

PHILIPPINE LAWS

REPUBLIC ACT NO. 4881

AN ACT CREATING A COUNCIL FOR THE PROTECTION OF CHILDREN IN EVERY CITY AND MUNICIPALITY OF THE PHILIPPINES AND FOR OTHER PURPOSES

Section 1. It is the declared policy of the State not only to assure that every family should be helped into bringing up their children to make them useful men and women but also to see that the proper direction, supervision and guardianship in the training, education, and other interests of its minor citizens be undertaken by it.

Section 2. To implement this sacred duty of the State, there is hereby created in every city and municipality including municipal district a “Council for the Protection of Children”, which is hereinafter referred to as the Council, to be composed of the City or Municipal Mayor, as Chairman, and two members of the City or Municipal Council to be elected among themselves, the City or Municipal Health Officer, the City or Municipal Supervising Teacher, the Chief of Police, a representative of the Social Welfare Administration, and a representative of the PTA Organization in the City or Municipality to be elected for a term of one year by the presidents of the different PTA Organizations in said City or Municipality, as members. In the absence of the City or Municipal Mayor, the Vice-Mayor shall be the presiding officer of the Council.

Section 3. The Council shall hold meetings at the call of the City or Municipal Mayor but it may also be convoked upon written request of at least two members thereof. The Chairman and member of the Council shall not receive any per diem or allowance or emolument whatsoever.

Section 4. A majority of the members is sufficient for the Council to transact its business provided that in the absence of a quorum, the Council may adjourn from day to day.

Section 5. The Council shall supervise and act as guardian for the health, education and well-being of all the minors within the city or municipality, and for this purpose it shall, among others, have the functions provided for in Article 360 of the Civil Code.

Section 6. Within six months after the approval of this Act, all city and municipal mayors shall convoke the Council herein created and start implementing the provisions of this Act.

Section 7. This Act shall take effect upon its approval.

Approved: June 17, 1967

PRESIDENTIAL DECREE No. 603

THE CHILD AND YOUTH WELFARE CODE
TITLE I
GENERAL PRINCIPLES

Article 1. Declaration of Policy. - The Child is one of the most important assets of the nation. Every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life.

The child is not a mere creature of the State. Hence, his individual traits and aptitudes should be cultivated to the utmost insofar as they do not conflict with the general welfare.

The molding of the character of the child starts at the home. Consequently, every member of the family should strive to make the home a wholesome and harmonious place as its atmosphere and conditions will greatly influence the child's development.

Attachment to the home and strong family ties should be encouraged but not to the extent of making the home isolated and exclusive and unconcerned with the interests of the community and the country. The natural right and duty of parents in the rearing of the child for civic efficiency should receive the aid and support of the government.

Other institutions, like the school, the church, the guild, and the community in general, should assist the home and the State in the endeavor to prepare the child for the responsibilities of adulthood.

Article 2. Title and Scope of Code. - The Code shall be known as the Child and Youth Welfare Code. It shall apply to persons below twenty-one years of age except those emancipated in accordance with law. "Child" or "minor" or "youth" as used in this Code, shall refer to such persons.

Article 3. Rights of the Child. - All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

1. Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.
2. Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

3. Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care.

The physically or mentally handicapped child shall be given the treatment, education and care required by his particular condition.

4. Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.
5. Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.
6. Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.
7. Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.
8. Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.
9. Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.
10. Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.
11. Every child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.
12. Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

Article 4. Responsibilities of the Child. - Every child, regardless of the circumstances of his birth, sex, religion, social status, political antecedents and other factors shall:

1. Strive to lead an upright and virtuous life in accordance with the tenets of his religion, the teachings of his elders and mentors, and the biddings of a clean conscience;
2. Love, respect and obey his parents, and cooperate with them in the strengthening of the family;
3. Extend to his brothers and sisters his love, thoughtfulness, and helpfulness, and endeavor with them to keep the family harmonious and united;
4. Exert his utmost to develop his potentialities for service, particularly by undergoing a formal education suited to his abilities, in order that he may become an asset to himself and to society;
5. Respect not only his elders but also the customs and traditions of our people, the memory of our heroes, the duly constituted authorities, the laws of our country, and the principles and institutions of democracy;
6. Participate actively in civic affairs and in the promotion of the general welfare, always bearing in mind that it is the youth who will eventually be called upon to discharge the responsibility of leadership in shaping the nation's future; and
7. Help in the observance of individual human rights, the strengthening of freedom everywhere, the fostering of cooperation among nations in the pursuit of their common aspirations for programs and prosperity, and the furtherance of world peace.

Article 5. Commencement of Civil Personality. - The civil personality of the child shall commence from the time of his conception, for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code.

Article 6. Abortion. - The abortion of a conceived child, whether such act be intentional or not, shall be governed by the pertinent provisions of the Revised Penal Code.

Article 7. Non-disclosure of Birth Records. - The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

1. The person himself, or any person authorized by him;
2. His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;
3. The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and
4. In case of the person's death, the nearest of kin.

Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both, in the discretion of the court.

Article 8. Child's Welfare Paramount. - In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.

Article 9. Levels of Growth. - The child shall be given adequate care, assistance and guidance through his various levels of growth, from infancy to early and later childhood, to puberty and adolescence, and when necessary even after he shall have attained age 21.

Article 10. Phases of Development. - The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to ensure and enable his fullest development physically, mentally, emotionally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity appropriate to the corresponding developmental stage.

Article 11. Promotion of Health. - The promotion of the Child's health shall begin with adequate pre-natal and post-natal care both for him and his mother. All appropriate measures shall be taken to insure his normal total development.

It shall be the responsibility of the health, welfare, and educational entities to assist the parents in looking after the health of the child.

Article 12. Education. - The schools and other entities engaged in non-formal education shall assist the parents in providing the best education for the child.

Article 13. Social and Emotional Growth. - Steps shall be taken to insure the child's healthy social and emotional growth. These shall be undertaken by the home in collaboration with the schools and other agencies engaged in the promotion of child welfare.

Article 14. Morality. - High moral principles should be instilled in the child, particularly in the home, the school, and the church to which he belongs.

Article 15. Spiritual Values. - The promotion of the child's spiritual well-being according to the precepts of his religion should, as much as possible, be encouraged by the State.

Article 16. Civic Conscience. - The civic conscience of the child shall not be overlooked. He shall be brought up in an atmosphere of universal understanding, tolerance, friendship, and helpfulness and in full consciousness of his responsibilities as a member of society.

TITLE II
CHILD AND YOUTH WELFARE AND THE HOME

CHAPTER I
Parental Authority

SECTION A. In General

Article 17. Joint Parental Authority. - The father and mother shall exercise jointly just and reasonable parental authority and responsibility over their legitimate or adopted children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

In case of the absence or death of either parent, the present or surviving parent shall continue to exercise parental authority over such children, unless in case of the surviving parent's remarriage, the court, for justifiable reasons, appoints another person as guardian.

In case of separation of his parents, no child under five years of age shall be separated from his mother unless the court finds compelling reasons to do so.

Article 18. Grandparents. - Grandparents shall be consulted on important family questions but they shall not interfere in the exercise of parental authority by the parents.

Article 19. Absence or Death of Parents. - Grandparents and in their default, the oldest brother or sister who is at least eighteen years of age, or the relative who has actual custody of the child, shall exercise parental authority in case of absence or death of both parents, unless a guardian has been appointed in accordance with the succeeding provision.

Article 20. Guardian. - The court may, upon the death of the parents and in the cases mentioned in Arts. 328 to 332 of the Civil Code, appoint a guardian for the person and property of the child, on petition of any relative or friend of the family or the Department of Social Welfare.

Article 21. Dependent, Abandoned or Neglected Child. - The dependent, abandoned or neglected child shall be under the parental authority of a suitable or accredited person or institution that is caring for him as provided for under the four preceding articles, after the child has been declared abandoned by either the court or the Department of Social Welfare.

Article 22. Transfer to the Department of Social Welfare. - The dependent, abandoned or neglected child may be transferred to the care of the Department of Social Welfare or a duly licensed child-caring institution or individual in accordance with Articles 142 and 154 of this Code, or upon the request of the person or institution exercising parental authority over him.

From the time of such transfer, the Department of Social Welfare or the duly licensed child-caring institution or individual shall be considered the guardian of the child for all intents and purposes.

Article 23. Case Study. - It shall be the duty of the Department of Social Welfare to make a case study of every child who is the subject of guardianship or custody proceedings and to submit its report and recommendations on the matter to the court for its guidance.

Article 24. Intervention of Department of Social Welfare. - The Department of Social Welfare shall intervene on behalf of the child if it finds, after its case study, that the petition for guardianship or custody should be denied.

Article 25. Hearings Confidential. - The hearing on guardianship and custody proceedings may, at the discretion of the court, be closed to the public and the records thereof shall not be released without its approval.

Article 26. Repealing Clause. - All provisions of the Civil Code on parental authority which are not inconsistent with the provisions of this Chapter shall remain in force: Provided, That Articles 334 up to 348 inclusive on Adoption, are hereby expressly repealed and replaced by Section B of this Chapter.

SECTION B. Adoption

Article 27. Who May Adopt. - Any person of age and in full possession of his civil rights may adopt: Provided, That he is in a position to support and care for his legitimate, legitimated, acknowledged natural children, or natural children by legal fiction, or other illegitimate children, in keeping with the means, both material and otherwise, of the family. In all cases of adoption the adopter must be at least fifteen years older than the person to be adopted.

Article 28. Who May Not Adopt. - The following persons may not adopt:

1. 1. A married person without the written consent of the spouse;
2. 2. The guardian with respect to the ward prior to final approval of his accounts;
3. 3. Any person who has been convicted of a crime involving moral turpitude;
4. 4. An alien who is disqualified to adopt according to the laws of his own country or one with whose government the Republic of the Philippines has broken diplomatic relations.

Article 29. Adoption by Husband and Wife. - Husband and Wife may jointly adopt. In such case, parental authority shall be exercised as if the child were their own by nature.

Article 30. Who May Not Be Adopted. - The following may not be adopted:

1. A married person, without the written consent of the spouse;

2. An alien with whose government the Republic of the Philippines has broken diplomatic relations;
3. A person who has already been adopted unless the adoption has been previously revoked or rescinded in accordance with this Chapter.

Article 31. Whose Consent is Necessary. - The written consent of the following to the adoption shall be necessary:

1. The person to be adopted, if fourteen years of age or over;
2. The natural parents of the child or his legal guardian of the Department of Social Welfare or any duly licensed child placement agency under whose care the child may be;
3. The natural children, fourteen years and above, of the adopting parents.

Article 32. Hurried Decisions. - In all proceedings for adoption, steps should be taken by the court to prevent the natural parents from making hurried decisions caused by strain or anxiety to give up the child, and to ascertain, that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his own home will be inimical to his welfare and interest.

Article 33. Case Study. - No petition for adoption shall be granted unless the Department of Social Welfare, or the Social Work and Counselling Division, in case of Juvenile and Domestic Relations Courts, has made a case study of the child to be adopted, his natural parents as well as the prospective adopting parents, and has submitted its report and recommendations on the matter to the court hearing such petition. The Department of Social Welfare shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied.

Article 34. Procedure. - The proceedings for adoption shall be governed by the Rules of Court in so far as they are not in conflict with this Chapter.

Article 35. Trial Custody. - No petition for adoption shall be finally granted unless and until the adopting parents are given by the court a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody parental authority shall be vested in the adopting parents.

The court may, upon its own motion or on motion of the petitioner, reduce or dispense with the trial period if it finds that it is to the best interest of the child. In such case, the court shall state its reasons for reducing said period.

Article 36. Decree of Adoption. - If, after considering the report of the Department of Social Welfare or duly licensed child placement agency and the evidence submitted before it, the court is satisfied that the petitioner is qualified to maintain, care for, and educate the child, that the trial custody period has been completed, and that the best interests of the child will be promoted by the adoption, a decree of

adoption shall be entered, which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is thenceforth to be known.

Article 37. Civil Registry Record. - The adoption shall be recorded in the local civil register and shall be annotated on the record of birth, and the same shall entitle the adopted person to the issuance of an amended certificate of birth.

Article 38. Confidential Nature of Proceedings and Records. - All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books and papers relating to the adoption cases in the files of the court, of the Department of Social Welfare, and of any other agency or institution participating in the adoption proceedings, shall be kept strictly confidential.

Subject to the provisions of Article 7, in any case in which information from such records, books and papers is needed, the person or agency requesting the release of the information may file a petition to the court which entered the decree of adoption for its release. If the court finds that the disclosure of the information is necessary for purposes connected with or arising out of the adoption and will be for the best interests of the child, the court may permit the necessary information to be released, restricting the purposes for which it may be used.

Article 39. Effects of Adoption. - The adoption shall:

1. Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter: Provided, That an adopted child cannot acquire Philippine citizenship by virtue of such adoption; lawphil.net
2. Dissolve the authority vested in the natural parent or parents, except where the adopter is the spouse of the surviving natural parent;
3. Entitle the adopted person to use the adopter's surname; and
4. Make the adopted person a legal heir of the adopter: Provided, That if the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child: Provided, further, That any property received gratuitously by the adopted from the adopter shall revert to the adopter should the former predecease the latter without legitimate issue unless the adopted has, during his lifetime, alienated such property: Provided, finally, That in the last case, should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue or a spouse, such illegitimate issue collectively or the spouse shall receive one-fourth of such property; if the adopted is survived by illegitimate issue and a spouse, then the former collectively shall receive one-fourth and the latter also one-fourth, the rest in any case reverting to the adopter, observing in the case of the illegitimate issue the proportion provided for in Article 895 of the Civil Code.

The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him, except that if the latter are both dead, the adopting parent or parents take the place of the natural parents in the line of succession, whether testate or interstate.

Article 40. Rescission by Adopted. - The adopted person or the Department of Social Welfare or any duly licensed child placement agency if the adopted is still a minor or otherwise incapacitated, may ask for the rescission of the adoption on the same grounds that cause the loss of parental authority under the Civil Code.

Article 41. Revocation by Adopter. - The adopter may petition the court for the revocation of the adoption in any of these cases:

1. If the adopted person has attempted against the life of the adopter and/or his spouse;
2. When the adopted minor has abandoned the home of the adopter for more than three years and efforts have been exhausted to locate the minor within the stated period;
3. When by other acts the adopted person has definitely repudiated the adoption.

Article 42. Effects of Rescission or Revocation. - Where the adopted minor has not reached the age of majority at the time of the revocation or rescission referred to in the next preceding articles, the court in the same proceeding shall determine whether he should be returned to the parental authority of his natural parents or remitted to the Department of Social Welfare or any duly licensed child placement agency or whether a guardian over his person and property should be appointed.

Where the adopted child has reached the age of majority, the revocation or rescission, if and when granted by the court, shall release him from all obligations to his adopting parents and shall extinguish all his rights against them: Provided, That if the said adopted person is physically or mentally handicapped as to need a guardian over his person or property, or both, the court may appoint a guardian in accordance with the provisions of existing law.

In all cases of revocation or rescission, the adopted shall lose the right to continue using the adopter's surname and the court shall order the amendment of the records in the Civil Register in accordance with its decision.

CHAPTER II

Rights of Parents

Article 43. Primary Right of Parents. - The parents shall have the right to the company of their children and, in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing.

Article 44. Rights Under the Civil Code. - Parents shall continue to exercise the rights mentioned in Articles 316 to 326 of the Civil Code over the person and property of the child.

Article 45. Right to Discipline Child. - Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.

CHAPTER III

Duties of Parents

Article 46. General Duties. - Parents shall have the following general duties toward their children:

1. To give him affection, companionship and understanding;
2. To extend to him the benefits of moral guidance, self-discipline and religious instruction; lawphi1.net
3. To supervise his activities, including his recreation; lawphi1.net
4. To inculcate in him the value of industry, thrift and self-reliance;
5. To stimulate his interest in civic affairs, teach him the duties of citizenship, and develop his commitment to his country;
6. To advise him properly on any matter affecting his development and well-being;
7. To always set a good example;
8. To provide him with adequate support, as defined in Article 290 of the Civil Code; and
9. To administer his property, if any, according to his best interests, subject to the provisions of Article 320 of the Civil Code.

Article 47. Family Affairs. - Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him. In cases involving his discipline, the child shall be given a chance to present his side.

Article 48. Winning Child's Confidence. - Parents shall endeavor to win the child's confidence and to encourage him to conduct with them on his activities and problems.

Article 49. Child Living Away from Home. - If by reason of his studies or for other causes, a child does not live with his parents, the latter shall communicate with him regularly and visit him as often as possible. The parents shall see to it that the child lives in a safe and wholesome place and under responsible adult care and supervision.

Article 50. Special Talents. - Parents shall endeavor to discover the child's talents or aptitudes, if any, and to encourage and develop them. If the child is especially gifted, his parents shall report this fact to the National Center for Gifted Children or to other agencies concerned so that official assistance or recognition may be extended to him.

Article 51. Reading Habit. - The reading habit should be cultivated in the home. Parents shall, whenever possible, provide the child with good and wholesome reading material, taking into consideration his age and emotional development. They shall guard against the introduction in the home of pornographic and other unwholesome publications.

Article 52. Association with Other Children. - Parents shall encourage the child to associate with other children of his own age with whom he can develop common interests of useful and salutary nature. It shall be their duty to know the child's friends and their activities and to prevent him from falling into bad company. The child should not be allowed to stay out late at night to the detriment of his health, studies or morals.

Article 53. Community Activities. - Parents shall give the child every opportunity to form or join social, cultural, educational, recreational, civic or religious organizations or movements and other useful community activities.

Article 54. Social Gatherings. - When a party or gathering is held, the parents or a responsible person should be present to supervise the same.

Article 55. Vices. - Parents shall take special care to prevent the child from becoming addicted to intoxicating drinks, narcotic drugs, smoking, gambling, and other vices or harmful practices.

Article 56. Choice of career. - The child shall have the right to choose his own career. Parents may advise him on this matter but should not impose on him their own choice.

Article 57. Marriage. - Subject to the provisions of the Civil Code, the child shall have the prerogative of choosing his future spouse. Parents should not force or unduly influence him to marry a person he has not freely chosen.

CHAPTER IV

Liabilities of Parents

Article 58. Torts. - Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.

Article 59. Crimes. - Criminal liability shall attach to any parent who:

1. Conceals or abandons the child with intent to make such child lose his civil status.
2. Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.
3. Sells or abandons the child to another person for valuable consideration.
4. Neglects the child by not giving him the education which the family's station in life and financial conditions permit.
5. Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.
6. Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.
7. It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.
8. Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.
9. Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignation and other excessive chastisement that embarrass or humiliate him.
10. Causes or encourages the child to lead an immoral or dissolute life.
11. Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.
12. Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

“Parents” as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

Article 60. Penalty. - The act mentioned in the preceding article shall be punishable with imprisonment from two or six months or a fine not exceeding five hundred pesos, or both, at the discretion of the Court, unless a higher penalty is provided for in the Revised Penal Code or special laws, without prejudice to actions for the involuntary commitment of the child under Title VIII of this Code.

CHAPTER V

Assistance to Parents

Article 61. Admonition to Parents. - Whenever a parent or guardian is found to have been unreasonably neglectful in the performance of his duties toward the child, he shall be admonished by the Department of Social Welfare or by the local Council for the Protection of Children referred to in Article 87. Whenever a child is found delinquent by any court, the father, mother or guardian may be judicially admonished.

Article 62. Medical and Dental Services. - If the child has special health problems, his parents shall be entitled to such assistance from the government as may be necessary for his care and treatment in addition to other benefits provided for under existing law.

Article 63. Financial Aid and Social Services to Needy Families. - Special financial or material aid and social services shall be given to any needy family, to help maintain the child or children in the home and prevent their placement elsewhere.

The amount of such aid shall be determined by the Department of Social Welfare, taking into consideration, among other things, the self-employment of any of the family members and shall be paid from any funds available for the purpose.

Article 64. Assistance to Widowed or Abandoned Parent and Her Minor Dependents. - The State shall give assistance to widowed or abandoned parent or where either spouse is on prolonged absence due to illness, imprisonment, etc. and who is unable to support his/her children. Financial and other essential social services shall be given by the National Government or other duly licensed agencies with similar functions to help such parent acquire the necessary knowledge or skill needed for the proper care and maintenance of the family.

Article 65. Criterion for Aid. - The criteria to determine eligibility for the aid mentioned in the next two preceding articles shall be (1) the age of the child or children (2) the financial condition of the family, (3) the degree of deprivation of parental care and support, and (4) the inability to exercise parental authority.

Article 66. Assistance to Unmarried Mothers and Their Children. - Any unmarried mother may, before and after the birth of the child, seek the assistance and advice of the Department of Social Welfare or any duly licensed child placement agency. The said agencies shall offer specialized professional services which include confidential help and protection to such mother and her child, including placement of protection to such mother and child, including placement of such mother's rights, if any, against the father of such child.

CHAPTER VI

Foster-Care

Article 67. Foster Homes. - Foster Homes shall be chosen and supervised by the Department of Social Welfare or any duly licensed child placement agency when and as the need therefore arises. They shall be run by married couples, to be licensed only after thorough investigation of their character, background, motivation and competence to act as foster parents.

Article 68. Institutional Care. - Assignment of the child to a foster home shall be preferred to institutional care. Unless absolutely necessary, no child below nine years of age shall be placed in an institution. An older child may be taken into an institution for child care if a thorough social case study indicates that he will derive more benefit therefrom.

Article 69. Day-care service and other substitute parental arrangement. - Day-care and other substitute parental arrangement shall be provided a child whose parents and relatives are not able to care for him during the day. Such arrangements shall be the subject of accreditation and licensing by the Department of Social Welfare.

Article 70. Treatment of Child Under Foster Care. - A child under foster care shall be given, as much as possible, the affection and understanding that his own parents, if alive or present, would or should have extended to him. Foster care shall take into consideration the temporary nature of the placement and shall not alienate the child from his parents.

TITLE III.

CHILD AND YOUTH WELFARE AND EDUCATION

CHAPTER I

Access to Educational Opportunities

Article 71. Admission to Schools. - The state shall see to it that no child is refused admission in public schools. All parents are required to enroll their children in schools to complete, at least, an elementary education.

Article 72. Assistance. - To implement effectively the compulsory education policy, all necessary assistance possible shall be given to parents, specially indigent ones or those who need the services of

children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programs which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.

Article 73. Nursery School. - To further help promote the welfare of children of working mothers and indigent parents, and in keeping with the Constitutional provision on the maintenance of an adequate system of public education, public nursery and kindergarten schools shall be maintained, whenever possible. The operation and maintenance of such schools shall be the responsibility of local governments. Aid from local school board funds, when available, may be provided.

Article 74. Special Classes. - Where needs warrant, there shall be at least special classes in every province, and, if possible, special schools for the physically handicapped, the mentally retarded, the emotionally disturbed, and the specially gifted. The private sector shall be given all the necessary inducement and encouragement to establish such classes or schools.

Article 75. School Plants and Facilities. - Local school officials and local government officials shall see to it that school children and students are provided with adequate schoolrooms and facilities including playground, space, and facilities for sports and physical development activities. Such officials should see to it that the school environment is free from hazards to the health and safety of the students and that there are adequate safety measures for any emergencies such as accessible exits, firefighting equipment, and the like. All children shall have the free access to adequate dental and medical services.

CHAPTER II

The Home and the School

Article 76. Role of the Home. - The home shall fully support the school in the implementation of the total school program - curricular and co-curricular - toward the proper physical, social, intellectual and moral development of the child.

Article 77. Parent-Teacher Associations. - Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Association all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

CHAPTER III

Miscellaneous

Article 78. Contributions. - No school shall receive or collect from students, directly or indirectly, contributions of any kind or form, or for any purpose except those expressly provided by law, and on occasions of national or local disasters in which case the school may accept voluntary contribution or aid from students for distribution to victims of such disasters or calamities.

TITLE IV.

CHILD AND YOUTH WELFARE AND THE CHURCH

Article 79. Rights of the Church. - The State shall respect the rights of the Church in matters affecting the religious and moral upbringing of the child.

Article 80. Establishment of Schools. - All churches and religious orders, congregations or groups may, conformably to law, establish schools for the purpose of educating children in accordance with the tenets of their religion.

Article 81. Religious Instruction. - The religious education of children in all public and private schools is a legitimate concern of the Church to which the students belong. All churches may offer religious instruction in public and private elementary and secondary schools, subject to the requirements of the Constitution and existing laws.

Article 82. Assistance to Churches. - Insofar as may be allowed by the Constitution, the government shall extend to all churches, without discrimination or preference, every opportunity to exercise their influence and disseminate their teachings.

Article 83. Parents. - Parents shall admonish their children to heed the teachings of their Church and to perform their religious duties. Whenever possible, parents shall accompany their children to the regular devotion of their Church and other religious ceremonies.

TITLE V.

CHILD AND YOUTH WELFARE AND THE COMMUNITY

CHAPTER I

Duties in General of the State

Article 84. Community Defined. - As used in this Title, a community shall mean, the local government, together with the society of individuals or institutions, both public and private, in which a child lives.

Article 85. Duties of the Community. - To insure the full enjoyment of the right of every child to live in a society that offers or guarantee him safety, health, good moral environment and facilities for his wholesome growth and development, it shall be the duty of the community to:

1. Bring about a healthy environment necessary to the normal growth of children and the enhancement of their physical, mental and spiritual well-being;
2. Help institutions of learning, whether public or private, achieve the fundamental objectives of education; lawphi1.net
3. Organize or encourage movements and activities, for the furtherance of the interests of children and youth;
4. Promote the establishment and maintenance of adequately equipped playgrounds, parks, and other recreational facilities;
5. Support parent education programs by encouraging its members to attend and actively participate therein;
6. Assist the State in combating and curtailing juvenile delinquency and in rehabilitating wayward children;
7. Aid in carrying out special projects for the betterment of children in the remote areas or belonging to cultural minorities or those who are out of school; and
8. Cooperate with private and public child welfare agencies in providing care, training and protection to destitute, abandoned, neglected, abused, handicapped and disturbed children.

CHAPTER II

Community Bodies Dealing with Child Welfare

SECTION A. Barangay Councils

Article 86. Ordinances and Resolutions. - Barangay Councils shall have the authority to enact ordinances and resolutions not inconsistent with law or municipal ordinances, as may be necessary to provide for the proper development and welfare of the children in the community, in consultation with representatives of national agencies concerned with child and youth welfare.

Article 87. Council for the Protection of Children. - Every barangay council shall encourage the organization of a local Council for the Protection of Children and shall coordinate with the Council for the Welfare of Children and Youth in drawing and implementing plans for the promotion of child and youth welfare.

Membership shall be taken from responsible members of the community including a representative of the youth, as well as representatives of government and private agencies concerned with the welfare of children and youth whose area of assignment includes the particular barangay and shall be on a purely voluntary basis.

Said Council shall:

1. Foster the education of every child in the barangay;
2. Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children and on positive parent-child relationship;
3. Protect and assist abandoned or maltreated children and dependents;
4. Take steps to prevent juvenile delinquency and assist parents of children with behavioral problems so that they can get expert advise;
5. Adopt measures for the health of children;
6. Promote the opening and maintenance of playgrounds and day-care centers and other services that are necessary for child and youth welfare;
7. Coordinate the activities of organizations devoted to the welfare of children and secure their cooperation; lawphil.net
8. Promote wholesome entertainment in the community, especially in movie houses; and
9. Assist parents, whenever necessary in securing expert guidance counseling from the proper governmental or private welfare agency.

In addition, it shall hold classes and seminars on the proper rearing of the children. It shall distribute to parents available literature and other information on child guidance. The Council shall assist parents, with behavioral problems whenever necessary, in securing expert guidance counseling from the proper governmental or private welfare agency.

Article 88. Barangay Scholarships. - Barangay funds may be appropriated to provide annual scholarship for indigent children who, in judgment of the Council for the Protection of Children, deserve public assistance in the development of their potentialities.

Article 89. Youth Associations in Barangays. - Barangay councils shall encourage membership in civil youth associations and help these organizations attain their objectives.

Article 90. Aid to Youth Associations. - In proper cases, barangay funds may be used for the payment of the cost of the uniforms and equipment required by these organizations.

SECTION B. Civic Associations of Adults

Article 91. Civic Associations of Adults. - As used in this Title, a civic association shall refer to any club, organization or association of individuals twenty-one years of age or over, which is directly or indirectly involved in carrying out child welfare programs and activities.

Article 92. Accounting of Proceeds or Funds. - It shall be the duty of any civic association of adults holding benefits or soliciting contributions pursuant to the provisions of the next preceding article, to render an accounting of the proceeds thereof to the Department of Social Welfare or to the city or municipal treasurer, as the case may be.

Article 93. Functions. - Civic associations and youth associations shall make arrangements with the appropriate governmental or civic organization for the instruction of youth in useful trades or crafts to enable them to earn a living.

Article 94. Youth Demonstrations. - Any demonstrations sponsored by any civic associations and youth associations shall be conducted in a peaceful and lawful manner.

Article 95. Unwholesome Entertainment and advertisements. - It shall be the duty of all civic associations and youth associations to bring to the attention of the proper authorities the exhibition of indecent shows and the publication, sale or circulation of pornographic materials.

The Board of Censors or the Radio Control Board may, upon representation of any civic association, prohibit any movie, television or radio program offensive to the proprieties of language and behavior. Commercial advertisements and trailers which are improper for children under eighteen years of age due to their advocating or unduly suggesting violence, vices, crimes and immorality, shall not be shown in any movie theater where the main feature is for general patronage nor shall they be used or shown during or immediately before and after any television or radio program for children.

Article 96. Complaint Against Child Welfare Agency. - Any civic association and any youth association may complain to the officials of any public or private child-caring agency about any act or omission therein prejudicial to the wards of such agency.

If the complaint is not acted upon, it may be brought to the Council for the Protection of Children or the Department of Social Welfare, which shall promptly investigate the matter and take such steps as may be necessary.

Article 97. Studies and Researches. - The government shall make available such data and technical assistance as may be needed by civic associations conducting studies and researches on matters relating to child welfare, including the prevention of juvenile delinquency.

Article 98. Exchange Programs. - Student exchange programs sponsored by civic associations or youth associations shall receive the support and encouragement of the State.

SECTION C. Youth Associations

Article 99. Youth Associations. - As used in this Title, a youth association shall refer to any club, organization or association of individuals below twenty-one years of age which is directly or indirectly involved in carrying out child or youth welfare programs and activities.

Article 100. Rights and Responsibilities. - All youth associations shall enjoy the same rights and discharge the same responsibilities as civic associations as may be permitted under existing laws.

Article 101. Student Organizations. - All student organization in public or private schools shall include in their objectives the cultivation of harmonious relations among their members and with the various segments of the community.

CHAPTER III

Collaboration Between the Home and the Community

Article 102. Proper Atmosphere for Children. - The home shall aid the community in maintaining an atmosphere conducive to the proper upbringing of children, particularly with respect to their preparation for adult life and the conscientious discharge of their civic duties as a whole.

Article 103. Unwholesome Influence. - The home and the community shall cooperate with each other in counteracting and eliminating such influences as may be exerted upon children by useless and harmful amusements and activities, obscene exhibitions and programs, and establishments inimical to health and morals.

TITLE VI.

CHILD AND YOUTH WELFARE AND THE SAMAHAN

CHAPTER I

Duties in General of the Samahan

Article 104. "Samahan" Defined. - As used in this Code, the term "samahan" shall refer to the aggregate of persons working in commercial, industrial, and agricultural establishments or enterprises, whether belonging to labor or management.

Article 105. Organization. - The barangay, municipal and city councils, whenever necessary, shall provide by ordinance for the formation and organization of a samahan in their respective communities. Membership in the samahan shall be on voluntary basis from among responsible persons from the various sectors of the community mentioned in the preceding article.

Article 106. Duties of the Samahan. - The Samahan shall:

1. Prevent the employment of children in any kind of occupation or calling which is harmful to their normal growth and development;
2. Forestall their exploitation by insuring that their rates of pay, hours of work and other conditions of employment are in accordance not only with law but also with equity;
3. Give adequate protection from all hazards to their safety, health, and morals, and secure to them their basic right to an education; lawphil.net
4. Help out-of-school youth to learn and earn at the same time by helping them look for opportunities to engage in economic self-sufficient projects;
5. To coordinate with vocational and handicraft classes in all schools and agencies in the barangay, municipality or city to arrange for possible marketing of the products or articles made by the students; and
6. Provide work experience, training and employment in those areas where the restoration and conservation of our natural resources is deemed necessary.

CHAPTER II

Working Children

Article 107. Employment of Children Below Sixteen Years. - Children below sixteen years of age may be employed to perform light work which is not harmful to their safety, health or normal development and which is not prejudicial to their studies.

The provisions of the Labor Code relating to employable age and conditions of employment of children are hereby adopted as part of this Code insofar as not inconsistent herewith.

Article 108. Duty of Employer to Submit Report. - The employer shall submit to the Department of Labor a report of all children employed by him. A separate report shall be made of all such children who are found to be handicapped after medical examination. The Secretary of Labor shall refer such handicapped children to the proper government or private agencies for vocational guidance, physical and vocational rehabilitation, and placement in employment.

Article 109. Register of Children. - Every employer in any commercial, industrial or agricultural establishment or enterprise shall keep:

1. A register of all children employed by him, indicating the dates of their birth;
2. A separate file for the written consent to their employment given by their parents or guardians;
3. A separate file for their educational and medical certificates; and
4. A separate file for special work permits issued by the Secretary of Labor in accordance with existing laws.

Article 110. Education of Children Employed as Domestics. - If a domestic is under sixteen years of age, the head of the family shall give him an opportunity to complete at least elementary education as required under Article 71. The cost of such education shall be a part of the domestic's compensation unless there is a stipulation to the contrary.

CHAPTER III

Labor-Management Projects

Article 111. Right to Self-Organization. - Working children shall have the same freedoms as adults to join the collective bargaining union of their own choosing in accordance with existing law. Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union.

Article 112. Conditions of Employment. - There shall be close collaboration between labor and management in the observance of the conditions of employment required by law for working children.

Article 113. Educational Assistance Programs. - The management may allow time off without loss or reduction of wages for working children with special talents to enable them to pursue formal studies in technical schools on scholarships financed by management or by the collective bargaining union or unions.

Article 114. Welfare Programs. - Labor and management shall, in cooperation with the Women and Minors Bureau of the Department of Labor, undertake projects and in-service training programs for working children which shall improve their conditions of employment, improve their capabilities and physical fitness, increase their efficiency, secure opportunities for their promotion, prepare them for more responsible positions, and provide for their social, educational and cultural advancement.

Article 115. Research Projects. - Labor and management shall cooperate with any government or private research project on matters affecting the welfare of working children.

CHAPTER IV
Collaboration Between the Home and the Samahan

Article 116. Collaboration Between the Home and the Samahan. - The home shall assist the Samahan in the promotion of the welfare of working children and for this purpose shall:

1. Instill in the hearts and minds of working children the value of dignity of labor;
2. Stress the importance of the virtues of honesty; diligence and perseverance in the discharge of their duties;
3. Counsel them on the provident use of the fruits of their labor for the enrichment of their lives and the improvement of their economic security; and
4. Protect their general well-being against exploitation by management or unions as well as against conditions of their work prejudicial to their health, education, or morals.

TITLE VII.
CHILD AND YOUTH WELFARE AND THE STATE

CHAPTER I
Regulation of Child and Youth Welfare Services

Article 117. Classifications of Child and Youth Welfare Agencies. - Public and private child welfare agencies providing encouragement, care, and protection to any category of children and youth whether mentally gifted, dependent, abandoned, neglected, abused, handicapped, disturbed, or youthful offenders, classified and defined as follows, shall be coordinated by the Department of Social Welfare:

1. A child-caring institution is one that provides twenty-four resident group care service for the physical, mental, social and spiritual well-being of nine or more mentally gifted, dependent, abandoned, neglected, handicapped or disturbed children, or youthful offenders.
2. An institution, whose primary purpose is education, is deemed to be a child-caring institution when nine or more of its pupils or wards in the ordinary course of events do not return annually to the homes of their parents or guardians for at least two months of summer vacation.
3. A detention home is a twenty-four hour child-caring institution providing short term resident care for youthful offenders who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

4. A shelter-care institution is one that provides temporary protection and care to children requiring emergency reception as a result of fortuitous events, abandonment by parents, dangerous conditions of neglect or cruelty in the home, being without adult care because of crisis in the family, or a court order holding them as material witnesses.
5. Receiving homes are family-type homes which provides temporary shelter from ten to twenty days for children who shall during this period be under observation and study for eventual placement by the Department of Social Welfare. The number of children in a receiving home shall not at any time exceed nine: Provided, That no more than two of them shall be under three years of age.
6. A nursery is a child-caring institution that provides care for six or more children below six years of age for all or part of a twenty-four hour day, except those duly licensed to offer primarily medical and educational services.
7. A maternity home is an institution or place of residence whose primary function is to give shelter and care to pregnant women and their infants before, during and after delivery.
8. A rehabilitation center is an institution that receives and rehabilitates youthful offenders or other disturbed children.
9. A reception and study center is an institution that receives for study, diagnosis, and temporary treatment, children who have behavioral problems for the purpose of determining the appropriate care for them or recommending their permanent treatment or rehabilitation in other child welfare agencies.
10. A child-placing agency is an institution or person assuming the care, custody, protection and maintenance of children for placement in any child-caring institution or home or under the care and custody of any person or persons for purposes of adoption, guardianship or foster care. The relatives of such child or children within the sixth degree of consanguinity or affinity are excluded from this definition.

Article 118. License Required. - No private person, natural or juridical, shall establish, temporarily or permanently, any child welfare agency without first securing a license from the Department of Social Welfare.

Such license shall not be transferable and shall be used only by the person or institution to which it was issued at the place stated therein.

No license shall be granted unless the purpose of function of the agency is clearly defined and stated in writing. Such definition shall include the geographical area to be served, the children to be accepted for care, and the services to be provided.

If the applicant is a juridical person, it must be registered in accordance with Philippine laws.

Article 119. Guiding Principles. - The protection and best interests of the child or children therein shall be the first and basic consideration in the granting, suspension or revocation of the license mentioned in the preceding article.

Article 120. Revocation or Suspension of License. - The Department of Social Welfare may, after notice and hearing, suspend or revoke the license of a child welfare agency on any of the following grounds:

1. That the agency is being used for immoral purposes;
2. That said agency is insolvent or is not in a financial position to support and maintain the children therein or to perform the functions for which it was granted license;
3. That the children therein are being neglected or are undernourished;
4. That the place is so unsanitary so as to make it unfit for children;
5. That said agency is located in a place or community where children should not be, or is physically dangerous to children or would unduly expose children to crime, vice, immorality, corruption or severe cruelty; or
6. That said agency has by any act or omission shown its incompetence or unworthiness to continue acting as a child welfare agency. During the period of suspension, the agency concerned shall not accept or admit any additional children. In any case, the Department of Social Welfare shall make such order as to the custody of the children under the care of such agency as the circumstances may warrant. The suspension may last for as long as the agency has not complied with any order of the Department of Social Welfare to remove or remedy the conditions which have risen to the suspension. The aggrieved agency may appeal the suspension and/or revocation in a proper court action. In such case, the court shall within fifteen days from the filing of the Department of Social Welfare's answer, conduct a hearing and decide the case, either by lifting the suspension, or continuing it for such period of time as it may order, or by revoking the license of the agency where the Department of Social Welfare has proven the revocation to be justified.

Article 121. Responsible Government Body. - The governing body of a child welfare agency or institution shall be composed of civic leaders or persons of good standing in the community. The administrator must be a competent person qualified by education or experience or both to serve as such.

Article 122. Child-Caring Institution Serving as Child-Placement Agency. - An association or corporation may be both a child-caring institution and a child-placement agency and it may be licensed to carry out both types of service.

When a license also serves as a child-placement agency, it shall maintain a staff equipped by training to make thorough studies of every prospective family home. Staff arrangements must also be made for continuing supervision of the children staying in family homes so long as the children remain in the legal custody of the agency.

Article 123. Responsible Staff of Employees. - The licensee shall choose its employees who shall be persons of good health and character, and whenever possible, the higher rank of employees shall in addition have training, preferably in child psychology.

Article 124. Intake Study and Periodic Investigations. - The licensee shall undertake investigations to determine if the acceptance or continued stay of a child in its institution is necessary. Each licensee shall make provisions for continuing services, including social casework for every child under its care.

Article 125. Records. - The licensee shall keep confidential records of every child in its study. These records shall be made available only to such persons as may be authorized by the Department of Social Welfare or by the proper court.

Article 126. Home Atmosphere. - Child welfare agencies shall endeavor to provide the children with a pleasant atmosphere that shall approximate as nearly as possible the conditions of an ideal home. Vocational rehabilitation shall also be provided in accordance with existing law and the particular needs of the children.

Article 127. Adequate Diet. - The licensee shall provide a varied and balanced diet to satisfy the child's total nutritional requirements.

Article 128. Clothing. - The licensee shall furnish clean, comfortable, and appropriate clothing for every child under its care.

Article 129. Physical Surroundings and Outings. - The licensee shall maintain a building adequate both in ventilation and sanitation, and with a safe, clean and spacious playground. Regular inexpensive periodic outing shall be an important part of its activities in order to make the children aware of their vital role in their community and country.

Article 130. Medical and Nursing Care. - The licensee shall provide adequate medical and nursing care for sick children who may be confined due to illness.

Article 131. Religious Training. - The licensee shall provide opportunities for religious training to children under its custody, taking into consideration the religious affiliation or express wishes of the child or his parents. For such purpose, it shall have a defined policy regarding its religious activities for the information of those wishing to place children in its care.

Article 132. Annual Report. - Every child welfare agency or institution shall submit to the Department of Social Welfare an annual report setting forth a brief summary of its operations during the preceding year, including the funds received during said period, the sources thereof, the purposes for which they were spent and the cash position of the agency or institution as of the date of the report, number of children admitted, and such other information as may be required by the Department of Social Welfare.

CHAPTER II

Collaboration Between the Home and the State

Article 133. Healthy Growth of Children. - Pursuant to its obligation to assist the parents in the proper upbringing of the child, the State shall, whenever possible, in collaboration and cooperation with local government establish:

1. Puericulture and similar centers;
2. Juvenile courts;
3. Child welfare agencies;
4. Orphanages and other similar institutions; and
5. Children's recreation centers.

Article 134. Puericulture or Health Centers. - Puericulture or health centers shall be established in every barangay to perform, among other things, the following functions:

1. Disseminate information concerning the health of children and expectant or nursing mothers;
2. Provide consultation service and treatment, whenever necessary, for the children and the expectant or nursing mothers;
3. Provide guidance and special treatment to children with physical handicaps; and
4. Advise child welfare institutions on matters relating to nutrition and hygiene.

Article 135. Juvenile and Domestic Relations Courts. - Juvenile and Domestic Relations Courts shall, as far as practicable, be established in every province or city to hear and decide cases involving juvenile and domestic problems.

Article 136. Regional Child Welfare Agencies. - The State shall, whenever practicable, establish regional child welfare agencies, orphanages and other similar institutions to provide care for the children mentioned in Title VIII of this Code.

Article 137. Children's Reading and Recreation Centers. - The State shall establish in every barangay reading centers and recreation centers where children may meet and play together for their healthy growth and their social and cultural development.

Article 138. Parent Education Program. - The Department of Social Welfare shall from time to time hold a Parent Education Congress, which shall aim to enable parents to understand child growth and development, parent-child relationship, family life, and family-community relationship, and to improve their ability to discharge their duties.

Article 139. Curfew Hours for Children. - City or municipal councils may prescribe such curfew hours for children as may be warranted by local conditions. The duty to enforce curfew ordinances shall devolve upon the parents or guardians and the local authorities.

Any parent or guardian found grossly negligent in the performance of the duty imposed by this article shall be admonished by the Department of Social Welfare or the Council for the Protection of Children.

Article 140. State Aid in Case of Public Calamity. - In case of earthquake, flood, storm, conflagration, epidemic, or other calamity, the State shall give special assistance to children whenever necessary. The Department of Social Welfare shall take immediate custody of dependent children and give temporary shelter to orphaned or displaced children (who are separated from their parents or guardian).

TITLE VIII. SPECIAL CATEGORIES OF CHILDREN

CHAPTER I Dependent, Abandoned and Neglected Children

Article 141. Definition of Terms. - As used in this Chapter:

1. A dependent child is one who is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody; and is dependent upon the public for support.

2. An abandoned child is one who has no proper parental care or guardianship, or whose parents or guardians have deserted him for a period of at least six continuous months.
3. A neglected child is one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:

Commitment may be done in the following manner:

- (a) There is a physical neglect when the child is malnourished, ill clad and without proper shelter.
 - (b) A child is unattended when left by himself without provisions for his needs and/or without proper supervision.
 - (c) Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in moral danger, or exposed to gambling, prostitution and other vices.
4. Commitment or surrender of a child is the legal act of entrusting a child to the care of the Department of Social Welfare or any duly licensed child placement agency or individual.
 - (a) Involuntary commitment, in case of a dependent child, or through the termination of parental or guardianship rights by reason of abandonment, substantial and continuous or repeated neglect and/or parental incompetence to discharge parental responsibilities, and in the manner, form and procedure hereinafter prescribed.
 - (b) Voluntary commitment, through the relinquishment of parental or guardianship rights in the manner and form hereinafter prescribed.

Article 142. Petition for Involuntary Commitment of a Child: Venue. - The Department of Social Welfare Secretary or his authorized representative or any duly licensed child placement agency having knowledge of a child who appears to be dependent, abandoned or neglected, may file a verified petition for involuntary commitment of said child to the care of any duly licensed child placement agency or individual.

The petition shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court in which the parents or guardian resides or the child is found.

Article 143. Contents of Petition: Verification. - The petition for commitment must state so far as known to the petitioner:

1. The facts showing that the child is dependent, abandoned, or neglected;
2. The names of the parent or parents, if known, and their residence. If the child has no parent or parents living, then the name and residence of the guardian, if any; and
3. The name of the duly licensed child placement agency or individual to whose care the commitment of the child is sought.

The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.

Article 144. Court to Set Time for Hearing: Summons. - When a petition or commitment is filed, the court shall fix a date for the hearing thereof. If it appears from the petition that one or both parents of the child, or the guardian, resides in province or city, the clerk of court shall immediately issue summons, together with a copy of the petition, which shall be served on such parent or guardian not less than two days before the time fixed for the hearing. Such summons shall require them to appear before the court on the date mentioned.

Article 145. When Summons Shall Not be Issued. - The summons provided for in the next preceding article shall not be issued and the court shall thereupon proceed with the hearing of the case if it appears from the petition that both parents of the child are dead or that neither parent can be found in the province or city and that the child has no guardian residing therein.

Article 146. Representation of Child. - If it appears that neither of the parents nor the guardian of the child can be found in the province or city, it shall be the duty of the court to appoint some suitable person to represent him.

Article 147. Duty of Fiscal. - The provincial or city fiscal shall appear for the State, seeing to it that there has been due notice to all parties concerned and that there is justification for the declaration of dependency, abandonment or neglect.

The legal services section of the Department of Social Welfare, any recognized legal association, or any appointed de officio counsel shall prepare the petition for the Secretary of the Department of Social Welfare, his representative or the head of the duly licensed child placement agency, or the duly licensed individual and represent him in court in all proceedings arising under the provisions of this Chapter.

Article 148. Hearing. - During the hearing of the petition, the child shall be brought before the court, which shall investigate the facts and ascertain whether he is dependent, abandoned, or neglected, and, if so, the cause and circumstances of such condition. In such hearing, the court shall not be bound by the technical rules of evidence.

Failure to provide for the child's support for a period of six months shall be presumptive evidence of the intent to abandon.

Article 149. Commitment of Child. - If, after the hearing, the child is found to be dependent, abandoned, or neglected, an order shall be entered committing him to the care and custody of the Department of Social Welfare or any duly licensed child placement agency or individual.

Article 150. When Child May Stay In His Own Home. - If in the court's opinion the cases of the abandonment or neglect of any child may be remedied, it may permit the child to stay in his own home and under the care and control of his own parents or guardian, subject to the supervision and direction of the Department of Social Welfare.

When it appears to the court that it is no longer for the best interests of such child to remain with his parents or guardian, it may commit the child in accordance with the next preceding article.

Article 151. Termination of Rights of Parents. - When a child shall have been committed to the Department of Social Welfare or any duly licensed child placement agency or individual pursuant to an order of the court, his parents or guardian shall thereafter exercise no authority over him except upon such conditions as the court may impose.

Article 152. Authority of Person, Agency or Institution. - The Department of Social Welfare or any duly licensed child placement agency or individual receiving a child pursuant to an order of the court shall be the legal guardian and entitled to his legal custody and control, be responsible for his support as defined by law, and when proper, shall have authority to give consent to his placement, guardianship and/or adoption.

Article 153. Change of Custody. - The Department of Social Welfare shall have the authority to change the custody of a child committed to and duly licensed child placement agency or individual if it appears that such change is for the best interests of the child. However, when conflicting interests arise among child placement agencies the court shall order the change of commitment of the child.

Article 154. Voluntary Commitment of a Child to an Institution. - The parent or guardian of a dependent, abandoned or neglected child may voluntarily commit him to the Department of Social Welfare or any duly licensed child placement agency or individual subject to the provisions of the next succeeding articles.

Article 155. Commitment Must Be in Writing. - No child shall be committed pursuant to the preceding article unless he is surrendered in writing by his parents or guardian to the care and custody of the Department of Social Welfare or duly licensed child placement agency. In case of the death or legal incapacity of either parent or abandonment of the child for a period of at least one year, the other parent alone shall have the authority to make the commitment. The Department of Social Welfare, or

any proper and duly licensed child placement agency or individual shall have the authority to receive, train, educate, care for or arrange appropriate placement of such child.

Article 156. Legal Custody. - When any child shall have been committed in accordance with the preceding article and such child shall have been accepted by the Department of Social Welfare or any duly licensed child placement agency or individual, the rights of his natural parents, guardian, or other custodian to exercise parental authority over him shall cease.

Such agency or individual shall be entitled to the custody and control of such child during his minority, and shall have authority to care for, educate, train and place him out temporarily or for custody and care in a duly licensed child placement agency. Such agency or individual may intervene in adoption proceedings in such manner as shall best inure to the child's welfare.

Article 157. Visitation or Inspection. - Any duly licensed child placement agency or individual receiving a judicial order or by voluntary commitment by his parents or guardian shall be subject to visitation or inspection by a representative of the court or of the Department of Social Welfare or both, as the case may be.

Article 158. Report of Person or Institution. - Any duly licensed child placement agency or individual receiving a child for commitment may at any time be required by the Department of Social Welfare to submit a report, copy furnished the court, containing all necessary information for determining whether the welfare of the child is being served.

Article 159. Temporary Custody of Child. - Subject to regulation by the Department of Social Welfare and with the permission of the court in case of judicial commitment, the competent authorities of any duly licensed child placement agency or individual to which a child has been committed may place him in the care of any suitable person, at the latter's request, for a period not exceeding one month at a time.

The temporary custody of the child shall be discontinued if it appears that he is not being given proper care, or at his own request, or at the instance of the agency or person receiving him.

Article 160. Prohibited Acts. - It shall be unlawful for any child to leave the person or institution to which he has been judicially or voluntarily committed or the person under whose custody he has been placed in accordance with the next preceding article, or for any person to induce him to leave such person or institution, except in case of grave physical or moral danger, actual or imminent, to the child. Any violation of this article shall be punishable by an imprisonment of not more than one year or by a fine of not more than two thousand pesos, or both such fine and imprisonment at the discretion of the court: Provided, That if the violation is committed by a foreigner, he shall also be subject to deportation.

If the violation is committed by a parent or legal guardian of the child, such fact shall aggravate or mitigate the offense as circumstances shall warrant.

Article 161. Duty to Report Abandonment. - When the parents or persons entitled to act as guardian of a child are dead or, if living, have abandoned him, for no valid reason, for at least six months in a duly licensed child placement agency or hospital, or left him with any other person for the same period without providing for his care and support, such fact shall be reported immediately to the Department of Social Welfare. In case of a child left in a hospital, immediate transfer of the child to the Department of Social Welfare or any duly licensed child placement agency must be arranged. The Department of Social Welfare shall make provisions for the adequate care and support of the child and shall take such action as it may deem proper for his best interests.

Article 162. Adoption of Dependent or Abandoned or Neglected Child. - Upon the filing of an application by any person to adopt a dependent, abandoned or neglected child in the custody of any institution or individual mentioned in Article 156, it shall be the duty of the provincial or city fiscal, any recognized legal association, or any appointed de officio counsel upon being informed of such fact, to represent the Department of Social Welfare in the proceedings. The costs of such proceedings shall be de officio.

Article 163. Restoration of Child After Involuntary Commitment. - The parents or guardian of a child committed to the care of a person, agency or institution by judicial order may petition the proper court for the restoration of his rights over the child: Provided, That the child in the meantime, has not been priorly given away in adoption nor has left the country with the adopting parents or the guardian. The petition shall be verified and shall state that the petitioner is now able to take proper care and custody of said child.

Upon receiving the petition, the court shall fix the time for hearing the questions raised thereby and cause reasonable notice thereof to be sent to the petitioner and to the person, agency or institution to which the child has been committed. At the trial, any person may be allowed, at the discretion of the court, to contest the right to the relief demanded, and witnesses may be called and examined by the parties or by the court motu proprio. If it is found that the cause for the commitment of the child no longer exists and that the petitioner is already able to take proper care and custody of the child, the court, after taking into consideration the best interests and the welfare of the child, shall render judgment restoring parental authority to the petitioner.

Article 164. Restoration After Voluntary Commitment. - Upon petition filed with the Department of Social Welfare the parent or parents or guardian who voluntarily committed a child may recover legal custody and parental authority over him from the agency, individual or institution to which such child was voluntarily committed when it is shown to the satisfaction of the Department of Social Welfare that the parent, parents or guardian is in a position to adequately provide for the needs of the child: Provided, That, the petition for restoration is filed within six months after the surrender.

In all cases, the person, agency or institution having legal custody of the child shall be furnished with a copy of the petition and shall be given the opportunity to be heard.

Article 165. Removal of Custody. - A petition to transfer custody of a child may be filed against a person or child welfare agency to whose custody a child has been committed by the court based on neglect of such child as defined in Article 141(3). If the court, after notice and hearing, is satisfied that the allegations of the petition are true and that it is for the best interest and welfare of the child the court shall issue an order taking him from the custody of the person or agency, as the case may be, and committing him to the custody of another duly licensed child placement agency or individual. The license of the agency or individual found guilty of such neglect may be suspended or revoked, as the court may deem proper, in the same proceeding.

Article 166. Report of Maltreated or Abused Child. - All hospitals, clinics and other institutions as well as private physicians providing treatment shall, within forty-eight hours from knowledge of the case, report in writing to the city or provincial fiscal or to the Local Council for the Protection of Children or to the nearest unit of the Department of Social Welfare, any case of a maltreated or abused child, or exploitation of an employed child contrary to the provisions of labor laws. It shall be the duty of the Council for the Protection of Children or the unit of the Department of Social Welfare to whom such a report is made to forward the same to the provincial or city fiscal.

Violation of this provision shall subject the hospital, clinic, institution, or physician who fails to make such report to a fine of not more than two thousand pesos.

In cases of sexual abuse, the records pertaining to the case shall be kept strictly confidential and no information relating thereto shall be disclosed except in connection with any court or official proceeding based on such report. Any person disclosing confidential information in violation of this provision shall be punished by a fine of not less than one hundred pesos nor more than five thousand pesos, or by imprisonment for not less than thirty days nor more than one year, or both such fine and imprisonment, at the discretion of the court.

Article 167. Freedom from Liability of Reporting Person or Institution. - Persons, organizations, physicians, nurses, hospitals, clinics and other entities which shall in good faith report cases of child abuse, neglect, maltreatment or abandonment or exposure to moral danger be free from any civil or criminal liability arising therefrom.

CHAPTER II

Mentally Retarded, Physically Handicapped, Emotionally Disturbed and Mentally Ill Children

Article 168. Mentally Retarded Children. - Mentally retarded children are (1) socially incompetent, that is, socially inadequate and occupationally incompetent and unable to manage their own affairs; (2) mentally subnormal; (3) retarded intellectually from birth or early age; (4) retarded at maturity; (5)

mentally deficient as a result of constitutional origin, through hereditary or disease, and (6) essentially incurable.

Article 169. Classification of Mental Retardation. - Mental Retardation is divided into four classifications:

1. Custodial Group. The members of this classification are severely or profoundly retarded, hence, the least capable group. This includes those with I.Q.s to 25.
2. Trainable Group. The members of this group consist of those with I.Q.s from about 25 to about 50; one who belongs to this group shows a mental level and rate of development which is $\frac{1}{4}$ to $\frac{1}{2}$ that of the average child, is unable to acquire higher academic skills, but can usually acquire the basic skills for living to a reasonable degree. He can likewise attain a primary grade level of education if he receives effective instruction.
3. Educable Group. This group's I.Q. ranges from about 50 to about 75, and the intellectual development is approximately $\frac{1}{2}$ to $\frac{3}{4}$ of that expected of a normal child of the same chronological age. The degree of success or accomplishment that they will reach in life depends very much on the quality and type of education they receive, as well as on the treatment at home and in the community. Many of the educable retardates may reach 5th or 6th grade educational level and can develop occupational skills which may result in partial or complete economic independence in adulthood.
4. Borderline or Low Normal Group. This is the highest group of mentally retarded, with I.Q.s from about 75 to about 89. The members of this classification are only slightly retarded and they can usually get by in regular classes if they receive some extra help, guidance and consideration. They have to spend much more time with their studies than do most children in order to pass. Those who cannot make it are usually handicapped by one or more other conditions aside from that of intelligence.

Article 170. Physically Handicapped Children. - Physically handicapped children are those who are crippled, deaf-mute, blind, or otherwise defective which restricts their means of action on communication with others.

Article 171. Emotionally Disturbed Children. - Emotionally disturbed children are those who, although not afflicted with insanity or mental defect, are unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.

Article 172. Mentally Ill Children. - Mentally ill children are those with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.

Article 173. Admission of Disabled Children. - The Department of Social Welfare, upon the application of the parents or guardians and the recommendation of any reputable diagnostic center or clinic, shall refer and/or admit disabled children to any public or private institution providing the proper care, training and rehabilitation.

“Disabled children” as used in this Chapter shall include mentally retarded, physically handicapped, emotionally disturbed, and severe mentally ill children.

Article 174. Training and Opportunities for Disabled Children. - Specialized educational services shall be expanded and improved to provide appropriate opportunities for disabled children. Vocational rehabilitation and manpower conservation agencies shall train disabled children for specialized types of jobs, services and business which could be learned only by them and shall help provide opportunities for their future occupational placement: That the agencies and organizations engaged in programs and services for the disabled need not be limited to minors. Persons of legal age may be admitted whenever facilities are available for them.

Article 175. Planning of Programs and Services. - Selected pilot demonstration projects needed by the disabled children shall be developed and shall be the basis for planning expanded programs and services throughout the nation. There shall be established area centers designed to bring together an aggregate of services to serve all ages of the disabled within a specified geographical area.

Article 176. Donations. - Donations to agencies and organizations engaged in programs and services for disabled children shall be deductible in accordance with the provision of Presidential Decree No. 507.

Article 177. Petition for Commitment. - Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, or mentally ill, and needs institutional care but his parents or guardians are opposed thereto, the Department of Social Welfare, or any duly licensed child placement agency or individual shall have the authority to file a petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.

The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when the welfare and interest of the child is at stake.

Article 178. Venue. - The petition for commitment of a disabled child shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court where the parent or guardian resides or where the child is found.

Article 179. Contents of Petition. - The petition for commitment must state so far as known to the petitioner:

1. The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed or mentally ill and needs institutional care;
2. The Fact that the parents or guardians or any duly licensed disabled child placement agency, as the case may be, has opposed the commitment of such child;
3. The name of the parents and their residence, if known or if the child has no parents or parent living, the names and residence of the guardian, if any; and
4. The name of the institution where the child is to be committed.
5. The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.

Article 180. Order of Hearing. - If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date for the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, or physically handicapped, or emotionally disturbed, or mentally ill, and on the person having charge of him or any of his relatives residing in the province or city as the judge may deem proper. The court shall furthermore order the sheriff to produce, if possible, the alleged disabled child on the date of the hearing.

Article 181. Hearing and Judgment. - Upon satisfactory proof that the institutional care of the child is for him or the public welfare and that his parents, or guardian or relatives are unable for any reason to take proper care of him, the Court shall order his commitment to the proper institution for disabled children.

Article 182. Disposition of Property or Money. - The Court, in its order of commitment, shall make proper provisions for the custody of property or money belonging to the committed child.

Article 183. Findings and Other Data. - The Court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the social and other data pertinent to the case.

Article 184. Expenses. - The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the next preceding paragraph, the same, or such part thereof as may remain unpaid, shall be borne by the Department of Social Welfare.

Article 185. Children With Cerebral Palsy. - Children afflicted with cerebral palsy shall be committed to the institution which under the circumstances of the particular child concerned is best equipped to treat and care for him.

Article 186. Discharge of Child Judicially Committed. - The Court shall order the discharge of any child judicially committed to an institution for disabled children if it is certified by the Department of Social Welfare that:

1. He has been certified by the duly licensed disabled child placement agency to be no longer a hazard to himself or to the community;
2. He has been sufficiently rehabilitated from his physical handicap or, if of work age, is already fit to engage in a gainful occupation; or
3. He has been relieved of his emotional problems and complexes and is ready to assume normal social relations.

Article 187. Discharge of Child Voluntarily Committed. - Any child voluntarily committed to an institution for disabled children may be discharged by the Department of Social Welfare *motu proprio* or upon the request of his parents or guardian on any of the grounds specified in the preceding article. In the latter case, the Department of Social Welfare may refuse to discharge the child if, in its opinion, his release would be prejudicial to him or to the community.

Article 188. Assistance of Fiscal. - The provincial or city fiscal shall represent the Department of Social Welfare or any recognized legal association in all judicial matters arising under the provisions of this Chapter.

CHAPTER III

Youthful Offenders

Article 189. Youthful Offender Defined. - A youthful offender is one who is over nine years but under twenty-one years of age at the time of the commission of the offense.

A child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192.

The provisions of Article 80 of the Revised Penal Code shall be deemed modified by the provisions of this Chapter.

Article 190. Physical and Mental Examination. - It shall be the duty of the law-enforcement agency concerned to take the youthful offender, immediately after his apprehension, to the proper medical or health officer for a thorough physical and mental examination. Whenever treatment for any physical or mental defect is indicated, steps shall be immediately undertaken to provide the same.

The examination and treatment papers shall form part of the record of the case of the youthful offender.

Article 191. Care of Youthful Offender Held for Examination or Trial. - A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required.

Article 192. Suspension of Sentence and Commitment of Youthful Offender. - If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare or any duly licensed agency or such other officer as the Court may designate subject to such conditions as it may prescribe.

Article 193. Appeal. - The youthful offender whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.

Article 194. Care and Maintenance of Youthful Offender. - The expenses for the care and maintenance of the youthful offender whose sentence has been suspended shall be borne by his parents or those persons liable to support him: Provided, That in case his parents or those persons liable to support him can not pay all or part of said expenses, the municipality in which the offense was committed shall pay one-third of said expenses or part thereof; the province to which the municipality belongs shall pay

one-third; and the remaining one-third shall be borne by the National Government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said indebtedness.

All city and provincial governments must exert efforts for the immediate establishment of local detention homes for youthful offenders.

Article 195. Report on Conduct of Child. - The Department of Social Welfare or its representative or duly licensed agency or individual under whose care the youthful offender has been committed shall submit to the court every four months or oftener as may be required in special cases, a written report on the conduct of said youthful offender as well as the intellectual, physical, moral, social and emotional progress made by him.

Article 196. Dismissal of the Case. - If it is shown to the satisfaction of the court that the youthful offender whose sentence has been suspended, has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare, it shall dismiss the case and order his final discharge.

Article 197. Return of the Youth Offender to Court. - Whenever the youthful offender has been found incorrigible or has wilfully failed to comply with the conditions of his rehabilitation programs, or should his continued stay in the training institution be inadvisable, he shall be returned to the committing court for the pronouncement of judgment.

When the youthful offender has reached the age of twenty-one while in commitment, the court shall determine whether to dismiss the case in accordance with the next preceding article or to pronounce the judgment of conviction.

In any case covered by this article, the youthful offender shall be credited in the service of his sentence with the full time spent in actual commitment and detention effected under the provisions of this Chapter.

Article 198. Effect of Release of Child Based on Good Conduct. - The final release of a child pursuant to the provisions of this Chapter shall not obliterate his civil liability for damages. Such release shall be without prejudice to the right for a writ of execution for the recovery of civil damages.

Article 199. Living Quarters for Youthful Offenders Sentence. - When a judgment of conviction is pronounced in accordance with the provisions of Article 197, and at the time of said pronouncement the youthful offender is still under twenty-one, he shall be committed to the proper penal institution to serve the remaining period of his sentence: Provided, That penal institutions shall provide youthful offenders with separate quarters and, as far as practicable, group them according to appropriate age levels or other criteria as will insure their speedy rehabilitation: Provided, further, That the Bureau

of Prisons shall maintain agricultural and forestry camps where youthful offenders may serve their sentence in lieu of confinement in regular penitentiaries.

Article 200. Records of Proceedings. - Where a youthful offender has been charged before any city or provincial fiscal or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be destroyed immediately thereafter.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to this Chapter, all the records of his case shall be destroyed immediately after such acquittal, dismissal or release, unless civil liability has also been imposed in the criminal action, in which case such records shall be destroyed after satisfaction of such civil liability. The youthful offender concerned shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made of him for any purpose.

“Records” within the meaning of this article shall include those which may be in the files of the National Bureau of Investigation and with any police department, or any other government agency which may have been involved in the case.

Article 201. Civil Liability of Youthful Offenders. - The civil liability for acts committed by a youthful offender shall devolve upon the offender’s father and, in case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian. Civil liability may also be voluntarily assumed by a relative or family friend of the youthful offender.

Article 202. Rehabilitation Centers. - The Department of Social Welfare shall establish regional rehabilitation centers for youthful offenders. The local government and other non-governmental entities shall collaborate and contribute their support for the establishment and maintenance of these facilities.

Article 203. Detention Homes. - The Department of Local Government and Community Development shall establish detention homes in cities and provinces distinct and separate from jails pending the disposition of cases of juvenile offenders.

Article 204. Liability of Parents or Guardian or Any Person in the Commission of Delinquent Acts by Their Children or Wards. - A person whether the parent or guardian of the child or not, who knowingly or wilfully,

1. Aids, causes, abets or connives with the commission by a child of a delinquency, or
2. Does any act producing, promoting, or contributing to a child’s being or becoming a juvenile delinquent, shall be punished by a fine not exceeding five hundred pesos or to imprisonment for a period not exceeding two years, or both such fine and imprisonment, at the discretion of the court.

TITLE IX.
COUNCIL FOR THE WELFARE OF CHILDREN AND YOUTH

CHAPTER I
Creation and Composition

Article 205. Creation of the Council for the Welfare of Children. - A Council for the Welfare of Children is hereby established under the Office of the President. The Council shall be composed of the Secretary of Social Welfare as Chairman, and seven members, namely: The Secretary of Justice, the Secretary of Labor, the Secretary of Education and Culture, the Secretary of Health, the Presiding Judge of the Juvenile and Domestic Relations Court, City of Manila, and two representatives of voluntary welfare associations to be appointed by the President of the Philippines, each of whom shall hold office for a term two years.

There shall be a permanent Secretariat for the Council headed by an Executive Director, to be appointed by the Chairman and approved by a majority of the members of the Council.

For actual attendance at regular meetings, the Chairman and each member of the Council shall receive a per diem of one hundred pesos for every meeting actually attended, but the total amount of per diem that the Chairman and a member may receive in a month shall in no case exceed five hundred pesos.

Article 206. Appropriation. - The sum of five million pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, for the operation and maintenance of the Council for the Welfare of Children and Youth during the fiscal year. Thereafter, such sums as may be necessary for its operation and maintenance shall be included in the General Appropriations Decree.

CHAPTER II
Powers and Responsibilities

Article 207. Powers and Functions. - The Council for the Welfare of Children and Youth shall have the following powers and functions:

1. To coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;
2. To prepare, submit to the President and circulate copies of long-range programs and goals for the physical, intellectual , emotional, moral, spiritual, and social development of children and youth, and to submit to him an annual report of the progress thereof;
3. To formulate policies and devise, introduce, develop and evaluate programs and services for the general welfare of children and youth;

4. To call upon and utilize any department, bureau, office, agency, or instrumentality, public, private or voluntary, for such assistance as it may require in the performance of its functions;
5. Perform such other functions as provided by law.

Article 208. Offices to Coordinate with the Council for Welfare of Children. - The following offices and agencies shall coordinate with the Council for the Welfare of Children and Youth in the implementation of laws and programs on child and youth welfare:

1. Department of Justice
2. Department of Social Welfare
3. Department of Education and Culture
4. Department of Labor
5. Department of Health
6. Department of Agriculture
7. Department of Local Government and Community Development;
8. Local Councils for the Protection of Children; and such other government and private agencies which have programs on child and youth welfare.

Existing as well as proposed programs of the above-named agencies as well as other government and private child and youth welfare agencies as may be hereafter created shall be implemented by such agencies: Provided, That, with the exception of those proposed by the Local Councils for the Protection of Children, all long-range child and youth welfare programs shall, before implementation, be indorsed by the agencies concerned to their respective departments, which shall in turn indorse the same to the Council for the Welfare on Children and Youth, for evaluation, cooperation and coordination.

CHAPTER III

Implementation of Code and Rule-Making Authority

Article 209. Implementation of this Code and Rule-Making Authority. - The enforcement and implementation of this Code shall be the primary responsibility of the Council for the Welfare of Children. Said Council shall have authority to promulgate the necessary rules and regulations for the purpose of carrying into effect the provisions of this Code.

FINAL PROVISIONS

Article 210. General Penalty. - Violations of any provisions of this Code for which no penalty is specifically provided shall be punished by imprisonment not exceeding one month or a fine not exceeding two hundred pesos, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws.

Article 211. Repealing Clause. - All laws or parts of any laws inconsistent with the provisions of this Code are hereby repealed or modified accordingly: Provided, That the provisions of the Dangerous Drugs Act of 1972 and amendments thereto shall continue to be in force and shall not be deemed modified or repealed by any provision of this Code.

Article 212. Separability Clause. - If any provision of this Code is held invalid, the other provisions not affected thereby shall continue in operation.

Article 213. Effectivity Clause. - This Code shall take effect six months after its approval.

Done in the City of Manila, this 10th day of December, in the year of Our Lord, nineteen hundred and seventy-four.

REPUBLIC ACT NO. 7610

AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES

ARTICLE I

Title, Policy, Principles and Definitions of Terms

Section 1. Title. This Act shall be known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act.”

Section 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

Section 3. Definition of Terms.

(a) “Children” refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

(b) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

1. Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

2. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
3. Unreasonable deprivation of his basic needs for survival, such as food and shelter;
4. Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

(c) “Circumstances which gravely threaten or endanger the survival and normal development of children” include, but are not limited to, the following;

1. Being in a community where there is armed conflict or being affected by armed conflict-related activities;
2. Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development;
3. Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or basic services needed for a good quality of life;
4. Being a member of a indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;
5. Being a victim of a man-made or natural disaster or calamity; or
6. Circumstances analogous to those above stated which endanger the life, safety or normal development of children.

(d) “Comprehensive program against child abuse, exploitation and discrimination” refers to the coordinated program of services and facilities to protected children against:

1. Child Prostitution and other sexual abuse;
2. Child trafficking;
3. Obscene publications and indecent shows;
4. Other acts of abuses; and
5. (Circumstances which threaten or endanger the survival and normal development of children.

ARTICLE II

Program on Child Abuse, Exploitation and Discrimination

Section 4. Formulation of the Program. There shall be a comprehensive program to be formulated, by the Department of Justice and the Department of Social Welfare and Development in coordination with other government agencies and private sector concerned, within one (1) year from the effectivity of this Act, to protect children against child prostitution and other sexual abuse; child trafficking, obscene publications and indecent shows; other acts of abuse; and circumstances which endanger child survival and normal development.

ARTICLE III

Child Prostitution and Other Sexual Abuse

Section 5. Child Prostitution and Other Sexual Abuse. Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

1. Acting as a procurer of a child prostitute;
2. Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
3. Taking advantage of influence or relationship to procure a child as prostitute;
4. Threatening or using violence towards a child to engage him as a prostitute; or
5. Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Section 6. Attempt To Commit Child Prostitution. There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

ARTICLE IV **Child Trafficking**

Section 7. Child Trafficking. Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

Section 8. Attempt to Commit Child Trafficking. – There is an attempt to commit child trafficking under Section 7 of this Act:

(a) When a child travels alone to a foreign country without valid reason therefore and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian;

(b) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or

(c) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or

(d) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.

A penalty lower two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.

ARTICLE V

Obscene Publications and Indecent Shows

Section 9. Obscene Publications and Indecent Shows. Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.

ARTICLE VI

Other Acts of Abuse

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

(b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Fifty thousand pesos (P50,000): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.

(c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of prision mayor in its medium period and a fine of not less than Forty thousand pesos (P40,000); Provided,

however, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be prision mayor in its maximum period, a fine of not less than Fifty thousand pesos (P50,000), and the loss of parental authority over the minor.

(d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of prision mayor in its medium period and a fine of not less than Fifty thousand pesos (P50,000), and the loss of the license to operate such a place or establishment.

(e) Any person who shall use, coerce, force or intimidate a street child or any other child to;

1. Beg or use begging as a means of living;
2. Act as conduit or middlemen in drug trafficking or pushing; or
3. Conduct any illegal activities, shall suffer the penalty of prision correccional in its medium period to reclusion perpetua.

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years age.

The victim of the acts committed under this section shall be entrusted to the care of the Department of Social Welfare and Development.

ARTICLE VII

Sanctions for Establishments or Enterprises

Section 11. Sanctions of Establishments or Enterprises which Promote, Facilitate, or Conduct Activities Constituting Child Prostitution and Other Sexual Abuse, Child Trafficking, Obscene Publications and Indecent Shows, and Other Acts of Abuse. – All establishments and enterprises which promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted under this Act and/or the Revised Penal Code, as amended, or special laws. A sign with the words “off

limits” shall be conspicuously displayed outside the establishments or enterprises by the Department of Social Welfare and Development for such period which shall not be less than one (1) year, as the Department may determine. The unauthorized removal of such sign shall be punishable by prison correccional.

An establishment shall be deemed to promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse if the acts constituting the same occur in the premises of said establishment under this Act or in violation of the Revised Penal Code, as amended. An enterprise such as a sauna, travel agency, or recruitment agency which: promotes the aforementioned acts as part of a tour for foreign tourists; exhibits children in a lewd or indecent show; provides child masseurs for adults of the same or opposite sex and said services include any lascivious conduct with the customers; or solicits children or activities constituting the aforementioned acts shall be deemed to have committed the acts penalized herein.

ARTICLE VIII

Working Children

Section 12. Employment of Children. Children below fifteen (15) years of age may be employed except:

1. When a child works directly under the sole responsibility of his parents or legal guardian and where only members of the employer’s family are employed: Provided, however, That his employment neither endangers his life, safety and health and morals, nor impairs his normal development: Provided, further, That the parent or legal guardian shall provide the said minor child with the prescribed primary and/or secondary education; or
2. When a child’s employment or participation in public & entertainment or information through cinema, theater, radio or television is essential: Provided, The employment contract concluded by the child’s parent or guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, That the following requirements in all instances are strictly complied with:
 - (a) The employer shall ensure the protection, health, safety and morals of the child;
 - (b) The employer shall institute measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and;
 - (c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skill acquisition of the child.

In the above exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirement.

The Department of Labor Employment shall promulgate rules and regulations necessary for the effective implementation of this Section.

Section 13. Non-formal Education for Working Children. The Department of Education, Culture and Sports shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.

Section 14. Prohibition on the Employment of Children in Certain Advertisements. No person shall employ child models in all commercials or advertisements promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts and violence.

Section 15. Duty of Employer. Every employer shall comply with the duties provided for in Articles 108 and 109 of Presidential Decree No. 603.

Section 16. Penalties. – Any person who shall violate any provision of this Article shall suffer the penalty of a fine of not less than One thousand pesos (P1,000) but not more than Ten thousand pesos (P10,000) or imprisonment of not less than three (3) months but not more than three (3) years, or both at the discretion of the court; Provided, That, in case of repeated violations of the provisions of this Article, the offender's license to operate shall be revoked.

ARTICLE IX

Children of Indigenous Cultural Communities

Section 17. Survival, Protection and Development. In addition to the rights guaranteed to children under this Act and other existing laws, children of indigenous cultural communities shall be entitled to protection, survival and development consistent with the customs and traditions of their respective communities.

Section 18. System of and Access to Education. The Department of Education, Culture and Sports shall develop and institute an alternative system of education for children of indigenous cultural communities which culture-specific and relevant to the needs of and the existing situation in their communities. The Department of Education, Culture and Sports shall also accredit and support non-formal but functional indigenous educational programs conducted by non-government organizations in said communities.

Section 19. Health and Nutrition. The delivery of basic social services in health and nutrition to children of indigenous cultural communities shall be given priority by all government agencies concerned. Hospitals and other health institution shall ensure that children of indigenous cultural communities are given equal attention. In the provision of health and nutrition services to children of indigenous cultural communities, indigenous health practices shall be respected and recognized.

Section 20. Discrimination. Children of indigenous cultural communities shall not be subjected to any and all forms of discrimination.

Any person who discriminate against children of indigenous cultural communities shall suffer a penalty of arresto mayor in its maximum period and a fine of not less than Five thousand pesos (P5,000) more than Ten thousand pesos (P10,000).

Section 21. Participation. Indigenous cultural communities, through their duly-designated or appointed representatives shall be involved in planning, decision-making implementation, and evaluation of all government programs affecting children of indigenous cultural communities. Indigenous institution shall also be recognized and respected.

ARTICLE X

Children in Situations of Armed Conflict

Section 22. Children as Zones of Peace. Children are hereby declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflicts in order to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed.

- (a) Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment;
- (b) Children shall not be recruited to become members of the Armed Forces of the Philippines of its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies;
- (c) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;
- (d) The safety and protection of those who provide services including those involved in fact-finding missions from both government and non-government institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;
- (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and

- (f) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated due to armed conflict.

Section 23. Evacuation of Children During Armed Conflict. Children shall be given priority during evacuation as a result of armed conflict. Existing community organizations shall be tapped to look after the safety and well-being of children during evacuation operations. Measures shall be taken to ensure that children evacuated are accompanied by persons responsible for their safety and well-being.

Section 24. Family Life and Temporary Shelter. Whenever possible, members of the same family shall be housed in the same premises and given separate accommodation from other evacuees and provided with facilities to lead a normal family life. In places of temporary shelter, expectant and nursing mothers and children shall be given additional food in proportion to their physiological needs. Whenever feasible, children shall be given opportunities for physical exercise, sports and outdoor games.

Section 25. Rights of Children Arrested for Reasons Related to Armed Conflict. Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights;

- (a) Separate detention from adults except where families are accommodated as family units;
- (b) Immediate free legal assistance;
- (c) Immediate notice of such arrest to the parents or guardians of the child; and
- (d) Release of the child on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.

If after hearing the evidence in the proper proceedings the court should find that the aforesaid child committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the Government, or duly-licensed agencies or any other responsible person, until he has had reached eighteen (18) years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the agency or responsible individual under whose care he has been committed.

The aforesaid child shall subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly-licensed agency or such other officer as the court may designate subject to such conditions as it may prescribe.

The aforesaid child whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.

Section 26. Monitoring and Reporting of Children in Situations of Armed Conflict. The chairman of the barangay affected by the armed conflict shall submit the names of children residing in said barangay to the municipal social welfare and development officer within twenty-four (24) hours from the occurrence of the armed conflict.

ARTICLE XI

Remedial Procedures

Section 27. Who May File a Complaint. Complaints on cases of unlawful acts committed against the children as enumerated herein may be filed by the following:

- (a) Offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relative within the third degree of consanguinity;
- (d) Officer, social worker or representative of a licensed child-caring institution;
- (e) Officer or social worker of the Department of Social Welfare and Development;
- (f) Barangay chairman; or
- (g) At least three (3) concerned responsible citizens where the violation occurred.

Section 28. Protective Custody of the Child. The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development pursuant to Executive Order No. 56, series of 1986. In the regular performance of this function, the officer of the Department of Social Welfare and Development shall be free from any administrative, civil or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603.

Section 29. Confidentiality. At the instance of the offended party, his name may be withheld from the public until the court acquires jurisdiction over the case.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio broadcasting, producer and director of the film in case of the movie industry, to cause undue and sensationalized publicity of any case of violation of this Act which results in the moral degradation and suffering of the offended party.

Section 30. Special Court Proceedings. Cases involving violations of this Act shall be heard in the chambers of the judge of the Regional Trial Court duly designated as Juvenile and Domestic Court.

Any provision of existing law to the contrary notwithstanding and with the exception of habeas corpus, election cases, and cases involving detention prisoners and persons covered by Republic Act No. 4908, all courts shall give preference to the hearing or disposition of cases involving violations of this Act.

ARTICLE XII

Common Penal Provisions

Section 31. Common Penal Provisions.

- (a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;
- (b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;
- (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;
- (d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;
- (e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is prision correccional or arresto mayor, the penalty of suspension shall also be imposed; and
- (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

ARTICLE XIII

Final Provisions

Section 32. Rules and Regulations. Unless otherwise provided in this Act, the Department of Justice, in coordination with the Department of Social Welfare and Development, shall promulgate rules and regulations of the effective implementation of this Act.

Such rules and regulations shall take effect upon their publication in two (2) national newspapers of general circulation.

Section 33. Appropriations. The amount necessary to carry out the provisions of this Act is hereby authorized to be appropriated in the General Appropriations Act of the year following its enactment into law and thereafter.

Section 34. Separability Clause. If any provision of this Act is declared invalid or unconstitutional, the remaining provisions not affected thereby shall continue in full force and effect.

Section 35. Repealing Clause. All laws, decrees, or rules inconsistent with the provisions of this Acts are hereby repealed or modified accordingly.

Section 36. Effectivity Clause. This Act shall take effect upon completion of its publication in at least two (2) national newspapers of general circulation.

Approved: June 17, 1992.

REPUBLIC ACT NO. 8353

AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES

Section 1. Short Title. - This Act shall be known as “The Anti-Rape Law of 1997.”

Section 2. Rape as a Crime Against Persons. - The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

“Chapter Three “Rape

“Article 266-A. Rape: When And How Committed. - Rape is committed:

1. “By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - “a) Through force, threat, or intimidation;
 - “b) When the offended party is deprived of reason or otherwise unconscious;
 - “c) By means of fraudulent machination or grave abuse of authority; and
 - “d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
2. “By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

“Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

“Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

“When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become reclusion perpetua to death.

“When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

“When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

“The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. “When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
2. “When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;
3. “When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;
4. “When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
5. “When the victim is a child below seven (7) years old;
6. “When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
7. “When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
8. “When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;
9. “When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
10. “When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

“Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

“Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

“When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.

“When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.

“When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.

“Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

“Article 266-C. Effect of Pardon. - The subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty imposed.

“In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void ab initio.

“Article 266-D. Presumptions. - Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.”

Section 3. Separability Clause. - If any part, Sec., or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected thereby shall remain valid.

Section 4. Repealing Clause. - Article 336 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

Section 5. Effectivity. - This Act shall take effect fifteen (15) days after completion of its publication in two (2) newspapers of general circulation.

Approved: September 30, 1997.

REPUBLIC ACT NO. 9208

AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER

Section 1. Title. This Act shall be known as the “Anti-Trafficking in Persons Act of 2003”.

Section 2. Declaration of Policy. – It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families. United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

Section 3. Definition of Terms. – As used in this Act:

(a) Trafficking in Persons – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as “trafficking in persons” even if it does not involve any of the means set forth in the preceding paragraph.

(b) Child – refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

- (c) Prostitution – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.
- (d) Forced Labor and Slavery – refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.
- (e) Sex Tourism – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.
- (f) Sexual Exploitation – refers to participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's vulnerability.
- (g) Debt Bondage – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.
- (h) Pornography – refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.
- (i) Council – shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

Section 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

- (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
- (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
- (e) To maintain or hire a person to engage in prostitution or pornography;
- (f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and
- (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

Section 5. Acts that Promote Trafficking in Persons. – The following acts which promote or facilitate trafficking in persons, shall be unlawful:

- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
- (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
- (c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
- (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
- (e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;

(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and

(g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

Section 6. Qualified Trafficking in Persons. – The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

(b) When the adoption is effected through Republic Act No. 8043, otherwise known as the “Inter-Country Adoption Act of 1995” and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;

(f) When the offender is a member of the military or law enforcement agencies; and

(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

Section 6. Confidentiality. – At any stage of the investigation, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public.

In cases when prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.

Section 8. Prosecution of Cases. – Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.

Section 9. Venue. – A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

Section 10. Penalties and Sanctions. – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

(a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

(b) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);

(d) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(e) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;

(f) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or

any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;

(g) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;

(h) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited; and

(i) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

Section 11. Use of Trafficked Persons. – Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

(a) First offense – six (6) months of community service as may be determined by the court and a fine of Fifty thousand pesos (P50,000.00); and

(b) Second and subsequent offenses – imprisonment of one (1) year and a fine of One hundred thousand pesos (P100,000.00).

Section 12. Prescriptive Period. – Trafficking cases under this Act shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6 shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage and shall be interrupted by the filing of the complaint or information and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

Section 13. Exemption from Filing Fees. – When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

Section 14. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons. – In addition to the penalty imposed for the violation of this Act, the court shall order the

confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act; Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender; Provided, further, That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

Section 15. Trust Fund. – All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such programs shall include, but not limited to, the following:

- (a) Provision for mandatory services set forth in Section 23 of this Act;
- (b) Sponsorship of a national research program on trafficking and establishment of a data collection system for monitoring and evaluation purposes;
- (c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations (NGOs);
- (d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, NGOs and international organizations; and
- (e) Promotion of information and education campaign on trafficking.

Section 16. Programs that Address Trafficking in Persons. – The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs;

- (a) Department of Foreign Affairs (DFA) – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.

The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

It shall establish and implement a pre-marriage, on-site and pre-departure counseling program on intermarriages.

(b) Department of Social Welfare and Development (DSWD) – shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community.

(c) Department of Labor and Employment (DOLE) – shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.

(d) Department of Justice (DOJ) – shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.

(e) National Commission on the Role of Filipino Women (NCRFW) – shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.

(f) Bureau of Immigration (BI) – shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.

(g) Philippine National Police (PNP) – shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. It shall closely coordinate with various law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. It shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.

(h) Philippine Overseas Employment Administration (POEA) – shall implement an effective pre-employment orientation seminars and pre-departure counseling programs to applicants for overseas employment. It shall likewise formulate a system of providing free legal assistance to trafficked persons.

(i) Department of the Interior and Local Government (DILG) – shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.

(j) Local government units (LGUs) – shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (Pos), civic organizations and other volunteer groups.

Section 17. Legal Protection to Trafficked Persons. – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

Section 18. Preferential Entitlement Under the Witness Protection Program. – Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

Section 19. Trafficked Persons Who are Foreign Nationals. – Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under this Act: Provided, That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders.

Section 20. Inter-Agency Council Against Trafficking. – There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Administrator, Philippine Overseas Employment Administration;

- (d) Commissioner, Bureau of Immigration;
- (e) Director-General, Philippine National Police;
- (f) Chairperson, National Commission on the Role of Filipino Women; and
- (g) Three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting, rules and regulations.

Section 21. Functions of the Council. – The Council shall have the following powers and functions:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- (h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;

- (i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- (j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;
- (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
- (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

Section 22. Secretariat to the Council. – The Department of Justice shall establish the necessary Secretariat for the Council.

Section 23. Mandatory Services to Trafficked Persons. – To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services which shall include information about the victims’ rights and the procedure

for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person;

(d) Medical or psychological services;

(e) Livelihood and skills training; and

(f) Educational assistance to a trafficked child.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.

Section 24. Other Services for Trafficked Persons. –

(a) Legal Assistance. – Trafficked persons shall be considered under the category “Overseas Filipino in Distress” and may avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.

(b) Overseas Filipino Resource Centers. – The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.

(c) The Country Team Approach. – The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

Section 25. Repatriation of Trafficked Persons. – The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of the trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

Section 26. Extradition. – The DOJ, in consultation with DFA, shall endeavor to include offenses of trafficking in persons among extraditable offenses.

Section 27. Reporting Requirements. – The Council shall submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act.

Section 28. Funding. – The heads of the departments and agencies concerned shall immediately include in their programs and issue such rules and regulations to implement the provisions of this Act, the funding of which shall be included in the annual General Appropriations Act.

Section 29. Implementing Rules and Regulations. – The Council shall promulgate the necessary implementing rules and regulations within sixty (60) days from the effectivity of this Act.

Section 30. Non-restriction of Freedom of Speech and of Association, Religion and the Right to Travel. – Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

Section 31. Separability Clause. – If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

Section 32. Repealing clause. – All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly: Provided, That this Act shall not in any way amend or repeal the provision of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”.

Section 33. Effectivity. – This Act shall take effect fifteen (15) days from the date of its complete publication in at least two (2) newspapers of general circulation.

This Act, which is a consolidation of Senate Bill No. 2444 and House Bill No. 4432 was finally passed by the Senate and the House of Representatives on May 12, 2003 respectively.

Approved: May 26, 2003.

REPUBLIC ACT NO. 9231

AN ACT PROVIDING FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOR AND AFFORDING STRONGER PROTECTION FOR THE WORKING CHILD, AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 7610, AS AMENDED, OTHERWISE KNOWN AS THE “SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT”

SECTION 1. Section 2 of Republic Act No. 7610, as amended, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”, is hereby amended to read as follows:

“SEC. 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

“It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

“The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.”

SECTION 2. Section 12 of the same Act, as amended, is hereby further amended to read as follows:

“SEC. 12. Employment of Children. – Children below fifteen (15) years of age shall not be employed except:

1. “When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed: Provided, however, That his/her employment neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development: Provided further, That the parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education; or

2. “Where a child’s employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential: Provided, That the employment contract is concluded by the child’s parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, further, That the following requirements in all instances are strictly complied with:

“(a) The employer shall ensure the protection, health, safety, morals and normal development of the child;

“(b) The employer shall institute measures to prevent the child’s exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and

“(c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

“In the above-exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

“For purposes of this Article, the term “child” shall apply to all persons under eighteen (18) years of age.”

SECTION 3. The same Act, as amended, is hereby further amended by adding new sections to be denominated as Sections 12-A, 12-B, 12-C, and 12-D to read as follows:

“SEC. 12-A. Hours of Work of a Working Child. – Under the exceptions provided in Section 12 of this Act, as amended:

1. “A child below fifteen (15) years of age may be allowed to work for not more than twenty (20) hours a week: Provided, That the work shall not be more than four (4) hours at any given day;
2. “A child fifteen (15) years of age but below eighteen (18) shall not be allowed to work for more than eight (8) hours a day, and in no case beyond forty (40) hours a week;
3. “No child below fifteen (15) years of age shall be allowed to work between eight o’clock in the evening and six o’clock in the morning of the following day and no child fifteen (15) years of age but below eighteen (18) shall be allowed to work between ten o’clock in the evening and six o’clock in the morning of the following day.”

“SEC. 12-B. Ownership, Usage and Administration of the Working Child’s Income. – The wages, salaries, earnings and other income of the working child shall belong to him/her in ownership and shall be set aside primarily for his/her support, education or skills acquisition and secondarily to the collective needs of the family: Provided, That not more than twenty percent (20%) of the child’s income may be used for the collective needs of the family.

“The income of the working child and/or the property acquired through the work of the child shall be administered by both parents. In the absence or incapacity of either of the parents, the other parent shall administer the same. In case both parents are absent or incapacitated, the order of preference on parental authority as provided for under the Family Code shall apply.

“SEC. 12-C. Trust Fund to Preserve Part of the Working Child’s Income. – The parent or legal guardian of a working child below eighteen (18) years of age shall set up a trust fund for at least thirty percent (30%) of the earnings of the child whose wages and salaries from work and other income amount to at least two hundred thousand pesos (₱200,000.00) annually, for which he/she shall render a semi-annual accounting of the fund to the Department of Labor and Employment, in compliance with the provisions of this Act. The child shall have full control over the trust fund upon reaching the age of majority.

“SEC. 12-D. Prohibition Against Worst Forms of Child Labor. – No child shall be engaged in the worst forms of child labor. The phrase “worst forms of child labor” shall refer to any of the following:

1. “All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003”, or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or
2. “The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or
3. “The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or
4. “Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:
 - “a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or
 - “b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or
 - “c) Is performed underground, underwater or at dangerous heights; or

“d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

“e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or

“f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or

“g) Is performed under particularly difficult conditions; or

“h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or

“i) Involves the manufacture or handling of explosives and other pyrotechnic products.”

SECTION 4. Section 13 of the same Act is hereby amended to read as follows:

“SEC. 13. Access to Education and Training for Working Children. –

“a) No child shall be deprived of formal or non-formal education. In all cases of employment allowed in this Act, the employer shall provide a working child with access to at least primary and secondary education.

“b) To ensure and guarantee the access of the working child to education and training, the Department of Education (DEPED) shall:

1. formulate, promulgate, and implement relevant and effective course designs and educational programs;
2. conduct the necessary training for the implementation of the appropriate curriculum for the purpose;
3. ensure the availability of the needed educational facilities and materials; and
4. conduct continuing research and development program for the necessary and relevant alternative education of the working child.

“c) The DEPED shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone

or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.”

SECTION 5. Section 14 of the same Act is hereby amended to read as follows:

“SEC. 14. Prohibition on the Employment of Children in Certain Advertisements. – No child shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.”

SECTION 6. Section 16 of the same Act, is hereby amended to read as follows:

“SEC. 16. Penal Provisions. –

“a) Any employer who violates Sections 12, 12-A, and Section 14 of this Act, as amended, shall be penalized by imprisonment of six (6) months and one (1) day to six (6) years or a fine of not less than Fifty thousand pesos (₱50,000.00) but not more than Three hundred thousand pesos (₱300,000.00) or both at the discretion of the court.

“b) Any person who violates the provision of Section 12-D of this Act or the employer of the subcontractor who employs, or the one who facilitates the employment of a child in hazardous work, shall suffer the penalty of a fine of not less than One hundred thousand pesos (₱100,000.00) but not more than One million pesos (₱1,000,000.00), or imprisonment of not less than twelve (12) years and one (1) day to twenty (20) years, or both such fine and imprisonment at the discretion of the court.

“c) Any person who violates Sections 12-D(1) and 12-D(2) shall be prosecuted and penalized in accordance with the penalty provided for by R.A. 9208 otherwise known as the “Anti-trafficking in Persons Act of 2003”: Provided, That such penalty shall be imposed in its maximum period.

“d) Any person who violates Section 12-D(3) shall be prosecuted and penalized in accordance with R.A. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”: Provided, That such penalty shall be imposed in its maximum period.

“e) If a corporation commits any of the violations a forecited, the board of directors/trustees and officers, which include the president, treasurer and secretary of the said corporation who participated in or knowingly allowed the violation, shall be penalized accordingly as provided for under this Section.

“f) Parents, biological or by legal fiction, and legal guardians found to be violating Sections 12, 12-A, 12-B and 12-C of this Act shall pay a fine of not less than Ten thousand pesos (₱10,000.00) but not more than One hundred thousand pesos (₱100,000.00), or be required to render community service for not less than thirty (30) days but not more than one (1) year, or both such fine and community service at the discretion of the court: Provided, That the maximum length of community service shall

be imposed on parents or legal guardians who have violated the provisions of this Act three (3) times: Provided, further, That in addition to the community service, the penalty of imprisonment of thirty (30) days but not more than one (1) year or both at the discretion of the court, shall be imposed on the parents or legal guardians who have violated the provisions of this Act more than three (3) times.

“g) The Secretary of Labor and Employment or his/her duly authorized representative may, after due notice and hearing, order the closure of any business firm or establishment found to have violated any of the provisions of this Act more than three (3) times. He/she shall likewise order the immediate closure of such firm or establishment if:

1. “The violation of any provision of this Act has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or
2. “Such firm or establishment is engaged or employed in prostitution or in obscene or lewd shows.

“h) In case of such closure, the employer shall be required to pay the employee(s) the separation pay and other monetary benefits provided for by law.”

SECTION 7. The same Act is hereby further amended by adding a new section to be denominated as Section 16-A, to read as follows:

“SEC. 16-A. Trust Fund from Fines and Penalties. – The fine imposed by the court shall be treated as a Trust Fund, administered by the Department of Labor and Employment and disbursed exclusively for the needs, including the costs of rehabilitation and reintegration into the mainstream of society of the working children who are victims of the violations of this Act, and for the programs and projects that will prevent acts of child labor.”

SECTION 8. Section 27 of the same Act is hereby amended to read as follows:

“SEC. 27. Who May File a Complaint. – Complaints on cases of unlawful acts committed against children as enumerated herein may be filed by the following:

“(a) Offended party;

“(b) Parents or guardians;

“(c) Ascendant or collateral relative within the third degree of consanguinity;

“(d) Officer, social worker or representative of a licensed child-caring institution;

“(e) Officer or social worker of the Department of Social Welfare and Development;

“(f) Barangay chairman of the place where the violation occurred, where the child is residing or employed; or

“(g) At least three (3) concerned, responsible citizens where the violation occurred.”

SECTION 9. The same Act is hereby further amended by adding new sections to Section 16 to be denominated as Sections 16-A, 16-B and 16-C to read as follows:

“SEC. 16-A. Jurisdiction. – The family courts shall have original jurisdiction over all cases involving offenses punishable under this Act: Provided, That in cities or provinces where there are no family courts yet, the regional trial courts and the municipal trial courts shall have concurrent jurisdiction depending on the penalties prescribed for the offense charged.

“The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of filing.

“If the preliminary investigation establishes a prima facie case, then the corresponding information shall be filed in court within forty eight (48) hours from the termination of the investigation.

“Trial of cases under this Act shall be terminated by the court not later than ninety (90) days from the date of filing of information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case.

“SEC. 16-B. Exemptions from Filing Fees. – When the victim of child labor institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from payment of filing fees.

“SEC. 16-C. Access to Immediate Legal, Medical and Psycho-Social Services. – The working child shall have the right to free legal, medical and psycho-social services to be provided by the State.”

SECTION 10. Implementing Rules and Regulations. – The Secretary of Labor and Employment, in coordination with the Committees on Labor and Employment of both Houses of Congress, shall issue the necessary Implementing Rules and Regulations (IRR) to effectively implement the provisions of this Act, in consultation with concerned public and private sectors, within sixty (60) days from the effectivity of this Act.

Such rules and regulations shall take effect upon their publication in two (2) national newspapers of general circulation.

SECTION 11. Separability Clause. – If any provision of this Act is declared invalid or unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SECTION 12. Repealing Clause. – All laws, decrees, or rules inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 13. Effectivity. – This Act shall take effect fifteen (15) days from the date of its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved: DECEMBER 19, 2003

REPUBLIC ACT NO. 9262

AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES

Section 1. Short Title.- This Act shall be known as the “Anti-Violence Against Women and Their Children Act of 2004”.

SECTION 2. Declaration of Policy.- It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

SECTION 3. Definition of Terms.- As used in this Act,

(a) “Violence against women and their children” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

A. “Physical Violence” refers to acts that include bodily or physical harm;

B. “Sexual violence” refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

- a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

- b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
- c) Prostituting the woman or child.

C. “Psychological violence” refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. “Economic abuse” refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. destroying household property;
4. controlling the victims’ own money or properties or solely controlling the conjugal money or properties.

(b) “Battery” refers to an act of inflicting physical harm upon the woman or her child resulting to the physical and psychological or emotional distress.

(c) “Battered Woman Syndrome” refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.

(d) “Stalking” refers to an intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof.

(e) “Dating relationship” refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the

course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.

(f) “Sexual relations” refers to a single sexual act which may or may not result in the bearing of a common child.

(g) “Safe place or shelter” refers to any home or institution maintained or managed by the Department of Social Welfare and Development (DSWD) or by any other agency or voluntary organization accredited by the DSWD for the purposes of this Act or any other suitable place the resident of which is willing temporarily to receive the victim.

(h) “Children” refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in this Act, it includes the biological children of the victim and other children under her care.

SECTION 4. Construction.- This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

SECTION 5. Acts of Violence Against Women and Their Children.- The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman’s or her child’s freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman’s or her child’s movement or conduct:
 - 1. Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
 - 2. Depriving or threatening to deprive the woman or her children of financial support legally due

her or her family, or deliberately providing the woman's children insufficient financial support;

3. Depriving or threatening to deprive the woman or her child of a legal right;
4. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

1. Stalking or following the woman or her child in public or private places;
2. Peering in the window or lingering outside the residence of the woman or her child;
3. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
4. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
5. Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's child/children.

SECTION 6. Penalties.- The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prison mayor; those constituting

less serious physical injuries shall be punished by prision correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

(b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;

(c) Acts falling under Section 5(e) shall be punished by prision correccional;

(d) Acts falling under Section 5(f) shall be punished by arresto mayor;

(e) Acts falling under Section 5(g) shall be punished by prision mayor;

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

SECTION 7. Venue.- The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the compliant.

SECTION 8. Protection Orders.- A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

(a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;

- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from petitioner and designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (f) Granting a temporary or permanent custody of a child/children to the petitioner;
- (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on matter;
- (i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;
- (j) Directing the DSWD or any appropriate agency to provide petitioner may need; and
- (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the

safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Any of the reliefs provided under this section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

The issuance of a BPO or the pendency of an application for BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO.

SECTION 9. Who may file Petition for Protection Orders. A petition for protection order may be filed by any of the following:

- (a) the offended party;
- (b) parents or guardians of the offended party;
- (c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) police officers, preferably those in charge of women and children's desks;
- (f) Punong Barangay or Barangay Kagawad;
- (g) lawyer, counselor, therapist or healthcare provider of the petitioner;
- (h) At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

SECTION 10. Where to Apply for a Protection Order. Applications for BPOs shall follow the rules on venue under Section 409 of the Local Government Code of 1991 and its implementing rules and regulations. An application for a TPO or PPO may be filed in the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court with territorial jurisdiction over the place of residence of the petitioner: Provided, however, That if a family court exists in the place of residence of the petitioner, the application shall be filed with that court.

SECTION 11. How to Apply for a Protection Order. The application for a protection order must be in writing, signed and verified under oath by the applicant. It may be filed as an independent action or as incidental relief in any civil or criminal case the subject matter or issues thereof partakes of a violence as described in this Act. A standard protection order application form, written in English

with translation to the major local languages, shall be made available to facilitate applications for protection order, and shall contain, among other, the following information:

- (a) names and addresses of petitioner and respondent;
- (b) description of relationships between petitioner and respondent;
- (c) a statement of the circumstances of the abuse;
- (d) description of the reliefs requested by petitioner as specified in Section 8 herein;
- (e) request for counsel and reasons for such;
- (f) request for waiver of application fees until hearing; and
- (g) an attestation that there is no pending application for a protection order in another court.

If the applicant is not the victim, the application must be accompanied by an affidavit of the applicant attesting to (a) the circumstances of the abuse suffered by the victim and (b) the circumstances of consent given by the victim for the filing of the application. When disclosure of the address of the victim will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall attest that the victim is residing in the municipality or city over which court has territorial jurisdiction, and shall provide a mailing address for purpose of service processing.

An application for protection order filed with a court shall be considered an application for both a TPO and PPO.

Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention.

SECTION 12. Enforceability of Protection Orders. All TPOs and PPOs issued under this Act shall be enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from Five Thousand Pesos (P5,000.00) to Fifty Thousand Pesos (P50,000.00) and/or imprisonment of six (6) months.

SECTION 13. Legal Representation of Petitioners for Protection Order. If the woman or her child requests in the applications for a protection order for the appointment of counsel because of lack of economic means to hire a counsel de parte, the court shall immediately direct the Public Attorney's Office (PAO) to represent the petitioner in the hearing on the application. If the PAO determines that the applicant can afford to hire the services of a counsel de parte, it shall facilitate the

legal representation of the petitioner by a counsel de parte. The lack of access to family or conjugal resources by the applicant, such as when the same are controlled by the perpetrator, shall qualify the petitioner to legal representation by the PAO.

However, a private counsel offering free legal service is not barred from representing the petitioner.

SECTION 14. Barangay Protection Orders (BPOs); Who May Issue and How. - Barangay Protection Orders (BPOs) refer to the protection order issued by the Punong Barangay ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A Punong Barangay who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If the Punong Barangay is unavailable to act on the application for a BPO, the application shall be acted upon by any available Barangay Kagawad. If the BPO is issued by a Barangay Kagawad the order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect is personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

SECTION 15. Temporary Protection Orders. Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after ex parte determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

SECTION 16. Permanent Protection Orders. Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing.

Respondents non-appearance despite proper notice, or his lack of a lawyer, or the non-availability of his lawyer shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondents appears without counsel on the date of the hearing on the PPO, the court shall appoint a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow ex parte presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the applicant is made.

The court shall, to the extent possible, conduct the hearing on the merits of the issuance of a PPO in one (1) day. Where the court is unable to conduct the hearing within one (1) day and the TPO issued is due to expire, the court shall continuously extend or renew the TPO for a period of thirty (30) days at each particular time until final judgment is issued. The extended or renewed TPO may be modified by the court as may be necessary or applicable to address the needs of the applicant.

The court may grant any, some or all of the reliefs specified in Section 8 hereof in a PPO. A PPO shall be effective until revoked by a court upon application of the person in whose favor the order was issued. The court shall ensure immediate personal service of the PPO on respondent.

The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application.

Regardless of the conviction or acquittal of the respondent, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

SECTION 17. Notice of Sanction in Protection Orders. The following statement must be printed in bold-faced type or in capital letters on the protection order issued by the Punong Barangay or court: “VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW.”

SECTION 18. Mandatory Period For Acting on Applications For Protection Orders Failure to act on an application for a protection order within the reglementary period specified in the previous section without justifiable cause shall render the official or judge administratively liable.

SECTION 19. Legal Separation Cases. In cases of legal separation, where violence as specified in this Act is alleged, Article 58 of the Family Code shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in this Act.

SECTION 20. Priority of Application for a Protection Order. Ex parte and adversarial hearings to determine the basis of applications for a protection order under this Act shall have priority over all other proceedings. Barangay officials and the courts shall schedule and conduct hearings on applications for a protection order under this Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.

SECTION 21. Violation of Protection Orders. A complaint for a violation of a BPO issued under this Act must be filed directly with any municipal trial court, metropolitan trial court, or municipal circuit trial court that has territorial jurisdiction over the barangay that issued the BPO. Violation of a BPO shall be punishable by imprisonment of thirty (30) days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

A judgement of violation of a BPO may be appealed according to the Rules of Court. During trial and upon judgment, the trial court may motu proprio issue a protection order as it deems necessary without need of an application.

Violation of any provision of a TPO or PPO issued under this Act shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

SECTION 22. Applicability of Protection Orders to Criminal Cases. The foregoing provisions on protection orders shall be applicable in impliedly instituted with the criminal actions involving violence against women and their children.

SECTION 23. Bond to Keep the Peace. The Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.

Should the respondent fail to give the bond as required, he shall be detained for a period which shall in no case exceed six (6) months, if he shall have been prosecuted for acts punishable under Section 5(a) to 5(f) and not exceeding thirty (30) days, if for acts punishable under Section 5(g) to 5(I).

The protection orders referred to in this section are the TPOs and the PPOs issued only by the courts.

SECTION 24. Prescriptive Period. Acts falling under Sections 5(a) to 5(f) shall prescribe in twenty (20) years. Acts falling under Sections 5(g) to 5(I) shall prescribe in ten (10) years.

SECTION 25. Public Crime. Violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

SECTION 26. Battered Woman Syndrome as a Defense. Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists.

SECTION 27. Prohibited Defense. Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this Act.

SECTION 28. Custody of children. The woman victim of violence shall be entitled to the custody and support of her child/children. Children below seven (7) years old older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim who is suffering from battered woman syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of a woman who is suffering from Battered woman syndrome.

SECTION 29. Duties of Prosecutors/Court Personnel. Prosecutors and court personnel should observe the following duties when dealing with victims under this Act:

- a) communicate with the victim in a language understood by the woman or her child; and
- b) inform the victim of her/his rights including legal remedies available and procedure, and privileges for indigent litigants.

SECTION 30. Duties of Barangay Officials and Law Enforcers. Barangay officials and law enforcers shall have the following duties:

- (a) respond immediately to a call for help or request for assistance or protection of the victim by entering the necessary whether or not a protection order has been issued and ensure the safety of the victim/s;
- (b) confiscate any deadly weapon in the possession of the perpetrator or within plain view;
- (c) transport or escort the victim/s to a safe place of their choice or to a clinic or hospital;
- (d) assist the victim in removing personal belongs from the house;
- (e) assist the barangay officials and other government officers and employees who respond to a call for help;
- (f) ensure the enforcement of the Protection Orders issued by the Punong Barangy or the courts;
- (g) arrest the suspected perpetrator wiithout a warrant when any of the acts of violence defined by this Act is occurring, or when he/she has personal knowledge that any act of abuse has just been committed, and there is imminent danger to the life or limb of the victim as defined in this Act; and
- (h) immediately report the call for assessment or assistance of the DSWD, social Welfare Department of LGUs or accredited non-government organizations (NGOs).

Any barangay official or law enforcer who fails to report the incident shall be liable for a fine not exceeding Ten Thousand Pesos (P10,000.00) or whenever applicable criminal, civil or administrative liability.

SECTION 31. Healthcare Provider Response to Abuse Any healthcare provider, including, but not limited to, an attending physician, nurse, clinician, barangay health worker, therapist or counselor who suspects abuse or has been informed by the victim of violence shall:

- (a) properly document any of the victim's physical, emotional or psychological injuries;
- (b) properly record any of victim's suspicions, observations and circumstances of the examination or visit;
- (c) automatically provide the victim free of charge a medical certificate concerning the examination or visit;
- (d) safeguard the records and make them available to the victim upon request at actual cost; and
- (e) provide the victim immediate and adequate notice of rights and remedies provided under this Act, and services available to them.

SECTION 32. Duties of Other Government Agencies and LGUs Other government agencies and LGUs shall establish programs such as, but not limited to, education and information campaign and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.

It shall be the duty of the concerned government agencies and LGU's to ensure the sustained education and training of their officers and personnel on the prevention of violence against women and their children under the Act.

SECTION 33. Prohibited Acts. A Punong Barangay, Barangay Kagawad or the court hearing an application for a protection order shall not order, direct, force or in any way unduly influence he applicant for a protection order to compromise or abandon any of the reliefs sought in the application for protection under this Act. Section 7 of the Family Courts Act of 1997 and Sections 410, 411, 412 and 413 of the Local Government Code of 1991 shall not apply in proceedings where relief is sought under this Act.

Failure to comply with this Section shall render the official or judge administratively liable.

SECTION 34. Persons Intervening Exempt from Liability. In every case of violence against women and their children as herein defined, any person, private individual or police authority or barangay official who, acting in accordance with law, responds or intervenes without using violence or restraint greater than necessary to ensure the safety of the victim, shall not be liable for any criminal, civil or administrative liability resulting therefrom.

SECTION 35. Rights of Victims. In addition to their rights under existing laws, victims of violence against women and their children shall have the following rights:

- (a) to be treated with respect and dignity;
- (b) to avail of legal assistance from the PAO of the Department of Justice (DOJ) or any public legal assistance office;
- (c) To be entitled to support services from the DSWD and LGUs’
- (d) To be entitled to all legal remedies and support as provided for under the Family Code; and
- (e) To be informed of their rights and the services available to them including their right to apply for a protection order.

SECTION 36. Damages. Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

SECTION 37. Hold Departure Order. The court shall expedite the process of issuance of a hold departure order in cases prosecuted under this Act.

SECTION 38. Exemption from Payment of Docket Fee and Other Expenses. If the victim is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on an application for a protection order, the court shall accept the application without payment of the filing fee and other fees and of transcript of stenographic notes.

SECTION 39. Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC). In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their children, hereinafter known as the Council, which shall be composed of the following agencies:

- (a) Department of Social Welfare and Development (DSWD);
- (b) National Commission on the Role of Filipino Women (NCRFW);

- (c) Civil Service Commission (CSC);
- (d) Commission on Human rights (CHR)
- (e) Council for the Welfare of Children (CWC);
- (f) Department of Justice (DOJ);
- (g) Department of the Interior and Local Government (DILG);
- (h) Philippine National Police (PNP);
- (i) Department of Health (DOH);
- (j) Department of Education (DepEd);
- (k) Department of Labor and Employment (DOLE); and
- (l) National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

SECTION 40. Mandatory Programs and Services for Victims. The DSWD, and LGU's shall provide the victims temporary shelters, provide counseling, psycho-social services and /or, recovery, rehabilitation programs and livelihood assistance.

The DOH shall provide medical assistance to victims.

SECTION 41. Counseling and Treatment of Offenders. The DSWD shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement.

SECTION 42. Training of Persons Involved in Responding to Violence Against Women and their Children Cases. All agencies involved in responding to violence against women and their children cases shall be required to undergo education and training to acquaint them with:

- (a) the nature, extend and causes of violence against women and their children;
- (b) the legal rights of, and remedies available to, victims of violence against women and their children;
- (c) the services and facilities available to victims or survivors;
- (d) the legal duties imposed on police officers to make arrest and to offer protection and assistance; and
- (e) techniques for handling incidents of violence against women and their children that minimize the likelihood of injury to the officer and promote the safety of the victim or survivor.

The PNP, in coordination with LGU's shall establish an education and training program for police officers and barangay officials to enable them to properly handle cases of violence against women and their children.

SECTION 43. Entitled to Leave. Victims under this Act shall be entitled to take a paid leave of absence up to ten (10) days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations, extendible when the necessity arises as specified in the protection order.

Any employer who shall prejudice the right of the person under this section shall be penalized in accordance with the provisions of the Labor Code and Civil Service Rules and Regulations. Likewise, an employer who shall prejudice any person for assisting a co-employee who is a victim under this Act shall likewise be liable for discrimination.

SECTION 44. Confidentiality. All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court.

Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand pesos (P500,000.00).

SECTION 45. Funding The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act (GAA).

The Gender and Development (GAD) Budget of the mandated agencies and LGU's shall be used to implement services for victim of violence against women and their children.

SECTION 46. Implementing Rules and Regulations. Within six (6) months from the approval of this Act, the DOJ, the NCRFW, the DSWD, the DILG, the DOH, and the PNP, and three (3) representatives from NGOs to be identified by the NCRFW, shall promulgate the Implementing Rules and Regulations (IRR) of this Act.

SECTION 47. Suppletory Application For purposes of this Act, the Revised Penal Code and other applicable laws, shall have suppletory application.

SECTION 48. Separability Clause. If any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions shall not be affected.

SECTION 49. Repealing Clause All laws, Presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 50. Effectivity This Act shall take effect fifteen (15) days from the date of its complete publication in at least two (2) newspapers of general circulation.

Approved: March 08, 2004

REPUBLIC ACT NO. 9344

AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

TITLE I GOVERNING PRINCIPLES

CHAPTER 1 TITLE, POLICY AND DEFINITION OF TERMS

Section 1. Short Title and Scope. - This Act shall be known as the “Juvenile Justice and Welfare Act of 2006.” It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

SEC. 2. Declaration of State Policy. - The following State policies shall be observed at all times:

(a) The State recognizes the vital role of children and youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

(b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.

(c) The State likewise recognizes the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty and exploitation, and other conditions prejudicial to their development.

(d) Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the child’s age and desirability of promoting his/her reintegration. Whenever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner appropriate to their well-being by

providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.

(e) The administration of the juvenile justice and welfare system shall take into consideration the cultural and religious perspectives of the Filipino people, particularly the indigenous peoples and the Muslims, consistent with the protection of the rights of children belonging to these communities.

(f) The State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law.

SEC. 3. Liberal Construction of this Act. - In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law

SEC. 4. Definition of Terms. - The following terms as used in this Act shall be defined as follows:

(a) “Bail” refers to the security given for the release of the person in custody of the law, furnished by him/her or a bondsman, to guarantee his/her appearance before any court. Bail may be given in the form of corporate security, property bond, cash deposit, or recognizance.

(b) “Best Interest of the Child” refers to the totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

(c) “Child” refers to a person under the age of eighteen (18) years.

(d) “Child at Risk” refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

1. being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
2. being exploited including sexually or economically;
3. being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
4. coming from a dysfunctional or broken family or without a parent or guardian;

5. being out of school;
6. being a street child;
7. being a member of a gang;
8. living in a community with a high level of criminality or drug abuse; and
9. living in situations of armed conflict.

(e) “Child in Conflict with the Law” refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

(f) “Community-based Programs” refers to the programs provided in a community setting developed for purposes of intervention and diversion, as well as rehabilitation of the child in conflict with the law, for reintegration into his/her family and/or community.

(g) “Court” refers to a family court or, in places where there are no family courts, any regional trial court.

(h) “Deprivation of Liberty” refers to any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will by order of any judicial or administrative authority.

(i) “Diversion” refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

(j) “Diversion Program” refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.

(k) “Initial Contact With-the Child” refers to the apprehension or taking into custody of a child in conflict with the law by law enforcement officers or private citizens. It includes the time when the child alleged to be in conflict with the law receives a subpoena under Section 3(b) of Rule 112 of the Revised Rules of Criminal Procedure or summons under Section 6(a) or Section 9(b) of the same Rule in cases that do not require preliminary investigation or where there is no necessity to place the child alleged to be in conflict with the law under immediate custody.

(l) “Intervention” refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.

- (m) “Juvenile Justice and Welfare System” refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development.
- (n) “Law Enforcement Officer” refers to the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a barangay tanod.
- (o) “Offense” refers to any act or omission whether punishable under special laws or the Revised Penal Code, as amended.
- (p) “Recognizance” refers to an undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible for the appearance in court of the child in conflict with the law, when required.
- (q) “Restorative Justice” refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.
- (r) “Status Offenses” refers to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. These shall include curfew violations; truancy, parental disobedience and the like.
- (s) “Youth Detention Home” refers to a 24-hour child-caring institution managed by accredited local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.
- (t) “Youth Rehabilitation Center” refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restricted pending court disposition of the charges against them.
- (u) “Victimless Crimes” refers to offenses where there is no private offended party.

CHAPTER 2

PRINCIPLES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SEC. 5. Rights of the Child in Conflict with the Law. - Every child in conflict with the law shall have the following rights, including but not limited to:

- (a) the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- (b) the right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;
- (c) the right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
- (d) the right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/She shall be conveyed separately to or from court. He/She shall await hearing of his/her own case in a separate holding area. A child in conflict with the law shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;
- (e) the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;
- (f) the right to bail and recognizance, in appropriate cases;
- (g) the right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
- (h) the right to have his/her privacy respected fully at all stages of the proceedings;
- (i) the right to diversion if he/she is qualified and voluntarily avails of the same;
- (j) the right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
- (k) the right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;

- (l) in general, the right to automatic suspension of sentence;
- (m) the right to probation as an alternative to imprisonment, if qualified under the Probation Law;
- (n) the right to be free from liability for perjury, concealment or misrepresentation; and
- (o) other rights as provided for under existing laws, rules and regulations.

The State further adopts the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or “Beijing Rules”, United Nations Guidelines for the Prevention of Juvenile Delinquency or the “Riyadh Guidelines”, and the United Nations Rules for the Protection of Juveniles Deprived of Liberty.

SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act. The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 7. Determination of Age. - The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child’s birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.

TITLE II
STRUCTURES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE

SEC. 8. Juvenile Justice and Welfare Council (JJWC). - A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

- (a) Council for the Welfare of Children (CWC);
- (b) Department of Education (DepEd);
- (c) Department of the Interior and Local Government (DILG);
- (d) Public Attorney's Office (PAO);
- (e) Bureau of Corrections (BUCOR);
- (f) Parole and Probation Administration (PPA)
- (g) National Bureau of Investigation (NBI);
- (h) Philippine National Police (PNP);.
- (i) Bureau of Jail Management and Penology (BJMP);
- (i) Commission on Human Rights (CHR);
- (k) Technical Education and Skills Development Authority (TESDA);
- (l) National Youth Commission (NYC); and
- (m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

- (a) Department of Justice (DOJ);
- (b) Department of Social Welfare and Development (DSWD);
- (c) Council for the Welfare of Children (CWC)

- (d) Department of Education (DepEd);
- (e) Department of the Interior and Local Government (DILG)
- (f) Commission on Human Rights (CHR);
- (g) National Youth Commission (NYC); and
- (h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

SEC. 9. Duties and Functions of the JJWC. - The JJWC shall have the following duties and functions:

- (a) To oversee the implementation of this Act;
- (b) To advise the President on all matters and policies relating to juvenile justice and welfare;
- (c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;
- (d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;
- (e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;
- (f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;
- (g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as but not limited to:

1. the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;
2. the periodic trends, problems and causes of juvenile delinquency and crimes; and
3. the particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

(h) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;

(i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

(j) To submit an annual report to the President on the implementation of this Act; and

(k) To perform such other functions as may be necessary to implement the provisions of this Act.

SEC. 10. Policies and Procedures on Juvenile Justice and Welfare. - All government agencies enumerated in Section 8 shall, with the assistance of the JJWC and within one (1) year from the effectivity of this Act, draft policies and procedures consistent with the standards set in the law. These policies and procedures shall be modified accordingly in consultation with the JJWC upon the completion of the national juvenile intervention program as provided under Section 9 (d).

SEC. 11. Child Rights Center (CRC). - The existing Child Rights Center of the Commission on Human Rights shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.

TITLE III
PREVENTION OF JUVENILE DELINQUENCY

CHAPTER 1
THE ROLE OF THE DIFFERENT SECTORS

SEC. 12. The Family. - The family shall be responsible for the primary nurturing and rearing of children which is critical in delinquency prevention. As far as practicable and in accordance with the procedures of this Act, a child in conflict with the law shall be maintained in his/her family.

SEC. 13. The Educational System. - Educational institutions shall work together with families, community organizations and agencies in the prevention of juvenile delinquency and in the rehabilitation and reintegration of child in conflict with the law. Schools shall provide adequate, necessary and individualized educational schemes for children manifesting difficult behavior and children in conflict with the law. In cases where children in conflict with the law are taken into custody or detained in rehabilitation centers, they should be provided the opportunity to continue learning under an alternative learning system with basic literacy program or non- formal education accreditation equivalency system.

SEC. 14. The Role of the Mass Media. - The mass media shall play an active role in the promotion of child rights, and delinquency prevention by relaying consistent messages through a balanced approach. Media practitioners shall, therefore, have the duty to maintain the highest critical and professional standards in reporting and covering cases of children in conflict with the law. In all publicity concerning children, the best interest of the child should be the primordial and paramount concern. Any undue, inappropriate and sensationalized publicity of any case involving a child in conflict with the law is hereby declared a violation of the child's rights.

SEC. 15. Establishment and Strengthening of Local Councils for the Protection of Children. - Local Councils for the Protection of Children (LCPC) shall be established in all levels of local government, and where they have already been established, they shall be strengthened within one (1) year from the effectivity of this Act. Membership in the LCPC shall be chosen from among the responsible members of the community, including a representative from the youth sector, as well as representatives from government and private agencies concerned with the welfare of children. The local council shall serve as the primary agency to coordinate with and assist the LGU concerned for the adoption of a comprehensive plan on delinquency prevention, and to oversee its proper implementation.

One percent (1%) of the internal revenue allotment of barangays, municipalities and cities shall be allocated for the strengthening and implementation of the programs of the LCPC: Provided, That the disbursement of the fund shall be made by the LGU concerned.

SEC. 16. Appointment of Local Social Welfare and Development Officer. - All LGUs shall appoint a duly licensed social worker as its local social welfare and development officer tasked to assist children in conflict with the law.

SEC. 17. The Sangguniang Kabataan. - The Sangguniang Kabataan (SK) shall coordinate with the LCPC in the formulation and implementation of juvenile intervention and diversion programs in the community.

CHAPTER 2

COMPREHENSIVE JUVENILE INTERVENTION PROGRAM

SEC. 18. Development of a Comprehensive Juvenile Intervention Program. - A Comprehensive juvenile intervention program covering at least a 3-year period shall be instituted in LGUs from the barangay to the provincial level.

The LGUs shall set aside an amount necessary to implement their respective juvenile intervention programs in their annual budget.

The LGUs, in coordination with the LCPC, shall call on all sectors concerned, particularly the child-focused institutions, NGOs, people's organizations, educational institutions and government agencies involved in delinquency prevention to participate in the planning process and implementation of juvenile intervention programs. Such programs shall be implemented consistent with the national program formulated and designed by the JJWC. The implementation of the comprehensive juvenile intervention program shall be reviewed and assessed annually by the LGUs in coordination with the LCPC. Results of the assessment shall be submitted by the provincial and city governments to the JJWC not later than March 30 of every year.

SEC. 19. Community-based Programs on Juvenile Justice and Welfare. - Community-based programs on juvenile justice and welfare shall be instituted by the LGUs through the LCPC, school, youth organizations and other concerned agencies. The LGUs shall provide community-based services which respond to the special needs, problems, interests and concerns of children and which offer appropriate counseling and guidance to them and their families. These programs shall consist of three levels:

- (a) Primary intervention includes general measures to promote social justice and equal opportunity, which tackle perceived root causes of offending;
- (b) Secondary intervention includes measures to assist children at risk; and
- (c) Tertiary intervention includes measures to avoid unnecessary contact with the formal justice system and other measures to prevent re-offending.

TITLE IV

TREATMENT OF CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY

SEC. 20. Children Below the Age of Criminal Responsibility. - If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code".

TITLE V

JUVENILE JUSTICE AND WELFARE SYSTEM

CHAPTER I

INITIAL CONTACT WITH THE CHILD

SEC. 21. Procedure for Taking the Child into Custody. - From the moment a child is taken into custody, the law enforcement officer shall:

- (a) Explain to the child in simple language and in a dialect that he/she can understand why he/she is being placed under custody and the offense that he/she allegedly committed;
- (b) Inform the child of the reason for such custody and advise the child of his/her constitutional rights in a language or dialect understood by him/her;
- (c) Properly identify himself/herself and present proper identification to the child;
- (d) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child in conflict with the law;
- (e) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;

- (f) Refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;
- (g) Avoid violence or unnecessary force;
- (h) Determine the age of the child pursuant to Section 7 of this Act;
- (i) Immediately but not later than eight (8) hours after apprehension, turn over custody of the child to the Social Welfare and Development Office or other accredited NGOs, and notify the child's apprehension. The social welfare and development officer shall explain to the child and the child's parents/guardians the consequences of the child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate;
- (j) Take the child immediately to the proper medical and health officer for a thorough physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever the medical treatment is required, steps shall be immediately undertaken to provide the same;
- (k) Ensure that should detention of the child in conflict with the law be necessary, the child shall be secured in quarters separate from that of the opposite sex and adult offenders;
- (l) Record the following in the initial investigation:
 - 1. Whether handcuffs or other instruments of restraint were used, and if so, the reason for such;
 - 2. That the parents or guardian of a child, the DSWD, and the PAO have been informed of the apprehension and the details thereof; and
 - 3. The exhaustion of measures to determine the age of a child and the precise details of the physical and medical examination or the failure to submit a child to such examination; and
- (m) Ensure that all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.

A child in conflict with the law shall only be searched by a law enforcement officer of the same gender and shall not be locked up in a detention cell.

SEC. 22. Duties During Initial Investigation. - The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred. The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare

and development officer. In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

After the initial investigation, the local social worker conducting the same may do either of the following:

- (a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and
- (b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.

CHAPTER 2 DIVERSION

SEC. 23. System of Diversion. - Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the conditions herein provided:

- (a) Where the imposable penalty for the crime committed is not more than six (6) years imprisonment, the law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.
- (b) In victimless crimes where the imposable penalty is not more than six (6) years imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC;
- (c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court.

SEC. 24. Stages Where Diversion May be Conducted. - Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level.

SEC. 25. Conferencing, Mediation and Conciliation. - A child in conflict with law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings.

SEC. 26. Contract of Diversion. - If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within forty-five (45) days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed forty-five (45) days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two (2) years.

SEC. 27. Duty of the Punong Barangay When There is No Diversion. - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Punong Barangay handling the case shall, within three (3) days from determination of the absence of jurisdiction over the case or termination of the diversion proceedings, as the case may be, forward the records of the case of the child to the law enforcement officer, prosecutor or the appropriate court, as the case may be. Upon the issuance of the corresponding document, certifying to the fact that no agreement has been reached by the parties, the case shall be filed according to the regular process.

SEC. 28. Duty of the Law Enforcement Officer When There is No Diversion. - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Women and Children Protection Desk of the PNP, or other law enforcement officer handling the case of the child under custody, to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation to determine whether or not the child should remain under custody and correspondingly charged in court. The document transmitting said records shall display the word “CHILD” in bold letters.

SEC. 29. Factors in Determining Diversion Program. - In determining whether diversion is appropriate and desirable, the following factors shall be taken into consideration:

- (a) The nature and circumstances of the offense charged;
- (b) The frequency and the severity of the act;
- (c) The circumstances of the child (e.g. age, maturity, intelligence, etc.);

- (d) The influence of the family and environment on the growth of the child;
- (e) The reparation of injury to the victim;
- (f) The weight of the evidence against the child;
- (g) The safety of the community; and
- (h) The best interest of the child.

SEC. 30. Formulation of the Diversion Program. - In formulating a diversion program, the individual characteristics and the peculiar circumstances of the child in conflict with the law shall be used to formulate an individualized treatment.

The following factors shall be considered in formulating a diversion program for the child:

- (a) The child's feelings of remorse for the offense he/she committed;
- (b) The parents' or legal guardians' ability to guide and supervise the child;
- (c) The victim's view about the propriety of the measures to be imposed; and
- (d) The availability of community-based programs for rehabilitation and reintegration of the child.

SEC. 31. Kinds of Diversion Programs. - The diversion program shall include adequate socio-cultural and psychological responses and services for the child. At the different stages where diversion may be resorted to, the following diversion programs may be agreed upon, such as, but not limited to:

- (a) At the level of the Punong Barangay:
 1. Restitution of property;
 2. Reparation of the damage caused;
 3. Indemnification for consequential damages;
 4. Written or oral apology;
 5. Care, guidance and supervision orders;
 6. Counseling for the child in conflict with the law and the child's family;
 7. Attendance in trainings, seminars and lectures on:
 - (i) anger management skills;
 - (ii) problem solving and/or conflict resolution skills;
 - (iii) values formation; and

(iv) other skills which will aid the child in dealing with situations which can lead to repetition of the offense;

8. Participation in available community-based programs, including community service; or

9. Participation in education, vocation and life skills programs.

(b) At the level of the law enforcement officer and the prosecutor:

1. Diversion programs specified under paragraphs (a)(1) to (a)(9) herein; and

2. Confiscation and forfeiture of the proceeds or instruments of the crime;

(c) At the level of the appropriate court:

1. Diversion programs specified under paragraphs(a)and (b) above;

2. Written or oral reprimand or citation;

3. Fine;

4. Payment of the cost of the proceedings; or

5. Institutional care and custody.

CHAPTER 3 PROSECUTION

SEC. 32. Duty of the Prosecutor's Office. - There shall be a specially trained prosecutor to conduct inquest, preliminary investigation and prosecution of cases involving a child in conflict with the law. If there is an allegation of torture or ill-treatment of a child in conflict with the law during arrest or detention, it shall be the duty of the prosecutor to investigate the same.

SEC. 33. Preliminary Investigation and Filing of Information. - The prosecutor shall conduct a preliminary investigation in the following instances: (a) when the child in conflict with the law does not qualify for diversion: (b) when the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and (c) when considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney's Office of such service, as well as the personal information, and place of detention of the child in conflict with the law.

Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within forty-five (45) days from the start of the preliminary investigation.

CHAPTER 4

COURT PROCEEDINGS

SEC. 34. Bail. - For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

SEC. 35. Release on Recognizance. - Where a child is detained, the court shall order:

- (a) the release of the minor on recognizance to his/her parents and other suitable person;
- (b) the release of the child in conflict with the law on bail; or
- (c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.

SEC. 36. Detention of the Child Pending Trial. - Children detained pending trial may be released on bail or recognizance as provided for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required.

SEC. 37. Diversion Measures. - Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate.

SEC. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

SEC. 39. Discharge of the Child in Conflict with the Law. - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

SEC. 40. Return of the Child in Conflict with the Law to Court. - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

SEC. 41. Credit in Service of Sentence. - The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

SEC. 42. Probation as an Alternative to Imprisonment. - The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.

CHAPTER 5

CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

SEC. 43. Confidentiality of Records and Proceedings. - All records and proceedings involving children in conflict with the law from initial contact until final disposition of the case shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child in conflict with the law may have his/her sentence suspended or if he/she may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child's identity. Records of a child in conflict with the law shall not be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his/her written consent.

A person who has been in conflict with the law as a child shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him/her for any purpose.

TITLE VI

REHABILITATION AND REINTEGRATION

SEC. 44. Objective of Rehabilitation and Reintegration. - The objective of rehabilitation and reintegration of children in conflict with the law is to provide them with interventions, approaches and strategies that will enable them to improve their social functioning with the end goal of reintegration to their families and as productive members of their communities.

SEC. 45. Court Order Required. - No child shall be received in any rehabilitation or training facility without a valid order issued by the court after a hearing for the purpose. The details of this order shall be immediately entered in a register exclusively for children in conflict with the law. No child shall be admitted in any facility where there is no such register.

SEC. 46, Separate Facilities from Adults. - In all rehabilitation or training facilities, it shall be mandatory that children shall be separated from adults unless they are members of the same family. Under no other circumstance shall a child in conflict with the law be placed in the same confinement as adults.

The rehabilitation, training or confinement area of children in conflict with the law shall provide a home environment where children in conflict with the law can be provided with quality counseling and treatment.

SEC. 47. Female Children. - Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

SEC. 48. Gender-Sensitivity Training. - No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

SEC. 49. Establishment of Youth Detention Homes. - The LGUs shall set aside an amount to build youth detention homes as mandated by the Family Courts Act. Youth detention homes may also be established by private and NGOs licensed and accredited by the DSWD, in consultation with the JJWC.

SEC. 50. Care and Maintenance of the Child in Conflict with the Law. - The expenses for the care and maintenance of a child in conflict with the law under institutional care shall be borne by his/her parents or those persons liable to support him/her: Provided, That in case his/her parents or those persons liable to support him/her cannot pay all or part of said expenses, the municipality where the offense was committed shall pay one-third (1/3) of said expenses or part thereof; the province to which the municipality belongs shall pay one-third (1/3) and the remaining one-third (1/3) shall be borne by the national government. Chartered cities shall pay two-thirds (2/3) of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said obligations: Provided, further, That in the event that the child in conflict with the law is not a resident of the municipality/city where the offense was committed, the court, upon its determination, may require the city/municipality where the child in conflict with the law resides to shoulder the cost.

All city and provincial governments must exert effort for the immediate establishment of local detention homes for children in conflict with the law.

SEC. 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

SEC. 52. Rehabilitation of Children in Conflict with the Law. - Children in conflict with the law, whose sentences are suspended may, upon order of the court, undergo any or a combination of disposition measures best suited to the rehabilitation and welfare of the child as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

If the community-based rehabilitation is availed of by a child in conflict with the law, he/she shall be released to parents, guardians, relatives or any other responsible person in the community. Under the supervision and guidance of the local social welfare and development officer, and in coordination with his/her parents/guardian, the child in conflict with the law shall participate in community-based programs, which shall include, but not limited to:

1. Competency and life skills development;
2. Socio-cultural and recreational activities;
3. Community volunteer projects;
4. Leadership training;
5. Social services;
6. Homelife services;
7. Health services; .
8. Spiritual enrichment; and
9. Community and family welfare services.

In accordance therewith, the family of the child in conflict with the law shall endeavor to actively participate in the community-based rehabilitation.

Based on the progress of the youth in the community, a final report will be forwarded by the local social welfare and development officer to the court for final disposition of the case.

If the community-based programs are provided as diversion measures under Chapter II, Title V, the programs enumerated above shall be made available to the child in conflict with the law.

SEC. 53. Youth Rehabilitation Center. - The youth rehabilitation center shall provide 24-hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals. A quarterly report shall be submitted by the center to the proper court on the progress of the children in conflict with the law. Based on the progress of the youth in the center, a final report will be forwarded to the court for final disposition of the case. The DSWD shall establish youth rehabilitation centers in each region of the country.

SEC. 54. Objectives of Community Based Programs. - The objectives of community-based programs are as follows:

- (a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;
- (b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;
- (c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and
- (d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

SEC. 55. Criteria of Community-Based Programs. - Every LGU shall establish community-based programs that will focus on the rehabilitation and reintegration of the child. All programs shall meet the criteria to be established by the JJWC which shall take into account the purpose of the program, the need for the consent of the child and his/her parents or legal guardians, and the participation of the child-centered agencies whether public or private.

SEC. 56. After-Care Support Services for Children in Conflict with the Law. - Children in conflict with the law whose cases have been dismissed by the proper court because of good behavior as per recommendation of the DSWD social worker and/or any accredited NGO youth rehabilitation center shall be provided after-care services by the local social welfare and development officer for a period of at least six (6) months. The service includes counseling and other community-based services designed to facilitate social reintegration, prevent re-offending and make the children productive members of the community.

TITLE VII GENERAL PROVISIONS

CHAPTER 1 EXEMPTING PROVISIONS

SEC. 57. Status Offenees. - Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

SEC. 58. Offenses Not Applicable to Children. - Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under

Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: Provided, That said persons shall undergo appropriate counseling and treatment program.

SEC. 59. Exemption from the Application of Death Penalty. - The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.

CHAPTER 2 PROHIBITED ACTS

SEC. 60. Prohibition Against Labeling and Shaming. - In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin.

SEC. 61. Other Prohibited Acts. - The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

- (a) Employment of threats of whatever kind and nature;
- (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
- (c) Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
- (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

CHAPTER 3 PENAL PROVISION

SEC. 62. Violation of the Provisions of this Act or Rules or Regulations in General. - Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Fifty thousand pesos (P50,000.00) or suffer imprisonment of

not less than eight (8) years but not more than ten (10) years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws. If the offender is a public officer or employee, he/she shall, in addition to such fine and/or imprisonment, be held administratively liable and shall suffer the penalty of perpetual absolute disqualification.

CHAPTER 4

APPROPRIATION PROVISION

SEC. 63. Appropriations. - The amount necessary to carry out the initial implementation of this Act shall be charged to the Office of the President. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the succeeding General Appropriations Act. An initial amount of Fifty million pesos (P50,000,000.00) for the purpose of setting up the JJWC shall be taken from the proceeds of the Philippine Charity Sweepstakes Office.

TITLE VIII

TRANSITORY PROVISIONS

SEC. 64. Children in Conflict with the Law Fifteen (15) Years Old and Below. - Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SEC. 65. Children Detained Pending Dial. - If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention.

If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SEC. 66. Inventory of “Locked-up” and Detained Children in Conflict with the Law. - The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

SEC. 67. Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings. - If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD)

of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SEC. 68. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

TITLE IX FINAL PROVISIONS

SEC. 69. Rule Making Power. - The JJWC shall issue the IRRs for the implementation of the provisions of this act within ninety (90) days from the effectivity thereof.

SEC. 70. Separability Clause. - If, for any reason, any section or provision of this Act is declared unconstitutional or invalid by the Supreme Court, the other sections or provisions hereof not affected by such declaration shall remain in force and effect.

SEC. 71. Repealing Clause. - All existing laws, orders, decrees, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 72. Effectivity. - This Act shall take effect after fifteen (15) days from its publication in at least two (2) national newspapers of general circulation.

Approved: April 28, 2006

REPUBLIC ACT NO. 9775

AN ACT DEFINING THE CRIME OF CHILD PORNOGRAPHY, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Section 1. Short Title. - This Act shall be known as the “Anti-Child Pornography Act of 2009.”

Section 2. Declaration of Policy. - The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological and social well-being.

Towards this end, the State shall:

- (a) Guarantee the fundamental rights of every child from all forms of neglect, cruelty and other conditions prejudicial to their development;
- (b) Protect the child from all forms of exploitation and abuse including, but not limited to:
 - 1. the exploitative use of a child or children in pornographic performances and materials; and
 - 2. the inducement or coercion of a child to engage in or perform any sexual activity or practices, through whatever means; and
- (c) Comply with international treaties to which the Philippines is a signatory or a State party concerning the rights of children which include, but not limited to, the Convention on the Rights of the Child, the 2nd Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the International Labor Organization (ILO) Convention No. 182 on the Elimination of the Worst Forms of Child Labor and the Convention Against Transnational Organized Crime.

Section 3. Definition of Terms. -

(a) “Children” refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

For the purpose of this Act, a child shall also refer to:

- 1. a person regardless of age who is presented, depicted or believed to be a child as defined herein; and
- 2. a computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein.

(b) “Child pornography” refers to any public or private representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

(c) “Child pornography materials” refers to the means and methods by which child pornography is carried out:

1. As to form:

(i) Visual depiction - which includes not only images of real children but also digital image, computer image or computer-generated image that is indistinguishable from that of real children engaging in an explicit sexual activity. Visual depiction shall include:

(aa) undeveloped film and videotapes;

(bb) data and/or images stored on a computer disk or by electronic means capable of conversion into a visual image;

(cc) photograph, film, video, picture, digital image or picture, computer image or picture, whether made or produced by electronic, mechanical or other means;

(dd) drawings, cartoons, sculptures or paintings depicting children; or

(ee) other analogous visual depiction; or

(ii) Audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity, or an audio representation that advocates, encourages or counsels any sexual activity with children which is an offense under this Act.

Such representation includes audio recordings and live audio transmission conveyed through whatever medium including real-time internet communications; or

(iii) Written text or material that advocates or counsels explicit sexual activity with a child and whose dominant characteristic is the description, for a sexual purpose, of an explicit sexual activity with a child.

2. As to content:

(i) It includes representation of a person who is, appears to be, or is represented as being a child, the dominant characteristic of which is the depiction, for a sexual purpose, of:

(aa) the sexual organ or the anal region, or a representation thereof; or

(bb) the breasts, or a representation of the breasts, of a female person.

(d) “Explicit sexual activity” refers to actual or simulated -

1. Sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital or oral to anal, whether between persons of the same or opposite sex;
- 2.
3. Bestiality;
4. Masturbation;
5. Sadistic or masochistic abuse;
6. Exhibition of the genitals, buttocks, breast, pubic area and/or anus; or
7. Use of any object or instrument for lascivious acts.

(e) “Internet address” refers to a website, bulletin board service, internet chat room or news group, or any other internet or shared network protocol address.

(f) “Internet café or kiosk” refers to an establishment that offers or proposes to offer services to the public for the use of its computer/s or computer system for the purpose of accessing the Internet, computer games or related services.

(g) “Internet content host” refers to a person who hosts or who proposes to host Internet content in the Philippines.

(h) “Internet service provider (ISP)” refers to a person or entity that supplies, or proposes to supply, an Internet carriage service to the public.

(i) “Luring” refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of a sexual activity or production of child pornography.

(j) “Grooming” refers to the act of preparing a child or someone who the offender believes to be a child for a sexual activity or sexual relationship by communicating child pornography. It includes online enticement, or enticement through any other means.

(k) “Primarily sexual purposes” refers to purposes which will fulfill all the following conditions:

1. The average person applying contemporary community standards would find the work taken as a whole appealing to prurient interest and satisfying only the market for gratuitous sex and violence;
2. The work depicts or describes sexual conduct in a patently offensive way; and
3. The work taken as a whole imbued within its context, manner or presentation, intention and culture, lascivious, literary, artistic, political and scientific value.

Section 4. Unlawful or Prohibited Acts. - It shall be unlawful for a person to commit any of the following acts:

- (a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of child pornography;
- (b) To produce, direct, manufacture or create any form of child pornography and child pornography materials;
- (c) To sell, offer, advertise and promote child pornography and child pornography materials;
- (d) To possess, download, purchase, reproduce or make available child pornography materials with the intent of selling or distributing them;
- (e) To publish, post, exhibit, disseminate, distribute, transmit or broadcast child pornography or child pornography materials;
- (f) To knowingly possess, view, download, purchase or in any way take steps to procure, obtain or access for personal use child pornography materials; and
- (g) To attempt to commit child pornography by luring or grooming a child.

Section 5. Duties of an Internet Service Provider (ISP). - An ISP shall:

- (a) Prevent access or transmittal of child pornography materials by any person and shall install a blocking system to prevent access to such materials;
- (b) Within seven (7) days, report the presence thereof, as well as the particulars of the person maintaining, hosting, distributing or in any manner contributing to the Internet address, to the proper authorities; and

(c) Preserve such evidence for purposes of investigation and prosecution by relevant authorities.

An ISP shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an Internet address which contains child pornography materials.

ISP who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 13(e) of this Act.

Section 6. Duties of an Internet Content Host. - An Internet content host shall:

(a) Not host any child pornography on its Internet address;

(b) Within seven (7) days, report the presence of child pornography, as well as the particulars of the person maintaining, hosting, distributing or in any manner contributing to such Internet address, to the proper authorities; and

(c) Preserve such evidence for purposes of investigation and prosecution by relevant authorities.

An Internet content host shall, upon the request of proper authorities, furnish the particulars of users who gained or attempted to gain access to an Internet address that contains child pornography materials.

An Internet content host who shall knowingly, willfully and intentionally violate this provision shall be subject to the penalty provided under Section 13(e) of this Act.

Section 7. Duty to Provide Blocking System or Software. - The following shall also have the duty to install blocking system or software to prevent transmittal of or access to the child pornography materials:

(a) Internet café establishments;

(b) Private and public educational institutions;

(c) Public and private offices; and

(d) Service providers such as telephone companies and others.

Section 8. Duty to Report. - Photo developers, information technology (IT) professionals, credit card companies and banks, and any person who has direct knowledge of any child pornography activities shall have the duty to report any suspected child pornography materials or transactions to the proper authorities within seven (7) days from discovery thereof.

Section 9. Facilitating Unlawful or Prohibited Acts. - It shall be unlawful for a person to knowingly facilitate the commission of any of the prohibited or unlawful acts under any of the provisions of this Act.

Section 10. Providing Venue for Commission of Prohibited Acts. - It shall be unlawful for a person to knowingly, willfully and intentionally provide a venue for the commission of prohibited acts such as, but not limited to, dens, private rooms, cubicles in Internet cafes, cinemas, secluded areas in residential houses or in establishments purporting to be a legitimate business.

Section 11. Confidentiality. - The right to privacy of the child shall be ensured at any stage of the investigation, prosecution and trial of an offense under this Act. Towards this end, the following rules shall be observed:

(a) The judge, prosecutor or any officer of the law to whom the complaint has been referred to may, whenever necessary to ensure a fair and impartial proceeding and after considering all circumstances for the best interest of the child, conduct a closed-door investigation, prosecution or trial;

(b) The name and personal circumstances of the child or any other information tending to establish his/her identity shall not be disclosed to the public;

(c) Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall be released only to the following:

1. Members of the court staff for administrative use;
2. The prosecuting attorney;
3. Defense counsel;
4. The guardian ad litem;
5. Agents of investigating law enforcement agencies; and
6. Other persons as determined by the court;.

(d) Any child pornography material that is part of the court records shall be subject to a protective order that provides as follows:

1. Child pornography materials may be viewed only by the parties, their counsel, their expert witness and guardian ad litem;
2. No child pornography material, or any portion thereof, shall be divulged to any other person, except as necessary for the investigation, prosecution or trial; and
3. No person shall be granted access to the child pornography material or any part thereof unless he/

she signs a written affirmation that he/she has received and read a copy of the protection order; that he/she submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he/she will be subject to the contempt power of the court; and

(e) In cases when prosecution or trial is conducted behind closed doors, it shall be unlawful for any editor, publisher and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing the tri-media facilities or information technology to cause publicity of any case of child pornography.

Section 12. Common Penal Provisions. -

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act.

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period.

(c) When the perpetrator is an ascendant, parent, guardian, step-parent or collateral relative within the second degree of consanguinity, the perpetrator thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period.

(d) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed.

(e) Any attempt to commit any of the prohibited acts under Section 4 hereof shall be punished by a penalty two (2) degrees lower than that prescribed for the consummated acts.

(f) If the offender is a foreigner, he/she shall be immediately deported after serving his/her sentence and be barred permanently from entering the country.

(g) In all cases, any person found guilty of providing venue for the commission of prohibited acts under Section 4 hereof shall be treated as a principal and penalized as such.

(h) Any person found guilty of facilitating the commission of any prohibited acts shall be punished with a penalty two (2) degrees lower than that prescribed by the offense.

(i) Any business establishment used in the commission of the prohibited acts provided herein shall be immediately closed, the authority or license to operate cancelled, without prejudice to the forfeiture of the proceeds and investments, and without prejudice to the prosecution of the owner, president,

managers or responsible officer who participated in the commission of the offense or who shall knowingly permit or fail to prevent its commission.

Section 13. Penalties and Sanctions. - The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

(a) Any person found guilty of violating Section 4(a), (b), (c) and (d) of this Act shall suffer the penalty of reclusion temporal in its maximum period and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

(b) Any person guilty of violating Section 4(e) shall suffer the penalty of reclusion temporal in its minimum period and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(c) Any person found guilty of violating Section 4(f) shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Three hundred thousand pesos (P300,000.00) but not more than Five hundred thousand pesos (P500,000.00);

(d) Any person found guilty of violating Section 4(g) shall suffer the penalty of prision mayor in its medium period and a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00);

(e) The owner, head, president, partner, manager or responsible officer of any ISP or Internet content host who shall knowingly, willfully or intentionally fail to perform his/her duties under Sections 5 and 6 of this Act shall suffer the penalty of prision correccional and a fine of not less than Fifty thousand pesos (P50,000.00) but not more than One hundred thousand pesos (P100,000.00);

(f) Any person found guilty of violating Section 8 of this Act shall pay a fine of not less than Thirty thousand pesos (P30,000.00) but not more than Fifty thousand pesos (P50,000.00); and

(g) Any person found guilty of violating Section 11(e) hereof shall suffer the penalty of arresto mayor in its maximum period and a fine of not less than Thirty thousand pesos (P30,000.00) but not more than Fifty thousand pesos (P50,000.00).

Section 14. Who May File a Complaint. - Complaints on cases of child pornography and other offenses punishable under this Act may be filed by the following:

(a) Offended party;

(b) Parents or guardians;

(c) Ascendant or collateral relative within the third degree of consanguinity;

- (d) Officer, social worker or representative of a licensed child-caring institution;
- e) Officer or social worker of the Department of Social Welfare and Development (DSWD);
- (f) Local social welfare development officer;
- (g) Barangay chairman;
- (h) At least three (3) concerned responsible citizens where the violation occurred; or
- (i) Any person who has personal knowledge of the circumstances of the commission of any offense under this Act.

Section 15. Venue. - A criminal action arising from a violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the child is found or actually resides at the time of the commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of the other courts.

Section 16. Authority to Regulate Internet Café or Kiosk. - The local government unit (LGU) of the city or municipality where an Internet café or kiosk is located shall have the authority to monitor and regulate the establishment and operation of the same or similar establishments in order to prevent violation of the provisions of this Act.

Section 17. Legal Protection to Victims of Child Pornography. - The child who is a victim of child pornography shall be recognized as a victim of violent crime defined under Section 3(d) of Republic Act No. 7309, or “An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes” so that the child may claim compensation therein. The child and family shall be entitled to protection as well as the rights and benefits of witnesses under Republic Act No. 6981, or the “Witness Protection, Security and Benefit Act”.

Section 18. Mandatory Services to Child Pornography Victims. - To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies and the LGUs shall make available the following services to victims of child pornography:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services, which shall include information about the victim’s rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the child;

- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the child victims shall be adopted and carried out.

Section 19. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Child Pornography. - In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act: Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender:

Provided, further, That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed or diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

Section 20. Programs for Victims of Child Pornography. - The Inter-Agency Council Against Child Pornography, created under Section 21 of this Act, shall develop and implement the necessary programs that will prevent child pornography, as well as protect, heal and reintegrate the child into the mainstream of society. Such programs shall include, but not limited to, the following:

- (a) Provision of mandatory services including counseling, free legal services, medical or psychological services, livelihood and skills training and educational assistance to the child pursuant to Section 18 of this Act;
- (b) Sponsorship of a national research program on child pornography and other acts covered by the law and the establishment of a data collection system for monitoring and evaluation purposes;
- (c) Provision of necessary technical and material support services to appropriate government agencies and nongovernmental organizations;

(d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, nongovernmental and international organizations; and

(e) Promotion of information and education campaign.

Section 21. Inter-Agency Council Against Child Pornography. - There is hereby established an Inter-Agency Council Against Child Pornography, to be composed of the Secretary of the DSWD as chairperson and the following as members:

(a) Secretary, Department of Justice (DOJ);

(b) Secretary, Department of Labor and Employment;

(c) Secretary, Department of Science and Technology;

(d) Chief, Philippine National Police;

(e) Chairperson, Commission on Human Rights;

(f) Chairperson, Commission on Information and Communications Technology;

(g) Commissioner, National Telecommunications Commission;

(h) Executive Director, Council for the Welfare of Children;

(i) Executive Director, Philippine Center for Transnational Crimes;

(j) Executive Director, Optical Media Board;

(k) Director, National Bureau of Investigation; and

(l) Three representatives from children's NGOs. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years, and may be renewed upon renomination and reappointment by the Council and the President, respectively.

The members of the Council may designate their permanent representatives, who shall have a rank not lower than assistant secretary or its equivalent, to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting, rules and regulations. The DSWD shall establish the necessary Secretariat for the Council.

Section 22. Functions of the Council. - The Council shall have the following powers and functions:

- (a) Formulate comprehensive and integrated plans and programs to prevent and suppress child pornography;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to child pornography;
- (e) Conduct and coordinate massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to child pornography;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on the action taken;
- (g) Assist in the filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
- (h) Formulate a program for the reintegration of victims of child pornography;
- (i) Secure from any department, bureau, office, agency or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
- (j) Complement the shared government information system relative to child abuse and exploitation, and ensure that the proper agencies conduct a continuing research and study on the patterns and schemes of child pornography which form the basis for policy formulation and program direction;
- (k) Develop the mechanism to ensure the timely, coordinated and effective response to cases of child pornography;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress child pornography;
- (m) Adopt measures and policies to protect the rights and needs of the victims of child pornography who are foreign nationals in the Philippines;
- (n) Maintain a database of cases of child pornography;

(o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons;

(p) Initiate training programs in identifying and providing the necessary intervention or assistance to victims of child pornography;

(q) Submit to the President and the Congressional Oversight Committee created herein the annual report on the policies, plans, programs and activities of the Council relative to the implementation of this Act; and

(r) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

Section 23. Extradition. - The DOJ, in consultation with the Department of Foreign Affairs, shall endeavor to include child pornography among extraditable offenses in future treaties.

Section 24. Congressional Oversight Committee. - There is hereby created a Congressional Oversight Committee composed of five (5) Members from the Senate and five (5) Members from the House of Representatives. The Members from the Senate shall be appointed by the Senate President based on the proportional representation from the parties or coalition therein with at least one (1) Member representing the Minority. The Members from the House of Representatives shall be appointed by the Speaker, also based on proportional representation of the parties or coalitions therein, with at least one (1) Member representing the Minority.

The Committee shall be headed by the respective chairpersons of the Senate Committee on Justice and Human Rights and the House of Representatives' Committee on Justice. The Secretariat of the Congressional Oversight Committee shall come from the existing Secretariat personnel of the Committees of the Senate and the House of Representatives concerned.

The Committee shall monitor and ensure the effective implementation of this Act, determine inherent weakness and loopholes in the law and recommend the necessary remedial legislation or administrative measures, and perform such other duties and functions as may be necessary to attain the objectives of this Act.

Section 25. Appropriations. - The amount necessary to implement the provisions of the Anti-Child Pornography Act and the operationalization of the Inter-Agency Council Against Child Pornography shall be included in the annual General Appropriations Act.

Section 26. Implementing Rules and Regulations. - The Inter-Agency Council Against Child Pornography shall promulgate the necessary implementing rules and regulations within six (6) months from the effectivity of this Act.

Section 27. Separability Clause. - If any part or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected shall remain valid sections, or provisions shall not be affected.

Section 28. Repealing Clause. - All laws, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

Section 29. Effectivity. - This Act shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

Approved: 17 November 2009

REPUBLIC ACT NO. 9995

AN ACT DEFINING AND PENALIZING THE CRIME OF PHOTO AND VIDEO VOYEURISM, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

Section 1. Short Title. - This Act shall be known as the “Anti-Photo and Video Voyeurism Act of 2009”.

Section 2. Declaration of Policy. - The State values the dignity and privacy of every human person and guarantees full respect for human rights. Toward this end, the State shall penalize acts that would destroy the honor, dignity and integrity of a person.

Section 3. Definition of Terms. - For purposes of this Act, the term:

(a) “Broadcast” means to make public, by any means, a visual image with the intent that it be viewed by a person or persons.

(b) “Capture” with respect to an image, means to videotape, photograph, film, record by any means, or broadcast.

(c) “Female breast” means any portion of the female breast.

(d) “Photo or video voyeurism” means the act of taking photo or video coverage of a person or group of persons performing sexual act or any similar activity or of capturing an image of the private area of a person or persons without the latter’s consent, under circumstances in which such person/s has/have a reasonable expectation of privacy, or the act of selling, copying, reproducing, broadcasting, sharing, showing or exhibiting the photo or video coverage or recordings of such sexual act or similar activity through VCD/DVD, internet, cellular phones and similar means or device without the written consent of the person/s involved, notwithstanding that consent to record or take photo or video coverage of same was given by such person’s.

(e) “Private area of a person” means the naked or undergarment clad genitals, public area, buttocks or female breast of an individual.

(f) “Under circumstances in which a person has a reasonable expectation of privacy” means believe that he/she could disrobe in privacy, without being concerned that an image or a private area of the person was being captured; or circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public, regardless of whether that person is in a public or private place.

Section 4. Prohibited Acts. - It is hereby prohibited and declared unlawful for any person:

- (a) To take photo or video coverage of a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment clad genitals, public area, buttocks or female breast without the consent of the person/s involved and under circumstances in which the person/s has/have a reasonable expectation of privacy;
- (b) To copy or reproduce, or to cause to be copied or reproduced, such photo or video or recording of sexual act or any similar activity with or without consideration;
- (c) To sell or distribute, or cause to be sold or distributed, such photo or video or recording of sexual act, whether it be the original copy or reproduction thereof; or
- (d) To publish or broadcast, or cause to be published or broadcast, whether in print or broadcast media, or show or exhibit the photo or video coverage or recordings of such sexual act or any similar activity through VCD/DVD, internet, cellular phones and other similar means or device.

The prohibition under paragraphs (b), (c) and (d) shall apply notwithstanding that consent to record or take photo or video coverage of the same was given by such person/s. Any person who violates this provision shall be liable for photo or video voyeurism as defined herein.

Section 5. Penalties. - The penalty of imprisonment of not less than three (3) years but not more than seven (7) years and a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00), or both, at the discretion of the court shall be imposed upon any person found guilty of violating Section 4 of this Act.

If the violator is a juridical person, its license or franchise shall be automatically be deemed revoked and the persons liable shall be the officers thereof including the editor and reporter in the case of print media, and the station manager, editor and broadcaster in the case of a broadcast media.

If the offender is a public officer or employee, or a professional, he/she shall be administratively liable. If the offender is an alien, he/she shall be subject to deportation proceedings after serving his/her sentence and payment of fines.

Section 6. Exemption. - Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the court, to use the record or any copy thereof as evidence in any civil, criminal investigation or trial of the crime of photo or video voyeurism: Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he/she may produce, and upon showing that there are reasonable grounds to believe that photo or video voyeurism has been committed or is about to be committed, and that the evidence to be obtained is essential to the conviction of any person for, or to the solution or prevention of such, crime.

Section 7. Inadmissibility of Evidence. - Any record, photo or video, or copy thereof, obtained or secured by any person in violation of the preceding sections shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

Section 8. Separability Clause. - If any provision or part hereof is held invalid or unconstitutional, the remaining provisions not affected thereby shall remain valid and subsisting.

Section 9. Repealing Clause. - Any law, presidential decree or issuance, executive order, letter of instruction , administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Section 10. Effectivity Clause. - This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in two(2) newspapers of general circulation.

Approved: FEBRUARY 15, 2010

REPUBLIC NO. 10175

AN ACT DEFINING CYBERCRIME, PROVIDING FOR THE PREVENTION, INVESTIGATION, SUPPRESSION AND THE IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES

CHAPTER I PRELIMINARY PROVISIONS

Section 1. Title. — This Act shall be known as the “Cybercrime Prevention Act of 2012”.

Section 2. Declaration of Policy. — The State recognizes the vital role of information and communications industries such as content production, telecommunications, broadcasting electronic commerce, and data processing, in the nation’s overall social and economic development. The State also recognizes the importance of providing an environment conducive to the development, acceleration, and rational application and exploitation of information and communications technology (ICT) to attain free, easy, and intelligible access to exchange and/or delivery of information; and the need to protect and safeguard the integrity of computer, computer and communications systems, networks, and databases, and the confidentiality, integrity, and availability of information and data stored therein, from all forms of misuse, abuse, and illegal access by making punishable under the law such conduct or conducts. In this light, the State shall adopt sufficient powers to effectively prevent and combat such offenses by facilitating their detection, investigation, and prosecution at both the domestic and international levels, and by providing arrangements for fast and reliable international cooperation.

Section 3. Definition of Terms. — For purposes of this Act, the following terms are hereby defined as follows:

- (a) Access refers to the instruction, communication with, storing data in, retrieving data from, or otherwise making use of any resources of a computer system or communication network.
- (b) Alteration refers to the modification or change, in form or substance, of an existing computer data or program.
- (c) Communication refers to the transmission of information through ICT media, including voice, video and other forms of data.
- (d) Computer refers to an electronic, magnetic, optical, electrochemical, or other data processing or communications device, or grouping of such devices, capable of performing logical, arithmetic, routing, or storage functions and which includes any storage facility or equipment or communications facility or equipment directly related to or operating in conjunction with such device. It covers any type of computer device including devices with data processing capabilities like mobile phones, smart phones, computer networks and other devices connected to the internet.

(e) Computer data refers to any representation of facts, information, or concepts in a form suitable for processing in a computer system including a program suitable to cause a computer system to perform a function and includes electronic documents and/or electronic data messages whether stored in local computer systems or online.

(f) Computer program refers to a set of instructions executed by the computer to achieve intended results.

(g) Computer system refers to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and software may include input, output and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media.

(h) Without right refers to either: (i) conduct undertaken without or in excess of authority; or (ii) conduct not covered by established legal defenses, excuses, court orders, justifications, or relevant principles under the law.

(i) Cyber refers to a computer or a computer network, the electronic medium in which online communication takes place.

(j) Critical infrastructure refers to the computer systems, and/or networks, whether physical or virtual, and/or the computer programs, computer data and/or traffic data so vital to this country that the incapacity or destruction of or interference with such system and assets would have a debilitating impact on security, national or economic security, national public health and safety, or any combination of those matters.

(k) Cybersecurity refers to the collection of tools, policies, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment and organization and user's assets.

(l) Database refers to a representation of information, knowledge, facts, concepts, or instructions which are being prepared, processed or stored or have been prepared, processed or stored in a formalized manner and which are intended for use in a computer system.

(m) Interception refers to listening to, recording, monitoring or surveillance of the content of communications, including procuring of the content of data, either directly, through access and use of a computer system or indirectly, through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring.

(n) Service provider refers to:

1. Any public or private entity that provides to users of its service the ability to communicate by means of a computer system; and
2. Any other entity that processes or stores computer data on behalf of such communication service or users of such service.

(o) Subscriber's information refers to any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which identity can be established:

1. The type of communication service used, the technical provisions taken thereto and the period of service;
2. The subscriber's identity, postal or geographic address, telephone and other access numbers, any assigned network address, billing and payment information, available on the basis of the service agreement or arrangement; and
3. Any other available information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.

(p) Traffic data or non-content data refers to any computer data other than the content of the communication including, but not limited to, the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

CHAPTER II

PUNISHABLE ACTS

Section 4. Cybercrime Offenses. — The following acts constitute the offense of cybercrime punishable under this Act:

(a) Offenses against the confidentiality, integrity and availability of computer data and systems:

1. **Illegal Access.** — The access to the whole or any part of a computer system without right.
2. **Illegal Interception.** — The interception made by technical means without right of any non-public transmission of computer data to, from, or within a computer system including electromagnetic emissions from a computer system carrying such computer data.
3. **Data Interference.** — The intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses.

4. System Interference. — The intentional alteration or reckless hindering or interference with the functioning of a computer or computer network by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or program, electronic document, or electronic data message, without right or authority, including the introduction or transmission of viruses.

5. Misuse of Devices.

(i) The use, production, sale, procurement, importation, distribution, or otherwise making available, without right, of:

(aa) A device, including a computer program, designed or adapted primarily for the purpose of committing any of the offenses under this Act; or

(bb) A computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed with intent that it be used for the purpose of committing any of the offenses under this Act.

(ii) The possession of an item referred to in paragraphs 5(i)(aa) or (bb) above with intent to use said devices for the purpose of committing any of the offenses under this section.

6. Cyber-squatting. — The acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, and deprive others from registering the same, if such a domain name is:

(i) Similar, identical, or confusingly similar to an existing trademark registered with the appropriate government agency at the time of the domain name registration:

(ii) Identical or in any way similar with the name of a person other than the registrant, in case of a personal name; and

(iii) Acquired without right or with intellectual property interests in it.

(b) Computer-related Offenses:

1. Computer-related Forgery. —

(i) The input, alteration, or deletion of any computer data without right resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible; or

(ii) The act of knowingly using computer data which is the product of computer-related forgery as defined herein, for the purpose of perpetuating a fraudulent or dishonest design.

2. Computer-related Fraud. — The unauthorized input, alteration, or deletion of computer data or program or interference in the functioning of a computer system, causing damage thereby with fraudulent intent: Provided, That if no damage has yet been caused, the penalty imposable shall be one (1) degree lower.
3. Computer-related Identity Theft. — The intentional acquisition, use, misuse, transfer, possession, alteration or deletion of identifying information belonging to another, whether natural or juridical, without right: Provided, That if no damage has yet been caused, the penalty imposable shall be one (1) degree lower.

(c) Content-related Offenses:

1. Cybersex. — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.
2. Child Pornography. — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.
3. Unsolicited Commercial Communications. — The transmission of commercial electronic communication with the use of computer system which seek to advertise, sell, or offer for sale products and services are prohibited unless:
 - (i) There is prior affirmative consent from the recipient; or
 - (ii) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or
 - (iii) The following conditions are present:
 - (aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject. receipt of further commercial electronic messages (opt-out) from the same source;
 - (bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and

(cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.

4. Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

Section 5. Other Offenses. — The following acts shall also constitute an offense:

(a) Aiding or Abetting in the Commission of Cybercrime. — Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.

(b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

Section 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: Provided, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

Section 7. Liability under Other Laws. — A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.

CHAPTER III PENALTIES

Section 8. Penalties. — Any person found guilty of any of the punishable acts enumerated in Sections 4(a) and 4(b) of this Act shall be punished with imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (PhP200,000.00) up to a maximum amount commensurate to the damage incurred or both.

Any person found guilty of the punishable act under Section 4(a)(5) shall be punished with imprisonment of prision mayor or a fine of not more than Five hundred thousand pesos (PhP500,000.00) or both.

If punishable acts in Section 4(a) are committed against critical infrastructure, the penalty of reclusion temporal or a fine of at least Five hundred thousand pesos (PhP500,000.00) up to maximum amount commensurate to the damage incurred or both, shall be imposed.

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(1) of this Act shall be punished with imprisonment of prision mayor or a fine of at least Two hundred thousand pesos (PhP200,000.00) but not exceeding One million pesos (PhP1,000,000.00) or both.

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(2) of this Act shall be punished with the penalties as enumerated in Republic Act No. 9775 or the “Anti-Child Pornography Act of 2009”: Provided, That the penalty to be imposed shall be one (1) degree higher than that provided for in Republic Act No. 9775, if committed through a computer system.

Any person found guilty of any of the punishable acts enumerated in Section 4(c)(3) shall be punished with imprisonment of arresto mayor or a fine of at least Fifty thousand pesos (PhP50,000.00) but not exceeding Two hundred fifty thousand pesos (PhP250,000.00) or both.

Any person found guilty of any of the punishable acts enumerated in Section 5 shall be punished with imprisonment one (1) degree lower than that of the prescribed penalty for the offense or a fine of at least One hundred thousand pesos (PhP100,000.00) but not exceeding Five hundred thousand pesos (PhP500,000.00) or both.

Section 9. Corporate Liability. — When any of the punishable acts herein defined are knowingly committed on behalf of or for the benefit of a juridical person, by a natural person acting either individually or as part of an organ of the juridical person, who has a leading position within, based on: (a) a power of representation of the juridical person provided the act committed falls within the scope of such authority; (b) an authority to take decisions on behalf of the juridical person: Provided, That the act committed falls within the scope of such authority; or (c) an authority to exercise control within the juridical person, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Ten million pesos (PhP10,000,000.00).

If the commission of any of the punishable acts herein defined was made possible due to the lack of supervision or control by a natural person referred to and described in the preceding paragraph, for the benefit of that juridical person by a natural person acting under its authority, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Five million pesos (PhP5,000,000.00).

The liability imposed on the juridical person shall be without prejudice to the criminal liability of the natural person who has committed the offense.

CHAPTER IV

ENFORCEMENT AND IMPLEMENTATION

Section 10. Law Enforcement Authorities. — The National Bureau of Investigation (NBI) and the Philippine National Police (PNP) shall be responsible for the efficient and effective law enforcement of the provisions of this Act. The NBI and the PNP shall organize a cybercrime unit or center manned by special investigators to exclusively handle cases involving violations of this Act.

Section 11. Duties of Law Enforcement Authorities. — To ensure that the technical nature of cybercrime and its prevention is given focus and considering the procedures involved for international cooperation, law enforcement authorities specifically the computer or technology crime divisions or units responsible for the investigation of cybercrimes are required to submit timely and regular reports including pre-operation, post-operation and investigation results and such other documents as may be required to the Department of Justice (DOJ) for review and monitoring.

Section 12. Real-Time Collection of Traffic Data. — Law enforcement authorities, with due cause, shall be authorized to collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system.

Traffic data refer only to the communication's origin, destination, route, time, date, size, duration, or type of underlying service, but not content, nor identities.

All other data to be collected or seized or disclosed will require a court warrant.

Service providers are required to cooperate and assist law enforcement authorities in the collection or recording of the above-stated information.

The court warrant required under this section shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and the showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed, or is being committed, or is about to be committed: (2) that there are reasonable grounds to believe that evidence that will be obtained is essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes; and (3) that there are no other means readily available for obtaining such evidence.

Section 13. Preservation of Computer Data. — The integrity of traffic data and subscriber information relating to communication services provided by a service provider shall be preserved for a minimum period of six (6) months from the date of the transaction. Content data shall be similarly preserved for six (6) months from the date of receipt of the order from law enforcement authorities requiring its preservation.

Law enforcement authorities may order a one-time extension for another six (6) months: Provided, That once computer data preserved, transmitted or stored by a service provider is used as evidence in a case, the mere furnishing to such service provider of the transmittal document to the Office of the Prosecutor shall be deemed a notification to preserve the computer data until the termination of the case.

The service provider ordered to preserve computer data shall keep confidential the order and its compliance.

Section 14. Disclosure of Computer Data. — Law enforcement authorities, upon securing a court warrant, shall issue an order requiring any person or service provider to disclose or submit subscriber's information, traffic data or relevant data in his/its possession or control within seventy-two (72) hours from receipt of the order in relation to a valid complaint officially docketed and assigned for investigation and the disclosure is necessary and relevant for the purpose of investigation.

Section 15. Search, Seizure and Examination of Computer Data. — Where a search and seizure warrant is properly issued, the law enforcement authorities shall likewise have the following powers and duties.

Within the time period specified in the warrant, to conduct interception, as defined in this Act, and:

- (a) To secure a computer system or a computer data storage medium;
- (b) To make and retain a copy of those computer data secured;
- (c) To maintain the integrity of the relevant stored computer data;
- (d) To conduct forensic analysis or examination of the computer data storage medium; and
- (e) To render inaccessible or remove those computer data in the accessed computer or computer and communications network.

Pursuant thereof, the law enforcement authorities may order any person who has knowledge about the functioning of the computer system and the measures to protect and preserve the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the search, seizure and examination.

Law enforcement authorities may request for an extension of time to complete the examination of the computer data storage medium and to make a return thereon but in no case for a period longer than thirty (30) days from date of approval by the court.

Section 16. Custody of Computer Data. — All computer data, including content and traffic data, examined under a proper warrant shall, within forty-eight (48) hours after the expiration of the period fixed therein, be deposited with the court in a sealed package, and shall be accompanied by an affidavit of the law enforcement authority executing it stating the dates and times covered by the examination, and the law enforcement authority who may access the deposit, among other relevant data. The law enforcement authority shall also certify that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the package deposited with the court. The package so deposited shall not be opened, or the recordings replayed, or used in evidence, or then contents revealed, except upon order of the court, which shall not be granted except

upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

Section 17. Destruction of Computer Data. — Upon expiration of the periods as provided in Sections 13 and 15, service providers and law enforcement authorities, as the case may be, shall immediately and completely destroy the computer data subject of a preservation and examination.

Section 18. Exclusionary Rule. — Any evidence procured without a valid warrant or beyond the authority of the same shall be inadmissible for any proceeding before any court or tribunal.

Section 19. Restricting or Blocking Access to Computer Data. — When a computer data is prima facie found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

Section 20. Noncompliance. — Failure to comply with the provisions of Chapter IV hereof specifically the orders from law enforcement authorities shall be punished as a violation of Presidential Decree No. 1829 with imprisonment or prison correctional in its maximum period or a fine of One hundred thousand pesos (Php100,000.00) or both, for each and every noncompliance with an order issued by law enforcement authorities.

CHAPTER V JURISDICTION

Section 21. Jurisdiction. — The Regional Trial Court shall have jurisdiction over any violation of the provisions of this Act, including any violation committed by a Filipino national regardless of the place of commission. Jurisdiction shall lie if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines.

There shall be designated special cybercrime courts manned by specially trained judges to handle cybercrime cases.

CHAPTER VI INTERNATIONAL COOPERATION

Section 22. General Principles Relating to International Cooperation. — All relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offenses related to computer systems and data, or for the collection of evidence in electronic form of a criminal, offense shall be given full force and effect.

CHAPTER VII

COMPETENT AUTHORITIES

Section 23. Department of Justice (DOJ). — There is hereby created an Office of Cybercrime within the DOJ designated as the central authority in all matters related to international mutual assistance and extradition.

Section 24. Cybercrime Investigation and Coordinating Center. — There is hereby created, within thirty (30) days from the effectivity of this Act, an inter-agency body to be known as the Cybercrime Investigation and Coordinating Center (CICC), under the administrative supervision of the Office of the President, for policy coordination among concerned agencies and for the formulation and enforcement of the national cybersecurity plan.

Section 25. Composition. — The CICC shall be headed by the Executive Director of the Information and Communications Technology Office under the Department of Science and Technology (ICTO-DOST) as Chairperson with the Director of the NBI as Vice Chairperson; the Chief of the PNP; Head of the DOJ Office of Cybercrime; and one (1) representative from the private sector and academe, as members. The CICC shall be manned by a secretariat of selected existing personnel and representatives from the different participating agencies.

Section 26. Powers and Functions. — The CICC shall have the following powers and functions:

- (a) To formulate a national cybersecurity plan and extend immediate assistance for the suppression of real-time commission of cybercrime offenses through a computer emergency response team (CERT);
- (b) To coordinate the preparation of appropriate and effective measures to prevent and suppress cybercrime activities as provided for in this Act;
- (c) To monitor cybercrime cases being bandied by participating law enforcement and prosecution agencies;
- (d) To facilitate international cooperation on intelligence, investigations, training and capacity building related to cybercrime prevention, suppression and prosecution;
- (e) To coordinate the support and participation of the business sector, local government units and nongovernment organizations in cybercrime prevention programs and other related projects;
- (f) To recommend the enactment of appropriate laws, issuances, measures and policies;
- (g) To call upon any government agency to render assistance in the accomplishment of the CICC's mandated tasks and functions; and

(h) To perform all other matters related to cybercrime prevention and suppression, including capacity building and such other functions and duties as may be necessary for the proper implementation of this Act.

CHAPTER VIII FINAL PROVISIONS

Section 27. Appropriations. — The amount of Fifty million pesos (PhP50,000,000_00) shall be appropriated annually for the implementation of this Act.

Section 28. Implementing Rules and Regulations. — The ICTO-DOST, the DOJ and the Department of the Interior and Local Government (DILG) shall jointly formulate the necessary rules and regulations within ninety (90) days from approval of this Act, for its effective implementation.

Section 29. Separability Clause — If any provision of this Act is held invalid, the other provisions not affected shall remain in full force and effect.

Section 30. Repealing Clause. — All laws, decrees or rules inconsistent with this Act are hereby repealed or modified accordingly. Section 33(a) of Republic Act No. 8792 or the “Electronic Commerce Act” is hereby modified accordingly.

Section 31. Effectivity. — This Act shall take effect fifteen (15) days after the completion of its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved: SEPTEMBER 12 2012

REPUBLIC ACT NO. 10361

AN ACT INSTITUTING POLICIES FOR THE PROTECTION AND WELFARE OF DOMESTIC WORKERS:

ARTICLE I GENERAL PROVISIONS

Section 1. Short Title. – This Act shall be known as the “Domestic Workers Act” or “Batas Kasambahay”.

Section 2. Declaration of Policies. – It is hereby declared that:

(a) The State strongly affirms labor as a primary social force and is committed to respect, promote, protect and realize the fundamental principles and rights at work including, but not limited to, abolition of child labor, elimination of all forms of forced labor, discrimination in employment and occupation, and trafficking in persons, especially women and children;

(b) The State adheres to internationally accepted working conditions for workers in general, and establishes labor standards for domestic workers in particular, towards decent employment and income, enhanced coverage of social protection, respect for human rights and strengthened social dialogue;

(c) The State recognizes the need to protect the rights of domestic workers against abuse, harassment, violence, economic exploitation and performance of work that is hazardous to their physical and mental health; and

(d) The State, in protecting domestic workers and recognizing their special needs to ensure safe and healthful working conditions, promotes gender-sensitive measures in the formulation and implementation of policies and programs affecting the local domestic work.

Section 3. Coverage. – This Act applies to all domestic workers employed and working within the country.

Section 4. Definition of Terms. – As used in this Act, the term:

(a) Debt bondage refers to the rendering of service by the domestic worker as security or payment for a debt where the length and nature of service is not clearly defined or when the value of the service is not reasonably applied in the payment of the debt.

(b) Deployment expenses refers to expenses that are directly used for the transfer of the domestic worker from place of origin to the place of work covering the cost of transportation. Advances or loans by the domestic worker are not included in the definition of deployment expenses.

(c) Domestic work refers to work performed in or for a household or households.

(d) Domestic worker or “Kasambahay” refers to any person engaged in domestic work within an employment relationship such as, but not limited to, the following: general househelp, nursemaid or “yaya”, cook, gardener, or laundry person, but shall exclude any person who performs domestic work only occasionally or sporadically and not on an occupational basis.

The term shall not include children who are under foster family arrangement, and are provided access to education and given an allowance incidental to education, i.e. “baon”, transportation, school projects and school activities.

(e) Employer refers to any person who engages and controls the services of a domestic worker and is party to the employment contract.

(f) Household refers to the immediate members of the family or the occupants of the house that are directly provided services by the domestic worker.

(g) Private Employment Agency (PEA) refers to any individual, legitimate partnership, corporation or entity licensed to engage in the recruitment and placement of domestic workers for local employment.

(h) Working children, as used under this Act, refers to domestic workers who are fifteen (15) years old and above but below eighteen (18) years old.

ARTICLE II RIGHTS AND PRIVILEGES

Section 5. Standard of Treatment. – The employer or any member of the household shall not subject a domestic worker or “kasambahay” to any kind of abuse nor inflict any form of physical violence or harassment or any act tending to degrade the dignity of a domestic worker.

Section 6. Board, Lodging and Medical Attendance. – The employer shall provide for the basic necessities of the domestic worker to include at least three (3) adequate meals a day and humane sleeping arrangements that ensure safety.

The employer shall provide appropriate rest and assistance to the domestic worker in case of illnesses and injuries sustained during service without loss of benefits.

At no instance shall the employer withdraw or hold in abeyance the provision of these basic necessities as punishment or disciplinary action to the domestic worker.

Section 7. Guarantee of Privacy. – Respect for the privacy of the domestic worker shall be guaranteed at all times and shall extend to all forms of communication and personal effects. This guarantee equally recognizes that the domestic worker is obliged to render satisfactory service at all times.

Section 8. Access to Outside Communication. – The employer shall grant the domestic worker access to outside communication during free time: Provided, That in case of emergency, access to communication shall be granted even during work time. Should the domestic worker make use of the employer's telephone or other communication facilities, the costs shall be borne by the domestic worker, unless such charges are waived by the employer.

Section 9. Right to Education and Training. – The employer shall afford the domestic worker the opportunity to finish basic education and may allow access to alternative learning systems and, as far as practicable, higher education or technical and vocational training. The employer shall adjust the work schedule of the domestic worker to allow such access to education or training without hampering the services required by the employer.

Section 10. Prohibition Against Privileged Information. – All communication and information pertaining to the employer or members of the household shall be treated as privileged and confidential, and shall not be publicly disclosed by the domestic worker during and after employment. Such privileged information shall be inadmissible in evidence except when the suit involves the employer or any member of the household in a crime against persons, property, personal liberty and security, and chastity.

ARTICLE III PRE-EMPLOYMENT

Section 11. Employment Contract. – An employment contract shall be executed by and between the domestic worker and the employer before the commencement of the service in a language or dialect understood by both the domestic worker and the employer. The domestic worker shall be provided a copy of the duly signed employment contract which must include the following:

- (a) Duties and responsibilities of the domestic worker;
- (b) Period of employment;
- (c) Compensation;
- (d) Authorized deductions;
- (e) Hours of work and proportionate additional payment;

- (f) Rest days and allowable leaves;
- (g) Board, lodging and medical attention;
- (h) Agreements on deployment expenses, if any;
- (i) Loan agreement;
- (j) Termination of employment; and
- (k) Any other lawful condition agreed upon by both parties.

The Department of Labor and Employment (DOLE) shall develop a model employment contract for domestic workers which shall, at all times, be made available free of charge to domestic workers, employers, representative organizations and the general public. The DOLE shall widely disseminate information to domestic workers and employers on the use of such model employment contract.

In cases where the employment of the domestic worker is facilitated through a private employment agency, the PEA shall keep a copy of all employment contracts of domestic workers and shall be made available for verification and inspection by the DOLE.

Section 12. Pre-Employment Requirement. – Prior to the execution of the employment contract, the employer may require the following from the domestic worker:

- (a) Medical certificate or a health certificate issued by a local government health officer;
- (b) Barangay and police clearance;
- (c) National Bureau of Investigation (NBI) clearance; and
- (d) Duly authenticated birth certificate or if not available, any other document showing the age of the domestic worker such as voter's identification card, baptismal record or passport.

However, Section 12(a), (b), (c) and (d) shall be standard requirements when the employment of the domestic worker is facilitated through the PEA.

The cost of the foregoing shall be borne by the prospective employer or agency, as the case may be.

Section 13. Recruitment and Finder's Fees. – Regardless of whether the domestic worker was hired through a private employment agency or a third party, no share in the recruitment or finder's fees shall be charged against the domestic worker by the said private employment agency or third party.

Section 14. Deposits for Loss or Damage. – It shall be unlawful for the employer or any other person to require a domestic worker to make deposits from which deductions shall be made for the reimbursement of loss or damage to tools, materials, furniture and equipment in the household.

Section 15. Prohibition on Debt Bondage. – It shall be unlawful for the employer or any person acting on behalf of the employer to place the domestic worker under debt bondage.

Section 16. Employment Age of Domestic Workers. – It shall be unlawful to employ any person below fifteen (15) years of age as a domestic worker. Employment of working children, as defined under this Act, shall be subject to the provisions of Section 10(A), paragraph 2 of Section 12-A, paragraph 4 of Section 12-D, and Section 13 of Republic Act No. 7610, as amended, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”.

Working children shall be entitled to minimum wage, and all benefits provided under this Act.

Any employer who has been sentenced by a court of law of any offense against a working child under this Act shall be meted out with a penalty one degree higher and shall be prohibited from hiring a working child.

Section 17. Employer’s Reportorial Duties. – The employers shall register all domestic workers under their employment in the Registry of Domestic Workers in the barangay where the employer’s residence is located. The Department of the Interior and Local Government (DILG) shall, in coordination with the DOLE, formulate a registration system for this purpose.

Section 18. Skills Training, Assessment and Certification. – To ensure productivity and assure quality services, the DOLE, through the Technical Education and Skills Development Authority (TESDA), shall facilitate access of domestic workers to efficient training, assessment and certification based on a duly promulgated training regulation.

ARTICLE IV

EMPLOYMENT – TERMS AND CONDITIONS

Section 19. Health and Safety. – The employer shall safeguard the health and safety of the domestic worker in accordance with laws, rules and regulations, with due consideration of the peculiar nature of domestic work.

Section 20. Daily Rest Period. – The domestic worker shall be entitled to an aggregate daily rest period of eight (8) hours per day.

Section 21. Weekly Rest Period. – The domestic worker shall be entitled to at least twenty-four (24) consecutive hours of rest in a week. The employer and the domestic worker shall agree in writing on

the schedule of the weekly rest day of the domestic worker: Provided, That the employer shall respect the preference of the domestic worker as to the weekly rest day when such preference is based on religious grounds. Nothing in this provision shall deprive the domestic worker and the employer from agreeing to the following:

- (a) Offsetting a day of absence with a particular rest day;
- (b) Waiving a particular rest day in return for an equivalent daily rate of pay;
- (c) Accumulating rest days not exceeding five (5) days; or
- (d) Other similar arrangements.

Section 22. Assignment to Non-household Work. – No domestic worker shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage rate lower than that provided for agricultural or nonagricultural workers. In such cases, the domestic worker shall be paid the applicable minimum wage.

Section 23. Extent of Duty. – The domestic worker and the employer may mutually agree for the former to temporarily perform a task that is outside the latter's household for the benefit of another household. However, any liability that will be incurred by the domestic worker on account of such arrangement shall be borne by the original employer. In addition, such work performed outside the household shall entitle the domestic worker to an additional payment of not less than the existing minimum wage rate of a domestic worker. It shall be unlawful for the original employer to charge any amount from the said household where the service of the domestic worker was temporarily performed.

Section 24. Minimum Wage. – The minimum wage of domestic workers shall not be less than the following:

- (a) Two thousand five hundred pesos (P2,500.00) a month for those employed in the National Capital Region (NCR);
- (b) Two thousand pesos (P2,000.00) a month for those employed in chartered cities and first class municipalities; and
- (c) One thousand five hundred pesos (P1,500.00) a month for those employed in second class municipalities. After one (1) year from the effectivity of this Act, and periodically thereafter, the Regional Tripartite and Productivity Wage Boards (RTPWBs) shall review, and if proper, determine and adjust the minimum wage rates of domestic workers.

Section 25. Payment of Wages. – Payment of wages shall be made on time directly to the domestic worker to whom they are due in cash at least once a month. The employer, unless allowed by the domestic worker through a written consent, shall make no deductions from the wages other than that which is mandated by law. No employer shall pay the wages of a domestic worker by means of promissory notes, vouchers, coupons, tokens, tickets, chits, or any object other than the cash wage as provided for under this Act.

The domestic worker is entitled to a thirteenth month pay as provided for by law.

Section 26. Pay Slip. – The employer shall at all times provide the domestic worker with a copy of the pay slip containing the amount paid in cash every pay day, and indicating all deductions made, if any. The copies of the pay slip shall be kept by the employer for a period of three (3) years.

Section 27. Prohibition on Interference in the Disposal of Wages. – It shall be unlawful for the employer to interfere with the freedom of any domestic worker to dispose of the latter's wages. The employer shall not force, compel or oblige the domestic worker to purchase merchandise, commodities or other properties from the employer or from any other person, or otherwise make use of any store or services of such employer or any other person.

Section 28. Prohibition Against Withholding of Wages. – It shall be unlawful for an employer, directly or indirectly, to withhold the wages of the domestic worker. If the domestic worker leaves without any justifiable reason, any unpaid salary for a period not exceeding fifteen (15) days shall be forfeited. Likewise, the employer shall not induce the domestic worker to give up any part of the wages by force, stealth, intimidation, threat or by any other means whatsoever.

Section 29. Leave Benefits. – A domestic worker who has rendered at least one (1) year of service shall be entitled to an annual service incentive leave of five (5) days with pay: Provided, That any unused portion of said annual leave shall not be cumulative or carried over to the succeeding years. Unused leaves shall not be convertible to cash.

Section 30. Social and Other Benefits. – A domestic worker who has rendered at least one (1) month of service shall be covered by the Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund or Pag-IBIG, and shall be entitled to all the benefits in accordance with the pertinent provisions provided by law.

Premium payments or contributions shall be shouldered by the employer. However, if the domestic worker is receiving a wage of Five thousand pesos (P5,000.00) and above per month, the domestic worker shall pay the proportionate share in the premium payments or contributions, as provided by law.

The domestic worker shall be entitled to all other benefits under existing laws.

Section 31. Rescue and Rehabilitation of Abused Domestic Workers. – Any abused or exploited domestic worker shall be immediately rescued by a municipal or city social welfare officer or a social welfare officer from the Department of Social Welfare and Development (DSWD) in coordination with the concerned barangay officials. The DSWD and the DILG shall develop a standard operating procedure for the rescue and rehabilitation of abused domestic workers, and in coordination with the DOLE, for possible subsequent job placement.

ARTICLE V POST EMPLOYMENT

Section 32. Termination of Service. – Neither the domestic worker nor the employer may terminate the contract before the expiration of the term except for grounds provided for in Sections 33 and 34 of this Act. If the domestic worker is unjustly dismissed, the domestic worker shall be paid the compensation already earned plus the equivalent of fifteen (15) days work by way of indemnity. If the domestic worker leaves without justifiable reason, any unpaid salary due not exceeding the equivalent fifteen (15) days work shall be forfeited. In addition, the employer may recover from the domestic worker costs incurred related to the deployment expenses, if any: Provided, That the service has been terminated within six (6) months from the domestic worker's employment.

If the duration of the domestic service is not determined either in stipulation or by the nature of the service, the employer or the domestic worker may give notice to end the working relationship five (5) days before the intended termination of the service.

The domestic worker and the employer may mutually agree upon written notice to pre-terminate the contract of employment to end the employment relationship.

Section 33. Termination Initiated by the Domestic Worker. – The domestic worker may terminate the employment relationship at any time before the expiration of the contract for any of the following causes:

- (a) Verbal or emotional abuse of the domestic worker by the employer or any member of the household;
- (b) Inhuman treatment including physical abuse of the domestic worker by the employer or any member of the household;
- (c) Commission of a crime or offense against the domestic worker by the employer or any member of the household;
- (d) Violation by the employer of the terms and conditions of the employment contract and other standards set forth under this law;

(e) Any disease prejudicial to the health of the domestic worker, the employer, or member/s of the household; and

(f) Other causes analogous to the foregoing.

Section 34. Termination Initiated by the Employer. – An employer may terminate the services of the domestic worker at any time before the expiration of the contract, for any of the following causes:

(a) Misconduct or willful disobedience by the domestic worker of the lawful order of the employer in connection with the former's work;

(b) Gross or habitual neglect or inefficiency by the domestic worker in the performance of duties;

(c) Fraud or willful breach of the trust reposed by the employer on the domestic worker;

(d) Commission of a crime or offense by the domestic worker against the person of the employer or any immediate member of the employer's family;

(e) Violation by the domestic worker of the terms and conditions of the employment contract and other standards set forth under this law;

(f) Any disease prejudicial to the health of the domestic worker, the employer, or member/s of the household; and

(g) Other causes analogous to the foregoing.

Section 35. Employment Certification. – Upon the severance of the employment relationship, the employer shall issue the domestic worker within five (5) days from request a certificate of employment indicating the nature, duration of the service and work performance.

ARTICLE VI PRIVATE EMPLOYMENT AGENCIES

Section 36. Regulation of Private Employment Agencies (PEAs). – The DOLE shall, through a system of licensing and regulation, ensure the protection of domestic workers hired through the PEAs.

The PEA shall be jointly and severally liable with the employer for all the wages, wage-related benefits, and other benefits due a domestic worker.

The provision of Presidential Decree No. 442, as amended, otherwise known as the "Labor Code of the Philippines", on qualifications of the PEAs with regard to nationality, net worth, owners and

officers, office space and other requirements, as well as non transferability of license and commission of prohibited practices, shall apply.

In addition, PEAs shall have the following responsibilities:

- (a) Ensure that domestic workers are not charged or levied any recruitment or placement fees;
- (b) Ensure that the employment agreement between the domestic worker and the employer stipulates the terms and conditions of employment and all the benefits prescribed by this Act;
- (c) Provide a pre-employment orientation briefing to the domestic worker and the employer about their rights and responsibilities in accordance with this Act;
- (d) Keep copies of employment contracts and agreements pertaining to recruited domestic workers which shall be made available during inspections or whenever required by the DOLE or local government officials;
- (e) Assist domestic workers with respect to complaints or grievances against their employers; and
- (f) Cooperate with government agencies in rescue operations involving abused or exploited domestic workers.

ARTICLE VII SETTLEMENT OF DISPUTES

Section 37. Mechanism for Settlement of Disputes. – All labor-related disputes shall be elevated to the DOLE Regional Office having jurisdiction over the workplace without prejudice to the filing of a civil or criminal action in appropriate cases. The DOLE Regional Office shall exhaust all conciliation and mediation efforts before a decision shall be rendered.

Ordinary crimes or offenses committed under the Revised Penal Code and other special penal laws by either party shall be filed with the regular courts.

ARTICLE VIII SPECIAL PROVISIONS

Section 38. Information Program. – The DOLE shall, in coordination with the DILG, the SSS, the PhilHealth and Pag-IBIG develop and implement a continuous information dissemination program on the provisions of this Act, both at the national and local level, immediately after the enactment of this law.

Section 39. “Araw Ng Mga Kasambahay”. – The date upon which the President shall approve this “Domestic Workers Act” shall be designated as the “Araw ng mga Kasambahay”.

ARTICLE IX

PENAL AND MISCELLANEOUS PROVISIONS

Section 40. Penalty. – Any violation of the provisions of this Act declared unlawful shall be punishable with a fine of not less than Ten thousand pesos (P10,000.00) but not more than Forty thousand pesos (P40,000.00) without prejudice to the filing of appropriate civil or criminal action by the aggrieved party.

Section 41. Transitory Provision; Non-Diminution of Benefits. – All existing arrangements between a domestic worker and the employer shall be adjusted to conform to the minimum standards set by this Act within a period of sixty (60) days after the effectivity of this Act: Provided, That adjustments pertaining to wages shall take effect immediately after the determination and issuance of the appropriate wage order by the RTWPBs: Provided, further, That nothing in this Act shall be construed to cause the diminution or substitution of any benefits and privileges currently enjoyed by the domestic worker hired directly or through an agency.

Section 42. Implementing Rules and Regulations. – Within ninety (90) days from the effectivity of this Act, the Secretary of Labor and Employment, the Secretary of Social Welfare and Development, the Secretary of the Interior and Local Government, and the Director General of the Philippine National Police, in coordination with other concerned government agencies and accredited nongovernment organizations (NGOs) assisting domestic workers, shall promulgate the necessary rules and regulations for the effective implementation of this Act.

ARTICLE X

FINAL PROVISIONS

Section 43. Separability Clause. – If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

Section 44. Repealing Clause. – All articles or provisions of Chapter III (Employment of Househelpers) of Presidential Decree No. 442, as amended and renumbered by Republic Act No. 10151 are hereby expressly repealed. All laws, decrees, executive orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 45. Effectivity Clause. – This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved: JANUARY 18 2013

REPUBLIC NO. 10364

AN ACT EXPANDING REPUBLIC ACT NO. 9208, ENTITLED “AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER PURPOSES”

Section 1. Short Title. – This Act shall be known as the “Expanded Anti-Trafficking in Persons Act of 2012”.

Section 2. Section 2 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 2. Declaration of Policy. – It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

“It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.”

Section 3. Section 3 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 3. Definition of Terms. – As used in this Act:

“(a) Trafficking in Persons – refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

“The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.

“(b) Child – refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

“(c) Prostitution – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

“(d) Forced Labor – refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of, force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception including any work or service extracted from any person under the menace of penalty.

“(e) Slavery – refers to the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

“(f) Involuntary Servitude – refers to a condition of enforced and compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including depriving access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.

“(g) Sex Tourism – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.

“(h) Sexual Exploitation – refers to participation by a person in prostitution, pornography or the production of pornography, in exchange for money, profit or any other consideration or where the participation is caused or facilitated by any means of intimidation or threat, use of force, or other forms of coercion, abduction, fraud, deception, debt bondage, abuse of power or of position or of legal process, taking advantage of the vulnerability of the person, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or in sexual intercourse or lascivious conduct caused or facilitated by any means as provided in this Act.

“(i) Debt Bondage – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.

“(j) Pornography – refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.

“(k) Council – shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.”

Section 4. Section 4 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

“(a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;

“(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

“(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

“(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

“(e) To maintain or hire a person to engage in prostitution or pornography;

“(f) To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

“(g) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

“(h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

“(i) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad;

“(j) To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide or receive a person by means defined in Section 3 of this Act for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:

1. To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or
2. To abuse or threaten the use of law or the legal processes; and

“(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of baring and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

1. All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict;
2. The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
3. The use, procuring or offering of a child for the production and trafficking of drugs; and
4. The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; and

“(l) To organize or direct other persons to commit the offenses defined as acts of trafficking under this Act.”

Section 5. A new Section 4-A is hereby inserted in Republic Act No. 9208, to read as follows:

“SEC. 4-A. Attempted Trafficking in Persons. – Where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any of the offenses enumerated in Section 4 of this Act shall constitute attempted trafficking in persons.

“In cases where the victim is a child, any of the following acts shall also be deemed as attempted trafficking in persons:

“(a) Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child’s parent or legal guardian;

“(b) Executing, for a consideration, an affidavit of consent or a written consent for adoption;

“(c) Recruiting a woman to bear a child for the purpose of selling the child;

“(d) Simulating a birth for the purpose of selling the child; and

“(e) Soliciting a child and acquiring the custody thereof through any means from among hospitals, clinics, nurseries, daycare centers, refugee or evacuation centers, and low-income families, for the purpose of selling the child.”

Section 6. A new Section 4-B is hereby inserted in Republic Act No. 9208, to read as follows:

“SEC. 4-B. Accomplice Liability. – Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined in this Act shall be punished in accordance with the provisions of Section 10(c) of this Act.”

Section 7. A new Section 4-C is hereby inserted in Republic Act No. 9208, to read as follows:

“SEC. 4-C. Accessories. – Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:

“(a) By profiting themselves or assisting the offender to profit by the effects of the crime;

“(b) By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;

“(c) By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime.

“Acts defined in this provision shall be punished in accordance with the provision of Section 10(d) as stated thereto.”

Section 8. Section 5 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 5. Acts that Promote Trafficking in Persons. – The following acts which promote or facilitate trafficking in persons, shall be unlawful:

“(a) xxx

“(b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;

“(c) xxx

“(d) xxx

“(e) xxx

“(f) xxx

“(g) xxx

“(h) To tamper with, destroy, or cause the destruction of evidence, or to influence or attempt to influence witnesses, in an investigation or prosecution of a case under this Act;

“(i) To destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel in order to maintain the labor or services of that person; or

“(j) To utilize his or her office to impede the investigation, prosecution or execution of lawful orders in a case under this Act.”

Section 9. Section 6 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 6. Qualified Trafficking in Persons. – Violations of Section 4 of this Act shall be considered as qualified trafficking:

“x x x

“(d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

“x x x

“(f) When the offender is a member of the military or law enforcement agencies;

“(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS);

“(h) When the offender commits one or more violations of Section 4 over a period of sixty (60) or more days, whether those days are continuous or not; and

“(i) When the offender directs or through another manages the trafficking victim in carrying out the exploitative purpose of trafficking.”

Section 10. Section 7 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 7. Confidentiality. – At any stage of the investigation, rescue, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners, as well as parties to the case, shall protect the right to privacy of the trafficked person. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or any other information tending to establish the identity of the trafficked person and his or her family shall not be disclosed to the public. “It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or electronic information technology to cause publicity of the name, personal circumstances, or any information tending to establish the identity of the trafficked person except when the trafficked person in a written statement duly notarized knowingly, voluntarily and willingly waives said confidentiality.

“Law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners shall be trained on the importance of maintaining confidentiality as a means to protect the right to privacy of victims and to encourage victims to file complaints.”

Section 11. Section 8 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 8. Initiation and Prosecution of Cases. –

“(a) Initiation of Investigation. – Law enforcement agencies are mandated to immediately initiate investigation and counter-trafficking-intelligence gathering upon receipt of statements or affidavit

from victims of trafficking, migrant workers, or their families who are in possession of knowledge or information about trafficking in persons cases.

“(b) Prosecution of Cases. – Any person who has personal knowledge of the commission of any offense under this Act, such as the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.

“(c) Affidavit of Desistance. – Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal.

“Any act involving the means provided in this Act or any attempt thereof for the purpose of securing an Affidavit of Desistance from the complainant shall be punishable under this Act.”

Section 12. Section 10 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 10. Penalties and Sanctions. – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

“(a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

“(b) Any person found guilty of committing any of the acts enumerated in Section 4-A of this Act shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

“(c) Any person found guilty of Section 4-B of this Act shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

“In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment agency involved in trafficking. The license of a recruitment agency which trafficked a child shall be automatically revoked.

“(d) Any person found, guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

“(e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);

“(f) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

“(g) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;

“(h) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;

“(i) If the offender is a foreigner, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country;

“(j) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His or her retirement and other benefits shall likewise be forfeited; and

“(k) Conviction, by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.”

Section 13. Section 11 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 11. Use of Trafficked Persons. – Any person who buys or engages the services of a trafficked person for prostitution shall be penalized with the following: Provided, That the Probation Law (Presidential Decree No. 968) shall not apply:

“(a) Prison Correccional in its maximum period to prison mayor or six (6) years to twelve (12) years imprisonment and a fine of not less than Fifty thousand pesos (P50,000.00) but not more than One hundred thousand pesos (P100,000.00): Provided, however, That the following acts shall be exempted thereto:

1. If an offense under paragraph (a) involves sexual intercourse or lascivious conduct with a child, the penalty shall be reclusion temporal in its medium period to reclusion perpetua or seventeen (17) years to forty (40) years imprisonment and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
2. If an offense under paragraph (a) involves carnal knowledge of, or sexual intercourse with, a male or female trafficking victim and also involves the use of force or intimidation, to a victim deprived of reason or to an unconscious victim, or a victim under twelve (12) years of age, instead of the penalty prescribed in the subparagraph above the penalty shall be a fine of not less than One million pesos (P1,000,000.00) but not more than Five million pesos (P5,000,000.00) and imprisonment of reclusion perpetua or forty (40) years imprisonment with no possibility of parole; except that if a person violating paragraph (a) of this section knows the person that provided prostitution services is in fact a victim of trafficking, the offender shall not be likewise penalized under this section but under Section 10 as a person violating Section 4; and if in committing such an offense, the offender also knows a qualifying circumstance for trafficking, the offender shall be penalized under Section 10 for qualified trafficking. If in violating this section the offender also violates Section 4, the offender shall be penalized under Section 10 and, if applicable, for qualified trafficking instead of under this section;

“(b) Deportation. – If a foreigner commits any offense described by paragraph (1) or (2) of this section or violates any pertinent provision of this Act as an accomplice or accessory to, or by attempting any such offense, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country; and

“(c) Public Official. – If the offender is a public official, he or she shall be dismissed from service and shall suffer perpetual absolute disqualification to hold public, office, in addition to any imprisonment or fine received pursuant to any other provision of this Act.”

Section 14. Section 12 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 12. Prescriptive Period. – Trafficking cases under this Act shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6, or against a child, shall prescribe in twenty (20) years.

“The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.”

Section 15. Section 16 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 16. Programs that Address Trafficking in Persons. – The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

“(a) Department of Foreign Affairs (DFA) – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs. It shall provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country. The DFA shall repatriate trafficked Filipinos with the consent of the victims.

“The DFA shall take necessary measures for the efficient implementation of the Electronic Passporting System to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

“In coordination with the Department of Labor and Employment, it shall provide free temporary shelters and other services to Filipino victims of trafficking overseas through the migrant workers and other overseas Filipinos resource centers established overseas under Republic Act No. 8042, as amended.

“(b) Department of Social Welfare and Development (DSWD) – shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community. It shall establish free temporary shelters, for the protection and housing of trafficked persons to provide the following basic services to trafficked persons:

1. Temporary housing and food facilities;
2. Psychological support and counseling;
3. 24-hour call center for crisis calls and technology-based counseling and referral system;
4. Coordination with local law enforcement entities; and
5. Coordination with the Department of Justice, among others.

“The DSWD must conduct information campaigns in communities and schools teaching parents and families that receiving consideration in exchange for adoption is punishable under the law. Furthermore, information campaigns must be conducted with the police that they must not induce poor women to give their children up for adoption in exchange for consideration.

“(c) Department of Labor and Employment (DOLE) – shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.

“(d) Department of Justice (DOJ) – shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.

“(e) Philippine Commission on Women (PCW) – shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women’s issues.

“(f) Bureau of Immigration (BI) – shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.

“(g) Philippine National Police (PNP) and National Bureau of Investigation (NBI) – shall be the primary law enforcement agencies to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. They shall closely coordinate with each other and with other law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. They shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.

“(h) Philippine Overseas Employment Administration (POEA) and Overseas Workers and Welfare Administration (OWWA) – POEA shall implement Pre-Employment Orientation Seminars (PEOS) while Pre-Departure Orientation Seminars (PDOS) shall be conducted by the OWWA. It shall likewise formulate a system of providing free legal assistance to trafficked persons, in coordination with the DFA.

“The POEA shall create a blacklist of recruitment agencies, illegal recruiters and persons facing administrative, civil and criminal complaints for trafficking filed in the receiving country and/or in the Philippines and those agencies, illegal recruiters and persons involved in cases of trafficking who have been rescued by the DFA and DOLE in the receiving country or in the Philippines even if no formal administrative, civil or criminal complaints have been filed: Provided, That the rescued victims shall execute an affidavit attesting to the acts violative of the anti-trafficking law. This blacklist shall be posted in conspicuous places in concerned government agencies and shall be updated bi-monthly.

“The blacklist shall likewise be posted by the POEA in the shared government information system, which is mandated to be established under Republic Act No. 8042, as amended.

“The POEA and OWWA shall accredit NGOs and other service providers to conduct PEOS and PDOS, respectively. The PEOS and PDOS should include the discussion and distribution of the blacklist.

“The license or registration of a recruitment agency that has been blacklisted may be suspended by the POEA upon a review of the complaints filed against said agency.

“(i) Department of the Interior and Local Government (DILG) – shall institute a systematic information and prevention campaign in coordination with pertinent agencies of government as provided for in this Act. It shall provide training programs to local government units, in coordination with the Council, in ensuring wide understanding and application of this Act at the local level.

“(j) Commission on Filipinos Overseas – shall conduct pre-departure counseling services for Filipinos in intermarriages. It shall develop a system for accreditation of NGOs that may be mobilized for purposes of conducting pre-departure counseling services for Filipinos in intermarriages. As such, it shall ensure that the counselors contemplated under this Act shall have the minimum qualifications and training of guidance counselors as provided for by law.

“It shall likewise assist in the conduct of information campaigns against trafficking in coordination with local government units, the Philippine Information Agency, and NGOs.

“(k) Local government units (LGUs) – shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with the DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community-based initiatives which address the trafficking in persons.

“In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people’s organizations (POs), civic organizations and other volunteer groups.”

Section 16. A new Section 16-A is hereby inserted into Republic Act No. 9208, to read as follows:

“SEC. 16-A. Anti-Trafficking in Persons Database. – An anti-trafficking in persons central database shall be established by the Inter-Agency Council Against Trafficking created under Section 20 of this Act. The Council shall submit a report to the President of the Philippines and to Congress, on or before January 15 of every year, with respect to the preceding year’s programs and data on trafficking-related cases.

“All government agencies tasked under the law to undertake programs and render assistance to address trafficking in persons shall develop their respective monitoring and data collection systems, and databases, for purposes of ensuring efficient collection and storage of data on cases of trafficking in persons handled by their respective offices. Such data shall be submitted to the Council for integration in a central database system.

“For this purpose, the Council is hereby tasked to ensure the harmonization and standardization of databases, including minimum data requirements, definitions, reporting formats, data collection systems, and data verification systems. Such databases shall have, at the minimum, the following information:

“(a) The number of cases of trafficking in persons, sorted according to status of cases, including the number of cases being investigated, submitted for prosecution, dropped, and filed and/or pending before the courts and the number of convictions and acquittals;

“(b) The profile/information on each case;

“(c) The number of victims of trafficking in persons referred to the agency by destination countries/ areas and by area of origin; and

“(d) Disaggregated data on trafficking victims and the accused/defendants.”

Section 17. Section 17 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 17. Legal Protection to Trafficked Persons. – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

“Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.”

Section 18. A new Section 17-A is hereby inserted into Republic Act No. 9208, to read as follows:

“SEC. 17-A. Temporary Custody of Trafficked Victims. – The rescue of victims should be done as much as possible with the assistance of the DSWD or an accredited NGO that services trafficked victims. A law enforcement officer, on a reasonable suspicion that a person is a victim of any offense

defined under this Act including attempted trafficking, shall immediately place that person in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter institution devoted to protecting trafficked persons after the rescue.”

Section 19. A new Section 17-B is hereby inserted into Republic Act No. 9208, to read as follows:

“SEC. 17-B. Irrelevance of Past Sexual Behavior, Opinion Thereof or Reputation of Victims and of Consent of Victims in Cases of Deception, Coercion and Other Prohibited Means. – The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person. Furthermore, the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth in Section 3(a) of this Act has been used.”

Section 20. A new Section 17-C is hereby inserted into Republic Act No. 9208, to read as follows:

“SEC. 17-C. Immunity from Suit, Prohibited Acts and Injunctive Remedies. – No action or suit shall be brought, instituted or maintained in any court or tribunal or before any other authority against any: (a) law enforcement officer; (b) social worker; or (c) person acting in compliance with a lawful order from any of the above, for lawful acts done or statements made during an authorized rescue operation, recovery or rehabilitation/intervention, or an investigation or prosecution of an anti-trafficking case: Provided, That such acts shall have been made in good faith.

“The prosecution of retaliatory suits against victims of trafficking shall be held in abeyance pending final resolution and decision of criminal complaint for trafficking.

“It shall be prohibited for the DFA, the DOLE, and the POEA officials, law enforcement officers, prosecutors and judges to urge complainants to abandon their criminal, civil and administrative complaints for trafficking.

“The remedies of injunction and attachment of properties of the traffickers, illegal recruiters and persons involved in trafficking may be issued motu proprio by judges.”

Section 21. Section 20 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 20. Inter-Agency Council Against Trafficking. – There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

“(a) Secretary, Department of Foreign Affairs;

“(b) Secretary, Department of Labor and Employment;

“(c) Secretary, Department of the Interior and Local Government;

“(d) Administrator, Philippine Overseas Employment Administration;

“(e) Commissioner, Bureau of Immigration;

“(f) Chief, Philippine National Police;

“(g) Chairperson, Philippine Commission on Women;

“(h) Chairperson, Commission on Filipinos Overseas;

“(i) Executive Director, Philippine Center for Transnational Crimes; and

“(j) Three (3) representatives from NGOs, who shall include one (1) representative each from among the sectors representing women, overseas Filipinos, and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

“The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.”

Section 22. Section 22 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 22. Secretariat to the Council. – The Department of Justice shall establish the necessary Secretariat for the Council.

“The secretariat shall provide support for the functions and projects of the Council. The secretariat shall be headed by an executive director, who shall be appointed by the Secretary of the DOJ upon the recommendation of the Council. The executive director must have adequate knowledge on, training and experience in the phenomenon of and issues involved in trafficking in persons and in the field of law, law enforcement, social work, criminology, or psychology.

“The executive director shall be under the supervision of the Inter-Agency Council Against Trafficking through its Chairperson and Co-Chairperson, and shall perform the following functions:

- “(a) Act as secretary of the Council and administrative officer of its secretariat;
- “(b) Advise and assist the Chairperson in formulating and implementing the objectives, policies, plans and programs of the Council, including those involving mobilization of government offices represented in the Council as well as other relevant government offices, task forces, and mechanisms;
- “(c) Serve as principal assistant to the Chairperson in the overall supervision of council administrative business;
- “(d) Oversee all council operational activities;
- “(e) Ensure an effective and efficient performance of council functions and prompt implementation of council objectives, policies, plans and programs;
- “(f) Propose effective allocations of resources for implementing council objectives, policies, plans and programs;
- “(g) Submit periodic reports to the Council on the progress of council objectives, policies, plans and programs;
- “(h) Prepare annual reports of all council activities; and
- “(i) Perform other duties as the Council may assign.”

Section 23. A new Section 26-A is hereby inserted into Republic Act No. 9208, to read as follows:

“SEC. 26-A. Extra-Territorial Jurisdiction. – The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, having been commenced in the Philippines and other elements having been committed in another country, if the suspect or accused:

- “(a) Is a Filipino citizen; or
- “(b) Is a permanent resident of the Philippines; or
- “(c) Has committed the act against a citizen of the Philippines.

“No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

“The government may surrender or extradite persons accused of trafficking in the Philippines to the appropriate international court if any, or to another State pursuant to the applicable extradition laws and treaties.”

Section 24. Section 28 of Republic Act No. 9208 is hereby amended, to read as follows:

“SEC. 28. Funding. – The amount necessary to implement the provisions of this Act shall be charged against the current year’s appropriations of the Inter-Agency Council Against Trafficking under the budget of the DOJ and the appropriations of the other concerned departments. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.”

Section 25. A new Section 28-A is hereby inserted into Republic Act No. 9208, to read as follows:

“SEC. 28-A. Additional Funds for the Council. – The amount collected from every penalty, fine or asset derived from any violation of this Act shall be earmarked as additional funds for the use of the Council. The fund may be augmented by grants, donations and endowment from various sources, domestic or foreign, for purposes related to their functions, subject to the existing accepted rules and regulations of the Commission on Audit.”

Section 26. Section 32 of Republic Act No. 9208 of the Repealing Clause is hereby amended to read as follows:

“SEC. 32. Repealing Clause. – Article 202 of the Revised Penal Code, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly: Provided, That this Act shall not in any way amend or repeal the provisions of Republic Act No. 7610, otherwise known as the ‘Special Protection of Child Against Child Abuse, Exploitation and Discrimination Act.’”

Section 27. Section 33 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 33. Effectivity. – This Act shall take effect fifteen (15) days following its complete publication in at least two (2) newspapers of general circulation.”

Approved: FEBRUARY 06 2013

REPUBLIC ACT NO. 10533

AN ACT ENHANCING THE PHILIPPINE BASIC EDUCATION SYSTEM BY STRENGTHENING ITS CURRICULUM AND INCREASING THE NUMBER OF YEARS FOR BASIC EDUCATION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Section 1. Short Title. — This Act shall be known as the “Enhanced Basic Education Act of 2013”.

Section 2. Declaration of Policy. — The State shall establish, maintain and support a complete, adequate, and integrated system of education relevant to the needs of the people, the country and society-at-large.

Likewise, it is hereby declared the policy of the State that every graduate of basic education shall be an empowered individual who has learned, through a program that is rooted on sound educational principles and geared towards excellence, the foundations for learning throughout life, the competence to engage in work and be productive, the ability to coexist in fruitful harmony with local and global communities, the capability to engage in autonomous, creative, and critical thinking, and the capacity and willingness to transform others and one’s self.

For this purpose, the State shall create a functional basic education system that will develop productive and responsible citizens equipped with the essential competencies, skills and values for both life-long learning and employment. In order to achieve this, the State shall:

- (a) Give every student an opportunity to receive quality education that is globally competitive based on a pedagogically sound curriculum that is at par with international standards;
- (b) Broaden the goals of high school education for college preparation, vocational and technical career opportunities as well as creative arts, sports and entrepreneurial employment in a rapidly changing and increasingly globalized environment; and
- (c) Make education learner-oriented and responsive to the needs, cognitive and cultural capacity, the circumstances and diversity of learners, schools and communities through the appropriate languages of teaching and learning, including mother tongue as a learning resource.

Section 3. Basic Education. — Basic education is intended to meet basic learning needs which provides the foundation on which subsequent learning can be based. It encompasses kindergarten, elementary and secondary education as well as alternative learning systems for out-of-school learners and those with special needs.

Section 4. Enhanced Basic Education Program. — The enhanced basic education program encompasses at least one (1) year of kindergarten education, six (6) years of elementary education,

and six (6) years of secondary education, in that sequence. Secondary education includes four (4) years of junior high school and two (2) years of senior high school education.

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

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

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

Basic education shall be delivered in languages understood by the learners as the language plays a strategic role in shaping the formative years of learners.

For kindergarten and the first three (3) years of elementary education, instruction, teaching materials and assessment shall be in the regional or native language of the learners. The Department of Education (DepED) shall formulate a mother language transition program from Grade 4 to Grade 6 so that Filipino and English shall be gradually introduced as languages of instruction until such time when these two (2) languages can become the primary languages of instruction at the secondary level.

For purposes of this Act, mother language or first Language (LI) refers to language or languages first learned by a child, which he/she identifies with, is identified as a native language user of by others, which he/she knows best, or uses most. This includes Filipino sign language used by individuals with pertinent disabilities. The regional or native language refers to the traditional speech variety or variety of Filipino sign language existing in a region, area or place.

Section 5. Curriculum Development. — The DepED shall formulate the design and details of the enhanced basic education curriculum. It shall work with the Commission on Higher Education (CHED) to craft harmonized basic and tertiary curricula for the global competitiveness of Filipino graduates. To ensure college readiness and to avoid remedial and duplication of basic education subjects, the DepED shall coordinate with the CHED and the Technical Education and Skills Development Authority (TESDA).

To achieve an effective enhanced basic education curriculum, the DepED shall undertake consultations with other national government agencies and other stakeholders including, but not limited to, the Department of Labor and Employment (DOLE), the Professional Regulation Commission (PRC), the private and public schools associations, the national student organizations, the national teacher organizations, the parents-teachers associations and the chambers of commerce on matters affecting the concerned stakeholders.

The DepED shall adhere to the following standards and principles in developing the enhanced basic education curriculum:

- (a) The curriculum shall be learner-centered, inclusive and developmentally appropriate;
- (b) The curriculum shall be relevant, responsive and research-based;
- (c) The curriculum shall be culture-sensitive;
- (d) The curriculum shall be contextualized and global;
- (e) The curriculum shall use pedagogical approaches that are constructivist, inquiry-based, reflective, collaborative and integrative;
- (f) The curriculum shall adhere to the principles and framework of Mother Tongue-Based Multilingual Education (MTB-MLE) which starts from where the learners are and from what they already knew proceeding from the known to the unknown; instructional materials and capable teachers to implement the MTB-MLE curriculum shall be available;
- (g) The curriculum shall use the spiral progression approach to ensure mastery of knowledge and skills after each level; and
- (h) The curriculum shall be flexible enough to enable and allow schools to localize, indigenize and enhance the same based on their respective educational and social contexts. The production and development of locally produced teaching materials shall be encouraged and approval of these materials shall devolve to the regional and division education units.

Section 6. Curriculum Consultative Committee. — There shall be created a curriculum consultative committee chaired by the DepED Secretary or his/her duly authorized representative and with members composed of, but not limited to, a representative each from the CHED, the TESDA, the DOLE, the PRC, the Department of Science and Technology (DOST), and a representative from the business chambers such as the Information Technology – Business Process Outsourcing (IT-BPO) industry association. The consultative committee shall oversee the review and evaluation on the implementation of the basic education curriculum and may recommend to the DepED the formulation of necessary refinements in the curriculum.

Section 7. Teacher Education and Training. — To ensure that the enhanced basic education program meets the demand for quality teachers and school leaders, the DepED and the CHED, in collaboration with relevant partners in government, academe, industry, and nongovernmental organizations, shall conduct teacher education and training programs, as specified:

(a) In-service Training on Content and Pedagogy — Current DepED teachers shall be retrained to meet the content and performance standards of the new K to 12 curriculum.

The DepED shall ensure that private education institutions shall be given the opportunity to avail of such training.

(b) Training of New Teachers. — New graduates of the current Teacher Education curriculum shall undergo additional training, upon hiring, to upgrade their skills to the content standards of the new curriculum. Furthermore, the CHED, in coordination with the DepED and relevant stakeholders, shall ensure that the Teacher Education curriculum offered in these Teacher Education Institutes (TEIs) will meet necessary quality standards for new teachers. Duly recognized organizations acting as TEIs, in coordination with the DepED, the CHED, and other relevant stakeholders, shall ensure that the curriculum of these organizations meet the necessary quality standards for trained teachers.

(c) Training of School Leadership. — Superintendents, principals, subject area coordinators and other instructional school leaders shall likewise undergo workshops and training to enhance their skills on their role as academic, administrative and community leaders.

Henceforth, such professional development programs as those stated above shall be initiated and conducted regularly throughout the school year to ensure constant upgrading of teacher skills.

Section 8. Hiring of Graduates of Science, Mathematics, Statistics, Engineering and Other Specialists in Subjects With a Shortage of Qualified Applicants, Technical-Vocational Courses and Higher Education Institution Faculty. — Notwithstanding the provisions of Sections 26, 27 and 28 of Republic Act No. 7836, otherwise known as the “Philippine Teachers Professionalization Act of 1994”, the DepED and private education institutions shall hire, as may be relevant to the particular subject:

(a) Graduates of science, mathematics, statistics, engineering, music and other degree courses with shortages in qualified Licensure Examination for Teachers (LET) applicants to teach in their specialized subjects in the elementary and secondary education. Qualified LET applicants shall also include graduates admitted by foundations duly recognized for their expertise in the education sector and who satisfactorily complete the requirements set by these organizations: Provided, That they pass the LET within five (5) years after their date of hiring: Provided, further, That if such graduates are willing to teach on part-time basis, the provisions of LET shall no longer be required;

(b) Graduates of technical-vocational courses to teach in their specialized subjects in the secondary education: Provided, That these graduates possess the necessary certification issued by the TESDA: Provided, further, That they undergo appropriate in-service training to be administered by the DepED or higher education institutions (HEIs) at the expense of the DepED;

(c) Faculty of HEIs be allowed to teach in their general education or subject specialties in the secondary education: Provided, That the faculty must be a holder of a relevant Bachelor's degree, and must have satisfactorily served as a full-time HEI faculty;

(d) The DepED and private education institutions may hire practitioners, with expertise in the specialized learning areas offered by the Basic Education Curriculum, to teach in the secondary level; Provided, That they teach on part-time basis only. For this purpose, the DepED, in coordination with the appropriate government agencies, shall determine the necessary qualification standards in hiring these experts.

Section 9. Career Guidance and Counselling Advocacy. — To properly guide the students in choosing the career tracks that they intend to pursue, the DepED, in coordination with the DOLE, the TESDA and the CHED, shall regularly conduct career advocacy activities for secondary level students. Notwithstanding the provisions of Section 27 of Republic Act No. 9258, otherwise known as the “Guidance and Counselling Act of 2004”, career and employment guidance counsellors, who are not registered and licensed guidance counsellors, shall be allowed to conduct career advocacy activities to secondary level students of the school where they are currently employed; Provided, That they undergo a training program to be developed or accredited by the DepED.

Section 10. Expansion of E-GASTPE Beneficiaries. — The benefits accorded by Republic Act No. 8545, or the “Expanded Government Assistance to Students and Teachers in Private Education Act”, shall be extended to qualified students enrolled under the enhanced basic education.

The DepED shall engage the services of private education institutions and non-DepED schools offering senior high school through the programs under Republic Act No. 8545, and other financial arrangements formulated by the DepED and the Department of Budget and Management (DBM) based on the principles of public-private partnership.

Section 11. Appropriations. — The Secretary of Education shall include in the Department's program the operationalization of the enhanced basic education program, the initial funding of which shall be charged against the current appropriations of the DepED. Thereafter, the amount necessary for the continued implementation of the enhanced basic education program shall be included in the annual General Appropriations Act.

Section 12. Transitory Provisions. — The DepED, the CHED and the TESDA shall formulate the appropriate strategies and mechanisms needed to ensure smooth transition from the existing ten (10) years basic education cycle to the enhanced basic education (K to 12) cycle. The strategies may cover changes in physical infrastructure, manpower, organizational and structural concerns, bridging models linking grade 10 competencies and the entry requirements of new tertiary curricula, and partnerships between the government and other entities. Modeling for senior high school may be implemented in selected schools to simulate the transition process and provide concrete data for the transition plan.

To manage the initial implementation of the enhanced basic education program and mitigate the expected multi-year low enrolment turnout for HEIs and Technical Vocational Institutions (TVIs) starting School Year 2016-2017, the DepED shall engage in partnerships with HEIs and TVIs for the utilization of the latter's human and physical resources. Moreover, the DepED, the CHED, the TESDA, the TVIs and the HEIs shall coordinate closely with one another to implement strategies that ensure the academic, physical, financial, and human resource capabilities of HEIs and TVIs to provide educational and training services for graduates of the enhanced basic education program to ensure that they are not adversely affected. The faculty of HEIs and TVIs allowed to teach students of secondary education under Section 8 hereof, shall be given priority in hiring for the duration of the transition period. For this purpose, the transition period shall be provided for in the implementing rules and regulations (IRK).

Section 13. Joint Congressional Oversight Committee on the Enhanced Basic Educational Program (K to 12 Program). — There is hereby created a Joint Oversight Committee to oversee, monitor and evaluate the implementation of this Act.

The Oversight Committee shall be composed of five (5) members each from the Senate and from the House of Representatives, including Chairs of the Committees on Education, Arts and Culture, and Finance of both Houses. The membership of the Committee for every House shall have at least two (2) opposition or minority members.

Section 14. Mandatory Evaluation and Review. — By the end of School Year 2014-2015, the DepED shall conduct a mandatory review and submit a midterm report to Congress as to the status of implementation of the K to 12 program in terms of closing the following current shortages: (a) teachers; (b) classrooms; (c) textbooks; (d) seats; (e) toilets; and (f) other shortages that should be addressed.

The DepED shall include among others, in this midterm report, the following key metrics of access to and quality of basic education: (a) participation rate; (b) retention rate; (c) National Achievement Test results; (d) completion rate; (e) teachers' welfare and training profiles; (f) adequacy of funding requirements; and (g) other learning facilities including, but not limited to, computer and science laboratories, libraries and library hubs, and sports, music and arts.

Section 15. Commitment to International Benchmarks. — The DepED shall endeavor to increase the per capita spending on education towards the immediate attainment of international benchmarks.

Section 16. Implementing Rules and Regulations. — Within ninety (90) days after the effectivity of this Act, the DepED Secretary, the CHED Chairperson and the TESDA Director-General shall promulgate the rules and regulations needed for the implementation of this Act.

Section 17. Separability Clause. — If any provision of this Act is held invalid or unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

Section 18. Repealing Clause. — Pertinent provisions of Batas Pambansa Blg. 232 or the “Education Act of 1982”, Republic Act No. 9155 or the “Governance of Basic Education Act of 2001”, Republic Act No. 9258, Republic Act No. 7836, and all other laws, decrees, executive orders and rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 19. Effectivity Clause. — This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved: MAY 15 2013

REPUBLIC ACT NO. 10630

AN ACT STRENGTHENING THE JUVENILE JUSTICE SYSTEM IN THE PHILIPPINES, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9344, OTHERWISE KNOWN AS THE “JUVENILE JUSTICE AND WELFARE ACT OF 2006” AND APPROPRIATING FUNDS THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. The Title of Republic Act No. 9344 is hereby amended to read as follows: “An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile justice and Welfare Council under the Department of Social Welfare and Development, Appropriating Funds Therefor, and for Other Purposes.”

Section 2. Section 4 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 4. Definition of Terms. – The following terms as used in this Act shall be defined as follows:
“x x x

“(s) ‘Bahay Pag-asa’ – refers to a 24-hour child-caring institution established, funded and managed by local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are above fifteen (15) but below eighteen (18) years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

“Part of the features of a ‘Bahay Pag-asa’ is an intensive juvenile intervention and support center. This will cater to children in conflict with the law in accordance with Sections 20, 20-A and 20-B hereof.

“A multi-disciplinary team composed of a social worker, a psychologist/mental health professional, a medical doctor, an educational/guidance counselor and a Barangay Council for the Protection of Children (BCPC) member shall operate the ‘Bahay Pag-asa’. The team will work on the individualized intervention plan with the child and the child’s family.

“x x x.”

Section 3. Section 6 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 6. Minimum Age of Criminal Responsibility. – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

“A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.

“A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act. “The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.”

Section 4. Section 8 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 8. Juvenile Justice and Welfare Council (JJWC). – A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Social Welfare and Development and placed under its administrative supervision. The JJWC shall be chaired by an Undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

“(a) Department of Justice (DOJ);

“(b) Council for the Welfare of Children (CWC);

“(c) Department of Education (DepED);

“(d) Department of the Interior and Local Government (DILG);

“(e) Public Attorney’s Office (PAO);

“(f) Bureau of Corrections (BUCOR);

“(g) Parole and Probation Administration (PPA);

“(h) National Bureau of Investigation (NBI);

“(i) Philippine National Police (PNP);

“(j) Bureau of Jail Management and Penology (BJMP);

“(k) Commission on Human Rights (CHR);

“(l) Technical Education and Skills Development Authority (TESDA);

“(m) National Youth Commission (NYC); and

“(n) Other institutions focused on juvenile justice and intervention programs.

“The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations:

“(1) Department of Justice (DOJ);

“(2) Department of Social Welfare and Development (DSWD);

“(3) Council for the Welfare of Children (CWC);

“(4) Department of Education (DepED);

“(5) Department of the Interior and Local Government (DILG);

“(6) Commission on Human Rights (CHR);

“(7) National Youth Commission (NYC);

“(8) Two (2) representatives from NGOs, to be designated by the Secretary of Social Welfare and Development, to be selected based on the criteria established by the Council;

“(9) Department of Health (DOH); and

“(10) One (1) representative each from the League of Provinces, League of Cities, League of Municipalities and League of Barangays.

“There shall be a Regional Juvenile Justice and Welfare Committee (RJJWC) in each region. The RJJWCs will be under the administration and supervision of the JJWC. The RJJWC shall be chaired by the director of the regional office of the DSWD. It shall ensure the effective implementation of this Act at the regional and LGU levels and the coordination among its member agencies.

“The RJJWC will be composed of permanent representatives who shall have a rank not lower than an assistant regional director or its equivalent to be designated by the concerned department heads from the following agencies and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations:

“(i) Department of Justice (DOJ);

“(ii) Department of Social Welfare and Development (DSWD);

“(iii) Department of Education (DepED);

“(iv) Department of the Interior and Local Government (DILG);

“(v) Commission on Human Rights (CHR);

“(vi) Department of Health (DOH);

“(vii) Two (2) representatives from NGOs operating within the region selected by the RJJWC based on the criteria established by the JJWC;

“(viii) One (1) sectoral representative from the children or youth sector within the region; and

“(ix) One (1) representative from the League of Provinces/ Cities/ Municipalities/ Barangays of the Philippines.

“The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC national secretariat and the RJJWC secretariat.

“In the implementation of this Act, the JJWC shall consult with the various leagues of local government officials.

“The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.”

Section 5. Section 9 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 9. Duties and Functions of the JJWC. – The JJWC shall have the following duties and functions:

“(a) To oversee the implementation of this Act;

“(b) To advise the President on all matters and policies relating to juvenile justice and welfare;

“(c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;

“(d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;

“(e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;

“(f) To consult with the various leagues of local government officials in the formulation and recommendation of policies and strategies for the prevention of juvenile delinquency and the promotion of juvenile justice and welfare;

“(g) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;

“(h) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as, but not limited to:

“(1) The performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;

“(2) The periodic trends, problems and causes of juvenile delinquency and crimes; and

“(3) The particular needs of children in conflict with the law in custody.

“The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

“The JJWC shall submit an annual report to Congress on the implementation of the provisions of this Act.

“The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

“(i) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;

“(j) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

“(k) To submit an annual report to the President on the implementation of this Act; and

“(l) To perform such other functions as may be necessary to implement the provisions of this Act.”

“SEC. 9-A. Duties and Functions of the RJJWC. – The RJJWC shall have the following duties and functions:

“(a) To oversee and ensure the effective implementation of this Act at the regional level and at the level of the LGUs;

“(b) To assist the concerned agencies in the implementation and in compliance with the JJWC’s adopted policies/regulations or provide substantial inputs to the JJWC in the formulation of new ones in line with the provisions of this Act;

“(c) To assist in the development of the comprehensive 3 to 5-year local juvenile intervention program, with the participation of concerned LGUs, NGOs and youth organizations within the region and monitor its implementation;

“(d) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities within the region;

“(e) To oversee the programs and operation of the intensive juvenile intervention and support center established within the region;

“(f) To collect relevant regional information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare within the region, such as, but not limited to:

“(1) Performance and results achieved by juvenile intervention programs and by activities of the LGUs and other government agencies within the region;

“(2) The periodic trends, problems and causes of juvenile delinquency and crimes from the LGU level to the regional level; and

“(3) The particular needs of children in conflict with the law in custody within their regional jurisdiction.

“The data gathered shall be forwarded by the RJJWC to the JJWC on an annual basis and as may be deemed necessary by the JJWC.

“(g) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities within the region and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary reports and recommendations to appropriate agencies and to the JJWC;

“(h) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program within the region;

“(i) To submit an annual report to the JJWC on the implementation of this Act; and

“(j) To perform such other functions as may be determined by the JJWC to implement the provisions of this Act.”

Section 6. Section 20 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 20. Children Below the Age of Criminal Responsibility. – If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child, in consultation with the local social welfare and development officer, has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child’s nearest relative. The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or ‘Bahay Pag-asa’ managed by LGUs or licensed and/or accredited NGOs monitored by the DSWD.

“The local social welfare and development officer shall determine the appropriate programs for the child who has been released, in consultation with the child and the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following:

“(a) A duly registered nongovernmental or religious organization;

“(b) A barangay official or a member of the Barangay Council for the Protection of Children (BCPC);

“(c) A local social welfare and development officer; or, when and where appropriate, the DSWD.

“If the child has been found by the local social welfare and development officer to be dependent, abandoned, neglected or abused by his/her parents and the best interest of the child requires that he/she be placed in a youth care facility or ‘Bahay Pag-asa’, the child’s parents or guardians shall execute a written authorization for the voluntary commitment of the child: Provided, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the Local Social Welfare and Development Office (LSWDO) pursuant to Presidential Decree No. 603, as amended, otherwise known as ‘The Child and Youth Welfare Code’ and the Supreme Court rule on commitment of children: Provided, further, That the minimum age for children committed to a youth care facility or ‘Bahay Pag-asa’ shall be twelve (12) years old.”

“SEC. 20-A. Serious Crimes Committed by Children Who Are Exempt From Criminal Responsibility. – A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than twelve (12) years of imprisonment, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall be mandatorily placed in a special facility within the youth care faculty or ‘Bahay Pag-asa’ called the Intensive Juvenile Intervention and Support Center (IJISC).

“In accordance with existing laws, rules, procedures and guidelines, the proper petition for involuntary commitment and placement under the IJISC shall be filed by the local social welfare and development officer of the LGU where the offense was committed, or by the DSWD social worker in the local social welfare and development officer’s absence, within twenty-four (24) hours from the time of the receipt of a report on the alleged commission of said child. The court, where the petition for involuntary commitment has been filed shall decide on the petition within seventy-two (72) hours from the time the said petition has been filed by the DSWD/LSWDO. The court will determine the initial period of placement of the child within the IJISC which shall not be less than one (1) year. The multi-disciplinary team of the IJISC will submit to the court a case study and progress report, to include a psychiatric evaluation report and recommend the reintegration of the child to his/her family or the extension of the placement under the IJISC. The multi-disciplinary team will also submit a report to the court on the services extended to the parents and family of the child and the compliance of the parents in the intervention program. The court will decide whether the child has successfully completed the center-based intervention program and is already prepared to be reintegrated with his/her family or if there is a need for the continuation of the center-based rehabilitation of the child. The court will determine the next period of assessment or hearing on the commitment of the child.”

“SEC. 20-B. Repetition of Offenses. – A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits an offense for the second time or oftener: Provided, That the child was previously subjected to a community-based intervention program, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall undergo an intensive intervention program supervised by the local social welfare and development officer: Provided, further, That, if the best interest of the child requires that he/she be placed in a youth care facility or ‘Bahay Pag-asa’, the child’s parents or guardians shall execute a written authorization for the voluntary commitment of the child: Provided, finally, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended.”

“SEC. 20-C. Exploitation of Children for Commission of Crimes. – Any person who, in the commission of a crime, makes use, takes advantage of, or profits from the use of children, including any person who abuses his/her authority over the child or who, with abuse of confidence, takes advantage

of the vulnerabilities of the child and shall induce, threaten or instigate the commission of the crime, shall be imposed the penalty prescribed by law for the crime committed in its maximum period.”

“SEC. 20-D. Joint Parental Responsibility. – Based on the recommendation of the multi-disciplinary team of the IJISC, the LSWDO or the DSWD, the court may require the parents of a child in conflict with the law to undergo counseling or any other intervention that, in the opinion of the court, would advance the welfare and best interest of the child.

“As used in this Act, ‘parents’ shall mean any of the following:

“(a) Biological parents of the child; or

“(b) Adoptive parents of the child; or

“(c) Individuals who have custody of the child.

“A court exercising jurisdiction over a child in conflict with the law may require the attendance of one or both parents of the child at the place where the proceedings are to be conducted.

“The parents shall be liable for damages unless they prove, to the satisfaction of the court, that they were exercising reasonable supervision over the child at the time the child committed the offense and exerted reasonable effort and utmost diligence to prevent or discourage the child from committing another offense.”

“SEC. 20-E. Assistance to Victims of Offenses Committed by Children. – The victim of the offense committed by a child and the victim’s family shall be provided the appropriate assistance and psychological intervention by the LSWDO, the DSWD and other concerned agencies.”

Section 7. Section 22 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 22. Duties During Initial Investigation. – The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred. “The taking of the statement of the child shall be conducted in the presence of the following: (1) child’s counsel of choice or in the absence thereof, a lawyer from the Public Attorney’s Office; (2) the child’s parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. In the absence of the child’s parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

“The social worker shall conduct an initial assessment to determine the appropriate interventions and whether the child acted with discernment, using the discernment assessment tools developed by the

DSWD. The initial assessment shall be without prejudice to the preparation of a more comprehensive case study report. The local social worker shall do either of the following:

“(a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and

“(b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.”

Section 8. Section 33 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 33. Preliminary Investigation and Filing of Information. – The prosecutor shall conduct a preliminary investigation in the following instances: (a) when the child in conflict with the law does not qualify for diversion; (b) when the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and (c) when considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

“Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney’s Office of such service, as well as the personal information, and place of detention of the child in conflict with the law.

“Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within forty-five (45) days from the start of the preliminary investigation. The information must allege that the child acted with discernment.”

Section 9. Section 49 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 49. Establishment of ‘Bahay Pag-Asa’. – Each province and highly-urbanized city (the LGUs) shall be responsible for building, funding and operating a ‘Bahay Pag-asa’ within their jurisdiction following the standards that will be set by the DSWD and adopted by the JJWC.

“Every ‘Bahay Pag-asa’ will have a special facility called the IJISC. This Center will be allocated for children in conflict with the law in accordance with Sections 20, 20-A and 20-B hereof. These children will be required to undergo a more intensive multi-disciplinary intervention program. The JJWC in partnership with, but not limited to, the DSWD, the DOH, the DepED and the DILG, will develop and set the standards for the implementation of the multi-disciplinary intervention program of the IJISC. Upon institutionalization of the IJISC program, the JJWC will continue to monitor and provide technical assistance to the multi-disciplinary teams operating the said centers.”

Section 10. Section 50 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 50. Care and Maintenance of the Child in Conflict with the Law. – x x x

“The LGUs expected expenditures on the local juvenile intervention program for children at risk and children in conflict with the law shall be included in the LGUs annual budget. Highly-urbanized cities and provincial governments should include a separate budget for the construction and maintenance of the ‘Bahay Pag-asa’ including the operation of the IJISC within the ‘Bahay Pag-asa’.”

Section 11. Section 57 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 57. Status Offenses. – Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.”

“SEC. 57-A. Violations of Local Ordinances. – Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. No penalty shall be imposed on children for said violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided for in such ordinances. The child shall also be recorded as a ‘child at risk’ and not as a ‘child in conflict with the law’. The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars.”

Section 12. Mandatory Registry of Children in Conflict with the Law. – All duty-bearers, including barangay/BCPC workers, law enforcers, teachers, guidance counselors, social workers and prosecutors who will receive report, handle or refer cases of children in conflict with the law, shall ensure a faithful recordation of all pertinent information, such as age, residence, gender, crime committed or accused of and the details of the intervention or diversion, as the case may be, under which they will undergo or has undergone, of all children in conflict with the law to guarantee the correct application of the provisions of this Act and other laws. The JJWC shall lead in the establishment of a centralized information management system on children in conflict with the law. This provision is however without prejudice to Section 43 of this Act.

Section 13. Section 63 of Republic Act No. 9344 is hereby amended to read as follows:

“SEC. 63. Appropriations. – The amount necessary to carry out the provisions of this Act shall be charged against the current year’s appropriations of the JJWC under the budget of the Department of

Justice. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the budget of the DSWD under the annual General Appropriations Act: Provided, That the amount of Four hundred million pesos (P400,000,000.00) shall be appropriated for the construction of ‘Bahay Pag-asa’ rehabilitation centers in provinces or cities with high incidence of children in conflict with the law to be determined and identified by the DSWD and the JJWC on a priority basis: Provided, further, That the said amount shall be coursed through the Department of Public Works and Highways (DPWH) for its proper implementation.

“The LGUs concerned shall make available, from its own resources or assets, their counterpart share equivalent to the national government contribution of Five million pesos (P5,000,000.00) per rehabilitation center.

“In addition, the Council may accept donations, grants and contributions from various sources, in cash or in kind, for purposes relevant to its functions, subject to the usual government accounting and auditing rules and regulations.”

Section 14. Implementing Rules and Regulations. – The JJWC shall promulgate the necessary rules and regulations within sixty (60) days from the effectivity of this Act.

Section 15. Separability Clause. – If any provision of this Act is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

Section 16. Repealing Clause. – All laws, decrees, ordinances and rules inconsistent with the provisions of this Act are hereby modified or repealed accordingly.

Section 17. Effectivity Clause. – This Act shall take effect fifteen (15) days after the completion of its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved: OCTOBER 03 2013

REPUBLIC ACT NO. 11058

AN ACT STRENGTHENING COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

CHAPTER I DECLARATION OF POLICY

Section 1. Declaration of Policy. - The State affirms labor as a primary social and economic force, and that a safe and healthy workforce is an integral aspect of nation building.

The State shall ensure a safe and healthful workplace for all working people by affording them full protection against all hazards in their work environment. It shall ensure that the provisions of the Labor Code of the Philippines, all domestic laws, and internationally-recognized standards on occupational safety and health are being fully enforced and complied with by the employers, and it shall provide penalties for any violation thereof.

The State shall protect every worker against injury, sickness or death through safe and healthful working conditions thereby assuring the conservation of valuable manpower resources and prevention of loss or damage to lives and properties consistent with national development goals, and with the State's commitment to the total development of every worker as a complete human being.

The State, in protecting the safety and health of the workers, shall promote strict but dynamic, inclusive, and gender-sensitive measures in the formulation and implementation of policies and programs related to occupational safety and health.

CHAPTER II GENEREAL PROVISIONS

Section 2. Coverage. - This Act shall apply to all establishments, projects, sites, including Philippine Economic Zone Authority (PEZA) establishments, and all other places where work is being undertaken in all other places where work is being undertaken in all branches of economic activity, except in public sector.

The Secretary of Labor and Employment shall issue the number of employees, and nature of operations, and the risk or hazard involved.

Section 3. Definition of Terms. As used in this Act:

(a) Certified first-aider refers to any person trained and duly certified to administer first aid by the Philippine Red Cross or any organization authorized by the Secretary of Labor and Employment;

- (b) Competency standards refers to industry-determined specification of proficiency required for effective work performance. These are expressed as outcomes with focus on workplace activity rather than training or personal attributes, and the ability to apply new skills in new situations or changing work organization;
- (c) Covered workplaces refer to establishments, projects, sites and all other places where work is being undertaken wherein the number of employee, nature of operations, and risk or hazard involved in the business, as determined by the Secretary of Labor and Employment, require compliance with the provisions of this Act;
- (d) Employer refers to any person, natural or juridical, including the principal employer, contractor or subcontractor, if any, who directly or indirectly benefits from the services of the employee;
- (e) Equipment refers to any machine with engine or electric motor as prime mover;
- (f) General safety and health inspection refers to an examination of the work environment including the location and operation of machinery other than those covered by technical safety audits, adequacy of work space, ventilation, lighting, conditions of work environment, handling, storage of work procedures, protection facilities and other possible sources of safety and health hazards in the workplace;
- (g) Imminent danger refers to a situation caused by a condition or practice in any place of employment that could reasonably be expected to lead to death or serious physical harm;
- (h) Micro and Small Enterprises (MSEs) refer to establishments employing less than ten (10) employees, and establishments employing less than one hundred (100) employees, respectively.
- (i) Occupational health personnel refers to a qualified first aider, nurse, dentist or physician engaged by the employer to provide occupational health services in the establishment, project, site or workplace;
- (j) Occupational Safety and Health (OSH) standards refer to the Occupational Safety and Health Standards issued by the Secretary of Labor and Employment pursuant to Articles 168 and 171, Chapter 2, Title I of Book Four of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, and such other standards as may be issued pursuant to this Act;
- (k) Safety and health audit refers to a regular and critical examination of project sites, safety programs, records, and management performance on programs, records, and management performance on program standards on safety and health;
- (l) Safety and health committee refers to a body created within the workplace tasked with the authority to monitor, inspect and investigate all aspects of the work pertaining to the safety and health of workers.
- (m) Safety and health program refers to a set of detailed rules to govern the process and practices

in all economic activities to conform with OSH standards, including the personnel responsible, and penalties for any violation thereof;

(n) Safety officer refers to any employee or officer of the company trained by the Department of Labor and Employment (DOLE) and tasked by the employer to implement an occupational safety and health program, and ensure that it is in accordance with the provisions of OSH standards;

(o) Safety signage refers to any emergency, warning or danger signpost or any safety instruction using the standards colors and sizes, including the standards symbols for safety instructions and warnings in the workplace, prescribed by the DOLE; and

(p) Workplace refers to any site or location where workers need to be or to go to by reason of their work, and which are under the direct or indirect control of the employer.

CHAPTER III

DUTIES AND RIGHTS OF EMPLOYERS, WORKERS AND OTHER PERSONS

Section 4. Duties of Employers Workers and Other Persons. -

(a) Every employer, contractor or subcontractor, if any, and any person who manages, controls or supervises the work being undertaken shall:

1. Furnish the workers a place of employment free from hazardous conditions that are causing or are likely to cause death, illness or physical harm to the workers;
2. Give complete job safety instructions or orientation to all the workers especially to those entering the job for the first time, including those relating to familiarization with their work environment;
3. Inform the workers of the hazards associated with their work health risks involved to which they are exposed to, preventive measures to eliminate or minimize the risks, and steps to be taken in cases of emergency;
4. Use only approved devices and equipment for the workplace;
5. Comply with OSH standards including training medical examination and where necessary, provision of protective and safety devices such as personal protective equipment (PPE) and machine guards;
6. Allow workers and their safety and health representatives to participate actively in the process of organizing, planning, implementing and evaluating the safety and health program to improve safety and health in the workplace; and

7. Provide, where necessary, for measures to deal with emergencies and accidents including first-aid arrangements.

(b) Every worker shall participate in ensuring compliance with OSH standards in the workplace. The worker shall make proper use of all safeguards and safety devices furnished for the worker's protection and that of others, and shall observe instructions to prevent accidents or imminent danger situation in workplace. The worker shall observe the prescribed steps to be taken in cases of emergency.

The worker shall report to the supervisor any work hazard that may be discovered in the workplace.

(c) It shall be the duty of any person, including the builder or contractor who visits, builds, renovates or installs devices or conducts business in any establishment or workplace, to comply with the provisions of this Act and all other regulations issued by the Secretary of Labor and Employment.

(d) Whenever two(2) or more undertakings are engaged in activities simultaneously in one (1) workplace, it shall be the duty of all engaged to collaborate in the application of OSH standards and regulations.

Section 5. Workers' Right to Know. - The right to safety and health at work shall be guaranteed. All workers shall be appropriately informed by the employer about all types of hazards in the workplace, provided access to training and education on chemical safety, electrical safety mechanical safety, and ergonomical safety.

Section 6. Workers' Right to Refuse Unsafe Work. The worker has the right of refusal to work without threat or reprisal from the employer if, as determined by the DOLE, an imminent danger situation exists in the workplace that may result in illness, injury or death, and corrective actions to eliminate the danger have not been undertaken by the employer.

Section 7. Workers' Right to Report Accidents. Workers and their representatives shall have the right to report accidents, dangerous occurrences, and hazards to the employer, to the DOLE and other concerned government agencies exercising jurisdiction as the competent authority in the specific industry or economic activity.

Section 8. Workers' Right to Personal Protective Equipment (PPE). - Every employer, contractor or subcontractor, if any, shall provide his workers, free of charge, protective equipment for their eyes, face, hands and feet, and free, and lifeline, safety belt or harness, gas or dust respirators or masks, protective shields whenever necessary by reason of the hazardous work process or environment, chemical, radiological, mechanical and other irritants or hazards capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact. The cost of the PPE shall be part of the safety and health program which is a separate pay item pursuant to Section 20 of this Act.

All PPE shall be of the appropriate type as tested and approved by the DOLE based on its standards. The usage of PPE in all establishments, projects, sites and all other places where work is being undertaken shall be based on the evaluation and recommendation of the safety officer.

Section 9. Safety Signage and Devices. - All establishments, projects, sites and all other places where work is being undertaken shall have safety signage and devices to warn the workers and the public of the hazards in the workplace. Safety signage and devices shall be posted in prominent positions and strategic locations in a language understandable to all, and in accordance with the standard set by the DOLE.

Section 10. Safety in the Use of Equipment. In relation to the use of equipment, the employer, contractor or subcontractor, if any, must comply with the DOLE requirements in the different phases of the company or project operation including the transport to and from the establishment, project, site or place where work is being undertaken.

Section 11. Occupational Safety and Health Information. - Workers in all establishments, projects, sites and all other places where work is being undertaken shall be provided adequate and suitable information by the employer, contractor or subcontractor, if any, on safety and health hazards, and the appropriate measures, including the probable location of workers, for the prevention, control and protection against those hazards.

CHAPTER IV COVERED WORKPLACES

Section 12. Occupational Safety Health (OSH) Program. - Covered workplaces shall have a safety and health program including the following policies, guidelines or information:

- (a) Statement of commitment to comply with OSH requirements;
- (b) General safety and health, including a drug-free workplace;
- (c) Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)/ tuberculosis/hepatitis prevention control;
- (d) Company or project details;
- (e) Composition and duties of the safety and health committee;
- (f) Occupational Safety and health personnel and facilities;
- (g) Safety and health promotion, training and education;

- (h) Conduct of toolbox meetings;
- (i) Accident/incident/illness investigation, recording and reporting;
- (j) Provision and use of PPE;
- (k) Provision of safety signage;
- (l) Dust control and management, and regulations on activities such as building of temporary structures, and lifting and operation of electrical, mechanical, communications systems and other equipment;
- (m) Provision of workers' welfare facilities;
- (n) Emergency preparedness and response plan;
- (o) Waste management system; and
- (p) Prohibited acts and penalties for violations.

The safety and health program shall be prepared and executed by the employer, contractor or subcontractor, if any, in consultation with the workers and their representatives and shall be submitted to the DOLE which shall approved disapproved or modify the same according to existing laws rules and regulations, and other issuances.

The approved safety and health program shall be communicated and be made readily available to all persons in the workplace.

Section 13. Occupational Safety and Health (OSH) Committee. - To ensure that the safety and health program observed and enforced, a safety and health committee shall be organized in covered workplaces composed of the following:

- (a) Employer or representative as the chairperson ex officio;
- (b) Safety officer of the company or project as the secretary;
- (c) Safety officer representing the contractor or subcontractor, as the case may be, as members;
- (d) Physicians, nurses, certified first-aiders, and dentists as members, ex officio, if applicable; and
- (e) Workers representatives who shall come from the union if the workers are organized or elected by the workers through a simple majority vote if they are unorganized, as members.

The committee shall effectively plan develop, oversee and monitor the implementation of the safety and health program.

Section 14. Safety Officer. - To ensure that a safety and health program is duly followed and enforced, covered workplaces shall have safety officers who shall:

- (a) Oversee the overall management of the safety and health program;
- (b) Frequently monitor and inspect any health or safety aspect of the operation being undertaken;
- (c) Assist government inspectors in the conduct of safety and health inspection at any time whenever work is being performed or during the conduct of an accident investigation; and
- (d) Issue work stoppage orders when necessary.

The number and qualification of the safety officers shall be proportionate to the total number of workers and equipment, the size of the work area and such other criteria as may be prescribed by the DOLE. In the case of a contractor or subcontractor, a safety officer must be deployed at each specific area of operations to oversee the management of the safety and health programs of its own workforce.

Section 15. Occupational Health Personnel and Facilities. - Covered workplaces shall have qualified occupational health personnel such as physicians, nurses, certified first-aiders, and dentists duly complemented with the required medical supplies, equipment and facilities. The number of health personnel, equipment and facilities. The number of health personnel, equipment and facilities, and the amount of supplies shall be proportionate to the total number of workers and the risk of hazard involved, the ideal ratio of which shall be prescribed by the DOLE.

Section 16. Safety and Health Training. -

- (a) All safety and health personnel shall undergo the mandatory training on basic occupational safety and health for safety officers as prescribed by DOLE.
- (b) All workers shall undergo the mandatory eight (8) hours safety and health seminar as required by the DOLE which shall include a portion on joint employer-employee orientation.
- (c) All personnel engaged in the operation, erection and dismantling of equipment and scaffolds, structural erections, excavations, blasting operations, demolition, confined spaces hazardous chemicals, welding, and flame cutting shall undergo specialized instruction and training on the said activities.

Section 17. Occupational Safety and Health Reports. - All employers, contractors or subcontractors, if any, shall submit all safety health reports, and notifications prescribed by the DOLE.

Section 18. Workers' Competency Certification. - In order to professionalize, upgrade and update the level of competence of workers, the Technical Education and Skills Development Authority (TESDA) or the Professional Regulation Commission (PRC), as the case may be, shall establish national competency standards and prepare guidelines on competence assessment and certification for critical occupations. In this regard, all critical occupations shall undergo the mandatory competence assessment and certification by the TESDA.

An occupation shall be considered critical when:

- (a) The performance of a job affects the people's lives and safety;
- (b) The job involves the handling of tools, equipment and supplies;
- (c) The job requires a relatively long period of education and training; and
- (d) The performance of the job may compromise the safety, health and environmental concerns within the immediate vicinity of the establishment.

Section 19. Workers' Welfare Facilities. - All establishments, projects, sites and all other places where work is being undertaken shall have the following welfare facilities in order to ensure humane working conditions:

- (a) Adequate supply of safe drinking water;
- (b) Adequate sanitary and washing facilities;
- (c) Suitable living accommodation for workers, as may be applicable; and
- (d) Separate sanitary, washing and sleeping facilities for men and women workers as may be applicable.

Section 20. Cost of safety and Health Program. - The total cost of implementing a duly approved safety and health program shall be an integral part of the operations cost. It shall be a separate pay item in construction and in all contracting or subcontracting arrangements.

CHAPTER V

JOINT AND SOLIDARITY LIABILITY

Section 21. Employers' Responsibility and Liability. - The employer, project owner, general contractor, contractor or subcontractor, if any, and any person who manages, controls or supervises the work being undertaken shall be jointly and solidarity liable for compliance with this Act.

CHAPTER VI

ENFORCEMENT OF OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section 22. Visitorial Power of the Secretary of Labor and Employment. - Pursuant to Article 128 of the Labor Code of the Philippines and other applicable laws, the Secretary of Labor and Employment or the Secretary's authorized representatives shall have the authority to enforce the mandatory occupational safety and health standards in all establishments and conduct, together with representatives from the the labor and the employer sectors, an annual spot audit on compliance with OSH standards. The Secretary or the Secretary's duly authorized representatives can enter workplaces at anytime of the day or night where work is being performed to examine records and investigate facts, conditions or matters necessary to determine compliance with the provisions of this Act.

No person or entity shall obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or the Secretary's duly authorized representatives issued pursuant to the authority granted under Article 128 of the Labor Code of the Philippines, and no lower court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders.

The Secretary of Labor and Employment may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when noncompliance with law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

The procedure for inspecting work premises, notifying employers of violations, and issuing compliance or stoppage orders shall be pursuant to the procedure laid down in Article 128 of the Labor Code of the Philippines as implemented through relevant regulations issued by the DOLE on administration and enforcement of labor laws. The inspector or person authorized by the DOLE to enforce compliance with OSH standards shall present proper identification upon request, and such inspector or person shall only act within the authority or direction given by the Secretary of Labor and Employment.

The Secretary of Labor and Employment or the Secretary duly authorized representatives shall inspect establishments and workplaces regardless of the size and nature of operation. Any kind of self-assessment shall not take the place of labor inspection conducted by the DOLE. However, chartered cities may be allowed to conduct industrial safety inspections of establishments within their jurisdiction in coordination with the DOLE: Provided, That they have adequate facilities and competent personnel for purpose as determines by the DOLE, and subject to national standards established by the latter.

Section 23, Payment of Workers During Work Stoppage Due to Imminent Danger. - If stoppage of work due to imminent danger occurs as a result of the employer's violation or fault, the employer shall pay the workers concerned their wages during the period of such stoppage of work or suspension of operation. For purposes of payment of wages and any other liabilities arising from a work stoppage order is issued secondary to an imminent danger situation which would imperil the lives of the workers.

Section 24. Delegation of Authority. - The authority to enforce mandatory OSH standards may be delegated by the Secretary of Labor and Employment to a competent government authority.

Section 25. Standards Setting Power of the Secretary of Labor and Employment. - The Secretary of Labor and Employment shall, in consultation with the other concerned government agencies and relevant stakeholders, by appropriate orders, set and enforce mandatory OSH standards to eliminate or reduce occupational safety and health hazards depending on the number of employees of the establishment, the nature of its business operations, and the risk or hazard involved.

The Secretary shall also institute new, and update existing programs to ensure safe and healthy working conditions in all workplaces especially in hazardous industries such as a mining, fishing, construction, and the maritime industry.

Section 26. Employee's Compensation Claim. - A worker may file claims for compensation benefit arising out of work-related disability or death. Such claims shall be processed independently of the finding of fault, gross negligence or bad faith of the employer in a proceeding instituted for the purpose.

Section 27. Incentives to Employers. - There shall be an established package of incentives under such rules and regulations as may be promulgated by the DOLE to qualified employers to recognize their efforts toward ensuring compliance with OSH and general labor standards such as OSH training packages, additional protective equipment, technical guidance, recognition awards and other similar incentives.

Section 28. Prohibited Acts. - The following are considered as prohibited acts:

(a) Willful failure or refusal of an employer, contractor or subcontractor to comply with the required OSH standards or with a compliance order issued by the Secretary of Labor and Employment or by the Secretary's authorized representative shall make such employer, contractor or subcontractor liable for an administrative fine not exceeding One hundred thousand pesos (₱100,000.00) per day until the violation is corrected, counted from the date the employer or contractor is notified of the violation or the date the compliance order is duly served on the employer. The amount of fine imposed shall depend on the frequency or gravity of the violation committed or the damage caused: Provide, however, That the maximum amount shall be imposed only when the violation exposes the workers to a risk of death, serious injury or serious illness.

(b) An employer, contractor or subcontractor who willfully fails or refuses to comply with the required OSH standards or with a duly issued compliance order, and engages in any of the following acts to aid, conceal or facilitate such noncompliance shall be liable for a maximum of One hundred thousand pesos (₱100,000.00) administrative fine separate from the daily fine imposed above:

1. Repeated obstruction, delay or refusal to provide the Secretary of Labor and Employment or any of its authorized representatives access to the covered workplace or refusal to provide or allow access to relevant records and documents or obstruct the conduct of investigation of any fact necessary in determining compliance with OSH standards;
2. Misrepresentation in relation to adherence to OSH standards, knowing such statement, report or record submitted to the DOLE to be false in any material aspect;
3. Making retaliatory measures such as termination of employment, refusal to pay, reducing wages and benefits or in any manner discriminates against any workers who has given information relative to the inspection being conducted.

For the purpose, the Secretary of Labor and Employment, in consultation with relevant stakeholders, shall issue a list of offenses with corresponding reasonable administrative fines depending on the severity, frequency and damage caused without prejudice to the filing of a criminal or a civil case in the regular courts, as the case may be.

The fine collected shall be used for the operation of occupational safety and health initiatives, including occupational safety and health training and education and other occupational safety and health programs.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Section 29. Updated DOLE Computerized Labor Law Compliance System. - The Secretary of Labor and Employment shall maintain an updated labor inspection system of computerized gathering and generation of real time data on compliances, monitoring of enforcement, and a system of notification on workplace accidents and injuries.

Section 30. Applicability to Micro and Small Enterprises (MSEs). - Specific to MSEs, the DOLE shall develop OSH core compliance standards to ensure safe and healthy workplaces. All MSEs shall be required to implement the prescribed standards for housekeeping, materials handling and storage, electrical and mechanical safety and PPE, and to monitor hazards regularly.

Section 31. Inter-Governmental Coordination and Cooperation. - The DOLE shall institute a mechanism for coordination with the Department of Environment and Natural Resources, Department of Energy, Department of Transportation, Department of Agriculture, Department of Public Works and Highways, Department of Trade and Industry, Department of the Interior and Local Government, Department of Health, Department of Information and Communications Technology, PEZA and all other government agencies, including local government units, within sixty (60) days from the issuance of the implementing rules and regulations of this Act. They shall regularly convene to monitor the

effective implementation of this Act as well as the related programs and projects that are established to prevent and eliminate the incidence of injury, sickness or death in all workplaces.

Section 32. Implementing Rules and Regulations. -The Secretary of Labor and Employment, in coordination with agencies concerned, shall formulate the rules and regulations within ninety (90) days after the effectivity of this Act.

Section 33. Separability Clause. - If any part, section or provision of this Act shall be held invalid or unconstitutional, the other provisions not affected by such declaration shall remain in full force and effect.

Section 34. Repealing Clause. - All laws, acts decrees, executive orders, rules and regulations or other issuances or parts thereof which are inconsistent with this Act are hereby modified or repealed.

Section 35. Effectivity. - This Act shall take effect after fifteen (15) days after its publication in the Official Gazette or at least two (2) newspapers of general circulation.

Approved: August 17, 2018

REPUBLIC ACT NO. 11188

AN ACT PROVIDING FOR THE SPECIAL PROTECTION OF CHILDREN IN SITUATIONS OF ARMED CONFLICT AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

Be it enacted by the Senate and House of Representatives of the Philippine Congress Assembled:

CHAPTER I GENERAL PROVISIONS

Section 1. Short Title. - This Act shall be known as the “Special Protection of Children in Situations of Armed Conflict Act”.

Section 2. Declaration of Stale Policy. - It shall be the policy of the State to provide special protection to children in situations of armed conflict from all forms of abuse, violence, neglect, cruelty, discrimination and other conditions prejudicial to their development, taking into consideration their gender, cultural, ethnic and religious background. For this purpose, the State shall:

(a) Fully implement the protection guaranteed under the United Nations Convention on the Rights of the Child (UNCRC), its Optional Protocol on the involvement of children in armed conflict and all other core human rights treaties, particularly, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; other pertinent international instruments such as the International Labor Organization Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor; the Geneva Conventions of 1949 and the additional protocols ratified by the Philippines; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation No. 30 and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;

(b) Take into account the United Nations Guiding Principles on Internal Displacement, the United Nations Security Council Resolutions related to children affected by armed conflict, United Nations Security Council Resolution (UNSCR) No. 1820 on Women, Peace and Security, and other pertinent international instruments in the implementation of its treaty obligations and of this Act;

(c) Respect the human rights of children at all times. It shall be recognized that children are entitled to dignity and respect as human beings in need of protection from degradation, humiliation, maltreatment, exploitation and assault;

(d) Consider as paramount the best interests of children, and treat all children involved in, affected by or displaced by armed conflict as victims;

- (e) Take all feasible measures to prevent the recruitment and use of children in armed conflict and shall take all necessary measures to ensure the effective implementation and enforcement of the provisions of this Act;
- (f) Take all the necessary measures to address the root causes of armed conflict including, but not limited to, poor governance, issues of injustice and widespread poverty and economic inequity that result in involving, affecting or displacing children;
- (g) Continue to recognize its primary role in providing-effective protection and relief to all children in situations of armed conflict;
- (h) Continue to fulfill its responsibilities to end impunity and to prosecute those responsible especially for grave child rights violations in armed conflict; and
- (i) Ensure the right to participation of children affected by armed conflict in all its policies, actions, and decisions concerning their rescue, rehabilitation and reintegration.

Section 3. Scope of Application. - This Act shall apply to all children involved in, affected by or displaced by armed conflict.

The application of this Act shall not affect the legal status of any party to the armed conflict.

Section 4. Interpretation of this Act. - Nothing in this Act shall be construed as precluding provisions in existing Philippine laws, international human rights laws and related instruments, and international humanitarian laws that are more conducive to the realization of the rights of children.

Section 5. Definition of Terms. - As used in this Act:

- (a) Abduction of children refers to the seizure, apprehension, taking in custody, detention or capture of one or more children either temporarily or permanently by force, threat of force or coercion, or deception for the purpose of any form of exploitation of such children in situations of armed conflict;
- (b) Acts of gender-based violence refer to physical or sexual violence other than rape, and psychosocial harm that is committed against a person as a result of power inequities that are based on gender roles. These include, among others battering, sexual slavery and abuse of children, female genital mutilation, prostitution, forced marriage, forced pregnancy or forced sterilization;
- (c) Armed conflict refers to armed confrontations occurring between government forces and one or more armed groups, or between such groups arising in the Philippine territory. These shall include activities which may lead to, or are undertaken in preparation of armed confrontation or armed violence that put children's lives at risk and their rights violated;

(d) Armed group refers to an armed non-State actor or non-State entity engaged in armed violence against the State or its government forces or against other non-State armed groups, actors or non-State entities;

(e) Attacks on schools, hospitals, places of worship, child development or day care centers, evacuation centers and other public places such as recreation parks, playgrounds and malls refer to the occupation, shelling or targeting for propaganda of schools, hospitals or places of worship; causing damage to such places, or harm or injury to their personnel; or causing the total or partial physical destruction of such facilities; or disruption of educational activities and health services. These also refer to attacks of such places which have been temporarily abandoned by the community as a result of armed conflict;

(f) Camps refer to structures or spaces occupied by government forces and armed groups;

(g) Child refers to:

1. A person below eighteen (18) years of age; or
2. A person eighteen (18) years of age or older but who is unable to fully take care of one's self; or protect one's self from abuse, neglect, cruelty, exploitation or discrimination; and unable to act with discernment because of physical or mental disability or condition;

(h) Child protection refers to measures, structures and activities that ensure the prevention and response to abuse, neglect, exploitation and violence affecting children. It shall include the promotion of their development and psychosocial well-being;

(i) Children affected by armed conflict refer to all children population experiencing or who have experienced armed conflict;

(j) Children involved in armed conflict (CIAC) refer to children who are either forcibly, compulsorily recruited, or who voluntarily joined a government force or any armed group in any capacity. They may participate directly in armed hostilities as combatants or fighters; or indirectly through support roles such as scouts, spies, saboteurs, decoys, checkpoint assistants, couriers, messengers, porters, cooks or as sexual objects;

(k) Children in situations of armed conflict refer to all children involved in armed conflict, children affected by armed conflict and internally displaced children:

(l) Extrajudicial killings refer to all acts and omissions of State actors that constitute violation of the general recognition of the right to life embodied in the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights, the UNCRC and similar other human rights treaties to which the Philippines is a State party;

- (m) False branding of children or labeling children as children involved in armed conflict refers to the voluntary and intentional act of referring to, calling, defining, reporting or any other form of communication that incorrectly defines children as children involved in armed conflict, when the status or condition of such children are such that they are not involved in armed conflict as defined in this Act;
- (n) False reporting of a child in custody refers to the voluntary and intentional act of any person of providing false, incorrect or mistaken information in relation to a child in custody in relation to situations of armed conflict;
- (o) Food blockade refers to an armed conflict tactic of forcibly cutting off entry of food supplies in a particular area where children can be found;
- (p) Government forces refer to the Armed Forces of the Philippines (AFP), Philippine National Police (PNP), paramilitary and other law enforcement agencies;
- (q) Grave child rights violations refer to the crimes committed against children that constitute flagrant violations of their human rights and have severe consequences on their lives. These crimes include those enumerated in Section 9 of this Act such as killing or maiming of children, recruitment or use of CIAC, rape and other forms of sexual violence against children, abduction of children, attacks against schools or hospitals, or denial of humanitarian access to children;
- (r) Hamleting refers to an armed conflict strategy used by one party involved in armed conflict that isolates a community of importance to the other party which is inhabited by children, including relocating a community away from crucial zones and could be used to control the activities of the people in said areas;
- (s) Hospitals or health facilities refer to any structure including diagnostic clinics or multispecialty clinics recognized and known by the community as a facility where the sick and wounded are provided with medical or health care services;
- (t) Humanitarian access refers to the right of vulnerable populations to receive international protection and assistance from an impartial humanitarian relief operation to complement efforts of national authorities. Such action is subject to the consent of the State or parties concerned and does not prescribe coercive measures in the event of refusal, however unwarranted;
- (u) Humanitarian assistance refers to any aid that seeks to save lives and alleviate suffering of a crisis-affected population. Humanitarian assistance must be provided in accordance with the basic humanitarian principles of humanity, impartiality, independence and neutrality. Assistance may be divided into three (3) categories: direct assistance, indirect assistance, and infrastructure support, which have diminishing degrees of contact with the affected population;

(v) Internally displaced children refer to children or group of children, whether separated or together with their families, who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effect of armed conflict and situations of generalized violence;

(w) Killing of children refers to acts of all kinds in the context of armed conflict that result in the death of one or more children. They include the death of children as a result of direct targeting and indirect actions, such as cross fire, use of landmines and improvised explosive devices (IED), cluster munitions, biological weapons of destruction, all other forms and types of explosives; or house demolitions, search and arrest campaigns, suicide attacks and torture; they also include murder, homicide and such other similar crimes as defined in the Revised Penal Code, as amended, and other special laws;

(x) Maiming of children refers to acts of all kinds in the context of armed conflict that result in serious or permanent or disabling injury, scarring or defacing, or mutilation of children. It shall cover intentional maiming of children where they are directly targeted, and causal maiming of children which result from indirect actions, such as cross fire, use of landmines, IED, cluster munitions, biological weapons of destruction, all forms and types of explosives; or in the context of house demolitions, search and arrest campaigns, suicide attacks and torture;

(y) Parents refer to any of the following:

1. Biological parents of the child;
2. Adoptive parents of the child;
3. Individuals who have custody of the child; or
4. A duly licensed foster parent, pursuant to Republic Act No. 10165, otherwise known as the “Foster Care Act of 2012”;

(z) Rape refers to a sexual assault that violates a person’s right to personal security and bodily integrity with the essential lack of consent and shall include those enumerated in Section 2 of Republic Act No. 8353, otherwise known as “The Anti-Rape Law of 1997”;

(aa) Recruitment refers to compulsory, forced or voluntary conscription or enlistment of children into the governmental armed force or forced or voluntary membership into the armed group;

(bb) Release of children refers to the process of formal and controlled disarmament and demobilization of children and their release from a government force or armed group as well as informal ways in which children leave by escaping, being captured or by

other means. It entails a disassociation from the government force or armed group and the beginning of transition from military to civilian life. Release can take place during a situation of armed conflict; it is not dependent on the temporary or permanent cessation of hostilities; and it is not dependent on children having weapons to forfeit;

- (cc) School refers to any structure or space, with or without marked visible boundaries, which is either recognized by the government or known by the community as a learning space for children; and
- (dd) Zone of peace refers to a site with sacred, religious, historic, educational, cultural, geographical or environmental importance, which is protected and preserved by its own community. It is not merely a “Demilitarized Zone”, but a sanctuary that operates within ethical principles of nonviolence, free from weapons, acts of violence, injustice and environmental degradation. The recognition of the Zone of Peace expresses commitments on the part of its community, governmental authority and, if appropriate, religious leadership to preserve the peaceful integrity of the designated site. Its custodians, members, participants and visitors exemplify mutual respect and nonviolent behavior while on the site, and share their resources for furthering peace and cooperation.

CHAPTER II

RIGHTS OF CHILDREN IN SITUATIONS OF ARMED CONFLICT

Section 6. Children as Zones of Peace. - Children are hereby declared as Zones of Peace. As such, they shall be treated in accordance with the policies stipulated under Article X, Section 22 of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”. Treatment of children as Zones of Peace shall extend beyond territorial or geographical boundaries and shall focus on the person of the child whose rights shall be promoted and protected at all times, especially in situations of armed conflict or violence. The State and all sectors concerned shall have the responsibility to resolve armed conflict in order to promote the goal of children as Zones of Peace. As such, the community, governmental authority and, if appropriate, religious leadership shall preserve the peaceful integrity of children, exemplify mutual respect and nonviolent behavior in the presence of children, and share their resources to further peace and cooperation.

Section 7. Rights of Children in Situations of Armed Conflict. - Children in situations of armed conflict shall have the following rights:

- (a) The right to life, survival and development;
- (b) The right of special respect and protection against any form of abuse, neglect, exploitation and violation, especially in the context of armed conflict;

- (c) The right to be treated as victims. They shall be treated in accordance with this Act and other applicable laws, consistent with the State obligations under international law, within the framework of restorative justice, social rehabilitation and promotion of their protection;
- (d) The right to be accorded with special respect and to be protected from any form of direct or indiscriminate attacks and acts of violence, especially protection from the grave child rights violations as enumerated in Section 9 of this Act;
- (e) The right to be protected from recruitment into government forces or armed groups and from participation in armed conflict including the right to be protected from torture or any cruel, inhuman or degrading practices that compel compliance or punish noncompliance with recruitment or participation in armed conflict;
- (f) The right to be protected from maiming, torture, abduction, rape and killing, especially extrajudicial killing;
- (g) The right to be immediately provided and have safe access to essential, adequate and culturally appropriate food and nutrition; basic shelter and housing; culturally appropriate clothing; water, sanitation and hygiene; basic health services including essential drugs, medicines and vaccines, minimum initial service package for reproductive health, and health professional evaluation and appropriate intervention; education, including religious and moral education; early childhood care and development programs, psychosocial support and social services. All services provided for them must be child-specific and gender sensitive and responsive;
- (h) The right to enjoy their freedom of thought, conscience, religion or belief, opinion and expression; to associate freely and participate equally in legitimate community affairs; to communicate in a language they understand even in situations of armed conflict and whether or not they have been internally displaced or are living in evacuation centers or settlements;
- (i) The right to be treated humanely in all circumstances, without any adverse distinction founded on race, color, religion or faith. Sexual Orientation, Gender Identity and Expression (SOGIE), birth, wealth or any other similar criteria;
- (j) The right not to be interned or confined in camp ;
- (k) The right of the injured, the wounded and the sick, those with disabilities, those who are separated and unaccompanied, expectant and lactating mothers, to care, protection and assistance required by their condition and treatment which takes into account their special needs such as their health needs, reproductive health care, appropriate counselling, prevention of infectious diseases and Mental Health Psychosocial Support Services;

- (l) The right to be with their families, especially with their mothers, during evacuations and in evacuation centers;
- (m) The right to be reunited with their families in case of separation due to armed conflict;
- (n) The right to privacy and confidentiality in all proceedings;
- (o) The right to nondiscrimination;
- (p) The right to liberty of movement and freedom to choose their residence; in particular, internally displaced children and their families have the right to move freely in and out of evacuation centers or other settlements, subject to existing rules and regulations in those centers or settlements and to other government regulations and directives;
- (q) The right especially of internally displaced children and their families to: leave the country; seek safety in another part of the country; seek other service providers; seek asylum in another country; and be protected against forcible return to resettlement in any place where their life, safety, liberty or health would be at risk;
- (r) The right to obtain necessary documents to enjoy their legal rights. The State shall have the duty to expedite services in the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions and without discrimination against female child and male child, who shall have equal rights to obtain and to be issued the same in their own names;
- (s) The right of access to justice including free legal aid when filing cases against the perpetrators;
- (t) The right to the protection of their family's properties and possessions in all circumstances; and
- (u) The right to be consulted and to participate in all matters affecting them. Whenever feasible, views of children, as well as families and the communities to which these children return, should be sought in all stages of assessment, planning, implementation and evaluation activities aimed at preventing the association of children with government forces and armed groups; as well as in the development and design of policies, programs and services for the rescue, rehabilitation, and reintegration of children involved in armed conflict.

The rights enumerated in this section shall not hinder the application of other rights recognized and guaranteed in the Constitution and other existing laws in keeping with the best interests of the child.

CHAPTER III PREVENTION

Section 8. Prevention. - The State shall take all feasible measures to prevent the recruitment, re-recruitment, use, displacement of, or grave child rights violations against children involved in armed conflict. It shall take all necessary measures to ensure the effective implementation and enforcement of the provisions of this Act. Towards this end, the State shall:

- (a) Prioritize children's issues in the peace program of the government and include children's concerns, specifically the effects of armed, conflicts, in peace negotiations;
- (b) Pursue in both formal and nonformal settings the mainstreaming of peace education programs and the promotion of the culture of peace and nonviolence;
- (c) Provide educational assistance, whether formal or alternative learning system, that is child and culturally sensitive. Girls should have an equal right to education irrespective of their status as mothers or wives;
- (d) Develop and implement training programs and campaign towards promoting a culture of peace and respect for human rights and international humanitarian law in collaboration with civil society organizations;
- (e) Provide capacity building on Local Governance and Community Development, and ensure the participation of the Local Councils for the Protection of Children, various organizations, especially of children's and people's organizations at the community level. These organizations shall be involved in consultation and decision-making processes and in the development and implementation of programs, projects and activities established for them;
- (f) Establish livelihood programs which shall be made available to communities in all affected areas in order to alleviate the living conditions of the people;
- (g) Make available basic health services in health facilities in all affected areas. Culturally-sensitive nutrition programs and activities including supplementary feeding shall also be made available. Efforts to support traditional health practices in indigenous peoples' area shall also be initiated;
- (h) Establish basic facilities and infrastructure needed;
- (i) Ensure that child protection mechanisms are present and functional; and
- (j) Establish a comprehensive, effective and efficient system for monitoring and reporting and response for violations as provided in Section 9 of this Act.

CHAPTER IV
PROHIBITED ACTS, PENALTIES AND PRESCRIPTION OF CRIME

Section 9. Prohibited Acts and Penalties -

(a) It shall be unlawful for any person to commit the following acts of grave child rights violations:

1. Killing of children;
2. Torture committed against children. For purposes of this Act, torture shall include those enumerated in Section 4 of Republic Act No. 9745, otherwise known as the “Anti-Torture Act of 2009”;
3. Intentional maiming of children; and
4. Rape of children and other forms of sexual violence.

Any person found guilty of committing any of the acts enumerated in subparagraphs (1), (2), (3) and (4) of paragraph (a) of this section shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00).

(b) The following acts of grave child rights violations are also hereby prohibited:

1. Cruel, inhuman and degrading treatment or punishment committed against children. For purposes of this Act, cruel, inhuman and degrading treatment or punishment shall include those acts enumerated in Section 5 of the “Anti-Torture Act of 2009”;
2. Abduction of children;
3. Causal maiming of children;
4. Taking children as hostages or using them as human shield;
5. Recruitment, conscription or enlistment of children into government forces and other armed groups;
6. Acts of gender-based violence against children;
7. Refusal or denial of humanitarian access or assistance to children;
8. Use or involvement of children involved in armed conflict in any capacity as defined in Section 5(i) of this Act; and

9. Attack on schools, hospitals, places of worship, evacuation centers and settlements and other public places such as recreation parks, playgrounds and malls.

Any person found guilty of committing any of the acts enumerated in subparagraphs (1), (2), (3), (4), (5), (6), (7), (8) and (9) of paragraph (b) of this section shall suffer the penalty of imprisonment of not less than fourteen (14) years but not more than twenty (20) years and a fine of not less than One million pesos (₱1,000,000.00) but not more than Two million pesos (₱2,000,000.00).

(c) Where the crimes committed under paragraph (b) of this section resulted in the killing, torture, maiming or rape of children as enumerated in subparagraphs (1), (2), (3) and (4) of paragraph (a), Section 9, the penalty imposed shall be that of Section 9(a) of this Act.

(d) Likewise, it shall be unlawful for any person to commit the following acts:

1. Hamleting;
2. Food blockade;
3. Intentional delayed reporting of a child in custody;
4. False reporting of a child in custody ;
5. False branding of children or labeling children as children involved in armed conflict; and
6. Arrest, arbitrary detention or unlawful prosecution of children allegedly associated with armed groups or government forces.lavvphil

Any person found guilty of committing any of the acts enumerated in subparagraphs (1), (2), (3), (4), (5) and (6) of paragraph (d) of this section shall suffer the penalty of imprisonment of not less than six (6) years but not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (₱500,000.00) but not more than One million pesos (₱1,000,000.00).

(e) Parental accountability of children in situations of armed conflict are subject to the existing provisions of Presidential Decree No. 603, otherwise known as “The Child and Youth Welfare Code”; Republic Act No. 7610; Republic Act No. 9208, otherwise known as the “Anti-Trafficking in Persons Act of 2003”; Republic Act No. 9231 on the elimination of worst forms of child labor; Republic Act No. 9851, otherwise known as the “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity”; and Republic Act No. 10364, otherwise known as the “Expanded Anti-Trafficking in Persons Act of 2012”: Provided, That the involvement of the child was due to parental action or inaction; or the parent directed or ratified the involvement of the child; or the child acted as the parent’s agent or servant; or the child was entrusted a dangerous weapon or instrument.

Section 10. Non-implementation or Violation of Any Other Provision of this Act or the Rules and Regulations in General. - Any public officer who shall knowingly and maliciously prevent, prohibit, refuse or discontinue the implementation of any provision of this Act or any rule and regulation promulgated in accordance thereof, or in any other way violate them if such officer has the duty to implement, shall be punished by imprisonment of not less than six (6) years but not more than twelve (12) years and perpetual absolute disqualification from public office.

Any such officer who shall prevent, prohibit, refuse or discontinue the implementation of this Act or its rules and regulations, or in any other way violate them by reason of inexcusable negligence or ignorance, shall suffer the penalty of imprisonment of not less than one (1) month but not more than six (6) months and temporary special disqualification from public office.

The public officer liable under this section shall, in addition to imprisonment, be/held administratively liable under existing applicable laws.

Any person who shall deliberately commit any other act not covered in Section 9, which shall result in prejudicing the rights of children in situations of armed conflict shall suffer the penalty of imprisonment of not less than six (6) months but not more than six (6) years.

Section 11. Forfeiture of Proceeds, Property and Assets. - The court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from the crimes defined and penalized in this Act, without prejudice to the rights of the bona fide third party. The court shall impose the corresponding accessory penalties under the Revised Penal Code, as amended, especially where the offender is a public officer.

The liabilities imposed in this Act shall not prejudice the application of other existing criminal, civil and administrative liabilities that may additionally be imposed upon the person.

Section 12. Nonprescription. - The crimes defined and penalized under this Act, their prosecution and the execution of sentences imposed on their account shall not be subject to any prescription.

CHAPTER V

PRINCIPLES OF CRIMINAL LIABILITY AND APPLICATION OF PENALTIES

Section 13. Irrelevance of Official Capacity. - This Act shall apply equally to all persons without any distinction based on official capacity. In no case shall the official capacity exempt a person from criminal responsibility or constitute a ground for reduction of sentence.

Section 14. Responsibility of Superiors. - In addition to the grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible for such crimes committed by subordinates where:

- (a) The superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or were about to commit such crimes; or
- (b) The superior failed to take all necessary, legitimate and reasonable measures to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Section 15. Orders from a Superior. - The fact that a crime defined and penalized under this Act has been committed by a person pursuant to an order of a superior shall not relieve that person of criminal responsibility unless all of the following elements occur:

- (a) The person was under a legal obligation to obey orders of the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The person acted under duress or coercion.

For purposes of this section, orders to commit grave child rights violations enumerated in Section 9 hereof are manifestly unlawful and shall be punished under this Act and other applicable existing laws.

Section 16. Unknown Superior. - Where the crimes defined and penalized under this Act have been committed by a person pursuant to an order or command of an unknown superior, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or who has performed similar acts on behalf of the armed groups, shall be deemed the superior.

CHAPTER VI

INVESTIGATION, PROSECUTION AND COURT

Section 17. Court, Prosecutors and Investigators. - The Family Courts shall have original and exclusive jurisdiction over the crimes punishable under this Act.

The Commission on Human Rights (CPIR), the Department of Justice (DOJ) and its attached agencies, the PNP or other concerned law enforcement agencies shall designate prosecutors or investigators, as the case may be, for cases involving crimes punishable under this Act.

The State shall ensure that judges, prosecutors and investigators designated for purposes of this Act, receive effective training in human rights particularly on the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children Involved in Armed Conflict and related international instruments, International Humanitarian Law, International Criminal Law and National

Guidelines and Protocols on the Handling and Treatment of CIAC.

Section 18. Requirement and Procedures on Age Verification and Presumption of Minority. - The child involved in, affected by or displaced by armed conflict, shall enjoy the presumption of minority and shall enjoy all the rights of a child recognized in this Act and other applicable laws unless proven to be at least eighteen (18) years of age or older.

The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent document. In the absence of these documents, age may be based on information from the child, testimonies of other persons, the physical appearance of the child and other relevant evidence such as dental records. In case of doubt as to the age of the child, it shall be resolved in favor of the child being deemed a minor.

Any person contesting the age of the child prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court, which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts to determine the age of the child involved in armed conflict.

Section 19. Protection of Victims and Witnesses. - In addition to existing provisions in Philippine law for the protection of victims and witnesses, the following measures shall be undertaken:

(a) The court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of child victims and witnesses. Pursuant thereto, the court shall give due regard to all relevant factors, including age, gender and health, and the nature of the crime, particularly where the crime involves sexual or gender-based violence or violence against children;

(b) The court shall protect the privacy of child victims and witnesses and observe confidentiality consistent with existing rules on examination of child victims and witnesses;

(c) Where the personal interests of the child victims are affected, the court shall consider the child victim's views and concerns in accordance with established rules of procedure and evidence; and

(d) Where the disclosure of evidence or information may be prejudicial to the security of the child, witness or the family, the prosecution may withhold such evidence or information and instead submit a summary thereof consistent with the rights of the accused to a fair and impartial trial.

Section 20. Reparation to Victims. - In addition to existing provisions in Philippine law and procedural rules for reparations to victims, the following measures shall be undertaken:

(a) The court shall follow the principles relating to the reparations to, or in respect of, child victims, including restitution, compensation and rehabilitation, taking into consideration the scope and extent of any damage, loss or injury suffered by child victims;

(b) The court shall make an order directly against a convicted person specifying appropriate reparations to child victims, including restitution, compensation and rehabilitation; and

(c) Before making an order under this section, the court may invite and shall take account of representations from or on behalf of the convicted person, child victims or other interested persons.

Nothing in this section shall be interpreted to prejudice the rights of child victims under national or international law.

Section 21. Immunity from Suit for Persons Providing Assistance. - Any person who shall take custody of children involved in armed conflict to ensure their safety or provide them any form of assistance shall be exempt from any civil, criminal and administrative liability: Provided, That the person taking custody shall report it to the Local Social Welfare and Development Office (LSWDO), the PNP or to the barangay office within forty-eight (48) hours from custody.

CHAPTER VII

REHABILITATION AND REINTEGRATION, RESCUE AND RELEASE

Section 22. Rescue, Rehabilitation and Reintegration. - The State shall institute policies, programs and services for the rescue, rehabilitation and reintegration of children in situations of armed conflict. The programs, which shall be provided by civilian local and national government agencies, in partnership with nongovernment organizations shall aim at providing services for children while involving their families, communities and other entities to facilitate the children's reintegration process.

These services shall include psychosocial support, health and nutrition, education, livelihood for families and other basic or legal services, as may be necessary.

Any program intervention shall be designed with due respect to the culture of each child, family and community. The child shall, at all times, be provided with legal assistance and physical security upon rescue.

Regardless of the perceived association of the children to one of the sides of the conflict, they shall benefit from all available medical, psychosocial, legal, shelter and educational response mechanism services for the victims of armed conflict.

The State shall take into account the protocol in the rescue, rehabilitation and reintegration of children specified below:

- (a) Rescue. – The State shall provide for adequate measures and mechanisms to facilitate the recovery, either voluntary or involuntary, of children from armed groups or government forces. It shall provide legal and physical security to children involved in armed conflict including services such as family tracing and system of referral or response on various psychosocial services needed by the victims;
- (b) Rehabilitation. – The civilian national or local government agencies and civil society organizations shall facilitate the normal development of children victims in their post-involvement phase. It shall provide services including therapeutic counseling, security and protection, educational assistance and livelihood opportunities to their parents, relatives or guardians or to the victims when they become of age;
- (c) Reintegration. – The civilian national or local government agencies and civil society organizations shall bring children back to their families or communities whenever possible. This shall involve services including the provision of alternative parental care. Trainings aimed to enhance community readiness in the reintegration of these children shall also be undertaken. Processes to facilitate the reintegration, healing and reconciliation of CIAC with their communities shall also be undertaken. Whenever possible, interventions for children shall be done with respect to their opinion. Interventions for indigenous peoples (IPs) children shall be conducted in recognition of the traditional structures and institutions of their communities.

Section 23. Release of Children Involved in Armed Conflict (CIAC). - The State shall take all feasible measures to ensure that children recruited or used in armed conflict are demobilized, dissociated or otherwise released from the government force or armed group. For purposes of this Act, release activities shall be initiated independent of any negotiated peace agreements.

The State, through its concerned agencies, in coordination with other stakeholders shall have the following duties:

- (a) Develop a child-specific release program. This release program should not make as a requirement the surrender of arms by CIAC;
- (b) Monitor and document the status of CIAC who undergo either a formal or informal release process;
- (c) Facilitate data and information sharing between government and nongovernment organizations to be informed and updated of the status of released CIAC and to assess and address their needs, with due regard to the right to privacy of CIAC, their security and safety, and considering the confidentiality of records;

- (d) Mobilize and strengthen networks for referrals;
- (e) Provide free legal assistance to released CIAC ensuring that the legal needs of the former CIAC will be addressed, such as the prohibition or stoppage of filing charges or dismissal of cases against CIAC as criminal or political offenders irrespective of their association with any-armed group or government force; and
- (f) Ensure the formal release of CIAC through various approaches such as advocacy of concerned groups, through the Government Peace Negotiating Panel (GPNP), and others: Provided, That in any release action, the best interest of the child shall be observed.

Section 24. Rescued, Taken into Custody, or Surrendered Children Involved in Armed Conflict (CIAC). - Where the CIAC have been rescued, taken into custody, or surrendered, they shall at all times be treated in a child-friendly and sensitive manner. The State, at all times, shall consider the safety and security of the CIAC, and ensure that they are not subjected to tactical interrogation or any similar forms of investigation, especially by the police and military. The following procedures shall apply without prejudice to the application of other existing laws that will uphold the best interests of the child:

- (a) The identity of rescued CIAC shall be protected. Any identifying information regarding them shall remain confidential;
- (b) Rescued CIAC shall not be used for any political propaganda nor be unnecessarily exposed to media in violation of child rights to privacy, security and confidentiality of their cases;
- (c) Upon the rescue or surrender of the CIAC, government agencies, in particular, the AFP, the PNP, the Department of National Defense (DND), the local government units (LGUs), other concerned government agencies or nongovernment organizations in possession of the CIAC shall report immediately within twenty-four (24) hours the incident to the LSWDO, Local Council for the Protection of Children (LCPC) and the Council for the Welfare of Children (CWC);
- (d) The LSWDO or LCPC shall coordinate with the agency or nongovernment organization in possession of CIAC for the handover of custody of the children to the Department of Social Welfare and Development (DSWD);
- (e) The handover to the LSWDO shall take place within twenty-four (24) hours or in cases where handover is not possible within the prescribed twenty-four (24)-hour period due to valid reasons and without the fault of the person having custody of the child, the handover shall be done within the next seventy-two (72) hours;

(f) The LSWDO shall facilitate the family tracing and coordinate with parents, relatives or guardians of the CIAC to inform them of the handover;

(g) The Local Health Office (LHO), in coordination with the LSWDO, shall check and assess the medical and physical condition of the CIAC. In cases where medical needs are apparent, the LHO shall ensure that medical services or treatment are received by the CIAC;

(h) The LSWDO shall assess the needs of the CIAC and refer to concerned agencies to provide immediate assistance or appropriate services.

The LSWDO shall require the parents of the child in situations of armed conflict to undergo counseling or any other intervention that, in the opinion of the court, will advance the welfare and best interest of the child. Relevant government agencies should provide social welfare and social protection interventions for parents and children to ensure family support, reintegration and rehabilitation, when necessary;

(i) The LSWDO, in coordination with other agencies, shall enter the CIAC into the child-specific reintegration programs; and

(j) The CIAC shall be reintegrated into the community and reunited with his or her family, or within a family or community setting where they can be adequately cared for and protected. In cases where reintegration to original community of origin is not feasible for reasons of CIAC's security, a conflict-free foster community or institution shall be identified. For other cases where children associated with government forces or armed groups remain with their family and community or maintain close ties, reintegration shall entail the reorientation of children towards civilian life.

CHAPTER VIII

INVOLVEMENT OF GOVERNMENT AND NONGOVERNMENT ORGANIZATIONS

Section 25. Inter-Agency Committee on Children in Situations of Armed Conflict. - To effectively undertake the protection of the welfare of children in situations of armed conflict and for proper implementation of this Act, the Inter-Agency Committee on Children Involved in Armed Conflict (IAC-CIAC) created by Executive Order No. 138 shall now be known as the Inter-Agency Committee on Children in Situations of Armed Conflict (IAC-CSAC). It shall be chaired by the CWC, with the following government organizations (GOs) as members:

(a) Armed Forces of the Philippines (AFP);

(b) Commission on Pluman Rights (CPIR);

(c) Department of the Interior and Local Government (DILG);

- (d) Department of Health (DOH);
- (e) Department of Education (DepEd);
- (f) Department of Justice (DOJ);
- (g) Department of National Defense (DND);
- (h) Department of Social Welfare and Development (DSWD);
- (i) Local government units (LGUs);
- (j) National Commission on Indigenous Peoples (NCIP);
- (k) National Commission on Muslim Filipinos (NCMF);
- (l) Office of Civil Defense (OCD);
- (m) Office of the Presidential Adviser on the Peace Process (OPAPP);
- (n) Philippine Commission on Women (PCW);
- (o) Philippine National Police (PNP); and
- (p) Two (2) civil society organizations working in the same field.

In caring for children in situations of armed conflict, child-focused NGOs, shall take active part in and continually strive to strengthen their programs and capabilities to deliver protection to these children. For proper implementation of this Act, all GOs and NGOs including those identified herein shall provide their respective counterpart support including technical, logistical and financial assistance relative to the implementation of programs, projects and activities for children in situations of armed conflict, in accordance with their mandate and in accordance with existing accounting and auditing rules and regulations.

All programs should be participatory and should ensure the involvement of children, their communities, NGOs, faith-based organizations or groups, and other concerned groups.

Section 26. Functions of the IAC-CSAC. - The IAC-CSAC shall perform the following functions:

- (a) Ensure that international instruments such as the UNCRC, the optional protocol on the involvement of children in armed conflict and other related human rights treaties are considered as actions taken;

- (b) Formulate guidelines and develop programs, in coordination with concerned agencies, for the handling of children involved in armed conflict and monitor or document cases of capture, surrender, arrest, rescue or recovery by government forces;
- (c) Conduct human rights training, advocacy and information campaigns and capability building of LGUs;
- (d) Implement a monitoring, reporting and response system for grave child rights' violations in situations of armed conflict; and
- (e) Work closely with concerned agencies in coordinating and monitoring the implementation of the enhanced CSAC program framework.

CHAPTER IX MONITORING AND REPORTING

Section 27. Monitoring and Reporting System. - The State, through IAC-CSAC, shall ensure the implementation of the provisions of this Act and shall submit to the

President and to Congress of the Philippines the annual report thereof. The IAC-CSAC, through the CWC, shall continue to maintain and strive to improve the database established by Executive Order No. 138 for the monitoring and reporting of children in situations of armed conflict. Its monitoring system should have demographic data on children disaggregated by sex, age, disability and ethnicity. The CWC may hire additional personnel to complement its present secretariat to perform its functions relative to this Act.

CHAPTER X TRANSITORY PROVISIONS

Section 28. Dismissal of Criminal Cases. - Upon the effectivity of this Act, criminal cases against children involved in armed conflict shall immediately be dismissed and the child shall be referred to the LSWDO. Such office, upon thorough assessment of the child, shall determine whether to release the child to the custody of the parents, or refer the child to prevention, rehabilitation and reintegration programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at a youth rehabilitation center shall likewise be released: Provided, That the Family Court shall, in consultation with concerned agencies, determine and order the appropriate prevention, rehabilitation and reintegration programs the person shall undergo as provided under this Act.

Section 29. Inventory of Custody of Children in Situations of Armed Conflict. - The AFP, PNP, BJMP, DSWD, NCIP, NCMF and the concerned LGUs are hereby directed to submit to the CWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in situations of armed conflict under their custody.

Section 30. Children Who Pleach the Age of Eighteen (18) Years Pending Court Proceedings or in Suspended Sentences. - In cases when a child with a pending case reaches the age of eighteen (18) years, the Family Court shall dismiss the case against the person and determine, in consultation with concerned agencies, whether or not there is a need for the person to undergo appropriate rehabilitation and reintegration programs provided under this Act.

Those with suspended sentences and undergoing rehabilitation at a youth rehabilitation center shall likewise be released: Provided, That the Family Court shall, in consultation with concerned agencies, determine and order the appropriate rehabilitation and reintegration programs the person shall undergo as provided under this Act.

Section 31. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted, and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act, and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable laws.

CHAPTER XI FINAL PROVISIONS

Section 32. Appropriations. - The amount necessary to cover the initial implementation of this Act shall be charged against the current year's appropriations of the concerned implementing departments/agencies. Thereafter, the amount necessary for its continued implementation shall be included in the budgets of the concerned departments/agencies in the annual General Appropriations Act.

Section 33. Implementing Rules and Regulations. - The CWC, together with its member agencies in the IAC-CSAC, in consultation with civil society organizations, shall promulgate the implementing rules and regulations of this Act within ninety (90) days from its approval. All government agencies enumerated in Section 25 of this Act shall be consulted insofar as the drafting of their responsibilities are concerned.

Nongovernment organizations involved in caring for children in situations of armed conflict shall likewise be consulted in the drafting of the implementing rules and regulations of this Act.

Section 34. Congressional Oversight Committee on Children in Situations of Armed Conflict. - There is hereby created an oversight committee on CSAC which shall be composed of the chairpersons of the Committee on Children in the Senate and in the House of Representatives, CWC, OPAPP, CHR, DSWD, and one (1) CSO representative which shall be determined by the aforementioned government agencies.

Section 35. Suppletory Application. - For purposes of this Act, the Revised Penal Code, as amended, Presidential Decree No. 603, Republic Act No. 7610, Republic Act No. 9208, Republic Act No. 9231, Republic Act No. 9851, and Republic Act No. 10364 and other applicable laws shall have suppletory application.

Section 36. Separability Clause. - If any part or provision of this Act is declared invalid or unconstitutional, the other parts hereof not affected thereby shall remain valid.

Section 37. Repealing Clause. - Article X, Sections 22 to 26 of Republic Act No. 7610, Executive Order No. 138, all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

Section 38. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved: January 10, 2019

REPUBLIC ACT NO. 11313

AN ACT DEFINING GENDER-BASED SEXUAL HARASSMENT IN STREETS, PUBLIC SPACES, ONLINE, WORKPLACES, AND EDUCATIONAL OR TRAINING INSTITUTIONS, PROVIDING PROTECTIVE MEASURES AND PRESCRIBING PENALTIES THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippine Congress assembled:

Section 1. Short Title. -This Act shall be known as the “Safe Spaces Act”.

Section 2. Declaration of Policies. -It is the policy of the State to value the dignity of every human person and guarantee full respect for human rights. It is likewise the policy of the State to recognize the role of women in nation-building and ensure the fundamental equality before the law of women and men. The State also recognizes that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.

Section 3. Definition of Terms. -As used in this Act:

- (a) Catcalling refers to unwanted remarks directed towards a person, commonly done in the form of wolf-whistling and misogynistic, transphobic, homophobic, and sexist slurs;
- (b) Employee refers to a person, who in exchange for remuneration, agrees to perform specified services for another person, whether natural or juridical, and whether private or public, who exercises fundamental control over the work, regardless of the term or duration of agreement: Provided, That for the purposes of this law, a person who is detailed to an entity under a subcontracting or secondment agreement shall be considered an employee;
- (c) Employer refers to a person who exercises control over an employee: Provided, That for the purpose of this Act, the status or conditions of the latter’s employment or engagement shall be disregarded;
- (d) Gender refers to a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behavior of men and women, and the relations between them;
- (e) Gender-based online sexual harassment refers to an online conduct targeted at a particular person that causes or likely to cause another mental, emotional or psychological distress, and fear of personal safety, sexual harassment acts including unwanted sexual remarks and comments, threats, uploading or sharing of one’s photos without consent, video and audio recordings, cyberstalking and online identity theft;

(f) Gender identity and/or expression refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex in which case this person is considered transgender:

(g) Public spaces refer to streets and alleys, public parks, schools, buildings, malls, bars, restaurants, transportation terminals, public markets, spaces used as evacuation centers, government offices, public utility vehicles as well as private vehicles covered by app-based transport network services and other recreational spaces such as, but not limited to, cinema halls, theaters and spas; and

(h) Stalking refers to conduct directed at a person involving the repeated visual or physical proximity, non-consensual communication, or a combination thereof that cause or will likely cause a person to fear for one's own safety or the safety of others, or to suffer emotional distress.

ARTICLE I

GENDER-BASED STREETS AND PUBLIC SPACES

SEXUAL HARASSMENT

Section 4. Gender-Based Streets and Public Spaces Sexual Harassment. -The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.

Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.

Section 5. Gender-Based Sexual Harassment in Restaurants and Cafes, Bars and Clubs, Resorts and Water Parks, Hotels and Casinos, Cinemas, Malls, Buildings and Other Privately-Owned Places Open to the Public. -Restaurants, bars, cinemas, malls, buildings and other privately-owned places open to the public shall adopt a zero-tolerance policy against gender-based streets and public spaces sexual harassment. These establishments are obliged to provide assistance to victims of gender-based sexual harassment by coordinating with local police authorities immediately after gender-based sexual harassment is reported, making CCTV footage available when ordered by the court, and providing a safe gender-sensitive environment to encourage victims to report gender-based sexual harassment at the first instance.

All restaurants, bars, cinemas and other places of recreation shall install in their business establishments clearly-visible warning signs against gender-based public spaces sexual harassment, including the anti-sexual harassment hotline number in bold letters, and shall designate at least one (1) anti-sexual harassment officer to receive gender-based sexual harassment complaints. Security guards in these places may be deputized to apprehend perpetrators caught in flagrante delicto and are required to immediately coordinate with local authorities.

Section 6. Gender-Based Sexual Harassment in Public Utility Vehicles. -In addition to the penalties in this Act, the Land Transportation Office (LTO) may cancel the license of perpetrators found to have committed acts constituting sexual harassment in public utility vehicles, and the Land Transportation Franchising and Regulatory Board (LTFRB) may suspend or revoke the franchise of transportation operators who commit gender-based streets and public spaces sexual harassment acts. Gender-based sexual harassment in public utility vehicles (PUVs) where the perpetrator is the driver of the vehicle shall also constitute a breach of contract of carriage, for the purpose of creating a presumption of negligence on the part of the owner or operator of the vehicle in the selection and supervision of employees and rendering the owner or operator solidarity liable for the offenses of the employee.

Section 7. Gender-Based Sexual Harassment in Streets and Public Spaces Committed by Minors. -In case the offense is committed by a minor, the Department of Social Welfare and Development (DSWD) shall take necessary disciplinary measures as provided for under Republic Act No. 9344, otherwise known as the “Juvenile Justice and Welfare Act of 2006”.

Section 8. Duties of Local Government Units (LGUs). -local government units (LGUs) shall bear primary responsibility in enforcing the provisions under Article I of this Act. LGUs shall have the following duties:

- (a) Pass an ordinance which shall localize the applicability of this Act within sixty (60) days of its effectivity;
- (b) Disseminate or post in conspicuous places a copy of this Act and the corresponding ordinance;
- (c) Provide measures to prevent gender-based sexual harassment in educational institutions, such as information campaigns and anti-sexual harassment seminars;
- (d) Discourage and impose fines on acts of gender-based sexual harassment as defined in this Act;
- (e) Create an anti-sexual harassment hotline; and
- (f) Coordinate with the Department of the Interior and Local Government (DILG) on the implementation of this Act.

Section 9. Role of the DILG. -The DILG shall ensure the full implementation of this Act by:

(a) Inspecting LGUs if they have disseminated or posted in conspicuous places a copy of this Act and the corresponding ordinance;

(b) Conducting and disseminating surveys and studies on best practices of LGUs in implementing this Act; and

(c) Providing capacity-building and training activities to build the capability of local government officials to implement this Act in coordination with the Philippine Commission on Women (PCW), the Local Government Academy (LGA) and the Development Academy of the Philippines (DAP).

Section 10. Implementing Bodies for Gender-Based Sexual Harassment in Streets and Public Spaces. -The Metro Manila Development Authority (MMDA), the local units of the Philippine National Police (PNP) for other provinces, and the Women and Children's Protection Desk (WCPD) of the PNP shall have the authority to apprehend perpetrators and enforce the law: Provided, That they have undergone prior Gender Sensitivity Training (GST). The PCW, DILG and Department of Information and Communications Technology (DICT) shall be the national bodies responsible for overseeing the implementation of this Act and formulating policies that will ensure the strict implementation of this Act.

For gender-based streets and public spaces sexual harassment, the MMDA and the local units of the PNP for the provinces shall deputize its enforcers to be Anti-Sexual Harassment Enforcers (ASHE). They shall be deputized to receive complaints on the street and immediately apprehend a perpetrator if caught in flagrante delicto. The perpetrator shall be immediately brought to the nearest PNP station to face charges of the offense committed. The ASHE unit together with the Women's and Children's Desk of PNP stations shall keep a ledger of perpetrators who have committed acts prohibited under this Act for purposes of determining if a perpetrator is a first-time, second-time or third-time offender. The DILG shall also ensure that all local government bodies expedite the receipt and processing of complaints by setting up an Anti-Sexual Harassment Desk in all barangay and city halls and to ensure the set-up of CCTVs in major roads, alleys and sidewalks in their respective areas to aid in the filing of cases and gathering of evidence. The DILG, the DSWD in coordination with the Department of Health (DOH) and the PCW shall coordinate if necessary to ensure that victims are provided the proper psychological counseling support services.

Section 11. Specific Acts and Penalties for Gender-Based Sexual Harassment in Streets and Public Spaces. -The following acts are unlawful and shall be penalized as follows:

(a) For acts such as cursing, wolf-whistling, catcalling, leering and intrusive gazing, taunting, pursing, unwanted invitations, misogynistic, transphobic, homophobic, and sexist slurs, persistent unwanted comments on one's appearance, relentless requests for one's personal details such as name, contact and social media details or destination, the use of words, gestures or actions that ridicule on the basis

of sex, gender or sexual orientation, identity and/or expression including sexist, homophobic, and transphobic statements and slurs, the persistent telling of sexual jokes, use of sexual names, comments and demands, and any statement that has made an invasion on a person's personal space or threatens the person's sense of personal safety –

1. The first offense shall be punished by a fine of One thousand pesos (₱1,000.00) and community service of twelve (12) hours inclusive of attendance to a Gender Sensitivity Seminar to be conducted by the PNP in coordination with the LGU and the PCW;
2. The second offense shall be punished by arresto menor (6 to 10 days) or a fine of Three thousand pesos (₱3,000.00);
3. The third offense shall be punished by arresto menor (11 to 30 days) and a fine of Ten thousand pesos (₱10,000.00).

(b) For acts such as making offensive body gestures at someone, and exposing private parts for the sexual gratification of the perpetrator with the effect of demeaning, harassing, threatening or intimidating the offended party including flashing of private parts, public masturbation, groping, and similar lewd sexual actions –

1. The first offense shall be punished by a fine of Ten thousand pesos (₱10,000.00) and community service of twelve (12) hours inclusive of attendance to a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW;
2. The second offense shall be punished by arresto menor (11 to 30 days) or a fine of Fifteen thousand pesos (₱15,000.00);
3. The third offense shall be punished by arresto mayor (1 month and 1 day to 6 months) and a fine of Twenty thousand pesos (₱20,000.00).

(c) For acts such as stalking, and any of the acts mentioned in Section 11 paragraphs (a) and (b), when accompanied by touching, pinching or brushing against the body of the offended person; or any touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs, face, buttocks or any part of the victim's body even when not accompanied by acts mentioned in

Section 11 paragraphs (a) and (b) –

1. The first offense shall be punished by arresto menor (11 to 30 days) or a fine of Thirty thousand pesos (₱30,000.00), provided that it includes attendance in a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW;

2. The second offense shall be punished by arresto mayor (1 month and 1 day to 6 months) or a fine of Fifty thousand pesos (₱50,000.00);
3. The third offense shall be punished by arresto mayor in its maximum period or a fine of One hundred thousand pesos (₱100,000.00).

ARTICLE II

GENDER-BASED ONLINE SEXUAL HARASSMENT

Section 12. Gender-Based Online Sexual Harassment. -Gender-based online sexual harassment includes acts that use information and communications technology in terrorizing and intimidating victims through physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages, invasion of victim's privacy through cyberstalking and incessant messaging, uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorized recording and sharing of any of the victim's photos, videos, or any information online, impersonating identities of victims online or posting lies about victims to harm their reputation, or filing, false abuse reports to online platforms to silence victims.

Section 13. Implementing Bodies for Gender-Based Online Sexual Harassment. -For gender-based online sexual harassment, the PNP Anti-Cybercrime Group (PNPACG) as the National Operational Support Unit of the PNP is primarily responsible for the implementation of pertinent Philippine laws on cybercrime, shall receive complaints of gender-based online sexual harassment and develop an online mechanism for reporting real-time gender-based online sexual harassment acts and apprehend perpetrators. The Cybercrime Investigation and Coordinating Center (CICC) of the DICT shall also coordinate with the PNPACG to prepare appropriate and effective measures to monitor and penalize gender-based online sexual harassment.

Section 14. Penalties for Gender-Based Online Sexual Harassment. -The penalty of prision correccional in its medium period or a fine of not less than One hundred thousand pesos (₱100,000.00) but not more than Five hundred thousand pesos (₱500,000.00), or both, at the discretion of the court shall be imposed upon any person found guilty of any gender-based online sexual harassment.

If the perpetrator is a juridical person, its license or franchise shall be automatically deemed revoked, and the persons liable shall be the officers thereof, including the editor or reporter in the case of print media, and the station manager, editor and broadcaster in the case of broadcast media. An alien who commits gender-based online sexual harassment shall be subject to deportation proceedings after serving sentence and payment of fines.

Exemption to acts constitutive and penalized as gender-based online sexual harassment are authorized written orders of the court for any peace officer to use online records or any copy thereof as evidence in any civil, criminal investigation or trial of the crime: Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses may produce, and upon showing that there are reasonable grounds to believe that gender-based online sexual harassment has been committed or is about to be committed, and that the evidence to be obtained is essential to the conviction of any person for, or to the solution or prevention of such crime.

Any record, photo or video, or copy thereof of any person that is in violation of the preceding sections shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

ARTICLE III

QUALIFIED GENDER-BASED STREETS, PUBLIC SPACES AND ONLINE SEXUAL HARASSMENT

Section 15. Qualified Gender-Based Streets, Public Spaces and Online Sexual Harassment. -The penalty next higher in degree will be applied in the following cases:

- (a) If the act takes place in a common carrier or PUV, including, but not limited to, jeepneys, taxis, tricycles, or app-based transport network vehicle services, where the perpetrator is the driver of the vehicle and the offended party is a passenger;
- (b) If the offended party is a minor, a senior citizen, or a person with disability (PWD), or a breastfeeding mother nursing her child;
- (c) If the offended party is diagnosed with a mental problem tending to impair consent;
- (d) If the perpetrator is a member of the uniformed services, such as the PNP and the Armed Forces of the Philippines (AFP), and the act was perpetrated while the perpetrator was in uniform; and
- (e) If the act takes place in the premises of a government agency offering frontline services to the public and the perpetrator is a government employee.

ARTICLE IV

GENDER-BASED SEXUAL HARASSMENT IN THE WORKPLACE

Section 16. Gender-Based Sexual Harassment in the Workplace. -The crime of gender-based sexual harassment in the workplace includes the following:

(a) An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;

(b) A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems;

(c) A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: Provided, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee; and

(d) Information and communication system refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data messages or electronic documents.

Section 17. Duties of Employers. -Employers or other persons of authority, influence or moral ascendancy in a workplace shall have the duty to prevent, deter, or punish the performance of acts of gender-based sexual harassment in the workplace. Towards this end, the employer or person of authority, influence or moral ascendancy shall:

(a) Disseminate or post in a conspicuous place a copy of this Act to all persons in the workplace;

(b) Provide measures to prevent gender-based sexual harassment in the workplace, such as the conduct of anti-sexual harassment seminars;

(c) Create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment which shall:

1. Adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;
2. Designate a woman as its head and not less than half of its members should be women;
3. Be composed of members who should be impartial and not connected or related to the alleged perpetrator;

4. Investigate and decide on the complaints within ten (10) days or less upon receipt thereof;
5. Observe due process;
6. Protect the complainant from retaliation; and
7. Guarantee confidentiality to the greatest extent possible;

(d) Provide and disseminate, in consultation with all persons in the workplace, a code of conduct or workplace policy which shall:

1. Expressly reiterate the prohibition on gender-based sexual harassment;
2. Describe the procedures of the internal mechanism created under Section 17(c) of this Act; and
3. Set administrative penalties.

Section 18. Duties of Employees and Co-Workers. -Employees and co-workers shall have the duty to:

- (a) Refrain from committing acts of gender-based sexual harassment;
- (b) Discourage the conduct of gender-based sexual harassment in the workplace;
- (c) Provide emotional or social support to fellow employees, co-workers, colleagues or peers who are victims of gender-based sexual harassment; and
- (d) Report acts of gender-based sexual harassment witnessed in the workplace.

Section 19. Liability of Employers.— In addition to liabilities for committing acts of gender-based sexual harassment, employers may also be held responsible for:

- (a) Non-implementation of their duties under Section 17 of this Act, as provided in the penal provisions; or
- (b) Not taking action on reported acts of gender-based sexual harassment committed in the workplace. Any person who violates subsection (a) of this section, shall upon conviction, be penalized with a fine of not less than Five thousand pesos (₱5,000.00) nor more than Ten thousand pesos (₱10,000.00).

Any person who violates subsection (b) of this section, shall upon conviction, be penalized with a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Fifteen thousand pesos (₱15,000.00).

Section 20. Routine Inspection. -The Department of Labor and Employment (DOLE) for the private sector and the Civil Service Commission (CSC) for the public sector shall conduct yearly spontaneous inspections to ensure compliance of employers and employees with their obligations under this Act.

ARTICLE V

GENDER-BASED SEXUAL HARASSMENT IN EDUCATIONAL AND TRAINING INSTITUTIONS

Section 21. Gender-Based Sexual Harassment in Educational and Training Institutions.—All schools, whether public or private, shall designate an officer-in-charge to receive complaints regarding violations of this Act, and shall, ensure that the victims are provided with a gender-sensitive environment that is both respectful to the victims’ needs and conducive to truth-telling.

Every school must adopt and publish grievance procedures to facilitate the filing of complaints by students and faculty members. Even if an individual does not want to file a complaint or does not request that the school take any action on behalf of a student or faculty member and school authorities have knowledge or reasonably know about a possible or impending act of gender-based sexual harassment or sexual violence, the school should promptly investigate to determine the veracity of such information or knowledge and the circumstances under which the act of gender-based sexual harassment or sexual violence were committed, and take appropriate steps to resolve the situation. If a school knows or reasonably should know about acts of gender-based sexual harassment or sexual violence being committed that creates a hostile environment, the school must take immediate action to eliminate the same acts, prevent their recurrence, and address their effects.

Once a perpetrator is found guilty, the educational institution may reserve the right to strip the diploma from the perpetrator or issue an expulsion order.

The Committee on Decorum and Investigation (CODI) of all educational institutions shall address gender-based sexual harassment and online sexual harassment in accordance with the rules and procedures contained in their CODI manual.

Section 22. Duties of School Heads. -School heads shall have the following duties:

- (a) Disseminate or post a copy of this Act in a conspicuous place in the educational institution;
- (b) Provide measures to prevent gender-based sexual harassment in educational institutions, like information campaigns;
- (c) Create an independent internal mechanism or a CODI to investigate and address complaints of gender-based sexual harassment which shall:

1. Adequately represent the school administration, the trainers, instructors, professors or coaches and students or trainees, students and parents, as the case may be;
2. Designate a woman as its head and not less than half of its members should be women;
3. Ensure equal representation of persons of diverse sexual orientation, identity and/or expression, in the CODI as far as practicable;
4. Be composed of members who should be impartial and not connected or related to the alleged perpetrator;
5. Investigate and decide on complaints within ten (10) days or less upon receipt, thereof;
6. Observe due process;
7. Protect the complainant from retaliation; and
8. Guarantee confidentiality to the greatest extent possible.

(d) Provide and disseminate, in consultation with all persons in the educational institution, a code of conduct or school policy which shall:

1. Expressly reiterate the prohibition on gender-based sexual harassment;
2. Prescribe the procedures of the internal mechanism created under this Act; and
3. Set administrative penalties.

Section 23. Liability of School Heads.— In addition to liability for committing acts of gender-based sexual harassment, principals, school heads, teachers, instructors, professors, coaches, trainers, or any other person who has authority, influence or moral ascendancy over another in an educational or training institution may also be held responsible for:

(a) Non-implementation of their duties under Section 22 of this Act, as provided in the penal provisions; or

(b) Failure to act on reported acts of gender-based sexual harassment committed in the educational institution.

Any person who violates subsection (a) of this section, shall upon conviction, be penalized with a fine of not less than Five thousand pesos (₱5,000.00) nor more than Ten thousand pesos (₱10,000.00).

Any person who violates subsection (b) of this section, shall upon conviction, be penalized with a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Fifteen thousand pesos (₱15,000.00).

Section 24. Liability of Students.— Minor students who are found to have committed acts of gender-based sexual harassment shall only be held liable for administrative sanctions by the school as stated in their school handbook.

Section 25. Routine Inspection.— The Department of Education (DepEd), the Commission on Higher Education (CHED), and the Technical Education and Skills Development Authority (TESDA) shall conduct regular spontaneous inspections to ensure compliance of school heads with their obligations under this Act.

ARTICLE VI COMMON PROVISIONS

Section 26. Confidentiality.— At any stage of the investigation, prosecution and trial of an offense under this Act, the rights of the victim and the accused who is a minor shall be recognized.

Section 27. Restraining Order.— Where appropriate, the court, even before rendering a final decision, may issue an order directing the perpetrator to stay away from the offended person at a distance specified by the court, or to stay away from the residence, school, place of employment, or any specified place frequented by the offended person.

Section 28. Remedies and Psychological Counselling.— A victim of gender-based street, public spaces or online sexual harassment may avail of appropriate remedies as provided for under the law as well as psychological counselling services with the aid of the LGU and the DSWD, in coordination with the DOH and the PCW. Any fees to be charged in the course of a victim's availment of such remedies or psychological counselling services shall be borne by the perpetrator.

Section 29. Administrative Sanctions.— Above penalties are without prejudice to any administrative sanctions that may be imposed if the perpetrator is a government employee.

Section 30. Imposition of Heavier Penalties.— Nothing in this Act shall prevent LGUs from coming up with ordinances that impose heavier penalties for the acts specified herein.

Section 31. Exemptions.— Acts that are legitimate expressions of indigenous culture and tradition, as well as breastfeeding in public shall not be penalized.

ARTICLE VII FINAL PROVISIONS

Section 32. PNP Women and Children’s Desks.— The women and children’s desks now existing in all police stations shall act on and attend to all complaints covered under this Act. They shall coordinate with ASHE officers on the street, security guards in privately-owned spaces open to the public, and anti-sexual harassment officers in government and private offices or schools in the enforcement of the provisions of this Act.

Section 33. Educational Modules and Awareness Campaigns.— The PCW shall take the lead in a national campaign for the awareness of the law. The PCW shall work hand-in-hand with the DILG and duly accredited women’s groups to ensure all LGUs participate in a sustained information campaign and the DICT to ensure an online campaign that reaches a wide audience of Filipino internet-users. Campaign materials may include posters condemning different forms of gender-based sexual harassment, informing the public of penalties for committing gender-based sexual harassment, and infographics of hotline numbers of authorities.

All schools shall educate students from the elementary to tertiary level about the provisions of this Act and how they can report cases of gender-based streets, public spaces and online sexual harassment committed against them. School courses shall include age-appropriate educational modules against gender-based streets, public spaces and online sexual harassment which shall be developed by the DepEd, the CHED, the TESDA and the PCW.

Section 34. Safety Audits. -LGUs are required to conduct safety audits every three (3) years to assess the efficiency and effectivity of the implementation of this Act within their jurisdiction. Such audits shall be multisectoral and participatory, with consultations undertaken with schools, police officers, and civil society organizations.

Section 35. Appropriations.— Such amounts as may be necessary for the implementation of this Act shall be indicated under the annual General Appropriations Act (GAA). National and local government agencies shall be authorized to utilize their mandatory Gender and Development (GAD) budget, as provided under Republic Act No. 9710, otherwise known as “The Magna Carta of Women” for this purpose. In addition, LGUs may also use their mandatory twenty percent (20%) allocation of them annual internal revenue allotments for local development projects as provided under Section 287 of Republic Act No. 7160, otherwise known as the “Local Government Code of 1991”.

Section 36. Prescriptive Period.— Any action arising from the violation of any of the provisions of this Act shall prescribe as follows:

(a) Offenses committed under Section 11(a) of this Act shall prescribe in one (1) year;

- (b) Offenses committed under Section 11(b) of this Act shall prescribe in three (3) years;
- (c) Offenses committed under Section 11(c) of this Act shall prescribe in ten (10) years;
- (d) Offenses committed under Section 12 of this Act shall be imprescriptible; and
- (e) Offenses committed under Sections 16 and 21 of this Act shall prescribe in five (5) years.

Section 37. Joint Congressional Oversight Committee.— There is hereby created a Joint Congressional Oversight Committee to monitor the implementation of this Act and to review the implementing rules and regulations promulgated. The Committee shall be composed of five (5) Senators and five (5) Representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall be co-chaired by the Chairpersons of the Senate Committee on Women, Children, Family Relations and Gender Equality and the House Committee on Women and Gender Equality.

Section 38. Implementing Rules and Regulations (IRR).— Within ninety (90) days from the effectivity of this Act, the PCW as the lead agency, in coordination with the DILG, the DSWD, the PNP, the Commission on Human Rights (CHR), the DOH, the DOLE, the DepEd, the CHED, the DICT, the TESDA, the MMDA, the LTO, and at least three (3) women’s organizations active on the issues of gender-based violence, shall formulate the implementing rules and regulations (IRR) of this Act.

Section 39. Separability Clause.— If any provision or part hereof is held invalid or unconstitutional, the remaining provisions not affected thereby shall remain valid and subsisting.

Section 40. Repealing Clause.— Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Section 41. Effectivity.— This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any two (2) newspapers of general circulation in the Philippines.

Approved: April 17, 2019.



UNITED NATIONS
CONVENTIONS, PROTOCOLS
AND GENERAL COMMENTS



**Convention on the
Rights of the Child**

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Forty-third session
Geneva, 11 – 29 September 2006

GENERAL COMMENT No. 9 (2006)

The rights of children with disabilities

Corrigendum

In the document CRC/C/GC/9, in paragraph 2 instead of CRC/C/66,
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GENERAL COMMENT No. 11 (2009)

Indigenous children and their rights under the Convention

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Introduction

1. In the preamble of the Convention on the Rights of the Child, States parties take “due account of the importance and cultural values of each people for the protection and harmonious development of the child”. While all the rights contained in the Convention apply to all children, whether indigenous or not, the Convention on the Rights of the Child was the first core human rights treaty to include specific references to indigenous children in a number of provisions.
2. Article 30 of the Convention states that “In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language.”
3. Furthermore, article 29 of the Convention provides that “education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin”.
4. Article 17 of the Convention also makes specific mention as States parties shall “encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous”.
5. The specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights. The Committee on the Rights of the Child has consistently taken into account the situation of indigenous children in its reviews of periodic reports of States parties to the Convention. The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment.
6. In addition to the Convention on the Rights of the Child, various human rights treaties, have played an important role in addressing the situation of indigenous children and their right not to be discriminated, namely, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social and Cultural Rights, 1966.
7. The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989 contains provisions which advance the rights of indigenous peoples and specifically highlights the rights of indigenous children in the area of education.
8. In 2001, the United Nations Commission on Human Rights appointed a Special Rapporteur on the

situation of human rights and fundamental freedoms of indigenous peoples, subsequently confirmed by the Human Rights Council in 2007. The Council has requested the Special Rapporteur to pay particular attention to the situation of indigenous children and several recommendations included in his annual and mission reports have focused on their specific situation.

9. In 2003, the United Nations Permanent Forum on Indigenous Issues held its second session on the theme indigenous children and youth and the same year the Committee on the Rights of the Child held its annual Day of General Discussion on the rights of indigenous children and adopted specific recommendations aimed primarily at States parties but also United Nations entities, human rights mechanisms, civil society, donors, the World Bank and regional development banks.
10. In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples which provides important guidance on the rights of indigenous peoples, including specific reference to the rights of indigenous children in a number of areas.

Objectives and structure

11. This general comment on the rights of indigenous children as provided for by the Convention on the Rights of the Child draws on the legal developments and initiatives outlined above.
12. The primary objective of this general comment is to provide States with guidance on how to implement their obligations under the Convention with respect to indigenous children. The Committee bases this general comment on its experience in interpreting the provisions of the Convention in relation to indigenous children. Furthermore, the general comment is based upon the recommendations adopted following the Day of General Discussion on indigenous children in 2003 and reflects a consultative process with relevant stakeholders, including indigenous children themselves.
13. The general comment aims to explore the specific challenges which impede indigenous children from being able to fully enjoy their rights and highlight special measures required to be undertaken by States in order to guarantee the effective exercise of indigenous children's rights. Furthermore, the general comment seeks to encourage good practices and highlight positive approaches in the practical implementation of rights for indigenous children.
14. Article 30 of the Convention and the right to the enjoyment of culture, religion and language are key elements in this general comment; however the aim is to explore the various provisions which require particular attention in their implementation in relation to indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, notably with the general principles of the Convention as identified by the Committee, namely, non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard.
15. The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups and the Committee may decide in the future to prepare a general comment specifically on the rights of children belonging to minority groups.

Article 30 and general obligations of

16. The Committee recalls the close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights. Both articles specifically provide for the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures. The Committee notes that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources.¹
17. Although article 30 is expressed in negative terms, it nevertheless recognizes the existence of a “right” and requires that it “shall not be denied”. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The Committee concurs with the Human Rights Committee that positive measures of protection are required, not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.²
18. In this context, the Committee also supports the Committee on the Elimination of Racial Discrimination in its call upon States parties *to recognize and respect indigenous distinct cultures, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation*.³
19. The presence of indigenous peoples is established by self-identification as the fundamental criterion for determining their existence.⁴ There is no requirement for States parties to officially recognize indigenous peoples in order for them to exercise their rights.
20. Based on its reviews of States parties reports, the Committee on the Rights of the Child has observed that in implementing their obligations under the Convention many States parties give insufficient attention to the rights of indigenous children and to promotion of their development. The Committee considers that special measures through legislation and policies for the protection of indigenous children should be undertaken in consultation with the communities concerned⁵ and with the participation of children in the consultation process, as provided for by article 12 of the Convention. The Committee considers that consultations should be actively carried out by authorities or other entities of States parties in a manner that is culturally appropriate, guarantees availability of information to all parties and ensures interactive communication and dialogue.
21. The Committee urges States parties to ensure that adequate attention is given to article 30 in the implementation of the Convention. States parties should provide detailed information in their periodic reports under the Convention on the special measures undertaken in order to guarantee that indigenous children can enjoy the rights provided in article 30.

¹ Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, paras. 3.2, 7. Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 4.

² Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, para. 6.1.

³ Committee on the Elimination of Racial Discrimination, general recommendation No. 23 on Indigenous Peoples, 1997, contained in A/52/18, Annex V.

⁴ ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, article 1 (2).

⁵ ILO Convention No. 169, articles 2, 6, 27.

22. The Committee underlines that cultural practices provided by article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child's dignity, health and development.⁶ Should harmful practices be present, inter alia early marriages and female genital mutilation, the State party should work together with indigenous communities to ensure their eradication. The Committee strongly urges States parties to develop and implement awareness raising campaigns, education programmes and legislation aimed at changing attitudes and address gender roles and stereotypes that contribute to harmful practices.⁷

General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

23. Article 2 sets out the obligation of States parties to ensure the rights of each child within its jurisdiction without discrimination of any kind. Non-discrimination has been identified by the Committee as a general principle of fundamental importance for the implementation of all the rights enshrined in the Convention. Indigenous children have the inalienable right to be free from discrimination. In order to effectively protect children from discrimination, it is a State party obligation to ensure that the principle of non-discrimination is reflected in all domestic legislation and can be directly applied and appropriately monitored and enforced through judicial and administrative bodies. Effective remedies should be timely and accessible. The Committee highlights that the obligations of the State party extend not only to the public but also to the private sector.
24. As previously stated in the Committee's general comment No. 5 on general measures of implementation, the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may furthermore require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.⁸
25. The Committee, through its extensive review of State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.⁹

⁶ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 7.

⁷ CRC, general comment No. 4 on Adolescent Health, 2003, para. 24.

⁸ CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.

⁹ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 9.

26. Among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes.¹⁰
27. States parties should ensure that public information and educational measures are taken to address the discrimination of indigenous children. The obligation under article 2 in conjunction with articles 17, 29.1 (d) and 30 of the Convention requires States to develop public campaigns, dissemination material and educational curricula, both in schools and for professionals, focused on the rights of indigenous children and the elimination of discriminatory attitudes and practices, including racism. Furthermore, States parties should provide meaningful opportunities for indigenous and non-indigenous children to understand and respect different cultures, religions, and languages.
28. In their periodic reports to the Committee, States parties should identify measures and programmes undertaken to address discrimination of indigenous children in relation to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Discrimination, Xenophobia and Related Intolerance.¹¹
29. In the design of special measures, States parties should consider the needs of indigenous children who may face multiple facets of discrimination and also take into account the different situation of indigenous children in rural and urban situations. Particular attention should be given to girls in order to ensure that they enjoy their rights on an equal basis as boys. States parties should furthermore ensure that special measures address the rights of indigenous children with disabilities.¹²

Best interests of the child

30. The application of the principle of the best interests of the child to indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights. Indigenous children have not always received the distinct consideration they deserve. In some cases, their particular situation has been obscured by other issues of broader concern to indigenous peoples, (including land rights and political representation).¹³ In the case of children, the best interests of the child cannot be neglected or violated in preference for the best interests of the group.
31. When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.

¹⁰ Ibid., para. 6.

¹¹ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 12.

¹² Convention on the Rights of Persons with Disabilities, preamble. United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 21, 22.

¹³ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 1.

32. The Committee considers there may be a distinction between the best interests of the individual child, and the best interests of children as a group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of the specific child that is the primary concern. However, considering the collective cultural rights of the child is part of determining the child's best interests.
33. The principle of the best interests of the child requires States to undertake active measures throughout their legislative, administrative and judicial systems that would systematically apply the principle by considering the implication of their decisions and actions on children's rights and interests.¹⁴ In order to effectively guarantee the rights of indigenous children such measures would include training and awareness-raising among relevant professional categories of the importance of considering collective cultural rights in conjunction with the determination of the best interests of the child.

The right to life, survival and development

34. The Committee notes with concern that disproportionately high numbers of indigenous children live in extreme poverty, a condition which has a negative impact on their survival and development. The Committee is furthermore concerned over the high infant and child mortality rates as well as malnutrition and diseases among indigenous children. Article 4 obliges States parties to address economic, social and cultural rights to the maximum extent of their available resources and where needed with international cooperation. Articles 6 and 27 provide the right of children to survival and development as well as an adequate standard of living. States should assist parents and others responsible for the indigenous child to implement this right by providing culturally appropriate material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The Committee stresses the need for States parties to take special measures to ensure that indigenous children enjoy the right to an adequate standard of living and that these, together with progress indicators, be developed in partnership with indigenous peoples, including children.
35. The Committee reiterates its understanding of development of the child as set out in its general comment No. 5, as a "holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development".¹⁵ The Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child. In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture.¹⁶ States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible.
36. The Committee reaffirms the importance of the Millennium Development Goals (MDGs) and calls on States to engage with indigenous peoples, including children, to ensure the full realization of the MDGs with respect to indigenous children.

¹⁴ CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.

¹⁵ Ibid.

¹⁶ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 8.

Respect for the views of the child

37. The Committee considers that, in relation to article 12, there is a distinction between the right of the child as an individual to express his or her opinion and the right to be heard collectively, which allows children as a group to be involved in consultations on matters involving them.
38. With regard to the individual indigenous child, the State party has the obligation to respect the child's right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one's opinion.
39. When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that they are consulted on all matters affecting them. The State party should design special strategies to guarantee that their participation is effective. The State party should ensure that this right is applied in particular in the school environment, alternative care settings and in the community in general. The Committee recommends States parties to work closely with indigenous children and their communities to develop, implement and evaluate programmes, policies and strategies for implementation of the Convention.

Civil rights and freedoms (arts. 7, 8, 13-17 and 37 (a) of the Convention)

Access to information

40. The Committee underlines the importance that the media have particular regard for the linguistic needs of indigenous children, in accordance with articles 17 (d) and 30 of the Convention. The Committee encourages States parties to support indigenous children to have access to media in their own languages. The Committee underlines the right of indigenous children to access information, including in their own languages, in order for them to effectively exercise their right to be heard.

Birth registration, nationality and identity

41. States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.
42. Therefore, States parties should take special measures in order to ensure that indigenous children, including those living in remote areas, are duly registered. Such special measures, to be agreed following consultation with the communities concerned, may include mobile units, periodic birth registration campaigns or the designation of birth registration offices within indigenous communities to ensure accessibility.

43. States parties should ensure that indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children. States parties should ensure that information to this effect is available to indigenous communities in their own languages and that public awareness campaigns are undertaken in consultation with the communities concerned.¹⁷
44. Furthermore, taking into account articles 8 and 30 of the Convention, States parties should ensure that indigenous children may receive indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity. States parties should put in place national legislation that provides indigenous parents with the possibility of selecting the name of their preference for their children.
45. The Committee draws the attention of States to article 8 (2) of the Convention which affirms that a child who has been illegally deprived of some or all of the elements of his or her identity shall be provided with appropriate assistance and protection in order to re-establish speedily his or her identity. The Committee encourages States parties to bear in mind article 8 of the United Nations Declaration on the Rights of Indigenous Peoples which sets out that effective mechanisms should be provided for prevention of, and redress for, any action which deprives indigenous peoples, including children, of their ethnic identities.

**Family environment and alternative care
(arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

46. Article 5 of the Convention requires States parties to respect the rights, responsibilities and duties of parents or where applicable, the members of the extended family or community to provide, in a manner consistent with the evolving capacities of all children, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27 (3) of the Convention.¹⁸
47. States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment and alternative care of indigenous children in a culturally sensitive way. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children.¹⁹
48. Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children and in accordance with article 20 (3) of the Convention pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In States parties where indigenous children are overrepresented among children separated from their

¹⁷ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 9.

¹⁸ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 17.

¹⁹ Ibid.

family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity.

Basic health and welfare
(arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties' reports, that this applies both to developing and developed countries.
50. The Committee urges States parties to take special measures to ensure that indigenous children are not discriminated against enjoying the highest attainable standard of health. The Committee is concerned over the high rates of mortality among indigenous children and notes that States parties have a positive duty to ensure that indigenous children have equal access to health services and to combat malnutrition as well as infant, child and maternal mortality.
51. States parties should take the necessary steps to ensure ease of access to health-care services for indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned.²⁰ Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in indigenous languages. Particular attention should be given to ensuring access to health care for indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.²¹
52. Health-care workers and medical staff from indigenous communities play an important role by serving as a bridge between traditional medicine and conventional medical services and preference should be given to employment of local indigenous community workers.²² States parties should encourage the role of these workers by providing them with the necessary means and training in order to enable that conventional medicine be used by indigenous communities in a way that is mindful of their culture and traditions. In this context, the Committee recalls article 25 (2) of the ILO Convention No. 169 and articles 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples on the right of indigenous peoples to their traditional medicines.²³

²⁰ ILO Convention No. 169, article 25 (1, 2).

²¹ CRC, general comment No. 9 on The Rights of Children with Disabilities, 2006.

²² ILO Convention No. 169, article 25 (3).

²³ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 24, 31.

53. States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care such as nutrition, breastfeeding, pre- and postnatal care, child and adolescent health, vaccinations, communicable diseases (in particular HIV/AIDS and tuberculosis), hygiene, environmental sanitation and the dangers of pesticides and herbicides.
54. Regarding adolescent health, States parties should consider specific strategies in order to provide indigenous adolescents with access to sexual and reproductive information and services, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted infections (STIs). The Committee recommends States parties to take into account its general comments No. 3 on HIV/AIDS and the rights of the child (2003) and No. 4 on adolescent health (2003) for this purpose.²⁴
55. In certain States parties suicide rates for indigenous children are significantly higher than for non-indigenous children. Under such circumstances, States parties should design and implement a policy for preventive measures and ensure that additional financial and human resources are allocated to mental health care for indigenous children in a culturally appropriate manner, following consultation with the affected community. In order to analyse and combat the root causes, the State party should establish and maintain a dialogue with the indigenous community.

Education **(arts. 28, 29 and 31 of the Convention)**

56. Article 29 of the Convention sets out that the aims of education for all children should be directed to, among other objectives, the development of respect for the child's cultural identity, language and values and for civilizations different from his or her own. Further objectives include the preparation of the child for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. The aims of education apply to education for all children and States should ensure these are adequately reflected in the curricula, content of materials, teaching methods and policies. States are encouraged to refer to the Committee's general comment No. 1 on the aims of education for further guidance.²⁵
57. The education of indigenous children contributes both to their individual and community development as well as to their participation in the wider society. Quality education enables indigenous children to exercise and enjoy economic, social and cultural rights for their personal benefit as well as for the benefit of their community. Furthermore, it strengthens children's ability to exercise their civil rights in order to influence political policy processes for improved protection of human rights. Thus, the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples.

²⁴ CRC, general comment No. 3 on HIV/AIDS and the Rights of the Child, 2003 and general comment No. 4 on Adolescent Health, 2003.

²⁵ CRC, general comment No. 1 on the Aims of Education, 2001.

58. In order to ensure that the aims of education are in line with the Convention, States parties are responsible for protecting children from all forms of discrimination as set out in article 2 of the Convention and for actively combating racism. This duty is particularly pertinent in relation to indigenous children. In order to effectively implement this obligation, States parties should ensure that the curricula, educational materials and history textbooks provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples.²⁶ Discriminatory practices, such as restrictions on the use of cultural and traditional dress, should be avoided in the school setting.
59. Article 28 of the Convention sets out that States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. States parties are encouraged to make secondary and vocational education available and accessible to every child. However, in practice, indigenous children are less likely to be enrolled in school and continue to have higher drop out and illiteracy rates than non-indigenous children. Most indigenous children have reduced access to education due to a variety of factors including insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula in accordance with article 30. Furthermore, indigenous children are frequently confronted with discrimination and racism in the school setting.
60. In order for indigenous children to enjoy their right to education on equal footing with non indigenous children, States parties should ensure a range of special measures to this effect. States parties should allocate targeted financial, material and human resources in order to implement policies and programmes which specifically seek to improve the access to education for indigenous children. As established by article 27 of the ILO Convention No. 169, education programmes and services should be developed and implemented in cooperation with the peoples concerned to address their specific needs. Furthermore, governments should recognize the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples.²⁷ States should undertake all reasonable efforts to ensure that indigenous communities are aware of the value and importance of education and of the significance of community support for school enrolment.
61. States parties should ensure that school facilities are easily accessible where indigenous children live. If required, States parties should support the use of media, such as radio broadcasts and long distance education programmes (internet-based) for educational purposes and establish mobile schools for indigenous peoples who practice nomadic traditions. The school cycle should take into account and seek to adjust to cultural practices as well as agricultural seasons and ceremonial periods. States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, languages and traditions.

²⁶ ILO Convention No. 169, article 31, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 15.

²⁷ ILO Convention No. 169, article 27.

62. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child's own language is essential. Article 28 of ILO Convention No. 169 affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country.²⁸ Bilingual and intercultural curricula are important criteria for the education of indigenous children. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.
63. With reference to article 31 of the Convention, the Committee notes the many positive benefits of participation in sports, traditional games, physical education, and recreational activities and calls on States parties to ensure that indigenous children enjoy the effective exercise of these rights.

Special protection measures
(arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)
Children in armed conflict and refugee children

Children in armed conflict and refugee children

64. Through its periodic reviews of States parties' reports, the Committee has concluded that indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal unrest. Indigenous communities often reside in areas which are coveted for their natural resources or that, because of remoteness, serve as a base for non-State armed groups. In other situations, indigenous communities reside in the vicinity of borders or frontiers which are disputed by States.²⁹
65. Indigenous children in such circumstances have been, and continue to face risks of being, victims of attacks against their communities, resulting in death, rape and torture, displacement, enforced disappearances, the witnessing of atrocities and the separation from parents and community. Targeting of schools by armed forces and groups has denied indigenous children access to education. Furthermore, indigenous children have been recruited by armed forces and groups and forced to commit atrocities, sometimes even against their own communities.
66. Article 38 of the Convention obliges States parties to ensure respect for the rules of humanitarian law, to protect the civilian population and to take care of children who are affected by armed conflict. States parties should pay particular attention to the risks indigenous children face in hostilities and take maximum preventive measures in consultation with the communities concerned. Military activities on indigenous territories should be avoided to the extent possible, the Committee recalls article 30 of the United Nations Declaration on the Rights of Indigenous Peoples in this regard.³⁰ States parties should not require military conscription of indigenous children under the age of 18 years. States parties are encouraged to ratify and implement the Optional Protocol on the Involvement of Children in Armed Conflict.
67. Indigenous children who have been victims of recruitment in armed conflict should be provided with the necessary support services for reintegration into their families and communities. Consistent with article 39 of the Convention, States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any

²⁸ ILO Convention No. 169, article 28.

²⁹ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 13.

³⁰ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 30.

form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. In the case of indigenous children, this should be done giving due consideration to the child's cultural and linguistic background.

68. Indigenous children who have been displaced or become refugees should be given special attention and humanitarian assistance in a culturally sensitive manner. Safe return and restitution of collective and individual property should be promoted.

Economic exploitation

69. Article 32 of the Convention provides that all children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In addition, ILO Convention No. 138 (Minimum Age Convention) and Convention No. 182 (Worst Forms of Child Labour Convention) set parameters for distinguishing child labour that needs abolition, on the one hand, and acceptable work done by children, including such activities that allow indigenous children to acquire livelihood skills, identity and culture, on the other. Child labour is work that deprives children of their childhood, their potential and dignity and that is harmful to their physical and mental development.³¹
70. Provisions in the Convention on the Rights of the Child refer to the use of children in illicit production and trafficking of drugs (art. 33), sexual exploitation (art. 34), trafficking in children (art. 35), children in armed conflicts (art. 38). These provisions are closely related to the definition of the worst forms of child labour under ILO Convention No. 182. The Committee notes with grave concern that indigenous children are disproportionately affected by poverty and at particular risk of being used in child labour, especially its worst forms, such as slavery, bonded labour, child trafficking, including for domestic work, use in armed conflict, prostitution and hazardous work.
71. The prevention of exploitative child labour among indigenous children (as in the case of all other children) requires a rights-based approach to child labour and is closely linked to the promotion of education. For the effective elimination of exploitative child labour among indigenous communities, States parties must identify the existing barriers to education and the specific rights and needs of indigenous children with respect to school education and vocational training. This requires that special efforts be taken to maintain a dialogue with indigenous communities and parents regarding the importance and benefits of education. Measures to combat exploitative child labour furthermore require analysis of the structural root causes of child exploitation, data collection and the design and implementation of prevention programmes, with adequate allocation of financial and human resources by the State party, to be carried out in consultation with indigenous communities and children.

Sexual exploitation and trafficking

72. Articles 34 and 35 of the Convention with consideration to the provisions of article 20, call on States to ensure that children are protected against sexual exploitation and abuse as well as the abduction, sale or traffic of children for any purposes. The Committee is concerned that indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming

³¹ ILO, Handbook on Combating Child Labour among Indigenous and Tribal Peoples, 2006, p. 9.

victims of sexual exploitation and trafficking. Young girls, particularly those not registered at birth, are especially vulnerable. In order to improve the protection of all children, including indigenous, States parties are encouraged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.

73. States should, in consultation with indigenous communities, including children, design preventive measures and allocate targeted financial and human resources for their implementation. States should base preventive measures on studies which include documentation of the patterns of violations and analysis of root causes.

Juvenile justice

74. Articles 37 and 40 of the Convention ensure the rights of children within, and in interaction with, State judicial systems. The Committee notes with concern that incarceration of indigenous children is often disproportionately high and in some instances may be attributed to systemic discrimination from within the justice system and/or society.³² To address these high rates of incarceration, the Committee draws the attention of States parties to article 40 (3) of the Convention requiring States to undertake measures to deal with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate. The Committee, in its general comment No. 10 on children's rights in juvenile justice (2007) and in its concluding observations, has consistently affirmed that the arrest, detention or imprisonment of a child may be used only as a measure of last resort.³³
75. States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child.³⁴ The Committee draws the attention of States parties to the United Nations Guidelines for the Prevention of Juvenile Delinquency, which encourage the development of community programmes for the prevention of juvenile delinquency.³⁵ States parties should seek to support, in consultation with indigenous peoples, the development of community-based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples.
76. States parties are reminded that pursuant to article 12 of the Convention, all children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner.
77. Professionals involved in law enforcement and the judiciary should receive appropriate training on the content and meaning of the provisions of the Convention and its Optional Protocols, including the need to adopt special protection measures for indigenous children and other specific groups.³⁶

³² CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 6.

³³ Ibid. para. 23.

³⁴ Recommendations of Day of General Discussion on the Rights of Indigenous Children, 2003, para. 13.

³⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency, "the Riyadh Guidelines", 1990.

³⁶ CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 97.

States parties' obligations and monitoring of the implementation of the Convention

78. The Committee reminds States parties that ratification of the Convention on the Rights of the Child obliges States parties to take action to ensure the realization of all rights in the Convention for all children within their jurisdiction. The duty to respect and protect requires each State party to ensure that the exercise of the rights of indigenous children is fully protected against any acts of the State party by its legislative, judicial or administrative authorities or by any other entity or person within the State party.
79. Article 3 of the Convention requires States parties to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 4 of the Convention requires States parties to undertake measures to implement the Convention to the maximum extent of their available resources. Article 42 sets out that States parties are further required to ensure that children and adults are provided information on the principles and provisions of the Convention.
80. In order to effectively implement the rights of the Convention for indigenous children, States parties need to adopt appropriate legislation in accordance with the Convention. Adequate resources should be allocated and special measures adopted in a range of areas in order to effectively ensure that indigenous children enjoy their rights on an equal level with non indigenous children. Further efforts should be taken to collect and disaggregate data and develop indicators to evaluate the degree of implementation of the rights of indigenous children. In order to develop policy and programming efforts in a culturally sensitive manner, States parties should consult with indigenous communities and directly with indigenous children. Professionals working with indigenous children should be trained on how consideration should be given to cultural aspects of children's rights.
81. The Committee calls for States parties to, when applicable, better integrate information in their periodic reports to the Committee on the implementation of indigenous children's rights and on the adoption of special measures in this regard. Furthermore, the Committee requests States parties to strengthen efforts to translate and disseminate information about the Convention and its Optional Protocols and the reporting process among indigenous communities and children, in order for them to actively participate in the monitoring process. Furthermore, indigenous communities are encouraged to utilize the Convention as an opportunity to assess the implementation of the rights of their children.
82. Finally, the Committee urges States parties to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. In order to guarantee effective monitoring of the implementation of the rights of indigenous children, States parties are urged to strengthen direct cooperation with indigenous communities and, if required, seek technical cooperation from international agencies, including United Nations entities. Empowerment of indigenous children and the effective exercise of their rights to culture, religion and language provide an essential foundation of a culturally diverse State in harmony and compliance with its human rights obligations.



Convention on the Rights of the Child

COMMITTEE ON THE RIGHTS OF THE CHILD

GENERAL COMMENT No. 14 (2013)
on the right of the child to have his or her best interests
taken as a primary consideration (art. 3, para. 1)*

*Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

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“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Convention on the Rights of the Child (art. 3, para. 1)

I. Introduction

A. The best interests of the child: a right, a principle and a rule of procedure

1. Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child,¹ and applies it as a dynamic concept that requires an assessment appropriate to the specific context.
2. The concept of the “child’s best interests” is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child (para. 2), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 5 (b) and 16, para. 1 (d)), as well as in regional instruments and many national and international laws.
3. The Convention also explicitly refers to the child’s best interests in other articles: article 9: separation from parents; article 10: family reunification; article 18: parental responsibilities; article 20: deprivation of family environment and alternative care; article 21: adoption; article 37(c): separation from adults in detention; article 40, paragraph 2 (b) (iii): procedural guarantees, including presence of parents at court hearings for penal matters involving children in conflict with the law. Reference is also made to the child’s best interests in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (preamble and art. 8) and in the Optional Protocol to the Convention on a communications procedure (preamble and arts. 2 and 3).
4. The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.² The Committee has already pointed out³ that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.” It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child’s best interests” and no right could be compromised by a negative interpretation of the child’s best interests.
5. The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

¹ The Committee’s general comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child, para. 12; and No. 12 (2009) on the right of the child to be heard, para. 2.

² The Committee expects States to interpret development as a “holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development” (general comment No. 5, para. 12).

³ General comment No. 13 (2011) on the right to protection from all forms of violence, para. 61.

6. The Committee underlines that the child's best interests is a threefold concept:
 - (a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.
 - (b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.
 - (c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.
7. In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above.

B. Structure

8. The scope of the present general comment is limited to article 3, paragraph 1, of the Convention and does not cover article 3, paragraph 2, which pertains to the well-being of the child, nor article 3, paragraph 3, which concerns the obligation of States parties to ensure that institutions, services and facilities for children comply with the established standards, and that mechanisms are in place to ensure that the standards are respected.
9. The Committee states the objectives (chapter II) of the present general comment and presents the nature and scope of the obligation of States parties (chapter III). It also provides a legal analysis of article 3, paragraph 1 (chapter IV), showing the links to other general principles of the Convention. Chapter V is dedicated to the implementation, in practice, of the principle of best interests of the child, while chapter VI provides guidelines on disseminating the general comment.

II. Objectives

10. The present general comment seeks to ensure the application of and respect for the best interests of the child by the States parties to the Convention. It defines the requirements for due consideration, especially in judicial and administrative decisions as well as in other actions concerning the child as an individual, and at all stages of the adoption of laws, policies, strategies, programmes,

plans, budgets, legislative and budgetary initiatives and guidelines – that is, all implementation measures – concerning children in general or as a specific group. The Committee expects that this general comment will guide decisions by all those concerned with children, including parents and caregivers.

11. The best interests of the child is a dynamic concept that encompasses various issues which are continuously evolving. The present general comment provides a framework for assessing and determining the child's best interests; it does not attempt to prescribe what is best for the child in any given situation at any point in time.
12. The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount consideration (see paragraph 38 below). Its overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders. More specifically, this has implications for:
 - (a) The elaboration of all implementation measures taken by governments;
 - (b) Individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children;
 - (c) Decisions made by civil society entities and the private sector, including profit and non-profit organizations, which provide services concerning or impacting on children;
 - (d) Guidelines for actions undertaken by persons working with and for children, including parents and caregivers.

III. Nature and scope of the obligations of States parties

13. Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.
14. Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:
 - (a) The obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;
 - (b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.
 - (c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.
15. To ensure compliance, States parties should undertake a number of implementation measures in accordance with articles 4, 42 and 44, paragraph 6, of the Convention, and ensure that the best interests of the child are a primary consideration in all actions, including:

- (a) Reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure;
- (b) Upholding the child's best interests in the coordination and implementation of policies at the national, regional and local levels;
- (c) Establishing mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her;
- (d) Upholding the child's best interests in the allocation of national resources for programmes and measures aimed at implementing children's rights, and in activities receiving international assistance or development aid;
- (e) When establishing, monitoring and evaluating data collection, ensure that the child's best interests are explicitly spelled out and, where required, support research on children's rights issues;
- (f) Providing information and training on article 3, paragraph 1, and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children;
- (g) Providing appropriate information to children in a language they can understand, and to their families and caregivers, so that they understand the scope of the right protected under article 3, paragraph 1, as well as creating the necessary conditions for children to express their point of view and ensuring that their opinions are given due weight;
- (h) Combating all negative attitudes and perceptions which impede the full realization of the right of the child to have his or her best interests assessed and taken as a primary consideration, through communication programmes involving mass media and social networks as well as children, in order to have children recognized as rights holders.

16. In giving full effect to the child's best interests, the following parameters should be borne in mind:

- (a) The universal, indivisible, interdependent and interrelated nature of children's rights;
- (b) Recognition of children as right holders;
- (c) The global nature and reach of the Convention;
- (d) The obligation of States parties to respect, protect and fulfill all the rights in the Convention;
- (e) Short-, medium- and long-term effects of actions related to the development of the child over time.

IV. Legal analysis and links with the general principles of the Convention

A. Legal analysis of article 3, paragraph 1

1. “In all actions concerning children”

(a) “in all actions”

17. Article 3, paragraph 1 seeks to ensure that the right is guaranteed in all decisions and actions concerning children. This means that every action relating to a child or children has to take into account their best interests as a primary consideration. The word “action” does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures.
18. Inaction or failure to take action and omissions are also “actions”, for example, when social welfare authorities fail to take action to protect children from neglect or abuse.

(b) “concerning”

19. The legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term “concerning” refers first of all, to measures and decisions directly concerning a child, children as a group or children in general, and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure. As stated in the Committee’s general comment No. 7 (2005), such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport) (para. 13 (b)). Therefore, “concerning” must be understood in a very broad sense.
20. Indeed, all actions taken by a State affect children in one way or another. This does not mean that every action taken by the State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.

Thus, in relation to measures that are not directly aimed at the child or children, the term “concerning” would need to be clarified in the light of the circumstances of each case in order to be able to appreciate the impact of the action on the child or children.

(c) “children”

21. The term “children” refers to all persons under the age of 18 within the jurisdiction of a State party, without discrimination of any kind, in line with articles 1 and 2 of the Convention.
22. Article 3, paragraph 1, applies to children as individuals and places an obligation on States parties to assess and take the child’s best interests as a primary consideration in individual decisions.

23. However, the term “children” implies that the right to have their best interests duly considered applies to children not only as individuals, but also in general or as a group. Accordingly, States have the obligation to assess and take as a primary consideration the best interests of children as a group or in general in all actions concerning them. This is particularly evident for all implementation measures. The Committee underlines that the child’s best interests is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.
24. That is not to say that in a decision concerning an individual child, his or her interests must be understood as being the same as those of children in general. Rather, article 3, paragraph 1, implies that the best interests of a child must be assessed individually. Procedures for establishing the best interests of children individually and as a group can be found in chapter V below.

2. “By public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”

25. The obligation of the States to duly consider the child’s best interests is a comprehensive obligation encompassing all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children. Although parents are not explicitly mentioned in article 3, paragraph 1, the best interests of the child “will be their basic concern” (art. 18, para. 1).

(a) “public or private social welfare institutions”

26. These terms should not be narrowly construed or limited to social institutions *stricto sensu*, but should be understood to mean all institutions whose work and decisions impact on children and the realization of their rights. Such institutions include not only those related to economic, social and cultural rights (e.g. care, health, environment, education, business, leisure and play, etc.), but also institutions dealing with civil rights and freedoms (e.g. birth registration, protection against violence in all settings, etc.). Private social welfare institutions include private sector organizations – either for-profit or non-profit – which play a role in the provision of services that are critical to children’s enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative.

(b) “courts of law”

27. The Committee underlines that “courts” refer to all judicial proceedings, in all instances – whether staffed by professional judges or lay persons – and all relevant procedures concerning children, without restriction. This includes conciliation, mediation and arbitration processes.
28. In criminal cases, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as

⁴ General comment No.11 (2009) on indigenous children and their rights under the Convention, para. 30.

⁵ General comment No. 10 (2007) on children’s rights in juvenile justice, para. 10.

children affected by the situation of their parents in conflict with the law. The Committee underlines that protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders.

29. In civil cases, the child may be defending his or her interests directly or through a representative, in the case of paternity, child abuse or neglect, family reunification, accommodation, etc. The child may be affected by the trial, for example in procedures concerning adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and development of the child, as well as child abuse or neglect proceedings. The courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so.

(c) “administrative authorities”

30. The Committee emphasizes that the scope of decisions made by administrative authorities at all levels is very broad, covering decisions concerning education, care, health, the environment, living conditions, protection, asylum, immigration, access to nationality, among others. Individual decisions taken by administrative authorities in these areas must be assessed and guided by the best interests of the child, as for all implementation measures.

(d) “legislative bodies”

31. The extension of States parties' obligation to their “legislative bodies” shows clearly that article 3, paragraph 1, relates to children in general, not only to children as individuals. The adoption of any law or regulation as well as collective agreements – such as bilateral or multilateral trade or peace treaties which affect children – should be governed by the best interests of the child. The right of the child to have his or her best interests assessed and taken as a primary consideration should be explicitly included in all relevant legislation, not only in laws that specifically concern children. This obligation extends also to the approval of budgets, the preparation and development of which require the adoption of a best-interests-of-the-child perspective for it to be child-rights sensitive.

3. “The best interests of the child”

32. The concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children

in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.

33. The child's best interests shall be applied to all matters concerning the child or children, and taken into account to resolve any possible conflicts among the rights enshrined in the Convention or other human rights treaties. Attention must be placed on identifying possible solutions which are in the child's best interests. This implies that States are under the obligation to clarify the best interests of all children, including those in vulnerable situations, when adopting implementation measures.
34. The flexibility of the concept of the child's best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child's best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child's best interests as irrelevant or unimportant.
35. With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation.⁶

4. "Shall be a primary consideration"

36. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The words "shall be" place a strong legal obligation on States and mean that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken.
37. The expression "primary consideration" means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.
38. In respect of adoption (art. 21), the right of best interests is further strengthened; it is not simply to be "a primary consideration" but "the paramount consideration". Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.
39. However, since article 3, paragraph 1, covers a wide range of situations, the Committee recognizes the need for a degree of flexibility in its application. The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis,

⁶ General comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 45.

carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.

40. Viewing the best interests of the child as "primary" requires a consciousness about the place that children's interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned.

B. The best interests of the child and links with other general principles of the Convention

1. The child's best interests and the right to non-discrimination (art. 2)

41. The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.

2. The child's best interests and the right to life, survival and development (art. 6)

42. States must create an environment that respects human dignity and ensures the holistic development of every child. In the assessment and determination of the child's best interests, the State must ensure full respect for his or her inherent right to life, survival and development.

3. The child's best interests and the right to be heard (art. 12)

43. Assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee's general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives.⁷
44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake. The Committee has already established that the more the

⁷ General comment No. 12, paras. 70-74.

⁸ Ibid., para. 84.

child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing.⁸ Similarly, as the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.

45. The Committee recalls that article 12, paragraph 2, of the Convention provides for the right of the child to be heard, either directly or through a representative, in any judicial or administrative proceeding affecting him or her (see further chapter V.B below).

V. Implementation: assessing and determining the child's best interests

46. As stated earlier, the “best interests of the child” is a right, a principle and a rule of procedure based on an assessment of all elements of a child's or children's interests in a specific situation. When assessing and determining the best interests of the child in order to make a decision on a specific measure, the following steps should be followed:
- (a) First, within the specific factual context of the case, find out what are the relevant elements in a best-interests assessment, give them concrete content, and assign a weight to each in relation to one another;
 - (b) Secondly, to do so, follow a procedure that ensures legal guarantees and proper application of the right.
47. Assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The “best-interests assessment” consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff – if possible a multidisciplinary team –, and requires the participation of the child. The “best-interests determination” describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.

A. Best interests assessment and determination

48. Assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.

49. Determining what is in the best interests of the child should start with an assessment of the specific circumstances that make the child unique. This implies that some elements will be used and others will not, and also influences how they will be weighted against each other. For children in general, assessing best interests involves the same elements.
50. The Committee considers it useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests. The non-exhaustive nature of the elements in the list implies that it is possible to go beyond those and consider other factors relevant in the specific circumstances of the individual child or group of children. All the elements of the list must be taken into consideration and balanced in light of each situation. The list should provide concrete guidance, yet flexibility.
51. Drawing up such a list of elements would provide guidance for the State or decision-maker in regulating specific areas affecting children, such as family, adoption and juvenile justice laws, and if necessary, other elements deemed appropriate in accordance with its legal tradition may be added. The Committee would like to point out that, when adding elements to the list, the ultimate purpose of the child's best interests should be to ensure the full and effective enjoyment of the rights recognized in the Convention and the holistic development of the child. Consequently, elements that are contrary to the rights enshrined in the Convention or that would have an effect contrary to the rights under the Convention cannot be considered as valid in assessing what is best for a child or children.

1. Elements to be taken into account when assessing the child's best interests

52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child's best interests, as relevant to the situation in question, are as follows:

(a) The child's views

53. Article 12 of the Convention provides for the right of children to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests.
54. The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation⁹ and support, where necessary, to ensure their full participation in the assessment of their best interests

⁹ See Convention on the Rights of Persons with Disabilities, art. 2: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure [...] the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

(b) The child's identity

55. Children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests.
56. Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).
57. Although preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention.

(c) Preservation of the family environment and maintaining relations

58. The Committee recalls that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents (arts. 9, 18 and 20). It also underscores that the elements mentioned above are concrete rights and not only elements in the determination of the best interests of the child.
59. The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children (preamble of the Convention). The right of the child to family life is protected under the Convention (art. 16). The term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5).
60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both parents is entitled "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.
62. The Guidelines for the Alternative Care of Children¹⁰ aims to ensure that children are not placed in alternative care unnecessarily; and that where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child. In particular, "financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family" (para. 15).
63. Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents.¹¹ Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child's safety.
64. In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests.
65. When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family.
66. When the child's relations with his or her parents are interrupted by migration (of the parents without the child, or of the child without his or her parents), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.
67. The Committee is of the view that shared parental responsibilities are generally in the child's best interests. However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents. In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents, together with the other elements relevant to the case.
68. The Committee encourages the ratification and implementation of the conventions of the Hague Conference on Private International Law,¹² which facilitate the application of the child's best interests and provide guarantees for its implementation in the event that the parents live in different countries.

¹² These include No. 28 on the Civil Aspects of International Child Abduction, 1980; No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993; No. 23 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 1973; No. 24 on the Law Applicable to Maintenance Obligations, 1973.

69. In cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child or children.¹³
70. Preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places.

(d) Care, protection and safety of the child

71. When assessing and determining the best interests of a child or children in general, the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (art. 3, para. 2) should be taken into consideration. The terms “protection and care” must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as “to protect the child from harm”), but rather in relation to the comprehensive ideal of ensuring the child’s “well-being” and development. Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.
72. Emotional care is a basic need of children; if parents or other primary caregivers do not fulfil the child’s emotional needs, action must be taken so that the child develops a secure attachment. Children need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment.
73. Assessment of the child’s best interests must also include consideration of the child’s safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (art. 19), sexual harassment, peer pressure, bullying, degrading treatment, etc.,¹⁴ as well as protection against sexual, economic and other exploitation, drugs, labour, armed conflict, etc.(arts. 32-39).
74. Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child’s safety

(e) Situation of vulnerability

75. An important element to consider is the child’s situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.

¹³ See recommendations of the Day of general discussion on children of incarcerated parents (2011).

¹⁴ General comment No. 13 (2011) on the right of the child to freedom from all forms of violence.

76. The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process

(f) The child's right to health

77. The child's right to health (art. 24) and his or her health condition are central in assessing the child's best interest. However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must also be given due weight based on his or her age and maturity. In this respect, children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in an informed manner.¹⁵
78. For example, as regards adolescent health, the Committee¹⁶ has stated that States parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make appropriate health behaviour choices. This should include information on use and abuse of tobacco, alcohol and other substances, diet, appropriate sexual and reproductive information, dangers of early pregnancy, prevention of HIV/AIDS and of sexually transmitted diseases. Adolescents with a psycho-social disorder have the right to be treated and cared for in the community in which he or she lives, to the extent possible. Where hospitalization or placement in a residential institution is necessary, the best interests of the child must be assessed prior to taking a decision and with respect for the child's views; the same considerations are valid for younger children. The health of the child and possibilities for treatment may also be part of a best-interests assessment and determination with regard to other types of significant decisions (e.g. granting a residence permit on humanitarian grounds).

(g) The child's right to education

79. It is in the best interests of the child to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge. All decisions on measures and actions concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education. In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and

¹⁵ General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para. 31.

¹⁶ General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

fulfilment of ambitions. Responding to this requirement and enhancing children's responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.

2. Balancing the elements in the best-interests assessment

80. It should be emphasized that the basic best-interests assessment is a general assessment of all relevant elements of the child's best interests, the weight of each element depending on the others. Not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.
81. The elements in the best-interests assessment may be in conflict when considering a specific case and its circumstances. For example, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements will have to be weighted against each other in order to find the solution that is in the best interests of the child or children.
82. In weighing the various elements, one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.
83. There might be situations where "protection" factors affecting a child (e.g. which may imply limitation or restriction of rights) need to be assessed in relation to measures of "empowerment" (which implies full exercise of rights without restriction). In such situations, the age and maturity of the child should guide the balancing of the elements. The physical, emotional, cognitive and social development of the child should be taken into account to assess the level of maturity of the child.
84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

B. Procedural safeguards to guarantee the implementation of the child's best interests

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure (see para. 6 (b) above).

86. While public authorities and organizations making decisions that concern children must act in conformity with the obligation to assess and determine the child's best interests, people who make decisions concerning children on a daily basis (e.g. parents, guardians, teachers, etc.) are not expected to follow strictly this two-step procedure, even though decisions made in everyday life must also respect and reflect the child's best interests.
87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.
88. The Committee invites States and all persons who are in a position to assess and determine the child's best interests to pay special attention to the following safeguards and guarantees:

(a) Right of the child to express his or her own views

89. A vital element of the process is communicating with children to facilitate meaningful child participation and identify their best interests. Such communication should include informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views.
90. Where the child wishes to express his or her views and where this right is fulfilled through a representative, the latter's obligation is to communicate accurately the views of the child. In situations where the child's views are in conflict with those of his or her representative, a procedure should be established to allow the child to approach an authority to establish a separate representation for the child (e.g. a guardian ad litem), if necessary.
91. The procedure for assessing and determining the best interests of children as a group is, to some extent, different from that regarding an individual child. When the interests of a large number of children are at stake, Government institutions must find ways to hear the views of a representative sample of children and give due consideration to their opinions when planning measures or making legislative decisions which directly or indirectly concern the group, in order to ensure that all categories of children are covered. There are many examples of how to do this, including children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, etc.

(b) Establishment of facts

92. Facts and information relevant to a particular case must be obtained by well-trained professionals in order to draw up all the elements necessary for the best-interests assessment. This could involve interviewing persons close to the child, other people who are in contact with the child on a daily basis, witnesses to certain incidents, among others. Information and data gathered must be verified and analysed prior to being used in the child's or children's best-interests assessment.

(c) Time perception

93. The passing of time is not perceived in the same way by children and adults. Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible. The timing of the decision should, as far as possible, correspond to the child's perception of how it can benefit him or her, and the decisions taken should be reviewed at reasonable intervals as the child develops and his or her capacity to express his or her views evolves. All decisions on care, treatment, placement and other measures concerning the child must be reviewed periodically in terms of his or her perception of time, and his or her evolving capacities and development (art. 25).

(d) Qualified professionals

94. Children are a diverse group, with each having his or her own characteristics and needs that can only be adequately assessed by professionals who have expertise in matters related to child and adolescent development. This is why the formal assessment process should be carried out in a friendly and safe atmosphere by professionals trained in, inter alia, child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner. As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests.
95. The assessment of the consequences of alternative solutions must be based on general knowledge (i.e. in the areas of law, sociology, education, social work, psychology, health, etc.) of the likely consequences of each possible solution for the child, given his or her individual characteristics and past experience.

(e) Legal representation

96. The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.

(f) Legal reasoning

97. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state

explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to be outweighed by the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration (see paragraph 38 above).

(g) Mechanisms to review or revise decisions

98. States should establish mechanisms within their legal systems to appeal or revise decisions concerning children when a decision seems not to be in accordance with the appropriate procedure of assessing and determining the child's or children's best interests. There should always be the possibility to request a review or to appeal such a decision at the national level. Mechanisms should be made known to the child and be accessible by him or her directly or by his or her legal representative, if it is considered that the procedural safeguards had not been respected, the facts are wrong, the best-interests assessment had not been adequately carried out or that competing considerations had been given too much weight. The reviewing body must look into all these aspects.

(h) Child-rights impact assessment (CRIA)

99. As mentioned above, the adoption of all measures of implementation should also follow a procedure that ensures that the child's best interests are a primary consideration. The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights and should complement ongoing monitoring and evaluation of the impact of measures on children's rights.¹⁷ CRIA needs to be built into Government processes at all levels and as early as possible in the development of policy and other general measures in order to ensure good governance for children's rights. Different methodologies and practices may be developed when undertaking CRIA. At a minimum, they must use the Convention and its Optional Protocols as a framework, in particular ensuring that the assessments are underpinned by the general principles and have special regard for the differentiated impact of the measure(s) under consideration on children. The impact assessment itself could be based on input from children, civil society and experts, as well as from relevant Government departments, academic research and experiences documented in the country

¹⁷ General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 78-81.

or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be made publicly available.¹⁸

VI. Dissemination

100. The Committee recommends that States widely disseminate the present general comment to parliaments, governments and the judiciary, nationally and locally. It should also be made known to children – including those in situations of exclusion –, all professionals working for and with children (including judges, lawyers, teachers, guardians, social workers, staff of public or private welfare institutions, health staff, teachers, etc.) and civil society at large. To do this, the general comment should be translated into relevant languages, child-friendly/appropriate versions should be made available, conferences, seminars, workshops and other events should be held to share best practices on how best to implement it. It should also be incorporated into the formal pre- and in-service training of all concerned professionals and technical staff.
101. States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to apply and respect the child's best interests in all judicial and administrative decisions and other actions concerning the child as an individual, as well as at all stages of the adoption of implementation measures concerning children in general or as a specific group.

¹⁸ States may draw guidance from the Report of the Special Rapporteur on the right to food on Guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5).



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GENERAL COMMENT No. 16 (2013)

on State obligations regarding the impact of the business sector on children's rights*

*Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

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I. Introduction and Objective

1. The Committee on the Rights of the Child recognizes that the business sector's impact on children's rights has grown in past decades because of factors such as the globalized nature of economies and of business operations and the ongoing trends of decentralization, and outsourcing and privatizing of State functions that affect the enjoyment of human rights. Business can be an essential driver for societies and economies to advance in ways that strengthen the realization of children's rights through, for example, technological advances, investment and the generation of decent work. However, the realization of children's rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children's rights.
2. States have obligations regarding the impact of business activities and operations on children's rights arising from the Convention on the Rights of the Child, the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict. These obligations cover a variety of issues, reflecting the fact that children are both rights-holders and stakeholders in business as consumers, legally engaged employees, future employees and business leaders and members of communities and environments in which business operates. The present general comment aims to clarify these obligations and outline the measures that should be undertaken by States to meet them.
3. For the purposes of the present general comment, the business sector is defined as including all business enterprises, both national and transnational, regardless of size, sector, location, ownership and structure. The general comment also addresses obligations regarding not-for-profit organizations that play a role in the provision of services that are critical to the enjoyment of children's rights.
4. It is necessary for States to have adequate legal and institutional frameworks to respect, protect and fulfil children's rights, and to provide remedies in case of violations in the context of business activities and operations. In this regard, States should take into account that:
 - (a) Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children's rights, such as exposure to violence, child labour or unsafe products or environmental hazards may have lifelong, irreversible and even transgenerational consequences;
 - (b) Children are often politically voiceless and lack access to relevant information. They are reliant on governance systems, over which they have little influence, to have their rights realized. This makes it hard for them to have a say in decisions regarding laws and policies that impact their rights. In the process of decision-making, States may not adequately consider the impact on children of business-related laws and policies, while, conversely, the business sector often exerts a powerful influence on decisions without reference to children's rights;
 - (c) It is generally challenging for children to obtain remedy – whether in the courts or through other mechanisms – when their rights are infringed upon, even more so by business enterprises. Children often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation. Furthermore, there are particular difficulties for children in obtaining remedy for abuses that occur in the context of businesses' global operations.

5. Given the broad range of children's rights that can be affected by business activities and operations, the present general comment does not examine every pertinent article of the Convention and its protocols. Instead it seeks to provide States with a framework for implementing the Convention as a whole with regard to the business sector whilst focusing on specific contexts where the impact of business activities on children's rights can be most significant. The present general comment aims to provide States with guidance on how they should:
 - (a) Ensure that the activities and operations of business enterprises do not adversely impact on children's rights;
 - (b) Create an enabling and supportive environment for business enterprises to respect children's rights, including across any business relationships linked to their operations, products or services and across their global operations; and
 - (c) Ensure access to effective remedy for children whose rights have been infringed by a business enterprise acting as a private party or as a State agent.
6. The present general comment draws from the experience of the Committee in reviewing State parties' reports and its day of general discussion on the private sector as service provider in 2002.¹ It is also informed by regional and international consultations with numerous stakeholders, including children, as well as by public consultations that have taken place since 2011.
7. The Committee is mindful of the relevance to the general comment of existing and evolving national and international norms, standards and policy guidance on business and human rights. The general comment is consistent with international conventions, including the International Labour Organization (ILO) Conventions No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and No. 138 (1973) concerning Minimum Age for Admission to Employment. The Committee recognizes the relevance of the United Nations "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights adopted by the Human Rights Council, and of the ILO Tripartite Declaration of Principles concerning Multinationals and Social Policy. Other documents, such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the Global Compact, the United Nations Study on Violence against Children and the Children's Rights and Business Principles have been useful references for the Committee.

II. Scope and application

8. The present general comment principally addresses States' obligations under the Convention and the Optional Protocols thereto. At this juncture, there is no international legally binding instrument on the business sector's responsibilities vis-à-vis human rights. However, the Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so. In addition, business enterprises should not undermine the States' ability to meet their obligations towards children under the Convention and the Optional Protocols thereto.

¹ Committee on the Rights of the Child, report on its thirty-first session, CRC/C/121, annex II.

9. The Committee acknowledges that voluntary actions of corporate responsibility by business enterprises, such as social investments, advocacy and public policy engagement, voluntary codes of conduct, philanthropy and other collective actions, can advance children's rights. States should encourage such voluntary actions and initiatives as a means to create a business culture which respects and supports children's rights. However, it should be emphasized that such voluntary actions and initiatives are not a substitute for State action and regulation of businesses in line with obligations under the Convention and its protocols or for businesses to comply with their responsibilities to respect children's rights.
10. It is important to recall that the Convention and the Optional Protocols thereto engage the State as a whole, regardless of its internal structures, branches or organization. Furthermore, decentralization of power, through devolution and delegation, does not reduce the direct responsibility of the State to meet its obligations to all children within its jurisdiction.
11. The present general comment first considers the relationship between State obligations regarding business activities and the general principles of the Convention. It then defines the general nature and scope of State obligations with regards to children's rights and the business sector. An examination follows of the scope of obligations in contexts where the impact of business activities and operations on children's rights is most significant, including when business enterprises are service providers, children are affected in the informal economy, States engage with international organizations and businesses operate abroad in areas where there is insufficient State protection for children's rights. The present general comment concludes by outlining a framework for implementation and dissemination.

III. General principles of the Convention as they relate to business activities

12. Children's rights are universal, indivisible, interdependent and interrelated. The Committee has established four general principles within the Convention as the basis for all State decisions and actions relating to business activities and operations in conformity with a child rights approach.²

A. The right to non-discrimination (art. 2)

13. Article 2 of the Convention calls on States to respect and ensure rights to each child in their jurisdiction "without discrimination of any kind, irrespective of a child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". States must ensure that all legislation, policies and programmes that deal with business issues are not intentionally or unintentionally discriminatory towards children in their content or implementation; for instance, those that address access to employment for parents or caregivers, or access to goods and services for children with disabilities.
14. States are required to prevent discrimination in the private sphere in general and provide remedy if it occurs. States should collect statistical data that is appropriately disaggregated and other

² See Committee on the Rights of the Child, general comment No. 13 (2011) on the right of the child to be free from all forms of violence, Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41 (A/67/41), annex V, para. 59.

information to identify discrimination against children in the context of business activities and operations and mechanisms should be established to monitor and investigate discriminatory practices within the business sector. States should also take steps to create a supportive environment for business to respect the right to protection from discrimination by promoting knowledge and understanding of the right within the business sector, including within the media, marketing and advertising sectors. Awareness-raising and sensitization among business enterprises should be aimed at challenging and eradicating discriminatory attitudes towards all children, especially those in vulnerable situations.

B. The best interests of the child (art. 3, para. 1)

15. Article 3, paragraph 1, of the Convention provides that the best interests of the child shall be a primary consideration for States in all actions concerning children. States are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning business activities and operations that directly or indirectly impact on children. For example, States must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations, such as those relating to employment, taxation, corruption, privatization, transport and other general economic, trade or financial issues.
16. Article 3, paragraph 1, is also directly applicable to business enterprises that function as private or public social welfare bodies by providing any form of direct services for children, including care, foster care, health, education and the administration of detention facilities.
17. The Convention and the Optional Protocols thereto provide the framework for assessing and determining the best interests of the child. The obligation to make the best interests of the child a primary consideration becomes crucial when States are engaged in weighing competing priorities, such as short-term economic considerations and longer-term development decisions. States should be in a position to explain how the right to have the best interests of the child considered has been respected in decision-making, including how it has been weighed against other considerations.³

C. The right to life, survival and development (art. 6)

18. Article 6 of the Convention acknowledges that every child has an inherent right to life and that States shall ensure the survival and development of the child. The Committee states its understanding of development of the child in general comment No. 5 (2003) on general measures of implementation of the Convention, as a “holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development”.⁴
19. The activities and operations of business enterprises can impact on the realization of article 6 in different ways. For example, environmental degradation and contamination arising from business activities can compromise children’s rights to health, food security and access to safe drinking water and sanitation. Selling or leasing land to investors can deprive local populations of access to

³ See General Comment No. 14 (2013) on the right of the child to have his/her best interests taken as a primary consideration: article 3, paragraph 1, of the Convention on the Rights of the Child, forthcoming, para. 6.

⁴ See Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41), annex XI, para. 12.

natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context.⁵ The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health.⁶ When business employment practices require adults to work long hours, older children, particularly girls, may take on their parent's domestic and childcare obligations, which can negatively impact their right to education and to play; additionally, leaving children alone or in the care of older siblings can have implications for the quality of care and the health of younger children.

20. Measures for implementing article 6 with regard to the business sector will need to be adapted according to context and include preventive measures such as effective regulation and monitoring of advertising and marketing industries and the environmental impact of business. In the context of care of children, particularly young children, other measures will be needed for creating an enabling environment for business to respect article 6 through, for example, the introduction of family-friendly workplace policies. Such policies must take account of the impact of working hours of adults on the survival and development of the child at all stages of development and must include adequately remunerated parental leave.⁷

D. The right of the child to be heard (art. 12)

21. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. States should hear children's views regularly – in line with general comment No. 12⁸ – when developing national and local-level business-related laws and policies that may affect them. In particular, States should consult with children who face difficulties in making themselves heard, such as the children of minority and indigenous groups, children with disabilities as stated in articles 4, paragraph 3, and 7 of the Convention on the Rights of Persons with Disabilities,⁹ and children in similar situations of vulnerability. Governmental bodies, such as education and labour inspectorates, concerned with regulating and monitoring the activities and operations of business enterprises should ensure that they take into account the views of affected children. States should also hear children when child-rights impact assessments of proposed business-related policy, legislation, regulations, budget or other administrative decisions are undertaken.
22. Children have a specific right “to be heard in any judicial and administrative proceedings affecting the child” (art. 12, para. 3, of the Convention). This includes judicial proceedings and mechanisms of conciliation and arbitration that concern abuses of children's rights caused or contributed to by business enterprises. As set out in general comment No. 12, children should be allowed to

⁵ General comment No. 11 (2009) on indigenous children and their rights under the convention, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41 (A/65/41)*, annex III, para. 35.

⁶ See general comment No. 15 (2013) on the right of the child to the highest attainable standard of health, forthcoming, para. 47.

⁷ See *passim* general comment No. 7 (2005) on implementing child rights in early childhood, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 41 (A/61/41)*, annex III.

⁸ General comment No. 12 (2009) on the right of the child to be heard, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41 (A/65/41)*, annex IV.

⁹ General comment No. 9 (2006) on the rights of children with disabilities, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41 (A/63/41)*, annex III, *passim*.

voluntarily participate in such proceedings and be provided the opportunity to be heard directly or indirectly through the assistance of a representative or appropriate body that has sufficient knowledge and understanding of the various aspects of the decision-making process as well as experience in working with children.

23. There may be instances when business consults communities that may be affected by a potential business project. In such circumstances, it can be critical for business to seek the views of children and consider them in decisions that affect them. States should provide businesses with specific guidance emphasizing that such processes must be accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times. Participation should be voluntary and occur in a child-friendly environment that challenges and does not reinforce patterns of discrimination against children. Where possible, civil society organizations that are competent in facilitating child participation should be involved.

IV. Nature and scope of State obligations

A. General obligations

24. The Convention provides for a set of rights for children that impose a particular level of obligations on the State in view of the special status of children; there is a particular gravity to violations of children's rights because they often have severe and long-lasting impact on child development. Article 4 sets out the obligation for States to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention and devote the maximum amount of available resources to the realization of economic, social and cultural rights of the child.
25. Under international human rights law there are three types of obligation on States: to respect, to protect and to fulfil human rights.¹⁰ They encompass obligations of result and obligations of conduct. States are not relieved of their obligations under the Convention and the Optional Protocols thereto when their functions are delegated or outsourced to a private business or non-profit organization. A State will thereby be in breach of its obligations under the Convention where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children. The scope of these duties is explored further below, whilst the required framework for implementation is discussed in chapter VI.

B. The obligation to respect, protect and fulfil

1. The obligation to respect

26. The obligation to respect means that States should not directly or indirectly facilitate, aid and abet any infringement of children's rights. Furthermore, States have the obligation to ensure that all actors respect children's rights, including in the context of business activities and operations. To

¹⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, Official Records of the Economic and Social Council, 2000, Supplement No. 2 (E/2000/22), annex VI, para. 46.

achieve this, all business-related policy, legislation or administrative acts and decision-making should be transparent, informed and include full and continuous consideration of the impact on the rights of the child.

27. The obligation to respect also implies that a State should not engage in, support or condone abuses of children's rights when it has a business role itself or conducts business with private enterprises. For example, States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children's rights. State agencies and institutions, including security forces, should not collaborate with or condone the infringement of the rights of the child by third parties. Furthermore, States should not invest public finances and other resources in business activities that violate children's rights.

2. The obligation to protect

28. States have an obligation to protect against infringements of rights guaranteed under the Convention and the Optional Protocols thereto by third parties. This duty is of primary importance when considering States' obligations with regards to the business sector. It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights. States must investigate, adjudicate and redress violations of children's rights caused or contributed to by a business enterprise. A State is therefore responsible for infringements of children's rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements.

3. The obligation to fulfil

29. The obligation to fulfil requires States to take positive action to facilitate, promote and provide for the enjoyment of children's rights. This means that States must implement legislative, administrative, budgetary, judicial, promotional and other measures in conformity with article 4 relating to business activities that impact on children's rights. Such measures should ensure the best environment for full realization of the Convention and the Optional Protocols thereto. To meet this obligation, States should provide stable and predictable legal and regulatory environments which enable business enterprises to respect children's rights. This includes clear and well-enforced law and standards on labour, employment, health and safety, environment, anti-corruption, land use and taxation that comply with the Convention and the Optional Protocols thereto. It also includes law and policies designed to create equality of opportunity and treatment in employment; measures to promote vocational training and decent work, and to raise living standards; and policies conducive to the promotion of small and medium enterprises. States should put in place measures to promote knowledge and understanding of the Convention and the Optional Protocols thereto within government departments, agencies and other State-based institutions that shape business practices, and foster a culture in business that is respectful of children's rights.

4. Remedies and reparations

30. States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises. The Committee states in its general comment No. 5 that for rights to have meaning, effective remedies must be available to redress violations.¹¹ Several provisions in the Convention call for penalties, compensation, judicial action and measures to promote recovery after harm caused or contributed to by third parties.¹² Meeting this obligation entails having in place child-sensitive mechanisms – criminal, civil or administrative – that are known by children and their representatives, that are prompt, genuinely available and accessible and that provide adequate reparation for harm suffered. Agencies with oversight powers relevant to children’s rights, including labour, education and health and safety inspectorates, environmental tribunals, taxation authorities, national human rights institutions and bodies focusing on equality in the business sector can also play a role in the provision of remedies. These agencies can proactively investigate and monitor abuses and may also have regulatory powers allowing them to impose administrative sanctions on businesses which infringe on children’s rights. In all cases, children should have recourse to independent and impartial justice, or judicial review of administrative proceedings.
31. When determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of children’s development and capacities and reparation should be timely to limit ongoing and future damage to the child or children affected; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done. States should provide medical and psychological assistance, legal support and measures of rehabilitation to children who are victims of abuse and violence caused or contributed to by business actors. They should also guarantee non-recurrence of abuse through, for example, reform of relevant law and policy and their application, including prosecution and sanction of the business actors concerned.

V. State obligations in specific contexts

32. Business activities and operations can impact on a broad range of children’s rights. However, the Committee has identified the following non-exhaustive, specific contexts where the impact of business enterprises can be significant and where States’ legal and institutional frameworks are often insufficient, ineffective or under pressure.

¹¹ General comment No. 5 (2003), para. 24. States should also take into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by General Assembly resolution 60/147 of 2005.

¹² For example, see Convention on the Rights of the Child, arts. 32, para. 2; 19; and 39.

A. Provision of services for the enjoyment of children's rights

33. Business enterprises and non-profit organizations can play a role in the provision and management of services such as clean water, sanitation, education, transport, health, alternative care, energy, security and detention facilities that are critical to the enjoyment of children's rights. The Committee does not prescribe the form of delivery of such services but it is important to emphasize that States are not exempted from their obligations under the Convention when they outsource or privatize services that impact on the fulfilment of children's rights.
34. States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised.¹³ They have an obligation to set standards in conformity with the Convention and closely monitor them. Inadequate oversight, inspection and monitoring of these bodies can result in serious violations of children's rights such as violence, exploitation and neglect. They must ensure that such provision does not threaten children's access to services on the basis of discriminatory criteria, especially under the principle of protection from discrimination, and that, for all service sectors, children have access to an independent monitoring body, complaints mechanisms and, where relevant, to judicial recourse that can provide them with effective remedies in case of violations. The Committee recommends that there should be a permanent monitoring mechanism or process aimed at ensuring that all non-State service providers have in place and apply policies, programmes and procedures which are in compliance with the Convention.¹⁴

B. The informal economy

35. The informal economy engages an important part of the economically active population in many countries and contributes significantly to gross national product. However, children's rights can be particularly at risk from business activities that take place outside of the legal and institutional frameworks that regulate and protect rights. For example, products that are manufactured or handled in this context, such as toys, garments or foodstuffs, can be unhealthy and/or unsafe for children. Also, a concentrated number of children are often found in hidden areas of informal work, such as small family enterprises, agricultural and hospitality sectors. Such work frequently involves precarious employment status, low, irregular or no remuneration, health risks, a lack of social security, limited freedom of association and inadequate protection from discrimination and violence or exploitation. It can prevent children from attending school, doing schoolwork and having adequate rest and play, potentially infringing articles 28, 29 and 31 of the Convention. Moreover, parents or caregivers working in the informal economy often have to work long hours to obtain subsistence-level earnings, thus seriously limiting their opportunities to exercise parental responsibilities or care for children in their charge.
36. States should put in place measures to ensure that business activities take place within appropriate legal and institutional frameworks in all circumstances regardless of size or sector of the economy so that children's rights can be clearly recognized and protected. Such measures can include:

¹³ See Committee on the Rights of the Child, report on its thirty-first session, CRC/C/121, annex II.

¹⁴ See general comment No. 5, para. 44.

awareness-raising, conducting research and gathering data on the impact of the informal economy upon children's rights, supporting the creation of decent jobs that provide adequate pay to working parents or caregivers; implementing clear and predictable land-use laws; improving the provision of social protection to low-income families; and supporting informal sector enterprises by providing skills training, registration facilities, effective and flexible credit and banking services, appropriate tax arrangements and access to markets, *inter alia*.

37. States must regulate working conditions and ensure safeguards to protect children from economic exploitation and work that is hazardous or interferes with their education or harms their health or physical, mental, spiritual, moral or social development. Such work is often found, albeit not exclusively, within the informal and family economies. Therefore, States are required to design and implement programmes aimed at reaching businesses in these contexts, including by enforcing international standards regarding legal minimum age for work and appropriate conditions of work, investing in education and vocational training and providing support for the satisfactory transition of children to the world of work. States should ensure that social and child protection policies reach all, especially families in the informal economy.

C. Children's rights and global operations of business

38. Business enterprises increasingly operate on a global scale through complex networks of subsidiaries, contractors, suppliers and joint ventures. Their impact on children's rights, whether positive or negative, is rarely the result of the action or omission of a single business unit, whether it is the parent company, subsidiary, contractor, supplier or others. Instead, it may involve a link or participation between businesses units located in different jurisdictions. For example, suppliers may be involved in the use of child labour, subsidiaries may be engaged in land dispossession and contractors or licensees may be involved in the marketing of goods and services that are harmful to children. There are particular difficulties for States in discharging their obligations to respect, protect and fulfil the rights of the child in this context owing, among other reasons, to the fact that business enterprises are often legally separate entities located in different jurisdictions even when they operate as an economic unit which has its centre of activity, registration and/or domicile in one country (the home State) and is operational in another (the host State).
39. Under the Convention, States have the obligation to respect and ensure children's rights within their jurisdiction. The Convention does not limit a State's jurisdiction to "territory". In accordance with international law, the Committee has previously urged States to protect the rights of children who may be beyond their territorial borders. It has also emphasized that State obligations under the Convention and the Optional Protocols thereto apply to each child within a State's territory and to all children subject to a State's jurisdiction.¹⁵
40. Extraterritorial obligations are also explicitly referred to in the Optional Protocol on the sale of children, child prostitution and child pornography. Article 3, paragraph 1, provides that each State shall ensure that, as a minimum, offences under it are fully covered by its criminal or penal law,

¹⁵ General comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, Official Records of the General Assembly, Sixty-first Session, Supplement No. 41 (A/61/41), annex II, para. 12.

whether such offences are committed domestically or transnationally. Under article 3, paragraph 4, of Optional Protocol on the sale of children, child prostitution and child pornography, liability for these offences, whether criminal, civil or administrative, should be established for legal persons, including business enterprises. This approach is consistent with other human rights treaties and instruments that impose obligations on States to establish criminal jurisdiction over nationals in relation to areas such as complicity in torture, enforced disappearance and apartheid, no matter where the abuse and the act constituting complicity is committed.

41. States have obligations to engage in international cooperation for the realization of children's rights beyond their territorial boundaries. The preamble and the provisions of the Convention consistently refer to the "importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries".¹⁶ General comment No. 5 emphasizes that "implementation of the Convention is a cooperative exercise for the States of the world".¹⁷ As such, the full realization of children's rights under the Convention is in part a function of how States interact. Furthermore, the Committee highlights that the Convention has been nearly universally ratified; thus realization of its provisions should be of major and equal concern to both host and home States of business enterprises.
42. Host States have the primary responsibility to respect, protect and fulfil children's rights in their jurisdiction. They must ensure that all business enterprises, including transnational corporations operating within their borders, are adequately regulated within a legal and institutional framework that ensures that they do not adversely impact on the rights of the child and/or aid and abet violations in foreign jurisdictions.
43. Home States also have obligations, arising under the Convention and the Optional Protocols thereto, to respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. A reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned.¹⁸ When adopting measures to meet this obligation, States must not violate the Charter of the United Nations and general international law nor diminish the obligations of the host State under the Convention.
44. States should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extraterritorially when there is a reasonable link between the State and the conduct concerned. Furthermore, States should provide international assistance and cooperation with investigations and enforcement of proceedings in other States.
45. Measures to prevent the infringement of children's rights by business enterprises when they are operating abroad include:
 - (a) Making access to public finance and other forms of public support, such as insurance, conditional on a business carrying out a process to identify, prevent or mitigate any negative impacts on children's rights in their overseas operations;

¹⁶ See Convention on the Rights of the Child, arts. 4; 24, para. 4; 28, para. 3; 17 and 22, para. 2; as well as Optional Protocol on the sale of children, child prostitution and child pornography, art. 10, and Optional Protocol on the involvement of children in armed conflict, art. 10.

¹⁷ General comment No. 5, para. 60.

¹⁸ See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, principle 25 (2012).

- (b) Taking into account the prior record of business enterprises on children's rights when deciding on the provision of public finance and other forms of official support;
 - (c) Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children's rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children's rights abuses.
46. Both home and host States should establish institutional and legal frameworks that enable businesses to respect children's rights across their global operations. Home States should ensure that there are effective mechanisms in place so that the government agencies and institutions with responsibility for implementation of the Convention and the Optional Protocols thereto coordinate effectively with those responsible for trade and investment abroad. They should also build capacity so that development assistance agencies and overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including children's rights, with foreign Governments. States that adhere to the OECD Guidelines for Multinational Enterprises should support their national contact points in providing mediation and conciliation for matters that arise extraterritorially by ensuring that they are adequately resourced, independent and mandated to work to ensure respect for children's rights in the context of business issues. Recommendations issued by bodies such as the OECD national contact points should be given adequate effect.

D. International organizations

47. All States are called upon, under article 4 of the Convention, to cooperate directly in the realization of the rights in the Convention through international cooperation and through their membership in international organizations. In the context of business activities, these international organizations include international development, finance and trade institutions, such as the World Bank Group, the International Monetary Fund and the World Trade Organization, and others of a regional scope, in which States act collectively. States must comply with their obligations under the Convention and the Optional Protocols thereto when acting as members of such organizations and they should not accept loans from international organizations, or agree to conditions set forth by such organizations, if these loans or policies are likely to result in violations of the rights of children. States also retain their obligations in the field of development cooperation and should ensure that cooperation policies and programmes are designed and implemented in compliance with the Convention and the Optional Protocols thereto.
48. A State engaged with international development, finance and trade organizations must take all reasonable actions and measures to ensure that such organizations act in accordance with the Convention and the Optional Protocols thereto in their decision-making and operations, as well as when entering into agreements or establishing guidelines relevant to the business sector. Such actions and measures should go beyond the eradication of child labour and include the full realization of all children's rights. International organizations should have standards and procedures to assess the risk of harm to children in conjunction with new projects and to take

measures to mitigate risks of such harm. These organizations should put in place procedures and mechanisms to identify, address and remedy violations of children's rights in accordance with existing international standards, including when they are committed by or result from activities of businesses linked to or funded by them.

E. Emergencies and conflict situations

49. There are particular challenges for both host and home States in meeting their obligations to respect, protect and fulfil the rights of the child when businesses are operating in situations where protection institutions do not work properly because of conflict, disaster or the breakdown of social or legal order. It is important to emphasize that the Convention and the Optional Protocols thereto apply at all times and that there are no provisions allowing for derogation of their provisions during emergencies.
50. In such contexts, there may be a greater risk of child labour being used by business enterprises (including within supply chains and subsidiaries), of child soldiers being used or of corruption and tax evasion occurring. Given the heightened risks, home States should require business enterprises operating in situations of emergency and conflict to undertake stringent child-rights due diligence tailored to their size and activities. Home States should also develop and implement laws and regulations that address specific foreseeable risks to children's rights from business enterprises that are operating transnationally. This can include a requirement to publish actions taken to ensure that companies' operations do not contribute to serious violations of children's rights, and a prohibition on the sale or transfer of arms and other forms of military assistance when the final destination is a country in which children are known to be, or may potentially be, recruited or used in hostilities.
51. A home State should provide businesses with current, accurate and comprehensive information of the local children's rights context when they are operating or planning to operate in areas affected by conflict or emergency. Such guidance should emphasize that companies have identical responsibilities to respect children's rights in such settings as they do elsewhere. Children can be affected by violence, including sexual abuse or exploitation, child trafficking and gender-based violence in conflict zones and this must be recognized by States when providing guidance to businesses.
52. The obligations of host and home States under the relevant provisions of the Convention should be emphasized when business is operating in areas affected by conflict: Article 38 requires respect for the rules of international humanitarian law, article 39 obliges States to provide appropriate psychological recovery and social reintegration and the Optional Protocol on the involvement of children in armed conflict contains provisions regarding recruitment of children into armed forces under 18 years of age. When operating in areas affected by conflict, business enterprises may employ private security companies and may risk being involved in violations such as exploitation and/or use of violence against children in the course of protecting facilities or other operations. To prevent this, both home and host States should introduce and implement national legislation that includes a specific prohibition on such companies recruiting children or using them in hostilities; requirements for effective measures to protect children from violence and exploitation; and mechanisms for holding personnel accountable for abuses of children's rights.

VI. Framework for implementation

A. Legislative, regulatory and enforcement measures

1. Legislation and regulation

53. Legislation and regulation are essential instruments for ensuring that the activities and operations of business enterprises do not adversely impact on or violate the rights of the child. States should enact legislation that gives effect to the rights of the child by third parties and provides a clear and predictable legal and regulatory environment which enables business enterprises to respect children's rights. To meet their obligation to adopt appropriate and reasonable legislative and regulatory measures to ensure that business enterprises do not infringe on children's rights, States will need to gather data, evidence and research for identifying specific business sectors of concern.
54. In conformity with article 18, paragraph 3, of the Convention, States should create employment conditions within business enterprises which assist working parents and caregivers in fulfilling their responsibilities to children in their care such as: the introduction of family-friendly workplace policies, including parental leave; support and facilitate breastfeeding; access to quality childcare services; payment of wages sufficient for an adequate standard of living; protection from discrimination and violence in the workplace; and, security and safety in the workplace.
55. Ineffective taxation systems, corruption and mismanagement of government revenues from, among others, State-owned businesses and corporate taxation, can limit the resources available for the fulfilment of children's rights in accordance with article 4 of the Convention. In addition to any existing obligations under anti-bribery and anti-corruption instruments,¹⁹ States should develop and implement effective laws and regulations to obtain and manage revenue flows from all sources, ensuring transparency, accountability and equity.
56. States should implement article 32 of the Convention to ensure the prohibition of economic exploitation and hazardous work for children. Some children are above the minimum working age, in line with international standards, and therefore can be legitimately working as employees, while still needing to be protected, for instance, from work that is hazardous to their health, safety or moral development and ensuring that their rights to education, development and recreation are promoted and protected.²⁰ States must set a minimum age for employment; appropriately regulate working hours and conditions; and establish penalties to effectively enforce article 32. They must have functioning labour inspection and enforcement systems and capacities in place. States should also ratify and enact into domestic law both of the fundamental ILO conventions relating to child labour.²¹ Under article 39, States must take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child who has experienced any form of violence, neglect, exploitation, or abuse, including economic exploitation.

¹⁹ Such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and/or the United Nations Convention Against Corruption.

²⁰ See general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), forthcoming.

²¹ ILO Conventions Nos. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and 138 (1973) concerning Minimum Age for Admission to Employment.

57. States are also required to implement and enforce internationally agreed standards concerning children's rights, health and business, including the World Health Organization Framework Convention on Tobacco Control, and the International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions. The Committee is aware that the activities and operations of the pharmaceutical sector can have a profound impact on the health of children. Pharmaceutical companies should be encouraged to improve the access, availability, acceptability and quality of medicines for children taking into consideration existing guidance.²² Furthermore, intellectual property rights should be applied in ways that promote the affordability of medicines.²³
58. The mass media industry, including advertising and marketing industries, can have positive as well as negative impacts on children's rights. Under article 17 of the Convention, States have obligations to encourage the mass media, including private media, to disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles. The media must be regulated appropriately to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualized images of children, while recognizing children's right to information and freedom of expression. States should encourage the mass media to develop guidelines to ensure full respect for the rights of the child, including their protection from violence and from portrayals that perpetuate discrimination, in all media coverage. States should establish copyright exceptions which permit the reproduction of books and other printed publications in formats that are accessible for children with visual or other impairments.
59. Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.
60. Digital media is of particular concern, as many children can be users of the Internet but also become victims of violence such as cyber-bullying, cyber-grooming, trafficking or sexual abuse and exploitation through the Internet. Although companies may not be directly involved in such criminal acts, they can be complicit in these violations through their actions; for example, child sex tourism can be facilitated by travel agencies operating on the Internet, as they enable the exchange of information and the planning of sex tourism activities. Child pornography can be indirectly facilitated by Internet businesses and credit-card providers. As well as meeting their obligations under the Optional Protocol on the sale of children, child prostitution and child pornography, States should provide children with age-appropriate information regarding web-related safety so they can manage the risks and know where to go for help. They should coordinate with the information and communication technology industry so that it develops and puts in place adequate measures to protect children from violent and inappropriate material.

²² Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines; Human Rights Council resolution 15/22.

²³ See general comment No. 15, para. 82; World Trade Organization, Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/2.

2. Enforcement measures

61. Generally, it is the lack of implementation or the poor enforcement of laws regulating business that pose the most critical problems for children. There are a number of measures States should employ to ensure effective implementation and enforcement, including:
- (a) Strengthening regulatory agencies responsible for the oversight of standards relevant to children's rights such as health and safety, consumer rights, education, environment, labour and advertising and marketing so that they have sufficient powers and resources to monitor and to investigate complaints and to provide and enforce remedies for abuses of children's rights;
 - (b) Disseminating laws and regulations regarding children's rights and business to stakeholders, including children and business enterprises;
 - (c) Training judges and other administrative officials as well as lawyers and legal aid providers to ensure the correct application of the Convention and its protocols on business and children's rights, international human rights standards and relevant national legislation and to promote the development of national jurisprudence; and
 - (d) Providing effective remedy through judicial or non-judicial mechanisms and effective access to justice.

3. Children's rights and due diligence by business enterprises

62. To meet their obligation to adopt measures to ensure that business enterprises respect children's rights, States should require businesses to undertake child-rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations.²⁴ Where there is a high risk of business enterprises being involved in violations of children's rights because of the nature of their operations or their operating contexts, States should require a stricter process of due diligence and an effective monitoring system.
63. Where child-rights due diligence is subsumed within a more general process of human-rights due diligence, it is imperative that the provisions of the Convention and the Optional Protocols thereto influence decisions. Any plan of action and measures to prevent and/or remedy human rights abuses must have special consideration for the differentiated impact on children.
64. States should lead by example, requiring all State-owned enterprises to undertake child-rights due diligence and to publicly communicate their reports on their impact on children's rights, including regular reporting. States should make public support and services, such as those provided by an export credit agency, development finance and investment insurance conditional on businesses carrying out child-rights due diligence.
65. As part of child-rights due diligence, large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address child-rights impacts. Such communication should be available, efficient and comparable across enterprises and address measures taken by business to mitigate potential and actual adverse impacts for children caused

²⁴ See UNICEF, Save the Children and Global Compact, Children's Rights and Business Principles (2011).

by their activities. Business enterprises should be required to publish the actions taken to ensure that the goods and services they produce or commercialize do not involve serious violations of children's rights, such as slavery or forced labour. Where reporting is mandatory, States should put in place verification and enforcement mechanisms to ensure compliance. States may support reporting by creating instruments to benchmark and recognize good performance with regard to children's rights.

B. Remedial measures

66. Children often find it difficult to access the justice system to seek effective remedies for abuse or violations of their rights when business enterprises are involved. Children may lack legal standing, which prevents them from pursuing a claim; children and their families often lack knowledge about their rights and the mechanisms and procedures available to them to seek redress or may lack confidence in the justice system. States may not always investigate breaches of criminal, civil or administrative laws committed by business enterprises. There are vast power imbalances between children and business and, often, prohibitive costs involved in litigation against companies as well as difficulties in securing legal representation. Cases involving business are frequently settled out of court and in the absence of a body of developed case law; children and their families in jurisdictions where judicial precedent is persuasive may be more likely to abandon undertaking litigation given uncertainty surrounding the outcome.
67. There are particular difficulties in obtaining remedy for abuses that occur in the context of businesses' global operations. Subsidiaries or others may lack insurance or have limited liability; the way in which transnational corporations are structured in separate entities can make identification and attribution of legal responsibility to each unit challenging; access to information and evidence located in different countries can be problematic when building and defending a claim; legal aid may be difficult to obtain in foreign jurisdictions and various legal and procedural hurdles can be used to defeat extraterritorial claims.
68. States should focus their attention on removing social, economic and juridical barriers so that children can in practice have access to effective judicial mechanisms without discrimination of any kind. Children and their representatives should be provided with information about remedies through, for example, the school curriculum, youth centres or community-based programmes. They should be allowed to initiate proceedings in their own right and have access to legal aid and the support of lawyers and legal aid providers in bringing cases against business enterprises to ensure equality of arms. States that do not already have provision for collective complaints, such as class actions and public interest litigation, should introduce these as a means of increasing accessibility to the courts for large numbers of children similarly affected by business actions. States may have to provide special assistance to children who face obstacles to accessing justice, for example, because of language or disability or because they are very young.
69. Age should not be a barrier to a child's right to participate fully in the justice process. Likewise, special arrangements should be developed for child victims and witnesses in both civil and criminal

²⁵ Adopted by the Economic and Social Council in its resolution 2005/20.

proceedings, in line with the Committee's general comment No. 12. Furthermore, States should implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.²⁵ Confidentiality and privacy must be respected and children should be kept informed of progress at all stages of the process, giving due weight to the child's maturity and any speech, language or communication difficulties they might have.

70. The Optional Protocol on the sale of children, child prostitution and child pornography requires that States enact criminal legislation that also applies to legal entities, including business enterprises. States should consider the adoption of criminal legal liability – or another form of legal liability of equal deterrent effect – for legal entities, including business enterprises, in cases concerning serious violations of the rights of the child, such as forced labour. National tribunals should have jurisdiction over these serious violations, in accordance with accepted rules of jurisdiction.
71. Non-judicial mechanisms, such as mediation, conciliation and arbitration, can be useful alternatives for resolving disputes concerning children and enterprises. They must be available without prejudice to the right to judicial remedy. Such mechanisms can play an important role alongside judicial processes, provided they are in conformity with the Convention and the Optional Protocols thereto and with international principles and standards of effectiveness, promptness and due process and fairness. Grievance mechanisms established by business enterprises can provide flexible and timely solutions and at times it may be in a child's best interests for concerns raised about a company's conduct to be resolved through them. These mechanisms should follow criteria that include: accessibility, legitimacy, predictability, equitability, rights compatibility, transparency, continuous learning and dialogue.²⁶ In all cases, access to courts or judicial review of administrative remedies and other procedures should be available.
72. States should make every effort to facilitate access to international and regional human rights mechanisms, including the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, so that an individual child or a group of children, or others acting on his/her/their behalf, are able to obtain remedy for State failure to adequately respect, protect and fulfil children's rights in relation to business activities and operations.

C. Policy measures

73. States should encourage a business culture that understands and fully respects children's rights. To this end, States should include the issue of children's rights and business in the overall context of the national policy framework for implementation of the Convention. They should develop guidance that explicitly sets out government expectations for business enterprises to respect children's rights in the context of its own business activities, as well as within business relationships linked to operations, products or services and activities abroad when they operate transnationally. This should include the implementation of zero-tolerance policies for violence in all business activities and operations. As required, States should signpost and encourage adherence to relevant corporate responsibility initiatives.

²⁶ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, guiding principle 31.

74. In many contexts, small and medium-sized enterprises represent a large part of the economy and it is particularly important that States provide them with readily available tailored guidance and support on how to respect children's rights and comply with national legislation while avoiding unnecessary administrative burdens. States should also encourage larger companies to use their influence over small and medium-sized enterprises to strengthen children's rights throughout their value chains.

D. Coordination and monitoring measures

1. Coordination

75. Full implementation of the Convention and the Optional Protocols thereto requires effective cross-sectoral coordination, among government agencies and departments and across different levels of government, from local to regional and central.²⁷ Typically, the departments and agencies directly involved with business policies and practices work separately from departments and agencies with direct responsibility for children's rights. States must ensure that governmental bodies, as well as parliamentarians, that shape business law and practices are aware of the State's obligations with regard to children's rights. They may require relevant information, training and support so that they are equipped to ensure full compliance with the Convention when developing law and policy and entering into economic, trade and investment agreements. National human rights institutions can play an important role as catalysts for linking different governmental departments concerned with children's rights and with business.

2. Monitoring

76. States have an obligation to monitor violations of the Convention and the Optional Protocols thereto committed or contributed to by business enterprises, including in their global operations. This can be achieved, for instance, through: gathering data that can be used to identify problems and inform policy; investigating abuses; collaborating with civil society and national human rights institutions; and making business accountable publicly by using business reporting on their impact on children's rights to assess their performance. In particular, national human rights institutions can be involved, for example in receiving, investigating and mediating complaints of violations; conducting public inquiries into large-scale abuses, mediating in conflict situations and undertaking legislative reviews to ensure compliance with the Convention. Where necessary, States should broaden the legislative mandate of national human rights institutions to accommodate children's rights and business.
77. When States develop national strategies and plans of action for implementation of the Convention and the Optional Protocols thereto, they should include explicit reference to the measures required to respect, protect and fulfil children's rights in the actions and operations of business enterprises. States should also ensure that they monitor progress in implementation of the Convention in the activities and operations of business. This can be achieved both internally through the use of child

²⁷ General comment No. 5, para. 37.

rights impact assessments and evaluations, as well as through collaboration with other bodies such as parliamentary committees, civil society organizations, professional associations and national human rights institutions. Monitoring should include asking children directly for their views on the impact of business on their rights. Different mechanisms for consultation can be used, such as youth councils and parliaments, social media, school councils and associations of children.

3. Child-rights impact assessments

78. Ensuring that the best interests of the child are a primary consideration in business-related legislation and policy development and delivery at all levels of government demands continuous child-rights impact assessments. These can predict the impact of any proposed business-related policy, legislation, regulations, budget or other administrative decisions which affect children and the enjoyment of their rights²⁸ and should complement ongoing monitoring and evaluation of the impact of laws, policies and programmes on children's rights.
79. Different methodologies and practices may be developed when undertaking child-rights impact assessments. At a minimum they must use the framework of the Convention and the Optional Protocols thereto, as well as relevant concluding observations and general comments issued by the Committee. When States conduct broader impact assessments of business-related policy, legislation or administrative practices, they should ensure that these assessments are underpinned by the general principles of the Convention and the Optional Protocols thereto and have special regard for the differentiated impact on children of the measures under consideration.²⁹
80. Child-rights impact assessments can be used to consider the impact on all children affected by the activities of a particular business or sector but can also include assessment of the differential impact of measures on certain categories of children. The assessment of the impact itself may be based upon input from children, civil society and experts, as well as from relevant government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be publicly available.³⁰
81. To ensure an impartial and independent process, the State may consider appointing an external actor to lead the assessment process. This can have significant advantages, but the State, as the party ultimately responsible for the result, must ensure that the actor undertaking the assessment is competent, honest and impartial.

E. Collaborative and awareness-raising measures

82. While it is the State that takes on obligations under the Convention, the task of implementation needs to engage all sectors of society, including business, civil society and children themselves. The Committee recommends that States adopt and implement a comprehensive strategy to inform and educate all children, parents and caregivers that business has a responsibility to respect children's

²⁸ General comment No. 5, para. 45.

²⁹ General comment No. 14, para. 99.

³⁰ Ibid.

rights wherever they operate, including through child-friendly and age-appropriate communications, for example through the provision of education about financial awareness. Education, training and awareness-raising about the Convention should also be targeted at business enterprises to emphasize the status of the child as a holder of human rights, encourage active respect for all of the Convention's provisions and challenge and eradicate discriminatory attitudes towards all children and especially those in vulnerable and disadvantaged situations. In this context, the media should be encouraged to provide children with information about their rights in relation to business and raise awareness among businesses of their responsibility to respect children's rights.

83. The Committee highlights that national human rights institutions can be involved in raising awareness of the Convention's provisions amongst business enterprises, for instance by developing good practice guidance and policies for businesses and disseminating them.
84. Civil society has a critical role in the independent promotion and protection of children's rights in the context of business operations. This includes monitoring and holding business accountable; supporting children to have access to justice and remedies; contributing to child-rights impact assessments; and raising awareness amongst businesses of their responsibility to respect children's rights. States should ensure conditions for an active and vigilant civil society, including effective collaboration with and support to independent civil society organizations, child and youth-led organizations, academia, chambers of commerce and industry, trade unions, consumer associations and professional institutions. States should refrain from interfering with these and other independent organizations and facilitate their involvement in public policy and programmes relating to children's rights and business.

VII. Dissemination

85. The Committee recommends that States widely disseminate the present general comment with parliament and across government, including within ministries, departments and municipal/local-level bodies working on business issues and those responsible for trade and investment abroad, such as development assistance agencies and overseas missions. The present general comment should be distributed to business enterprises, including those operating transnationally, as well as to small and medium-sized enterprises and actors in the informal sector. It should also be distributed and made known to professionals working for and with children, including judges, lawyers and legal aid providers, teachers, guardians, social workers, officials of public or private welfare institutions, as well as to all children and civil society. This will require translating it into relevant languages, making accessible and child-friendly versions available, holding workshops and seminars to discuss its implications and how best to implement it, and incorporating it into the training of all relevant professionals.
86. States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to respect, protect and fulfil children's rights in the context of the activities and operations of business enterprises both domestically and, where appropriate, transnationally.



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**General comment No. 21 (2017)
on children in street situations**

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I. Introduction: “change our story”

1. Children in street situations consulted for the present general comment spoke strongly about the need for respect, dignity and rights. In expressing their feelings, they said, inter alia: “Respect us as human beings”; “I would like for people who have never lived on the streets to see us as persons with pride, like normal people”; “It’s not about getting us off the streets and into shelters. It’s about giving us a status”; “Governments should not say we should not be on the streets. They should not harass us if on the streets. We should be accepted”; “Living on the street does not mean that we cannot have rights”; “The street leaves its mark: either you get out or you don’t”; “We don’t want help, charity, pity. Governments should work with the community to give us rights. We’re not asking for charity. I want to become someone to fend for myself”; “[People] should give us a chance to use our gifts and talents to achieve our dreams”; “Give us the opportunity to change our story”.¹

II. Overall context

Purpose

2. In the present general comment, the Committee on the Rights of the Child provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child. While the Convention makes no explicit reference to them, all of its provisions are applicable to children in street situations, who experience violations of a large majority of the Convention’s articles.

Consultations

3. In total, 327 children and young people from 32 countries were consulted in seven regional consultations. Civil society representatives responded to a general call for submissions, and an advanced draft was shared with all States parties.

Terminology

4. In the past, the terms used to describe children in street situations have included “street children”, “children on the street”, “children of the street”, “runaway children”, “throwaway children”, “children living and/or working on the street”, “homeless children” and “street-connected children”. In the present general comment, the term “children in street situations” is used to comprise: (a) children who depend on the streets to live and/or work, whether

¹ All quotations are from consultations or written submissions for the present general comment. Respectively, they are from: children in Bangladesh (written submission from Dhaka); children in Latin America (consultation in Mexico); a 15-year-old boy from Brazil; an 18-year-old boy and girl from India; children and young people from the Democratic Republic of the Congo; children and young people in Europe (consultation in Brussels); a 16-year-old boy from Pakistan; a boy from Burundi; and an 18-year-old boy from Brazil.

alone, with peers or with family; and (b) a wider population of children who have formed strong connections with public spaces and for whom the street plays a vital role in their everyday lives and identities. This wider population includes children who periodically, but not always, live and/or work on the streets and children who do not live or work on the streets but who regularly accompany their peers, siblings or family in the streets. Concerning children in street situations, “being in public spaces” is understood to include spending a significant amount of time on streets or in street markets, public parks, public community spaces, squares and bus and train stations. It does not include public buildings such as schools, hospitals or other comparable institutions.

Key observations

5. There are different approaches used with respect to children in street situations, sometimes in combination. They include a child rights approach, whereby the child is respected as a rights holder and decisions are often made with the child; a welfare approach, involving the “rescue” of children perceived to be an object or victim from the street and whereby decisions are made for the child without serious consideration for her or his views; and a repressive approach, whereby the child is perceived to be a delinquent. The welfare and repressive approaches fail to take into account the child as a rights holder and result in the forcible removal of children from the streets, which further violates their rights. Indeed, claiming that welfare and repressive approaches are in the best interests of the child does not make them rights based.² To apply the Convention, it is essential to use a child rights approach.
6. Children in street situations are not a homogenous group. Characteristics are diverse in terms of age, sex, ethnicity, indigenous identity, nationality, disability, sexual orientation and gender identity/expression, among others. This diversity implies different experiences, risks and needs. The nature and time spent physically on the street varies significantly from child to child, as does the nature and extent of relationships with peers, family members, community members, civil society actors and public authorities. Children’s relationships can help them survive on the streets and/or perpetuate conditions of violent abuse of their rights. Children engage in a range of activities in public spaces, including work, socialization, recreation/leisure, shelter, sleeping, cooking, washing and engaging in substance abuse or sexual activity. Children may engage in such activities voluntarily, through lack of viable choices or through coercion or force by other children or adults. Children may conduct these activities alone or in the company of family members,³ friends, acquaintances, gang members, or exploitative peers, older children and/or adults.

² See general comments No. 13 (2011) on the right of the child to freedom from all forms of violence, para. 59, and No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.

³ For children in street situations with their families, this general comment focuses on the children as the main rights-holders. Where children in street situations have children of their own, the best interests of each generation of children must be a primary consideration.

7. Often, data are not systematically collected or disaggregated, so it is not known how many children are in street situations. Estimates fluctuate according to definitions used that reflect socioeconomic, political, cultural and other conditions. The absence of data makes these children invisible, which leads to policies not being developed or measures that are ad hoc, temporary or short-term. This results in the persistence of multiple rights violations that force children onto the streets and that continue when children are on the streets. This issue concerns every State.
8. Causes, prevalence and experiences of children in street situations differ within and between States. Inequalities based on economic status, race and gender are among the structural causes of the emergence and exclusion of children in street situations. These are exacerbated by material poverty, inadequate social protection, poorly targeted investment, corruption and fiscal (tax and expenditure) policies that reduce or eliminate the ability of poorer people to move out of poverty. Abrupt destabilization, caused by conflict, famine, epidemic, natural disaster or forced eviction, or events leading to displacement or forced migration, further compound the effects of structural causes. Other causes include: violence, abuse, exploitation and neglect at home or in care or educational (including religious) institutions; the death of caregivers; child relinquishment (including through HIV/AIDS);⁴ unemployment of caregivers; precarious families; family breakdown; polygamy;⁵ exclusion from education; substance abuse and mental ill-health (of children or families); intolerance and discrimination, including against children with disabilities, children accused of witchcraft, former child soldiers rejected by families and children cast out from families as a result of questioning their sexuality or identifying as lesbian, gay, bisexual, transgender, intersex or asexual; and families' inability to accept children's resistance to harmful practices, such as child marriage and female genital mutilation.⁶

III. Objectives

9. The objectives of the general comment are:
 - (a) To clarify the obligations of States in applying a child rights approach to strategies and initiatives for children in street situations;
 - (b) To provide comprehensive and authoritative guidance to States on using a holistic, child rights approach to: prevent children experiencing rights violations and the lack of choices that results in them having to depend on the streets for their survival and development; and to promote and protect the rights of children already in street situations, ensuring a continuum of care and helping them to develop to their fullest potential;
 - (c) To identify the implications of particular articles of the Convention for children in street situations to enhance respect for them as rights holders and full citizens, and to enhance understanding of children's connections to the street.

⁴ See general comment No. 3 (2003) on HIV/AIDS and the rights of the child, para. 7.

⁵ See joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, paras. 25-28.

⁶ Ibid., paras. 19-24.

IV. Holistic long-term strategies based on a child rights approach

A. Child rights approach

Description

10. In a child rights approach, the process of realizing children's rights is as important as the end result. A child rights approach ensures respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights holder.
11. According to the United Nations Children's Fund (UNICEF),⁷ a child rights approach is one that:
 - (a) Furthers the realization of child rights as established in the Convention and other international human rights instruments;
 - (b) Uses child rights standards and principles from the Convention and other international human rights instruments to guide behaviour, actions, policies and programmes, particularly: non-discrimination; the best interests of the child; the right to life, survival and development; the right to be heard and taken seriously; and the child's right to be guided in the exercise of his or her rights by caregivers, parents and community members, in line with the child's evolving capacities;
 - (c) Builds the capacity of children as rights holders to claim their rights and the capacity of duty bearers to fulfil their obligations to children.

Significance for children in street situations

12. The Committee considers that strategies and initiatives that adopt a child rights approach fulfil the main criteria for good practice, regardless of level or context. Children in street situations are often distrustful of adult intervention in their lives. Their abusive treatment by adults in society has led them to be unwilling to relinquish their hard-won, albeit limited, autonomy. This approach emphasizes full respect for their autonomy, including supporting them to find alternatives to depending on the streets. It promotes their resilience and capabilities, increasing their agency in decision-making and empowering them as socioeconomic, political and cultural actors. It builds on their existing strengths and the positive contributions they make to their own survival and development and that of their peers, families and communities. Applying this approach is not only a moral and legal imperative but also the most sustainable approach for identifying and implementing long-term solutions with children in street situations.

⁷ See UNICEF, Child Rights Education Toolkit: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools (Geneva, 2014), p. 21. Available from https://www.unicef.org/crc/files/UNICEF_CRE_Toolkit_FINAL_web_version170414.pdf. See also general comment No. 13, para. 59. See also "Human Rights Based Approach to Development Cooperation", available from <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>.

B. National strategies

Overview

13. To comply with obligations under the Convention, States are urged to adopt holistic and long-term strategies and make the necessary budget allocations for children in street situations. The cross-cutting issues and processes are shown below, followed by the thematic content to be addressed in such strategies. As experts on their own lives, children in street situations should participate in developing and implementing strategies. A first step is for States to collect information about such children in their country to decide how best to uphold their rights. States should take a cross-sectoral approach to understand how policy in one area, for example, finance, affects policy in another, for example, education, which in turn affects children in street situations. States should encourage cross-sectoral and inter-State cooperation.

Legislative and policy review

14. States should assess how laws and policies can be improved to reflect the recommendations of the present general comment. States should, with immediate effect: remove provisions that directly or indirectly discriminate on the grounds of the street situation of children or their parents or family; abolish any provisions allowing or supporting the round-up or arbitrary removal of children and their families from the streets or public spaces; abolish where appropriate offences that criminalize and disproportionately affect children in street situations, such as begging, breach of curfews, loitering, vagrancy and running away from home; and abolish offences that criminalize children for being a victim of commercial sexual exploitation, and so-called moral offences, such as sex outside of marriage. States should introduce or review an act on child protection or children based on a child rights approach and that specifically addresses children in street situations. The act should be implemented by enabling policies, mandates, operating procedures, guidelines, service delivery, oversight and enforcement mechanisms, and developed in collaboration with key stakeholders, including children in street situations. States may need to develop nationally relevant policy and legal definitions of such children on the basis of participatory research, in contexts where this is necessary to facilitate interventions by legally mandated professionals and services. However, the process of developing legal definitions should not delay taking action to address rights violations.

Role of the State and responsibilities, regulation and coordination of non-State actors

15. Strategies for children in street situations should acknowledge State and non-State actors. The role of the State, as primary duty bearer, is outlined in section V below. States have an obligation to help parents or caregivers to secure, within their abilities and financial capacities and with respect for the evolving capacities of the child, the living conditions necessary for the child's optimal development (arts. 5, 18 and 27). States should also support civil society, as complementary actors, in providing personalized, specialist services for children in street

situations the basis of a child rights approach, through funding, accreditation and regulation. The business sector must meet its responsibilities regarding children's rights, and States should ensure it does so.⁸ Coordination is needed between State and non-State actors. States are legally obliged to ensure that non-State service providers operate in accordance with the provisions of the Convention.⁹

Addressing complexity

16. Strategies need to address multiple causes, ranging from structural inequalities to family violence. They also need to take into account measures for immediate implementation, such as stopping round-ups or the arbitrary removal of children from public spaces, and measures to be implemented progressively, such as comprehensive social protection. A combination of legal, policy and service provision changes is likely to be needed. States should commit to fulfilling human rights beyond childhood. Particularly, States should ensure follow-up mechanisms for children in alternative care settings and in street situations as they transition into adulthood at the age of 18, to avoid an abrupt termination of support and services.
Comprehensive child protection systems
17. Within a legislative and policy framework, budgeting for, developing and strengthening holistic child protection systems, on the basis of a child rights approach, forms the basis of the practical measures required for prevention and response strategies. Such national child protection systems need to reach children in street situations and should incorporate fully the specific services they need. The systems need to provide a continuum of care across all relevant contexts, including prevention, early intervention, street outreach, helplines, drop-in centres, day-care centres, temporary residential care, family reunification, foster care, independent living or other short- or long-term care options. However, not all of these contexts are relevant for all children in street situations. For example, prevention and early intervention are priorities for children at the early stages of developing strong and harmful street connections, but are not relevant for children born in street situations. Some children may not experience residential placements while, for others, family reunification is not relevant or appropriate. Strategies should make it clear that a child rights approach needs to apply to each and every context. Administrative burdens and delays in gaining access to child protection systems should be reduced. Information should be made available in child-friendly and accessible formats and children in street situations should be supported to understand and navigate child protection systems.

Capacity-building of those in contact with the child

18. States should invest in good quality initial and in-service basic training on child rights, child protection and the local context of children in street situations for all professionals

⁸ See general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, para. 8.

⁹ See general comments No. 5 (2003) on general measures of implementation of the Convention, paras. 42-44; No. 7 (2005) on implementing child rights in early childhood, para. 32; No. 9 (2006) on the rights of children with disabilities, para. 25; and No. 16, para. 25.

who may come into direct or indirect contact with children in street situations, in such areas as policymaking, law enforcement, justice, education, health, social work and psychology. This training may draw on the expertise of non-State actors and should be integrated into the curricula of relevant training institutions. Additional in-depth training on a child rights approach, psychosocial support and child empowerment is required for professionals working with children in street situations as a dedicated part of their mandate, for example, street-based social workers and specialized child protection units of the police service. “Outreach walks” and “street walks” are an important on-the-ground training method. Basic and specialized training should include attitudinal and behavioural change, as well as knowledge transfer and skills development, and should encourage intersectoral cooperation and collaboration. National and local governments should understand and support the critical role of social workers, including street-based workers, in early detection, providing support to families with children at risk and to children in street situations. Professionals should be involved in participatory development of operating procedures, good practice guidelines, strategic directives, plans, performance standards and disciplinary codes, and should receive support to implement these in practice. States should facilitate sensitization and training for other stakeholders who come into direct or indirect contact with children in street situations, such as transport workers, media representatives, community and spiritual/religious leaders and private sector actors, who should be encouraged to adopt the Children’s Rights and Business Principles.¹⁰

Service provision

19. States should take action to secure the ability of children in street situations to gain access to basic services such as health and education, and to justice, culture, sport and information. States should ensure their child protection systems provide for specialized services on the street, involving trained social workers with good knowledge of local street connections and who can help children reconnect with family, local community services and wider society. This does not necessarily imply that children should renounce their street connections, but rather, the intervention should secure their rights. Prevention, early intervention and street-based support services are mutually reinforcing elements and provide a continuum of care within an effective long-term and holistic strategy. While States are the primary duty bearers, civil society activities may complement States’ efforts in developing and delivering innovative and personalized service provision.

Implementation at the local government level

20. Successful initiatives rely on a detailed understanding of local contexts and individualized support to children. Care must be taken when scaling up initiatives not to lose children in the process. States should encourage and support local-level, partnership-based, specialized

¹⁰ See <http://childrenandbusiness.org>. See also general comment No. 16.

interventions on the basis of a child rights approach, small and flexible, with adequate budgets, often led by civil society organizations with local expertise. These interventions should be coordinated by local governments and supported by the State, through the national child protection system. They could benefit from support from the private sector, for capacity-building resources and organizational skills, and academia, for research capacity to enable evidence-based decision-making. Child-friendly cities and communities contribute to an atmosphere of acceptance and provide the basis for social networks and community-based protection systems for children in street situations. Children in street situations should be supported to participate in local, decentralized bottom-up planning processes.

Monitoring and accountability

21. The effective implementation of legislation, policies and services relies on clear monitoring and accountability mechanisms that are transparent and robustly enforced. States should support the involvement of children in street situations, including in social accountability mechanisms, such as coalitions of State and non-State actors, committees or working groups that monitor public policy, focusing on children in street situations. Independent national human rights institutions for promoting and monitoring implementation of the Convention,¹¹ such as children's rights ombudspersons, must be easily accessible to children in street situations.

Access to justice and remedies

22. Children in street situations who have been victims or are survivors of human rights violations have the right to effective legal and other remedies, including legal representation. This includes access to individual complaints mechanisms, by children themselves and/or represented by adults, and to judicial and non-judicial redress mechanisms at the local and national levels, including independent human rights institutions. When domestic remedies are exhausted, access to applicable international human rights mechanisms should be available, including the procedure set up by the Optional Protocol to the Convention on a communications procedure. Reparation measures can include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition of rights violations.¹²

Data collection and research

23. In partnership with academia, civil society and the private sector, States should develop systematic, rights-respecting, participatory mechanisms to collect data and share disaggregated information about children in street situations. States must ensure that the collection and use of such information does not stigmatize or harm these children. Collecting data on children in street situations should be integrated into national data collection on children, ensuring that national data do not rely solely on household surveys, but also cover

¹¹ See general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, paras. 2 and 15.

¹² See www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx.

children living outside household settings. Children in street situations should participate in setting the aims and agendas of research and in gathering information, analysing and disseminating research to inform policymaking, and designing specialized interventions.¹³ Street situations change rapidly, and research needs to be carried out periodically to ensure policy and programmes are up to date.

V. Key articles of the Convention in relation to children in street situations

Overview

24. All the rights contained in the Convention and its Optional Protocols are interrelated and indivisible, for children in street situations as for all children. The present general comment should be read in conjunction with all other general comments of the Committee. The present general comment focuses on articles that have particular significance for children in street situations and that have not previously been the focus of general comments by the Committee. For example, although provisions relating to violence, education, juvenile justice and health are clearly important, they feature here as relatively brief references to existing general comments. Some other articles, on the other hand, receive greater scrutiny given their implications for children in street situations and the fact that they have not previously been explored in detail by the Committee. The articles selected below do not imply a predominance of civil and political rights over social, economic and cultural rights for children in street situations.

A. Articles of overarching relevance in a child rights approach

Article 2 on non-discrimination

Non-discrimination on the grounds of social origin, property, birth or other status

25. States must respect and ensure the rights set forth in the Convention for each child within their jurisdiction without discrimination of any kind. However, discrimination is one of the prime causes of children ending up in street situations. Children are then discriminated against on the basis of their connections with the street, that is, on the grounds of their social origin, property, birth or other status, resulting in lifelong negative consequences. The Committee interprets “other status” under article 2 of the Convention to include the street situation of a child or his or her parents and other family members.

*Systemic discrimination*¹⁴

26. Discrimination may be direct or indirect.¹⁵ Direct discrimination includes disproportionate policy approaches to “tackle homelessness” that apply repressive efforts to prevent begging, loitering, vagrancy, running away or survival behaviours, for example, the criminalization

¹³ See Office of the United Nations High Commissioner for Human Rights (OHCHR), “A Human Rights-Based Approach To Data”, available from www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

¹⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 12.

¹⁵ Ibid., para. 10.

of status offences,¹⁶ street sweeps or “round-ups”, and targeted violence, harassment and extortion by police. Direct discrimination can include: the refusal by police to take seriously reports by children in street situations of theft or violence; discriminatory treatment within juvenile justice systems; the refusal of social workers, teachers or health care professionals to work with children in street situations; and harassment, humiliation and bullying by peers and teachers in schools. Indirect discrimination includes policies that result in exclusion from basic services, such as health and education, for example by requiring payment or the provision of identity documents. Even if children in street situations are not isolated from basic services, they might be isolated within such systems. Children can face multiple and intersecting forms of discrimination, for example, on the basis of gender, sexual orientation and gender identity/expression, disability, race, ethnicity, indigenous status,¹⁷ immigration status and other minority status, particularly as minority groups are often overrepresented among children in street situations. Children subject to discrimination are more vulnerable to violence, abuse, exploitation, sexually transmitted infections, including HIV, and their health and development are put at greater risk.¹⁸ States are reminded that guaranteeing the right to non-discrimination is not only a passive obligation to prohibit all forms of discrimination, but also requires appropriate proactive measures to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This requires positive measures aimed at redressing a situation of substantive inequality.¹⁹ Systemic discrimination is responsive to, and can therefore be addressed by, legal and policy change. Children in street situations have highlighted the discrimination and negative attitudes by the public they face as a specific concern, and asked for there to be awareness-raising and educational measures to counter them.

Eliminating discrimination

27. Discrimination should be eliminated formally, by ensuring that a State’s constitution, laws and policies do not discriminate on the grounds of street situation, and substantively, by paying sufficient attention to children in street situations as a group who have suffered persistent prejudice and who require affirmative action.²⁰ Temporary special measures necessary to accelerate or achieve de facto equality of children in street situations should not be considered discrimination. States should ensure: that children in street situations are equal under the law; that all discrimination on the basis of street situation is prohibited; that incitement to discriminate and harassment²¹ is addressed; that children in street situations and their families are not arbitrarily deprived of their property; and that curfews are legitimate, proportional and non-discriminatory. States should also sensitize professionals, the private sector and the public to the experiences and rights of children in street situations, with the aim of positively transforming attitudes. States should support creative artistic, cultural and/

¹⁶ See general comments No. 4 (2003) on adolescent health and development in the context of the Convention, para. 12; and No. 10 (2007) on children’s rights in juvenile justice, paras. 8-9.

¹⁷ See general comment No. 11 (2009) on indigenous children and their rights under the Convention.

¹⁸ See general comments No. 4, para. 6; and No. 3, para. 7.

¹⁹ See general comment No. 14, para. 41.

²⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 20, para. 8.

²¹ Ibid., para. 7.

or sports programmes led by, or involving, children in street situations that help to address misconceptions and break down barriers with professionals, communities — including other children — and wider society through visible mutual dialogue and interaction. This may include street circus, theatre, music, art and sports matches. States should work with print, broadcast and social media to disseminate and amplify sensitization and de-stigmatization messages and stories on the basis of a child rights approach. Public fear of crime committed by children in street situations is often media-fuelled and disproportionate to reality. The media should be actively encouraged to use accurate data and evidence and conform to child protection standards to safeguard children’s dignity, physical security and psychological integrity.

Article 3 (1) on the best interests of the child

28. The obligations attached to this right are fundamental, as part of a child rights approach, to secure the holistic physical, psychological and moral integrity of children in street situations and promote their human dignity. These children have been identified as particularly vulnerable. As the Committee has already stated, the best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child’s uniqueness.²² In this context, “vulnerability” should be considered in conjunction with the resilience and self-reliance of individual children in street situations.

Article 6 on the right to life, survival and development

Right to life

29. Children in street situations are at risk of, inter alia: extrajudicial killings by State agents; murder by adults or peers, including murder linked to so-called vigilante justice, and association with/targeting by criminal individuals and gangs, and when the State does not prevent such crimes; exposure to potentially life-threatening conditions associated with hazardous forms of child labour, traffic accidents,²³ substance abuse, commercial sexual exploitation and unsafe sexual practices; and death due to lack of access to adequate nutrition, health care and shelter. The right to life should not be interpreted narrowly.²⁴ It concerns individuals’ entitlement to be free from acts and omissions intended or expected to cause their unnatural or premature death, and to enjoy a life with dignity. In 1999, in the case of the torture and murder by police of three children and two young people in street situations in 1990, the Inter-American Court of Human Rights ruled that arbitrary privation of life is not limited to the illegal act of homicide, but extends to the deprivation of the right to live with

¹³ See Office of the United Nations High Commissioner for Human Rights (OHCHR), “A Human Rights-Based Approach To Data”, available from www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

¹⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 12.

¹⁵ Ibid., para. 10.

dignity. This conception of the right to life extends not only to civil and political rights but also to economic, social and cultural rights. The need to protect the most vulnerable people — as in the case of street children — definitely requires an interpretation of the right to life that encompasses the minimum conditions for a life with dignity.²⁵

30. The Committee has already highlighted that growing up in conditions of absolute poverty threatens children's survival and their health and undermines their basic quality of life.²⁶

Right to survival and development

31. The Committee expects States to interpret “development” as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Children in street situations have a limited range of activities and behaviours from which to choose for their survival and development in public spaces. States' obligations under article 6 necessitate careful attention being given to the behaviours and lifestyles of children, even if they do not conform to what specific communities or societies determine to be acceptable under prevailing cultural norms for a particular age group. Programmes can only be effective when they acknowledge the realities of children in street situations. Interventions should support individual children in street situations to achieve their optimal development, maximizing their positive contribution to society.

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Ensuring a life with dignity

32. States have an obligation to respect the dignity of children in street situations and their right to life, survival and development by refraining from State-led violence and by decriminalizing survival behaviours and status offences; to protect children in street situations from harm caused by third parties; and to fulfil their right to life, survival and development

²² See general comment No. 14, paras. 75-76.

²³ See general comment No. 4, para. 21.

²⁴ The preparatory work of the Convention indicate that the rights to life, survival and development under article 6 were understood as complementary and not mutually exclusive, and that the article poses positive obligations (E/CN.4/1988/28).

²⁵ Joint opinion, Villagrán Morales et al v. Guatemala, Inter-American Court of Human Rights, 19 November 1999. Available from www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf.

²⁶ See general comment No. 7, para. 26.

²⁷ See general comment No. 3, para. 11.

²⁸ See general comment No. 5, para. 12.

by designing and implementing holistic long-term strategies, on the basis of a child rights approach, to secure their development to their fullest potential. States should assist trustworthy and supportive adults — such as family members or State or civil society social workers, psychologists, street workers or mentors — to help children in street situations. States should also put in place procedural and practical funeral arrangements to ensure dignity and respect for children who die on the streets.

Article 12 on the right to be heard²⁹

33. Children in street situations face particular barriers in being heard, and the Committee encourages States to make proactive efforts to overcome those barriers. States and intergovernmental organizations should provide — and support civil society organizations in providing — children in street situations with a supportive and enabling environment to: be heard in judicial and administrative proceedings; carry out their own initiatives; and fully participate at the community and national levels in policy and programme conceptualization, design, implementation, coordination, monitoring, review and communication, including through the media. Interventions are of most benefit to children in street situations when the children themselves are involved actively in assessing needs, devising solutions, shaping strategies and carrying them out, rather than being seen as objects for whom decisions are made. States should also listen to relevant adults, such as family and community members, professionals and advocates, when developing prevention and response strategies. Interventions should support individual children in street situations to exercise their rights and develop skills, resilience, responsibility and citizenship, in line with their evolving capacities. States should support and encourage children in street situations to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation.³⁰ Where appropriate, and when properly safeguarded, children in street situations can raise awareness by sharing their own experiences, to reduce stigmatization and discrimination and to help prevent other children ending up in street situations.

Article 4 on appropriate measures

34. Under article 4, States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. This applies to every child without discrimination, paying special attention to the most disadvantaged groups — which clearly includes children in street situations.³¹ A minimum core obligation is incumbent upon every State to ensure the satisfaction of, at the very least, minimum essential levels of each of the social, economic and cultural rights.³² States should ensure that this applies to children in street situations. Lack of available resources is not a valid argument per se for States to not comply with this core obligation.

²⁹ General comment No. 12 (2009) on the right of the child to be heard.

³⁰ See *ibid.*, para. 128.

³¹ See general comment No. 5, para. 8.

³² Committee on Economic, Social and Cultural Rights general comment No. 3 (1990) on the nature of States parties' obligations, para. 10.

³³ See general comment No. 19 (2016) on public budgeting for the realization of children's rights, para. 31.

As the Committee has already stated, the immediate and minimum core obligations imposed by children's rights shall not be compromised by any retrogressive measures, even in times of economic crisis.³³ States should ensure that children in street situations are not affected by regressive measures in times of economic crisis.

Article 5 on direction and guidance consistent with evolving capacities

35. To strengthen prevention, States should build the capacity of parents, extended families, legal guardians and community members to provide appropriate direction and guidance to children, helping them to take into account the child's views, in accordance with their age and maturity; to provide a safe and supportive environment in which the child can develop; and to recognize the child as an active rights holder who is increasingly able to exercise those rights as they develop, given proper guidance and direction. The Committee has already elaborated the principle of the evolving capacities of the child: the more the child knows, has experienced and understands, the more the parent or legal guardian has to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing.³⁴ Children in street situations require particularly sensitive direction and guidance that respects their life experience. The majority of children in street situations maintain contact with families, and there is increasing evidence on effective ways to strengthen those family connections. If children in street situations have few or no positive connections with parents, extended families or legal guardians, then the role of community members, as referenced in article 5, takes on a stronger significance and this is understood to include support from trustworthy adults associated with civil society organizations.

B. Civil rights and freedoms

Article 15 on the right to freedom of association and peaceful assembly

Overview

36. The realities in which children in street situations live do not fit traditional definitions or conceptualizations of childhood. They have a unique relationship to public spaces compared with other children. State restrictions on article 15 in relation to public spaces may therefore have a disproportionate impact on children in street situations. States should ensure that their access to political and public space in which to associate and peacefully assemble is not denied in a discriminatory way.

Civil and political space

37. Association and peaceful assembly are essential for children in street situations to claim their rights, for example, through working children's unions and child-led associations. However, the Committee has regularly expressed concern in its concluding observations regarding the lack of political space afforded to children to speak out. This is particularly constrained for children in street situations, who often lack connections with a trustworthy adult who may be

³³ See general comment No. 19 (2016) on public budgeting for the realization of children's rights, para. 31.

³⁴ See general comment No. 12 (2009) on the right of the child to be heard, para. 84, and general comment No. 14, para. 44.

required to legally register an organization. Children in street situations may lack support in completing paperwork and gaining access to information to develop association and peaceful assembly initiatives. Children in street situations may be paid to boost numbers in protests or gatherings. They may be vulnerable to exploitation and unaware of the implications of joining such events, raising complex questions regarding the need to balance protection and participation rights. However, as expressed by the Committee in its concluding observations, this should not be used as an excuse to curtail their right to association and peaceful assembly. Article 15 requires States to empower children in street situations to exercise their participation rights and counter co-option and manipulation by adults.

Public spaces

38. In addition to association and peaceful assembly in the context of civil and political rights, the Committee emphasizes the importance of respecting the choice of children in street situations to associate together in public spaces, without threat to public order, to satisfy their survival and development rights (art. 6), for rest, play and leisure (art. 31),³⁵ to create networks and organize their social life, and as a key feature of their lives in general. For children in street situations, this type of gathering together is part of living. It cannot always be broken down into discrete activities like eating, sleeping or recreation. For children not in street situations, this cooperative coexistence with others mainly takes place in settings like the family household or school. For children in street situations, it takes place in public spaces. Such children need to have a safe space in which they can exercise their right to association, interpreted here in conjunction with other rights protected under the Convention as “spending time with others in public spaces”. The Committee has explored the decreasing tolerance of children in public spaces in relation to article 31.³⁶ In the present general comment, it extends those concerns, regarding decreasing tolerance, to the use of public spaces by children for purposes other than those covered under article 31.

Restrictions on article 15

39. In accordance with article 15 (2), policing or other measures relating to public order are only permissible where such measures are taken on the basis of the law, entail individual rather than collective assessment, comply with the principle of proportionality and represent the least intrusive option. Such measures should not be applied on a group or collective basis.³⁷ This means that harassment, violence, round-ups and street sweeps of children in street situations, including in the context of major political, public or sporting events, or other interventions that restrict or interfere with their rights to association and peaceful assembly, contravene article 15 (2). Not recognizing legally constituted working children’s unions and organizations led by children in street situations, and/or requiring licences for organizations to which children in street situations do not have reasonable access, constitute discrimination against them and are not in compliance with article 15 (2).

³⁵ See general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, para. 21.

³⁶ Ibid., para. 37.

³⁷ See general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 18. Originally developed in relation to unaccompanied and separated children who have crossed an international border, in the present general comment the Committee extends this interpretation to all children in street situations.

Implementation measures

40. States should not harass or arbitrarily remove children in street situations from where they associate and peacefully assemble in public spaces. Sanctions should be imposed on those who violate this right. Specialized training is required to build the capacity of police and security forces to deal with public order situations in a way that upholds respect for the rights of children in street situations.³⁸ Local government by-laws should be reviewed to ensure compliance with article 15 (2). States should support positive measures, such as: empowering children in street situations through child rights education and the development of life skills; preparing stakeholders to accept the views of these children in decision-making as expressed through association and assembly; and promoting the participation of these children in recreation, leisure, sports, artistic and cultural activities alongside other children in the community. Legislation should not require children in street situations' associations or peaceful assemblies to be formally registered to incur protection under article 15.

Articles 7 on birth registration and 8 on identity

41. Lack of proof of identity has a negative impact on the protection of rights for children in street situations in relation to education, health and other social services, justice, inheritance and family reunification. As a minimum, States should ensure that free, accessible, simple and expeditious birth registration is available to all children at all ages. Children in street situations should be supported proactively to obtain legal identity documents. As a temporary solution, States and local governments should allow innovative and flexible solutions, such as providing informal identity cards, linked to civil society personnel/addresses, allowing children in the meantime to gain access to basic services and protection in the justice system. Innovative solutions should be adopted to overcome the challenges faced by children in street situations, who are often highly mobile and who lack the means to keep a physical identity document safe without losing it or having it damaged or stolen.

Articles 13 on freedom of expression and 17 on access to information

42. The right of children in street situations to have access to, seek and impart information about their rights is crucial if those rights are to be understood and realized in practice. Context-specific, accessible child rights education will help to overcome barriers to participation so their voices can be heard. Children in street situations need to have access through accessible and appropriate channels to accurate, high-quality and child-friendly information relating to: (a) the role and accountability of the State, and complaints mechanisms for redress in relation to human rights violations; (b) protection from violence; (c) sexual and reproductive health, including family planning and prevention of sexually transmitted infections; (d) healthy lifestyles, including diet and physical activity; (e) safe and respectful social and sexual behaviours; (f) prevention of accidents; and (g) the negative impacts of abuse of alcohol, tobacco, drugs and other harmful substances.

Article 16 on privacy, honour and reputation

³⁸ See general comment No. 13, para. 44.

43. Children in street situations may experience limited privacy given that they have to carry out activities in public spaces. Discrimination on the grounds of their or their parents' or family's street situation makes them particularly vulnerable to violations of article 16. The Committee recognizes forced eviction to be a violation of article 16 of the Convention, and the Human Rights Committee has in the past recognized it to be a violation of article 17 of the International Covenant on Civil and Political Rights.³⁹ Recommendations in paragraph 27 addressing stigmatization, and in paragraph 60 addressing non-discriminatory and respectful treatment by the police, give guidance in relation to honour and reputation.

C. Family environment and alternative care

Article 20 on the right to special protection and assistance for children deprived of a family environment

Types of care

44. For those children in street situations without primary or proxy caregivers, the State is the de facto caregiver and is obliged, under article 20, to ensure alternative care to a child temporarily or permanently deprived of his or her family environment.⁴⁰ Types of care include: practical and moral support to children on the streets, through a trustworthy adult street worker or peer support, without requiring or coercing children to renounce their street connections and/or move into alternative accommodation; drop-in and community/social centres; night shelters; day-care centres; temporary residential care in group homes; foster care; family reunification; and independent living or long-term care options including, but not exclusively, adoption. Deprivation of liberty, for example, in detention cells or closed centres, is never a form of protection.

Applying a child rights approach

45. Interventions that do not respect children as active agents in the process of moving off the street into alternative care do not work: children often end up back on the streets when they run away or when placements break down. Placements fail when children in street situations are sent to unfamiliar areas to live with little-known relatives. By applying a child rights approach to the development and provision of alternative choices, States will ensure that children are not forced to depend on their street connections for their survival and/or development and that they are not forced to accept placements against their will. States should ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered in decisions regarding placements, development and review of care plans, and visits with family.⁴¹ States should respect the established international parameters that limit institutionalization as a last resort,⁴² ensure that children are not placed

³⁹ See CCPR/CO/83/KEN, para. 22, and CCPR/C/BGR/CO/3, para. 24.

⁴⁰ See general comment No. 13, paras. 33 and 35.

⁴¹ See general comments No. 12, para. 54; No. 6, para. 40; and No. 7, para. 36 (b).

⁴² See general comment No. 3, para. 35.

in alternative care unnecessarily and ensure that, where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child.⁴³ States should ensure that State and civil society-run shelters and facilities are safe and of good quality. Where placement with family members is deemed, in consultation with the children in street situations themselves, to be in their best interests, careful preparation and follow-up is needed on both sides. A transitional stage between the streets and a long-term placement is often required, the length of this period being determined on a case-by-case basis with the child. Use of police or other detention cells to accommodate children owing to lack of alternative care facilities is not acceptable.

Article 9 on separation from parents

46. Many children in street situations live with their families, either on or off the streets, and/or maintain family connections, and they should be supported to maintain those connections. States should not separate children from their families solely on the basis of the families' street-working or street-living status. Likewise, States should not separate babies or children born to children themselves in street situations. Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care but should be seen as a signal for the need to provide appropriate support to the family.⁴⁴ To prevent long-term separation, States can support temporary, rights-respecting care options for children whose parents, for instance, migrate for certain periods of the year for seasonal employment.

Articles 3 (3) on standards for care and protection institutions, services and facilities, and 25 on periodic review of placements

47. It is important to establish, maintain and monitor the quality of State and non-State services to prevent children from ending up in street situations as a result of failing to have their care and protection rights fulfilled, and for the benefit of children already in street situations. States should provide quality, rights-respecting services and support civil society organizations to do the same. Non-State institutions, services and facilities for children in street situations should be supported, resourced, accredited, regulated and monitored by the State. Personnel involved in such services should be trained in accordance with paragraph 18.

Article 18 on parental responsibility

48. Support for parents and legal guardians is essential to prevent children ending up in street situations, and to strengthen family reunification programmes for children already in street situations. States are obliged to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to ensure the development of institutions, facilities and services for the care of children. States should take measures to eliminate structural forces that put pressure on families in precarious situations. Key issues to address include: improving rights-based community development in impoverished

⁴³ Guidelines for the Alternative Care of Children, GA resolution 64/142, annex.

⁴⁴ See general comment No. 14, para. 62.

neighbourhoods; establishing comprehensive economic and social safety nets; providing safe and affordable day-care centres and other specialist services; and improving access to adequate housing and income generation for families. In addition to structural and policy approaches, vulnerable families need case-by-case solutions facilitated by well-trained professionals. States should invest in and scale up family support programmes on the basis of a child rights approach that are proved to halt the intergenerational transmission of conditions that exacerbate children ending up in street situations. States should take measures to provide universal education on child rights and positive parenting for all parents and caregivers, prioritizing — in a non-stigmatizing way — families with children at risk of ending up in street situations. This education should include child rights, including how to listen to children and include their views in decision-making; positive child-rearing, including positive discipline skills, non-violent conflict resolution and attachment parenting; and early childhood development. See also paragraphs 35 and 49.

D. Adequate standard of living

Article 27 on the right to an adequate standard of living

Support to parents, caregivers and children

49. In accordance with article 27 (3), States should ensure that all children have a standard of living adequate for their physical, mental, spiritual and moral development, to prevent them ending up in street situations and to fulfil the rights of children already in street situations. States shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. Those prescriptions leave no leeway for the discretion of States. The implementation of the above in accordance with national conditions and within the means of States parties should be interpreted in conjunction with article 4, that is, to the maximum extent of States parties' available resources and, where needed, within the framework of international cooperation, with particular regard to the obligations of States to fulfil the minimum core obligation for social, economic and cultural rights. In terms of material assistance, children in street situations prioritize the need for a safe place to live, food and free and accessible medical care and education, through State support to parents and caregivers, particularly in relation to subsidized, adequate housing and income generation. The interpretation of article 27 (3) is not limited to measures to assist parents and others responsible for the child. The obligation to provide material assistance and support programmes in case of need should be interpreted as also meaning assistance provided directly to children. This is particularly relevant for children in street situations with non-existent or abusive family connections. Direct material assistance to children in the form of services may be provided either by the State or via State support to civil society organizations. For single-parent and reconstructed families, States' measures to secure maintenance for the child are particularly important (see article 27 (4)).

Adequate housing

50. The right to housing is an important component of article 27 that is particularly relevant for children in street situations. It has been interpreted broadly by the Committee on Economic, Social and Cultural Rights as the right to live somewhere in security, peace and dignity,⁴⁵ which clarifies that the concept of “adequacy” in relation to housing requires attention to: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁴⁶ Children are among those who suffer disproportionately from the practice of forced eviction.⁴⁷ Forced evictions, including through demolition of informal or illegal housing, can make life more precarious for children, forcing them to sleep on the streets and exposing them to further rights violations. A predominant theme of consultations with children in street situations is the inadequacy and inappropriateness of some State-run “shelters”, and their high levels of violence and insecurity, such that children prefer to be on the streets.

Implementation measures

51. States should take measures to address the structural causes of poverty and income inequalities to reduce pressure on and strengthen precarious families, as a means of offering better protection for children and reducing the likelihood of children ending up in street situations. Such measures include: introducing tax and expenditure policies that reduce economic inequalities; expanding fair-wage employment and other opportunities for income generation; introducing pro-poor policies for rural and urban development; eliminating corruption; introducing child-focused policies and budgeting; strengthening child-centred poverty alleviation programmes in areas known for high levels of migration; and offering adequate social security and social protection. Specific examples include child benefit programmes used in European and North American countries, and cash transfer programmes introduced in Latin American countries and widely applied in Asian and African countries. States should make efforts so that such programmes reach the most marginalized families who may not have bank accounts. Material support should be made available to parents and caregivers and also directly to children in street situations, and such mechanisms and services should be designed and implemented on the basis of a child rights approach. With regard to housing, security of tenure is essential for preventing children from coming into street situations. This includes access to adequate housing that is safe, with access to safe drinking water, sanitation and hygiene facilities. Children, including those living in informal or illegal housing, should not be subject to forced evictions prior to the provision of adequate alternative accommodation: States are required to make appropriate provisions for affected children. Child and human rights impact assessments should be a prerequisite for development and infrastructure projects to minimize the negative impacts of displacement.

⁴⁵ See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 7.

⁴⁶ *Ibid.*, para. 8.

⁴⁷ See Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions, para. 10.

E. Disability and health

Article 23 on children with disabilities

52. Children with disabilities end up in street situations for various reasons, including economic and social factors, and are sometimes exploited for begging. States should take all actions necessary to prevent and to explicitly criminalize such exploitation and to bring perpetrators to justice.⁴⁸ Children in street situations may be at risk of developing disabilities owing to the negative impact of aspects of street life, such as violence, exploitation and substance abuse. Intellectual and psychosocial disabilities can render children in street situations particularly vulnerable to exploitation and abuse. States should adopt special protection measures, including identifying and removing barriers that prevent children with disabilities from gaining access to services, including inclusive education.

Articles 24 on health⁴⁹ and 33 on drugs and substance abuse

53. The street environment can increase vulnerability regarding physical and mental health issues.⁵⁰ Challenges include disproportionately high rates of substance abuse, HIV⁵¹ and other sexually transmitted infections, pregnancy, violence (including by peers), suicidal thoughts and suicide, self-medicating with unregulated medicines and exposure to infectious diseases, pollution and traffic accidents. The Committee emphasizes the need for health education and services, including on sexual and reproductive health, tailored to the specific needs of children in street situations. Such education and services should be friendly and supportive, comprehensive, accessible, free, confidential, non-judgmental, non-discriminatory, respectful of autonomous decision by the children, and without the requirement for parental consent.⁵² Health services should be made accessible regardless of physical location or social status. Children in street situations should have access to free basic health-care services through universal health coverage and social protection schemes. States should increase the availability of prevention, treatment and rehabilitation services for substance abuse, including harm-reduction services, and trauma therapy and mental health services for children in street situations. These services should be staffed by professionals trained on child rights and the particular circumstances of children in street situations. States can promote properly supported peer education that can be especially effective in combating substance abuse, sexually transmitted infections and HIV. Particular attention is needed to protect children in street situations from involvement in the drug trade.

⁴⁸ See general comment No. 9, para. 76.

⁴⁹ General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

⁵⁰ See general comment No. 4, para. 34.

⁵¹ See general comment No. 3, para. 30.

⁵² *Ibid.*, paras. 20-21; general comments No. 4, paras. 11 and 26; and No. 15, particularly paras. 8, 11 and 28.

F. Education, leisure and cultural activities

Article 28 on education

54. Accessible, free, safe, relevant and quality education is crucial to preventing children from ending up in street situations and fulfilling the rights of children already in street situations. For many children, education represents the last connection point with wider societies. States should make adequate provision, including support to parents, caregivers and families, to ensure that children in street situations can stay in school and that their right to quality education is fully protected. A range of education options is necessary, including “second-chance education”, catch-up classes, mobile schools, vocational training linked to market research and followed up with long-term support for income generation, and pathways into formal education, through partnerships with civil society. Teachers should be trained on child rights and children in street situations, and child-centred, participatory teaching methodologies.

Article 29 on the aims of education⁵³

55. The aims of education for children in street situations should comply with article 29 and include literacy, numeracy, digital literacy, life skills, child rights education, tolerance for diversity, and citizenship education. Such education is vitally important for the fulfilment of children’s rights to protection, development and participation, including strengthening their autonomy and empowering them to better negotiate situations of risk, to prevent children from ending up in street situations and for those who are in street situations. States should take measures to provide good quality, free child rights education and life skills universally to all children, through the school curriculum and through non-formal and street education, to reach out-of-school children.

Article 31 on rest, play and leisure

56. The Committee highlights the right to rest, play, leisure and participation in artistic and cultural activities. Children in street situations apply their own creativity to utilize the informal setting of the streets for play opportunities.⁵⁴ States should ensure they are not excluded in a discriminatory way from parks and playgrounds, for example, in relation to dress codes,⁵⁵ and adopt measures to assist them in developing their creativity and practising sport, including with mobile recreation and sports facilities.

⁵³ General comment No. 1 (2001) on the aims of education.

⁵⁴ General comment No. 17.

⁵⁵ *Ibid.*, para. 49.

⁵⁶ See general comments No. 3, paras. 19 and 36-37; No. 4, paras. 2 and 23; No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment; and No. 13

G. Violence against children and special protection measures

Articles 19 and 39 on freedom from all forms of violence⁵⁶

57. Violence in all its forms — emotional, physical or sexual — is a fundamental cause and a consequence of children ending up in street situations. Violence of all kinds permeates the lives of children in street situations on a vast scale and it is a primary concern highlighted by children themselves. Specific, immediate and urgent measures need to be taken to protect children in street situations. In conjunction with all the recommendations in general comment No. 13, such measures include: prohibiting all forms of violence, including corporal punishment; mechanisms for reaching out to vulnerable children in the process of disconnecting from family and community; mechanisms for reporting violence, discrimination and other forms of rights violations; and mechanisms for holding perpetrators of violence to account, whether State or non-State, individuals or groups. Special mechanisms might have to be established to deal with individuals reported by these children as threats to their well-being, such as some members of the police and those involved in organized crime and drug trafficking.

Articles 34-36 on sexual abuse, sexual exploitation, trafficking and other exploitation

58. Children in street situations are particularly vulnerable to sexual violence and exploitation, and the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography is particularly relevant for them. Gender-sensitive responses should be made by professionals who are trained in understanding the specific circumstances of children in street situations. Children may have ended up in street situations through trafficking for sexual or labour exploitation, and/or may be vulnerable to such trafficking, as well as trafficking for body parts, and other forms of exploitation, once they are on the streets.

Article 32 on child labour

59. The Committee urges States to implement the provisions of article 32 (2) of the Convention, and the International Labour Organization Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182), to protect children in street situations from economic exploitation and the worst forms of child labour. Action against child labour should comprise comprehensive measures, including the provision of support enabling children to transition into education and guaranteeing an adequate standard of living for them and their families. Such measures should be developed in collaboration with children in street situations and other key stakeholders to reflect children's best interests and to ensure they do not have any inadvertent negative impact on children's survival or development. The criminalization of begging or unlicensed trading can result in worse forms of survival behaviours, such as commercial sexual exploitation. Savings schemes to develop budgeting skills and safeguard earnings for children in street situations are beneficial.

⁵⁶ See general comments No. 3, paras. 19 and 36-37; No. 4, paras. 2 and 23; No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment; and No. 13

Articles 37 and 40 on juvenile justice

60. Children in street situations are more likely to be targeted, criminalized and end up in the juvenile or adult justice system and less likely to benefit from diversion, alternatives to detention or restorative practices as they are unable to afford bail and may have no responsible adults to vouch for them. Police misconduct, such as harassment (including stealing children's money and possessions, rounding them up or arbitrarily moving children on, often on the orders of their superiors and/or politicians), corruption, extortion (for money or sex) and physical, psychological or sexual violence are common rights violations that States should criminalize as a matter of urgency. The Committee is concerned about the application of "zero tolerance" policies criminalizing children in street situations and resulting in forced institutionalization. States should support community policing, with an emphasis on protection rather than punishment of children in street situations, and adopt a multicultural police service. States should guarantee all rights to all children, including those in street situations, in the context of a restorative rather than punitive juvenile justice system.⁵⁷

Article 38 on armed conflict

61. The Optional Protocol to the Convention on the involvement of children in armed conflict is relevant as children in street situations are vulnerable to recruitment into armed forces or armed groups. Conflicts may lead to children ending up in street situations through the disruption of social networks, family separation, displacement from communities or rejection of demobilized child combatants from communities. In relation to prevention, child rights education, including peace education, and anti-recruitment initiatives need to reach children in street situations. Interventions to minimize the impact of armed conflict need to mitigate proactively the separation of children from families, and family tracing programmes should be prioritized. Disarmament, demobilization and reintegration programmes for children should take into account the dynamics of street-connectedness as a cause and a consequence of children's involvement in armed conflict.

VI. Dissemination and cooperation

Dissemination

62. The Committee recommends that States widely disseminate the present general comment within government, legal and administrative structures, to children in street situations, parents and caregivers, professional organizations, communities, the private sector and civil society. All channels of dissemination, including print media, the Internet, and children's own communication means, such as storytelling and peer education, should be used. This will necessitate translating it into relevant languages, including sign languages, Braille and easy-to-understand formats for children with disabilities and limited literacy levels.

⁵⁶ See general comments No. 6, para. 61; and No. 10, paras. 6, 8-9 and 16.

It also requires making culturally appropriate and child-friendly versions and pictorial rather than text-based versions available, holding workshops and seminars, implementing age- and disability-specific support to discuss its implications and how best to implement it, and incorporating it into the training of all professionals working for and with children in street situations. States are also encouraged to include information on children in street situations in their reports to the Committee.

International cooperation

63. The Committee calls upon States to strengthen international commitment, cooperation and mutual assistance in preventing children from ending up in street situations and protecting children already in street situations. This includes identifying and sharing rights-based practices that have been shown to be effective, research, policies, monitoring and capacity-building. Cooperation requires the involvement of States, United Nations bodies and agencies, regional organizations, civil society organizations (including child-led organizations and academics), children, the private sector and professional groups. The Committee encourages those actors to foster continuous, high-level policy dialogues and research in relation to quality, evidence-based interventions for prevention and response. This includes dialogues at the international, national, regional and local levels. Such cooperation may need to address the protection of children crossing borders as migrants, refugees and asylum seekers and as victims/survivors of cross-border trafficking.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Encouraged by the overwhelming support for the

Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged

in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in Article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present Article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State. 2. Each State Party may take such

measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, in the following cases:

- (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
- (b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in Article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4.

5. If an extradition request is made with respect to an offence described in Article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present Article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
 - (i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;
 - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
 - (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
6. Nothing in the present Article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this Article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with Article 44 of the

Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the d

way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States

Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph I of the present Article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Noting the adoption of the Statute of the International Criminal Court and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth international Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary

recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

(b) Such recruitment is done with the informed consent of the person=s parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary- General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive

information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene

the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS
ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

Adopted and opened for signature, ratification and accession by General Assembly
Resolution 55/25 of 15 November 2000

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in

Have agreed as follows :

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention

and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this

paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol

shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.



**INTERNATIONAL
LABOR ORGANIZATION
CONVENTIONS**

Convention No. 138
Convention concerning Minimum Age for Admission to Employment

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and

Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and

Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and

Having determined that these proposals shall take the form of an international Convention, adopts the twenty-sixth day of June of the year one thousand nine hundred and seventy-three, the following Convention, which may be cited as the Minimum Age Convention, 1973:

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2

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

2. Each Member which has ratified this Convention may subsequently notify the Director- General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

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

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the constitution of the International Labour Organisation a statement--

(a) that its reason for doing so subsists; or

(b) that it renounces its right to avail itself of the provisions in question as from a stated date.

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.

2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.

2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article--

(a) shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

(b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at

least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is—

- (a) not likely to be harmful to their health or development; and
- (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

Article 10

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.

2. The coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.

3. The Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be closed to further ratification when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.

4. When the obligations of this Convention are accepted--

(a) by a Member which is a party to the Minimum Age (Industry) Convention (Revised), 1937, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(b) in respect of non-industrial employment as defined in the Minimum Age (Non- Industrial Employment) Convention, 1932, by a Member which is a party to that Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(c) in respect of non-industrial employment as defined in the Minimum Age (Non- Industrial Employment) Convention (Revised), 1937, by a Member which is a party to that Convention, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(d) in respect of maritime employment, by a Member which is a party to the Minimum Age (Sea) Convention (Revised), 1936, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to maritime employment, this shall ipso jure involve the immediate denunciation of that Convention,

(e) in respect of employment in maritime fishing, by a Member which is a party to the Minimum Age (Fishermen) Convention, 1959, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to employment in maritime fishing, this shall ipso jure involve the immediate denunciation of that Convention,

(f) by a Member which is a party to the Minimum Age (Underground Work) Convention, 1965, and a minimum age of not less than the age specified in pursuance of that Convention is specified in pursuance of Article 2 of this Convention or the Member specifies that such an age applies to employment underground in mines in virtue of Article 3 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention, if and when this Convention shall have come into force.

5. Acceptance of the obligations of this Convention--

(a) shall involve the denunciation of the Minimum Age (Industry) Convention, 1919, in accordance with Article 12 thereof,

(b) in respect of agriculture shall involve the denunciation of the Minimum Age (Agriculture) Convention, 1921, in accordance with Article 9 thereof,

(c) in respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and of the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof, if and when this Convention shall have come into force.

Article 11

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 13

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 15

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 16

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;
 - b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 146
Minimum Age Recommendation

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and

Recognising that the effective abolition of child labour and the progressive raising of the minimum age for admission to employment constitute only one aspect of the protection and advancement of children and young persons, and

Noting the concern of the whole United Nations system with such protection and advancement, and Having adopted the Minimum Age Convention, 1973, and

Desirous to define further certain elements of policy which are the concern of the International Labour Organisation, and

Having decided upon the adoption of certain proposals regarding minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Minimum Age Convention, 1973, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three, the following Recommendation, which may be cited as the Minimum Age Recommendation, 1973:

I. National Policy

1. To ensure the success of the national policy provided for in Article 1 of the Minimum Age Convention, 1973, high priority should be given to planning for and meeting the needs of children and youth in national development policies and programmes and to the progressive extension of the inter-related measures necessary to provide the best possible conditions of physical and mental growth for children and young persons.
2. In this connection special attention should be given to such areas of planning and policy as the following:
 - (a) firm national commitment to full employment, in accordance with the Employment Policy Convention and Recommendation, 1964, and the taking of measures designed to promote employment-oriented development in rural and urban areas;
 - (b) the progressive extension of other economic and social measures to alleviate poverty wherever it

exists and to ensure family living standards and income which are such as to make it unnecessary to have recourse to the economic activity of children;

- (c) the development and progressive extension, without any discrimination, of social security and family welfare measures aimed at ensuring child maintenance, including children's allowances;
 - (d) the development and progressive extension of adequate facilities for education and vocational orientation and training appropriate in form and content to the needs of the children and young persons concerned;
 - (e) the development and progressive extension of appropriate facilities for the protection and welfare of children and young persons, including employed young persons, and for the promotion of their development.
3. Particular account should as necessary be taken of the needs of children and young persons who do not have families or do not live with their own families and of migrant children and young persons who live and travel with their families. Measures taken to that end should include the provision of fellowships and vocational training.
4. Full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively ensured up to an age at least equal to that specified for admission to employment in accordance with Article 2 of the Minimum Age Convention, 1973.
- 5.
- (1) Consideration should be given to measures such as preparatory training, not involving hazards, for types of employment or work in respect of which the minimum age prescribed in accordance with Article 3 of the Minimum Age Convention, 1973, is higher than the age of completion of compulsory full-time schooling.
 - (2) Analogous measures should be envisaged where the professional exigencies of a particular occupation include a minimum age for admission which is higher than the age of completion of compulsory full-time schooling.

II. Minimum Age

6. The minimum age should be fixed at the same level for all sectors of economic activity.
- 7.
- (1) Members should take as their objective the progressive raising to 16 years of the minimum age for admission to employment or work specified in pursuance of Article 2 of the Minimum Age Convention, 1973.
 - (2) Where the minimum age for employment or work covered by Article 2 of the Minimum Age Convention, 1973, is still below 15 years, urgent steps should be taken to raise it to that level.

8. Where it is not immediately feasible to fix a minimum age for all employment in agriculture and in related activities in rural areas, a minimum age should be fixed at least for employment on plantations and in the other agricultural undertakings referred to in Article 5, paragraph 3, of the Minimum Age Convention, 1973.

III. Hazardous Employment or Work

9. Where the minimum age for admission to types of employment or work which are likely to jeopardise the health, safety or morals of young persons is still below 18 years, immediate steps should be taken to raise it to that level.
10.
 - (1) In determining the types of employment or work to which Article 3 of the Minimum Age Convention, 1973, applies, full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work.
 - (2) The list of the types of employment or work in question should be re-examined periodically and revised as necessary, particularly in the light of advancing scientific and technological knowledge.
11. Where, by reference to Article 5 of the Minimum Age Convention, 1973, a minimum age is not immediately fixed for certain branches of economic activity or types of undertakings, appropriate minimum age provisions should be made applicable therein to types of employment or work presenting hazards for young persons.

IV. Conditions of Employment

12.
 - (1) Measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. These conditions should be supervised closely.
 - (2) Measures should likewise be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions and schools for vocational or technical education and to formulate standards for their protection and development.
- 13.

- (1) In connection with the application of the preceding Paragraph, as well as in giving effect to Article 7, paragraph 3, of the Minimum Age Convention, 1973, special attention should be given to--
 - (a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work;
 - (b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;
 - (c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days;
 - (d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;
 - (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
 - (f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.
- (2) Subparagraph (1) of this Paragraph applies to young seafarers in so far as they are not covered in respect of the matters dealt with therein by international labour Conventions or Recommendations specifically concerned with maritime employment.

V. Enforcement

14.

- (1) Measures to ensure the effective application of the Minimum Age Convention, 1973, and of this Recommendation should include--
 - (a) the strengthening as necessary of labour inspection and related services, for instance by the special training of inspectors to detect abuses in the employment or work of children and young persons and to correct such abuses; and
 - (b) the strengthening of services for the improvement and inspection of training in undertakings.
- (2) Emphasis should be placed on the role which can be played by inspectors in supplying information and advice on effective means of complying with relevant provisions as well as in securing their enforcement.
- (3) Labour inspection and inspection of training in undertakings should be closely co-ordinated to provide the greatest economic efficiency and, generally, the labour administration services should work in close co-operation with the services responsible for the education, training, welfare and guidance of children and young persons.

15. Special attention should be paid--

- (a) to the enforcement of provisions concerning employment in hazardous types of employment or work; and
- (b) in so far as education or training is compulsory, to the prevention of the employment or work of children and young persons during the hours when instruction is available.

16. The following measures should be taken to facilitate the verification of ages:

- (a) the public authorities should maintain an effective system of birth registration, which should include the issue of birth certificates;
- (b) employers should be required to keep and to make available to the competent authority registers or other documents indicating the names and ages or dates of birth, duly certified wherever possible, not only of children and young persons employed by them but also of those receiving vocational orientation or training in their undertakings;
- (c) children and young persons working in the streets, in outside stalls, in public places, in itinerant occupations or in other circumstances which make the checking of employers' records impracticable should be issued licenses or other documents indicating their eligibility for such work.

Convention No. 182
Worst Forms of Child Labour Convention

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;
adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides --

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

Convention No. 189
Domestic Workers Convention

Preamble

The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), as well as of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006), and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial

Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime, and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this sixteenth day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011..

Article 1

For the purpose of this Convention:

- (a) the term domestic work means work performed in or for a household or households;
- (b) the term domestic worker means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Article 2

1. The Convention applies to all domestic workers.
2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:
 - (a) categories of workers who are otherwise provided with at least equivalent protection;
 - (b) limited categories of workers in respect of which special problems of a substantial nature arise.
3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

Article 3

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

Article 4

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

Article 5

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

Article 6

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Article 7

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;

- (e) the remuneration, method of calculation and periodicity of payments;
- (f) the normal hours of work;
- (g) paid annual leave, and daily and weekly rest periods;
- (h) the provision of food and accommodation, if applicable;
- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

Article 8

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.
2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.
3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.
4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

Article 9

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

Article 10

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

2. Weekly rest shall be at least 24 consecutive hours.

3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

Article 11

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

Article 12

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.

2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Article 13

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 14

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 15

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 16

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Article 17

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Article 18

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Article 19

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

Article 20

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 21

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director- General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 22

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 23

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 24

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

Article 25

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 26

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 27

The English and French versions of the text of this Convention are equally authoritative.

Promotional Framework for Occupational Safety and Health Convention

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006,

Recognizing the global magnitude of occupational injuries, diseases and deaths, and the need for further action to reduce them, and

Recalling that the protection of workers against sickness, disease and injury arising out of employment is among the objectives of the International Labour Organization as set out in its Constitution, and

Recognizing that occupational injuries, diseases and deaths have a negative effect on productivity and on economic and social development, and

Noting paragraph III(g) of the Declaration of Philadelphia, which provides that the International Labour Organization has the solemn obligation to further among the nations of the world programmes which will achieve adequate protection for the life and health of workers in all occupations, and Mindful of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, 1998, and

Noting the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and other instruments of the International Labour Organization relevant to the promotional framework for occupational safety and health, and

Recalling that the promotion of occupational safety and health is part of the International Labour Organization's agenda of decent work for all, and

Recalling the Conclusions concerning ILO standards-related activities in the area of occupational safety and health - a global strategy, adopted by the International Labour Conference at its 91st Session (2003), in particular relating to ensuring that priority be given to occupational safety and health in national agendas, and

Stressing the importance of the continuous promotion of a national preventative safety and health culture, and

Having decided upon the adoption of certain proposals with regard to occupational safety and health, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this fifteenth day of June of the year two thousand and six the following Convention, which may be cited as the Promotional Framework for Occupational Safety and Health Convention, 2006.

I. DEFINITIONS

Article 1

For the purpose of this Convention:

- (a) the term national policy refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155);
- (b) the term national system for occupational safety and health or national system refers to the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health;
- (c) the term national programme on occupational safety and health or national programme refers to any national programme that includes objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve occupational safety and health, and means to assess progress;
- (d) the term a national preventative safety and health culture refers to a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority.

II. OBJECTIVE

Article 2

1. Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.
2. Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health.
3. Each Member, in consultation with the most representative organizations of employers and workers, shall periodically consider what measures could be taken to ratify relevant occupational safety and health Conventions of the ILO.

III. NATIONAL POLICY

Article 3

1. Each Member shall promote a safe and healthy working environment by formulating a national policy.
2. Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.

3. In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.

IV. NATIONAL SYSTEM

Article 4

1. Each Member shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers.

2. The national system for occupational safety and health shall include among others:

- (a) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health;
- (b) an authority or body, or authorities or bodies, responsible for occupational safety and health, designated in accordance with national law and practice;
- (c) mechanisms for ensuring compliance with national laws and regulations, including systems of inspection; and
- (d) arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures.

3. The national system for occupational safety and health shall include, where appropriate:

- (a) a national tripartite advisory body, or bodies, addressing occupational safety and health issues;
- (b) information and advisory services on occupational safety and health;
- (c) the provision of occupational safety and health training;
- (d) occupational health services in accordance with national law and practice;
- (e) research on occupational safety and health;
- (f) a mechanism for the collection and analysis of data on occupational injuries and diseases, taking into account relevant ILO instruments;
- (g) provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases; and
- (h) support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.

V. NATIONAL PROGRAMME

Article 5

1. Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.

2. The national programme shall:

- (a) promote the development of a national preventative safety and health culture;

- (b) contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;
 - (c) be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;
 - (d) include objectives, targets and indicators of progress; and
 - (e) be supported, where possible, by other complementary national programmes and plans which will assist in achieving progressively a safe and healthy working environment.
3. The national programme shall be widely publicized and, to the extent possible, endorsed and launched by the highest national authorities.

VI. FINAL PROVISIONS

Article 6

This Convention does not revise any international labour Conventions or Recommendations.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

Article 12

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision.

Article 13

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.



**ASSOCIATION OF
SOUTHEAST ASIAN
NATIONS**



ASEAN Convention Against Trafficking in Persons, Especially Women and Children

Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN") - Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, hereinafter referred to individually as "the Party" and collectively as "the Parties";

RECOGNISING that trafficking in persons constitutes a violation of human rights and an offence to the dignity of human beings;

RECALLING the purpose and principles of the Charter of the United Nations, the Universal Declaration on Human Rights, the Charter of the Association of Southeast Asian Nations ("ASEAN Charter"), the ASEAN Human Rights Declaration, the United Nations Convention against Transnational Organized Crime, and where applicable, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and other international agreements and resolutions of the United Nations on the eradication of trafficking in persons, in the promotion and protection of human rights, fundamental freedoms, fair treatment, rule of law and due process;

REAFFIRMING our commitment to the ASEAN Charter with a view to responding effectively, in accordance with the principle of comprehensive security, to all forms of transnational crimes and transboundary challenges;

REAFFIRMING also our commitment to the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children adopted in 2004; the Criminal Justice

Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims in 2007 ("ASEAN Practitioner Guidelines"); the ASEAN Leaders' Joint Statement in Enhancing Cooperation against Trafficking in Persons in South East Asia in 2011; and ASEAN's efforts in promoting human rights, including the ASEAN Human Rights Declaration adopted in 2012;

REAFFIRMING further our commitment to a stronger and more effective regional and international cooperation against trafficking in persons where the offence is transnational in nature, including but not limited to crimes committed by organised criminal groups;

RECOGNISING that cooperation is imperative to the successful investigation, prosecution and elimination of safe havens for the perpetrators and accomplices of trafficking in persons and for the effective protection of, and assistance to, victims of trafficking;

RECOGNISING that trafficking in persons is caused by a combination of factors, including government corruption, poverty, economic instability, inefficient legal systems, organised crimes, and the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, which must be effectively addressed;

REALISING that all ASEAN Member States, regardless of whether they are countries of origin, transit or destination, have a shared responsibility and a common goal to prevent trafficking in persons, prosecute and punish offenders of trafficking in persons and to protect and assist victims of trafficking in persons;

TAKING INTO consideration the proximity and connecting borders of ASEAN Member States and in the spirit of regionalism;

REALISING the need to establish a regional instrument that deals especially with trafficking in persons as a legal framework for regional action in preventing and combating trafficking in persons, including the protection of, and assistance to, victims of trafficking in persons;

RECOGNISING the importance of having in place a regional instrument against trafficking in persons that is legally binding and that would assist ASEAN Member States, as countries of origin, transit or destination, to deal with their diverse national challenges, priorities and strategies in the fight against trafficking in persons;

Have agreed as follows:

Chapter I General Provisions

Article 1 Objectives

1. The objectives of this regional legal instrument are to effectively:
 - a. Prevent and combat trafficking in persons, especially against women and children, and to ensure just and effective punishment of traffickers;
 - b. Protect and assist victims of trafficking in persons, with full respect for their human rights; and
 - c. Promote cooperation among the Parties in order to meet these objectives.
2. The Parties agree that the measures set forth in this Convention must be construed and applied in a manner that is consistent with internationally and regionally recognised

principle of non-discrimination, especially to those persons on the ground that they are victims of trafficking in persons.

Article 2

Use of Terms

For the purposes of this Convention:

- a. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in Paragraph (a) of this Article shall be irrelevant where any of the means set forth in Paragraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in Paragraph (a) of this Article;
- d. "Child" shall mean any person under eighteen (18) years of age;
- e. "Victim" shall mean any natural person who is subject to an act of trafficking in persons as defined in this Convention;

f. "Organised criminal group" shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

g. "Serious crime", as stated in Paragraph (f) of this Article, shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

h. "Transnational Crime" shall mean an offence that is transnational in nature. An offence is transnational in nature if:

- (i) It is committed in more than one State;
- (ii) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (iii) It is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or
- (iv) It is committed in one State but has substantial effects in another State.

i. "Public official" shall mean:

- (i) any person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;
- (ii) any other person who performs a public function, including for a public agency or public enterprise, or

provides a public service, as defined in the domestic laws of the Party and as applied in the pertinent area of law of that Party;

(iii) any other person defined as a "public official" in the domestic laws of that Party.

j. "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

k. "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

l. "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

m. "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

n. "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 7 of this Convention.

Article 3

Scope of Application

This Convention shall apply to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Convention, where the offences are transnational in nature, including those committed by

organised criminal groups, as well as to the protection of and assistance to victims of trafficking in persons.

Article 4

Protection of Sovereignty

1. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

Chapter II

Criminalisation

Article 5

Criminalisation of Trafficking in Persons

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 2 of this Convention, when committed intentionally.
2. Each Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - a. Subject to the basic concepts of its legal systems, attempting to commit an offence established in accordance with Paragraph 1 of this Article;
 - b. Participating as an accomplice in an offence established in accordance with Paragraph 1 of this Article;

- c. Organising or directing other persons to commit an offence established in accordance with Paragraph 1 of this Article.

3. Each Party shall adopt such legislative or other measures as may be appropriate so that offenders are liable to higher penalties than usual if any of the following aggravating circumstances are present:

- a. Where the offence involves serious injury or death of the victim or another person, including death as a result of suicide;
- b. Where the offence involves a victim who is particularly vulnerable such as a child or a person who is unable to fully take care of or protect himself or herself because of a physical or mental disability or condition;
- c. Where the offence exposed the victim to a life-threatening illness, including HIV/AIDS;
- d. Where the offence involves more than one victim;
- e. Where the crime was committed as part of the activity of an organised criminal group;
- f. Where the offender has been previously convicted for the same or similar offences;
- g. Where the offence was committed by a public official in the performance of his or her public duties.

Article 6
Criminalisation of Participation in an Organised Criminal Group

1. Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt such legislative and other measures as may be necessary to establish as criminal offences, when trafficking in persons is committed intentionally:

- a. Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
 - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organised criminal group;
 - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organised criminal group or its intention to commit the crimes in question, takes an active part in:
 - (a) Criminal activities of the organised criminal group;
 - (b) Other activities of the organised criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

- b. Organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organised criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in Paragraph 1 of this Article may be inferred from objective factual circumstances.

Article 7

Criminalisation of the Laundering of Proceeds of Crime

Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- a. (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- b. Subject to the basic concepts of its legal system:
 - (iii) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - (iv) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting,

facilitating and counselling the commission of any of the offences established in accordance with this Article.

Article 8

Criminalisation of Corruption

1. Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- a. The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- b. The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each Party shall also consider establishing as criminal offences other forms of corruption.

3. Each Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this Article.

Article 9

Criminalisation of Obstruction of Justice

Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

a. The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

b. The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this Paragraph shall prejudice the right of Parties to have legislation that protects other categories of public officials.

Article 10 Jurisdiction

1. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with Article 5, Article 6, Article 7, Article 8, and Article 9 of this Convention when:

- a. The offence is committed in the territory of that Party;
or
- b. The offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.

2. Subject to Article 4 of this Convention, a Party may also establish its jurisdiction over any such offence when:

- a. The offence is committed against a national of that Party;
- b. The offence is committed by a national of that Party or a stateless person who has his or her habitual residence in its territory; or

c. The offence is:

- (v) One of those established in accordance with Article 6, Paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
- (i) One of those established in accordance with Article 7, Paragraph (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with Article 7, Paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of Article 19 of this Convention, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a Party exercising its jurisdiction under Paragraph 1 or 2 of this Article has been notified, or has otherwise learned, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic laws.

Chapter III Prevention

Article 11 Prevention of Trafficking in Persons

1. The Parties shall establish comprehensive policies, programmes and other measures:
 - a. To prevent and combat trafficking in persons; and
 - b. To protect victims of trafficking in persons, especially women and children, from revictimisation.
2. The Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this Article shall, as appropriate, include cooperation with non-governmental organisations, other relevant organisations and other elements of civil society.
4. The Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. The Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 12

Areas of Cooperation

The areas of cooperation under this Convention on prevention of trafficking in persons may, in conformity with the domestic laws of the respective Parties, include appropriate measures, among others:

- a. To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking;
- b. To take or strengthen measures where appropriate, such as through bilateral, multilateral or regional cooperation to prevent and combat trafficking in persons, so as to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of education and equal opportunity;
- c. To strengthen policies and programmes to prevent trafficking in persons through research, information, awareness-raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking;
- d. To further strengthen regional cooperation in the investigation and prosecution of trafficking in persons cases;
- e. To enable free movement of people to take place legally, and to ensure that immigration requirements are adhered to, by disseminating accurate information on the requirements and conditions enabling the legal entry into, exit from, and stay in their respective territories;
- f. To exchange and share information on measures to reduce children's vulnerability to trafficking in persons, so that they can grow up and live in a safe environment;

g. To promote capacity-building, including trainings, technical cooperation, and the holding of regional coordination meetings;

h. To ensure that any person who perpetrates or supports trafficking in persons is brought to justice.

Article 13

Cross-border Cooperation, Control and Validity of Documents

1. The Parties shall endeavour to undertake cross-border cooperation, in order to prevent and detect trafficking in persons, as appropriate, among border control agencies by, *inter alia*:

- a. Establishing and maintaining direct channels of communication;
- b. Enhancing intelligence exchange and sharing of information including through establishing, developing or utilising appropriate databases.

2. The Parties shall prevent the movement of traffickers and victims of trafficking in persons by effective border control and controls on the issuance of identity papers and travel documents, and through effective measures to prevent counterfeiting, forgery or fraudulent use of identity papers and travel documents.

Chapter IV

Protection

Article 14

Protection of Victims of Trafficking in Persons

1. Each Party shall establish national guidelines or procedures for the proper identification of victims of

trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.

2. In a case where the trafficking takes place in more than one country, each Party shall respect and recognise the identification of victims of trafficking in person made by the competent authorities of the receiving Party.

3. Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.

4. Each Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. Each Party shall give appropriate consideration to humanitarian and compassionate factors to this end.

5. Each Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.

7. Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.

8. Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to,

during, or after civil, criminal, or administrative proceedings for trafficking in persons.

9. Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.

10. Each Party shall, where applicable, provide care and support to victims of trafficking in persons, including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following:

- a. Appropriate housing;
- b. Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- c. Medical, psychological and material assistance; and
- d. Employment, educational and training opportunities.

11. Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.

12. Each Party shall, take into account, in applying the provisions of this Article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children.

13. Each Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

14. Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.

Article 15

Repatriation and Return of Victims

1. The Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a Party returns a victim in accordance with Paragraph 1 of this Article, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking in persons.

3. In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5. Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation

programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.

6. This Article shall be without prejudice to any rights afforded to victims of trafficking in persons by any domestic laws of the receiving Party.

7. This Article shall be without prejudice to the provisions of any applicable bilateral or multilateral agreement or immigration arrangements that provide for more favourable rights and privileges to victims of trafficking in persons.

Chapter V

Law Enforcement

Article 16

Law Enforcement and Prosecution

1. Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.

2. Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.

3. Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.

4. Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies

against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.

5. Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.

6. Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.

7. Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.

8. Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and

that such offences shall be prosecuted and punished in accordance with that law.

Article 17

Confiscation and Seizure

1. Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

- a. Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
- b. Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable

to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.

7. Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.

8. The provisions of this Article shall not be construed to prejudice the rights of *bona fide* third parties.

9. Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.

Chapter VI

International Cooperation

Article 18

Mutual Legal Assistance in Criminal Matters

1. In order to combat offences of trafficking in persons which are transnational in nature, the Parties shall, subject to their respective domestic laws, afford one another the widest measure of mutual legal assistance in criminal investigations or criminal proceedings in relation to such offences established in accordance with Article 5 of this Convention.

2. The Parties shall carry out their obligations under Paragraph 1 of this Article in accordance with the Treaty on Mutual Legal Assistance in Criminal Matters.

Article 19

Extradition

1. Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.

3. Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

4. A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic

law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

5. For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.

Article 20

Law Enforcement Cooperation

1. The Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each Party shall, in particular, adopt effective measures:

- a. To enhance and, where necessary, to establish as well as utilise existing channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the Parties concerned deem it appropriate, links with other criminal activities;
- b. To cooperate with other Parties in conducting inquiries with respect to offences covered by this Convention concerning:
 - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - (ii) The movement of proceeds of crime or property derived from the commission of such offences;

- (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
 - c. To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
 - d. To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;
 - e. To exchange information with other Parties on specific means and methods used by traffickers, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
 - f. To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.
2. With a view to giving effect to this Convention, the Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, the Parties shall make full use of agreements or arrangements, including international or

regional organisations, to enhance the cooperation between their law enforcement agencies.

3. The Parties shall endeavour to cooperate within their means to respond to trafficking in persons and other offences covered by this Convention committed through the use of modern technology.

Article 21

International Cooperation for Purposes of Confiscation

1. A Party that has received a request from another Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in Article 17, Paragraph 1 of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

- a. Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
- b. Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting Party in accordance with Article 17, Paragraph 1 of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in Article 17, Paragraph 1, situated in the territory of the requested Party.

2. Following a request made by another Party having jurisdiction over an offence covered by this Convention, the requested Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in Article 17, Paragraph 1 of this Convention for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a

request under Paragraph 1 of this Article, by the requested Party.

3. The provisions of Article 18 of this Convention are applicable, *mutatis mutandis*, to this Article. In addition to the information specified in Article 18, requests made pursuant to this Article shall contain:

- a. In the case of a request pertaining to Paragraph 1 (a) of this Article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic laws;
- b. In the case of a request pertaining to Paragraph 1 (b) of this Article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting Party, a statement of the facts and information as to the extent to which execution of the order is requested;
- c. In the case of a request pertaining to Paragraph 2 of this Article, a statement of the facts relied upon by the requesting Party and a description of the actions requested.

4. The decisions or actions provided for in Paragraphs 1 and 2 of this Article shall be taken by the requested Party in accordance with and subject to the provisions of its domestic laws and its procedural rules, any bilateral or multilateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party, and the Treaty on Mutual Legal Assistance in Criminal Matters.

5. If a Party elects to make the taking of the measures referred to in Paragraphs 1 and 2 of this Article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

6. The provisions of this Article shall not be construed to prejudice the rights of *bona fide* third parties.

7. The Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this Article.

Article 22

Disposal of Confiscated Proceeds of Crime or Property

1. Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.

2. When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.

Chapter VII Final Provisions

Article 23 Establishment of Coordinating Structures

Each Party shall consider establishing coordinating structures in the fight against trafficking in persons, including enhancing cooperation under all areas of this Convention.

Article 24 Monitoring, Reviewing and Reporting

1. The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.
2. The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.

Article 25 Confidentiality of Documents, Records and Information

1. Each Party shall preserve the confidentiality and secrecy of documents, records and other information received from any other Party, including the source thereof.
2. No document, record or other information obtained pursuant to this Convention shall be disclosed to or shared with any other Party, State or person except with the prior written consent of the Party which provided such document, record or information.

Article 26
Relationship with Other International Instruments

This Convention shall not derogate from obligations subsisting between the Parties pursuant to other international agreements nor, where the Parties agree, shall it prevent the Parties from providing assistance to each other pursuant to other international agreements or the provisions of their respective domestic laws.

Article 27
Settlement of Disputes

Any difference or dispute between the Parties arising from the interpretation or application of the provisions of this Convention shall be settled amicably through consultation and negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed upon between the Parties.

Article 28
Ratification, Approval and Depositary

1. This Convention shall be subject to ratification or approval in accordance with the internal procedures of the Parties.

2. The instruments of ratification or approval shall be deposited with the Secretary-General of ASEAN who shall promptly inform the other Parties of such deposit.

Article 29
Entry into Force and Amendment

a. This Convention shall enter into force on the thirtieth (30th) day following the date of the deposit of the sixth (6th) instrument of ratification or approval with the Secretary-General of ASEAN in respect of those Parties that have submitted their instruments of ratification or approval.

b. For any Party ratifying or approving this Convention after the deposit of the sixth (6th) instrument of ratification or approval, but before the day the Convention enters into force, the Convention shall also apply to that Party on the date the Convention enters into force. In respect of a Party ratifying or approving this Convention subsequent to its entry into force pursuant to Paragraph 1, it shall enter into force for that Party on the date its instrument of ratification or approval is deposited.

c. This Convention may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment shall enter into force on such date as shall be mutually agreed upon by Parties and shall form part of this Convention.

d. Any modification or amendment shall not affect the rights and obligations of the Parties arising from or based on the provisions of this Convention before the entry into force of such modification or amendment.

Article 30 Withdrawal

1. Any Party may withdraw from this Convention at any time after the date of the entry into force of this Convention for that Party.

2. The withdrawal shall be notified by an instrument of withdrawal to the Secretary-General of ASEAN.

3. The withdrawal shall take effect one hundred and eighty (180) days after the receipt of the instrument of withdrawal by the Secretary-General of ASEAN.

4. The Secretary-General of ASEAN shall promptly notify all the other Parties of any withdrawal.

Article 31

Registration

This Convention shall be registered by the Secretary-General of ASEAN to the United Nations Secretariat pursuant to Article 102 of the Charter of the United Nations.

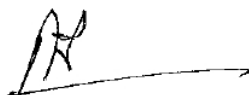
DONE at Kuala Lumpur, Malaysia, this Twenty-First Day of November in the Year Two Thousand and Fifteen, in a single original copy in the English language.

For Brunei Darussalam:



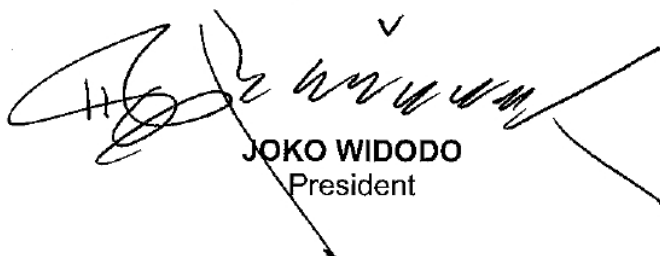
HAJI HASSANAL BOLKIAH
Sultan of Brunei Darussalam

For the Kingdom of Cambodia:



SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN
Prime Minister

For the Republic of Indonesia:



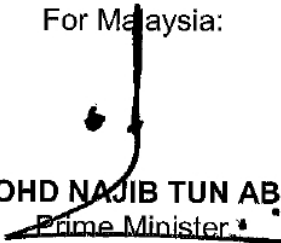
JOKO WIDODO
President

For the Lao People's Democratic Republic:



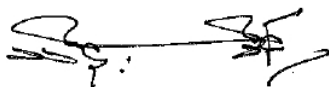
THONGSING THAMMAVONG
Prime Minister

For Malaysia:



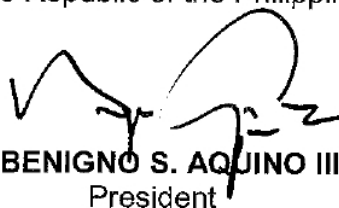
DATO' SRI MOHD NAJIB TUN ABDUL RAZAK
Prime Minister

For the Republic of the Union of Myanmar:



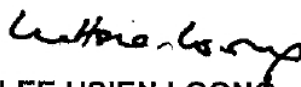
THEIN SEIN
President

For the Republic of the Philippines:



BENIGNO S. AQUINO III
President

For the Republic of Singapore:



LEE HSIEN LOONG
Prime Minister

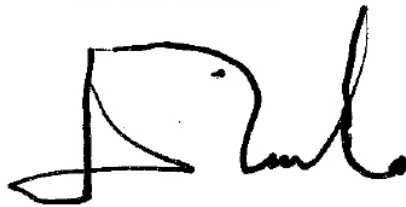
For the Kingdom of Thailand:

A handwritten signature in black ink, appearing to read "Gen. Prayut Chan-o-cha".

GENERAL PRAYUT CHAN-O-CHA (RET.)
Prime Minister

For the Socialist Republic of Viet Nam:

NGUYEN TAN DUNG
Prime Minister

A handwritten signature in black ink, appearing to be a stylized representation of the name "Nguyen Tan Dung".A single horizontal line drawn in black ink.

AMERICAN BAR ASSOCIATION

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