

LEGAL PROTECTION FOR CHILDREN IN DOMESTIC AND TREATY LAW*

*Elizabeth Aguilong-Pangalangan***

INTRODUCTION

Don't give your youth to the weak and unclean of heart.... Open the eyes of your children so they may zealously guard their honor and may love their neighbors, their country, and their duty...

- Jose Rizal

The protection of children is a special concern of both the state and the international community because children are as vulnerable as they are important to the state, as its citizens, and to humankind because they ensure the perpetuation of the species.

The international community protects children through, among many instruments, the U.N. Convention on the Rights of the Child¹ (hereafter Convention) which sets universal legal standards for the protection of children against neglect, abuse, and exploitation. The Convention likewise guarantees to the children their basic human rights including survival, development, and full participation in social, cultural, educational, and other endeavors necessary for their individual growth and well-being. The Preamble of the Convention reiterates the fundamental principles of the United Nations, specifically the recognition of the inherent dignity, equality, and inalienability of

* Based on "A Study on the Laws and Policies on Youth and Children" commissioned by the Children and Youth Foundation of the Philippines. The author acknowledges the research assistance of Thor Causing, Angela Ponce and Sarah Lintag.

** Assistant Professor of Law, University of the Philippines, Diliman, Quezon City. Prof. Pangalangan earned her A.B. and LL.B degrees from the University of the Philippines and her LL.M. from Harvard Law School where she also served as Visiting Researcher in Family Law. She teaches Family Law and Private International Law.

¹ Convention on the Rights of the Child [hereafter CRC], adopted by the United Nations General Assembly on 20 November 1989.

human rights as the foundation of universal justice and peace. It further asserts the special need of children to legal and other forms of protection for their full development. As such, the Convention is often considered as the charter on the rights of the child. It has been ratified or acceded to by at least 187 states, with the Philippines ratifying it in July 1990.

The status of an international convention in municipal law is determined by the internal law of each country. Under Philippine municipal law, the rule is laid down in the Constitution, which provides in Section 21 of Article VII that a treaty is valid and effective only if it is concurred in by at least two-thirds of all Members of the Senate. Furthermore, Article II, Section 3 of the Philippine Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land.

In addition, the Convention defines the legal character of the international obligation assumed by the States Parties. Under Article 2, each state undertakes to "respect and ensure the rights set forth in the Convention" and to take all appropriate measures to promote these rights. As a method of promoting and protecting children's rights, the Convention incorporates a self-reporting mechanism.² This reporting obligation, as provided in Article 44 of the Convention, requires States Parties to submit to the Committee on the Rights of the Child "reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights." Moreover, under the General Guidelines for reporting adopted by the Committee, each state should provide relevant information on:

- (a) the measures taken to harmonize national law and policy with the provisions of the Convention; and
- (b) existing or planned mechanisms at the national or local level for coordinating policies relating to children and to monitor the implementation of the Convention."³

² The Philippines submitted its first country report in September 1993 which was published by the United Nations in November 1993.

³ General Guidelines for Reporting to the Committee on the Rights of the Child, U.N. Doc. CRC/C/5, 30 October 1991.

The measures of implementation in the Convention and the Guidelines on reporting require the States Parties to do positive action to fully realize the rights of the child. These include the passage of the necessary legislative measures to ensure that national laws are harmonized with the standards set in the Convention subject, however, to Article 41 of the Convention which states that when a standard is contained both in national law and international law, the higher standard shall always prevail.

Therefore, whether as a matter of the Philippine doctrine on incorporation in satisfaction of treaty law obligation or the practical exigencies of protecting children, this paper studies existing legislations on children and on proposed bills before the Tenth Congress of the Philippines. It is aimed at identifying the gaps in the laws and at providing proposals of action that seek to advance our standard on child protection. With the U.N. Convention on the Rights of the Child as overall framework, the study is divided into four (4) major areas namely:

- I. Survival
- II. Protection
- III. Development and
- IV. Participation

SURVIVAL

The Convention recognizes that every child has an inherent right to life.⁴ It stresses the state's obligation to ensure the child's survival and development through the adoption of appropriate measures conceived to protect life, establish a standard of living adequate to the child's full development, clarify parental responsibilities, grant the child the benefits of social security, and provide adequate nutrition. States Parties should, likewise, promote life consistent with the human dignity of all children including refugees, minorities, and disabled children.

⁴ CRC, art. 6.

Definition of the Child

The first article of the Convention endeavors to specify who are governed by the norms. It provides that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

In defining a child, the twin issues of when childhood begins and ends inevitably arise. The question of when childhood begins is crucial since it determines the point from which the child enjoys rights, particularly the "inherent right to life," embodied in the Convention. Of equal importance is determining when a person crosses the threshold of childhood into adulthood. Each state's resolution of these points is fraught with disparate cultural, religious, social, and historical constructs. What the Convention succeeds in doing is establishing the age of 18 years as the yardstick in deciding the end of childhood.

The Philippine Constitution recognizes the sanctity of human life and the consequent need for the protection of the life of the mother and of the unborn from conception.⁵ On the other hand, Article 41 of our Civil Code provides for the definition of a child by furnishing the necessary standards—it considers the fetus born "if it is alive at the time it is completely delivered from the womb." Although the conceived child shall be considered born for all purposes that are favorable to it, it has to be born later since it is birth which determines personality or the fitness to be subject of legal relations.⁶ No consensus has been reached by legal experts on whether the Philippine Constitution has, in effect, determined that an aborted fetus had rights which were violated although it did not and never will acquire personality.

Few laws give a precise definition of the term "child". Two of these are P.D. 603⁷ and R.A. 7610⁸ which refer to persons below

⁵ See CONST., art. II sec. 12.

⁶ CIVIL CODE, art. 40.

⁷ Pres. Decree No. 603 (1975). Popularly known as the Child and Youth Welfare Code, it has since been amended by P.D. Nos. 1179 and 1210 and E.O. Nos. 91 and 209.

eighteen years of age.⁹ R.A. 7610 also extends the definition to "those over [18] but are unable to fully take care of themselves...from abuse, neglect, exploitation, or discrimination because of physical or mental disability or condition."¹⁰ In most statutes, the terms "child," "minor," and "youth" are used interchangeably although in R.A. 8044,¹¹ the National Youth Commission is mandated to undertake a comprehensive study of Filipino youth described as falling within the age-range of 15-30 years.

The definition of a child as an area of study also concerns itself with the status of the child. In Article 2(2) of the Convention, it is imperative for States Parties to ensure that the child is protected against all forms of discrimination on the basis of "social origin...birth or other status." One of the most evident manifestations of discrimination is the difference in the rights accorded to legitimate and illegitimate children.¹² Although Article 3 of P.D. 603 enumerates fourteen (14) rights of the child "without distinction as to legitimacy or illegitimacy," these rights refer to broad, motherhood statements such as the right to a wholesome family life, the right to a well-rounded development, the right to a balanced diet, and the right to an efficient and honest government. On the other hand, Philippine laws still adhere to the strict distinctions between the rights of legitimate and illegitimate children, *e.g.*, the use of the father's name, support, and successional rights.¹³

Legitimation is a remedy which, by legal fiction, confers upon a child born outside of wedlock the status and rights of a legitimate child

⁸ Rep. Act No. 7610 (1992). Entitled "An act providing for stronger deterrence and special protection against child abuse, exploitation and discrimination, providing penalties for its violation and for other purposes."

⁹ Pres. Decree No. 603 states that those below twenty-one years of age are considered children except those emancipated by law. Rep. Act No. 6809, approved on December 13, 1989, lowered the age of majority to 18 years of age.

¹⁰ Rep. Act No. 7610 (1992), sec. 3(a).

¹¹ Rep. Act No. 8044 (1995), Sec. 4(a). The Act is entitled "An act creating the National Youth Commission, establishing a national comprehensive and coordinated program on youth development."

¹² See UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948), art. 25(2), which provides social protection for "all children, whether born in or out of wedlock."

¹³ See FAMILY CODE, arts. 174 and 176.

through a subsequent valid marriage between his or her parents.¹⁴ It is in view of this that Article 177 of the Family Code extends the remedy of legitimation only to "children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other." The law however fails to address the case of parents who were disqualified from marrying each other due to minority, a gap which Senate Bill 1304¹⁵ seeks to rectify. The bill reinforces the policy behind Article 177 which is to strengthen and promote the integrity of the family. As such, it is recommended for approval since the issues of public scandal as may be found with respect to children of adulterous, incestuous, and bigamous relationships are not present here. Likewise, a clear exception was provided in the Civil Code, which was the law in force prior to the Family Code. In Article 269 of the Civil Code, legitimation was available only to "natural children"¹⁶ or to those whose parents, at the time of conception, were not disqualified by any impediment to marry. However, a natural child by legal fiction or one born to a void marriage could nevertheless be legitimated if the only impediment to the legality of his or her parents' marriage was their not having reached the minimum marriageable age.¹⁷

Another bill on the status of the child is Senate Bill 917.¹⁸ It proposes that the father, in cases of rape, abduction, or seduction should be compelled to recognize the child as his natural child, but only for purposes of support. This proposition is a superfluity since this has been provided for in Article 345 of the Revised Penal Code which states that a person guilty of rape shall also be sentenced to 1) indemnify the offended woman; 2) acknowledge the offspring; and 3) support the offspring. In *People v. Velo*, the Court held that the "raper (sic) is duty bound to support the offspring not only because he is the father but because he is civilly responsible for all evil consequences of the offense,

¹⁴ See FAMILY CODE, art. 177 and 178.

¹⁵ S. No. 1304, 10th Cong., 1st Sess. (1995). Filed by Sen. Gregorio B. Honasan on December 6, 1995.

¹⁶ In the Civil Code, illegitimate children were classified into natural children (Art. 269), natural children by legal fiction (Art. 89), and spurious children (Art. 287).

¹⁷ I A. TOLENTINO, CIVIL CODE OF THE PHILIPPINES, 539 (4th ed., 1974).

¹⁸ S. No. 917, 10th Cong., 1st Sess. (1995). Filed by Sen. Leticia R. Shahani on July 24, 1995.

one of them is that which exposes the child...into the open seas of world vicissitudes...without the care, parental love, support, and protection of a non-adventitious father.”¹⁹

For the proposal to have a far-reaching impact, it should modify the doctrine set down in *People v De Guzman*²⁰ which held that if the rapist is a married man, he may not be compelled to recognize the offspring of the crime as his child except for the purpose of support. The law prohibits the acknowledgment of the offspring in this case on account of the issue of parental authority which might thus be conferred upon the party committing the rape. The same reason, it is argued, which prevents the offender from acknowledging the offspring should also prohibit him from periodically entering the home of the raped woman in order to comply with the duty to support the spurious offspring. This reasoning fails to distinguish between parental authority and the duty to support. Although the person exercising parental authority is obliged to support the child at all times, such obligation does not by itself grant the giver parental rights over the child. To illustrate, although Article 176 of the Family Code states that illegitimate children shall be under the parental authority of their mother, it likewise adds that they shall be entitled to support. Our law on support provides that among those obliged to support each other are “parents and their illegitimate children and the legitimate and illegitimate children of the latter....”²¹ The law imposes the duty to support illegitimate children on both the natural and biological parents although it confers parental authority exclusively on the mother.

Furthermore, a law that prohibits acknowledgment of the offspring may have legal and moral basis if the woman who was raped is married because of “the inherent parental right in favor of the father in *constants matrimonio*” and the violation and disturbance of family rights of the married rape victim.²² Then, it would be her choice to have her child acknowledged or not. It is absurd, however, to apply the same reasoning to a situation where it is the rapist who is married. The law

¹⁹ 80 Phil. 471 (1948).

²⁰ G.R. Nos. 51385-86, January 22, 1993, 217 SCRA 395 (1993).

²¹ CIVIL CODE, art. 195.

²² U.S. vs. Yambao, 4 Phil. 205 (1905).

should step in and require the putative father, *whether married or not*, to recognize the child for successional purposes as well.

Right to Health and Adequate Nutrition

Survival rights recognize that all children deserve quality health care services and adequate nutrition. Domestic laws on these concerns are abundant. Thus, the relevant questions are the extent to which these laws overlap and, in the reverse situation, the need for specific policies to fill in the gaps left by existing legislation.

Article 24 of the Convention obliges States Parties to recognize the right of the child to the highest attainable standard of health. While respecting the primary responsibility of parents to care for their children, the Convention imposes on the state the duty to give children health care and, on a broader scale, Article 18 binds the state to render appropriate assistance to parents in child-rearing.

The Philippine Constitution mandates the state to adopt "an integrated and comprehensive approach to health development"²³ and to defend "the right of children to assistance, including proper care and nutrition."²⁴ Statutes putting these standards and rights into operation are ample, e.g. R.A. 6972,²⁵ establishing a day-care center in every barangay; P.D. 1543,²⁶ establishing a foundation for respiratory disease for children; P.D. 1631,²⁷ creating the Philippine Children's Hospital; and E.O. 51,²⁸ promoting breastfeeding. There are also Memoranda of Agreement entered into with Australia relating to food aid for street children. What is glaringly absent is an integrated and comprehensive law which covers all these concerns. Bills proposed are often too narrow in scope and are enacted without any general state program in mind. An example is House Bill 510²⁹ or "An Act Creating the Position of a

²³ CONST., art. XIII, sec. 11.

²⁴ CONST., art. XV, sec. 3(2).

²⁵ Approved on 23 November 1990, 87 OG 209 No. 2 (Jan. 14, 1991).

²⁶ Pres. Decree No. 1543 (1978).

²⁷ Pres. Decree No. 1631 (1979).

²⁸ Took effect on 27 November 1986. 82 OG 5037 No. 43 (Oct. 27, 1986).

²⁹ H. No. 510, 10th Cong., 1st Sess. (1996). Filed by Rep. Bonifacio Gillego on March 1, 1996.

Rural Dentist in Every Rural Health Unit" which is commendable but, standing alone, is not enough to address our present-day health and nutritional concerns. It is thus recommended that a National Nutrition and Health Care Plan be developed, with emphasis on children's nutrition and health care. More specifically, attention should be placed on children living in distressful conditions such as streetchildren and children in war zones, the combat of children's diseases, immunization, proper sanitation, and access to medical care. At the same time, attention should be placed on the proper implementation of existing legislation and adequate training of health workers.

Such a program should also take into consideration the child's standard of living, which covers the right of the child to the enjoyment of the highest attainable standard of health and to facilities for an environment attuned to his full physical, mental, moral, and social development. Unfortunately, no law has been passed nor any bill proposed to cover these concerns. There is only the Convention statement to guide future legislation.

Disabled Children

The right of every child to health demands that the state give the best possible health care to all children including those who suffer from any disability. Article 23 of the Convention thus stresses the right of a physically or mentally disabled child to a full and decent life.

In the Philippines, concern for persons with disabilities is evident with the passage of various laws, among which, are Commonwealth Act 3203 which provides for the care and protection of disabled children; R.A. 65 known as the Bill of Rights for the Social and Economic Restoration of Disabled Veterans;³⁰ R.A. 1179 creating the Bureau of Disabled Persons Welfare³¹ and amended by R.A. 2615 creating the National Council on Rehabilitation.³² They are accorded priority by the Constitution as provided in Article IX, Section 11, afforded with programs and services for their care, training, and

³⁰ Rep. Act No. 65 (1946).

³¹ Rep. Act No. 1179 (1954).

³² Rep. Act No. 2615 (1959).

rehabilitation by the Child and Youth Welfare Code,³³ and vested with representation in local legislative councils by the Local Government Code as stated in Article 3, Section 457. There is also the Magna Carta For Disabled Persons,³⁴ which requires the state to exert all efforts to remove all social, cultural, economic, environmental, and attitudinal barriers that are prejudicial to disabled persons, and the Accessibility Law,³⁵ which aims to increase the mobility of persons with disabilities by making it mandatory for certain establishments and public utilities to install sidewalks, ramps, and other facilities to aid them. Furthermore, a sectoral representative for disabled persons was appointed to Congress in 1990.

Their education is ensured with laws establishing a 10-year training program for the teachers of special and exceptional children³⁶ and promoting the education of the blind.³⁷ It is this latter concern which is targeted by many of the proposed bills. Senate Bills 285,³⁸ 818,³⁹ and 1267⁴⁰ concern themselves with providing for and expanding the educational programs for children with disabilities. Senate Bills 285 and 818, both entitled "An Act To Expand And Revitalize The Special Education Program For Gifted And Handicapped Children And Youth In The Philippines," proceed from the policy of the democratization of access to quality education and are aimed at the empowerment and eradication of illiteracy of gifted and handicapped children. These bills will allow mentally- or physically-disabled children to "enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community."⁴¹

³³ Pres. Decree 603 (1975), art. 168-188.

³⁴ Rep. Act No. 7277 (1992).

³⁵ Batas Pambansa Blg. 344 (1983).

³⁶ Rep. Act. No. 5250 (1968).

³⁷ Rep. Act. No. 3562 (1963).

³⁸ S. No. 285, 10th Cong., 1st Sess. (1995). Filed by Sen. Orlando Mercado on June 30, 1995.

³⁹ S. No. 818, 10th Cong., 1st Sess. (1995). Filed by Sen. Miriam Santiago on November 15, 1995.

⁴⁰ S. No. 1267, 10th Cong., 1st Sess. (1995). Filed by Sen. Miriam Defensor Santiago on November 14, 1995.

⁴¹ CRC, art. 23 (1).

Both bills recognize that the progress of special education has been impeded by various constraints, foremost of which are the shortage of classrooms and other physical facilities and the lack of teachers especially trained for the job and attuned to the particular educational needs of children with disabilities. Thus, the bills provide for the organization of special education classes from pre-school up to post-secondary education, the establishment of vocational skills training and outreach programs for out-of-school youth, and the provision for medical, counseling, and recreational services in special education centers and regular schools. More importantly, emphasis is placed on the training of teachers handling special education classes. It would be more in consonance with the bills' intent to make these core subjects required for all education students.

Senate Bill 1267, on the other hand, is a bill providing for the creation of municipal special education centers for deaf-mute and blind children. This can be consolidated with Senate Bills 285 and 818. One important provision of this bill is the authority of the Secretary of Education, Culture, and Sports to give grants to or enter into cooperative arrangements or contracts with public or private non-profit agencies for programs including "... facilitation of parental involvement in the education of their deaf-mute or blind children ...". While parent education is addressed in the explanatory notes of the bills, it is not actually furnished operative provisions in the bills themselves.

The laws for participation of disabled persons are there and funds have been provided for them. However, there has to be a concerted effort in the implementation of these laws in order to mobilize them and tap this vastly under-utilized human resource.

Parental Responsibilities

The Preamble of the Convention, along with Articles 5 and 18, focus on the family as the natural environment for the growth and well-being of all its members and recognize that parents have the right and primary responsibility in the upbringing of their children. These provisions echo other international covenants that acknowledge the

family as the natural and fundamental group of society and, thus, is entitled to protection and assistance.⁴²

In Article II, Section 12 of the Philippine Constitution, the state recognizes the sanctity of family life and vows to strengthen the family as a basic autonomous social institution. The Child and Youth Welfare Code lays down basic principles on parental authority. It states that "the molding of the character of the child starts at the home" and that "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."⁴³ These principles are given flesh in various articles of the Civil Code that define the scope of the rights and duties of parents over the person and property of their children.⁴⁴

In *Santos, Sr. vs. Court of Appeals*,⁴⁵ the Supreme Court decided that parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. In effect, a parent who entrusts the custody of his or her minor child to another, such as the child's grandparents, gives mere temporary custody. Although grandparents shower their grandchild with love and exhibit a better ability to support the child financially, these are insufficient to defeat the father's parental authority and right to custody.

In the earlier case of *Medina v. Makabili*,⁴⁶ the court defined the outer limit of the exercise of parental authority. It held that the right of parents to the company and custody of their children is only ancillary to the proper discharge of their duties to provide their children with adequate support, education, moral, intellectual, and civic training. Likewise, in *Luna v. Intermediate Appellate Court*,⁴⁷ custody of the child was given to the grandparents instead of her biological parents since

⁴² UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948), art. 16, par. 1-3; INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966), art. 23; and INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), art. 10.

⁴³ Pres. Decree No. 603 (1975), art. 1.

⁴⁴ CIVIL CODE, art. 209-214, 220-227.

⁴⁵ *Santos, Sr. vs. Court of Appeals*, G.R. No. 113054, March 16, 1995, 242 SCRA 407.

⁴⁶ G.R. No. 26953, March 28, 1969, 27 SCRA 502 (1969).

⁴⁷ G.R. No. 68374, June 18, 1985, 137 SCRA 7 (1985).

the Court concluded that to return her to the custody of her parents "to face the same emotional environment which she is now complaining of would be indeed traumatic and cause irreparable damage to the child."⁴⁸ However, in his dissenting opinion, Justice Makasiar stressed that the right of the parents to the custody of their minor children is both a natural and a legal right which the Court should not disturb "except for the strongest reasons, and only upon a clear showing of a parent's gross misconduct or unfitness, or other extraordinary circumstances affecting the welfare of the child."⁴⁹

Two (2) interesting bills have been filed in relation to parental responsibilities, one of which is House Bill 6491,⁵⁰ entitled "An Act Providing Benefits and Privileges to Single Parents and Their Children and for other purposes." This bill recognizes the substantial increase in the number of single parent families as a consequence of the death of the other spouse, separation, migration of a spouse usually for overseas work, parenting by an unwed mother or father or victims of rape, and the adoption of children by unmarried persons.

As stated in its explanatory note, the policy behind the bill is to promote the family as the foundation of the nation and the concept of the state as a substitute parent in an "incomplete" family set-up. The bill recognizes that the state is tasked with taking care of the welfare of these parents and children, with the goal that they do not become wards of the state but productive citizens in their respective communities. Towards this end, it proposes the development of a comprehensive program of social and economic services, including livelihood development services, allowance of a flexible work schedule, parental leave, family counseling services, medical assistance, and educational and housing benefits, as well as prohibition against discrimination in work and in school with respect to terms and conditions of employment and enrollment or admittance. The last mentioned is what

⁴⁸ *Id.* at 16.

⁴⁹ Luna vs. Intermediate Appellate Court, *supra*, Dissenting Opinion of Justice Makasiar at 19-20.

⁵⁰ H. No. 6491, 10th Congress, 1st Sess. (1996). Filed by Rep. Milagros Laurel-Trinidad on March 3, 1996.

differentiates this bill from House Bill 5685.⁵¹ It is noted, however, that no provision for day-care centers has been included among the proposed benefits, the absence of which leaves single parents with no genuine prospects of entering the workforce and becoming financially self-sufficient because of the lack of a safe environment where they may leave their children. Likewise, attention should be called to the way the bill characterizes single-parent families as "incomplete" families. Though non-traditional, single-parent families are not any less of a family and, thus, should be accorded the same legal privileges and protection enjoyed by traditional families.

Another aspect of concern is the delimitation of single parents who are eligible for assistance as the bill provides that only those with incomes below the poverty line shall be eligible for assistance. The bill does not extend support to parents who do not live below the poverty line but nevertheless have extreme financial difficulties in supporting their children. This low standard contravenes the recognized right of every child to enjoyment of the highest attainable standard of health. Furthermore, the concept of "abandonment" under Sec 3B(7) in relation to those considered as single parents needs to be clarified. It contemplates, to wit: "... parents left alone with the responsibility of parenthood due to *abandonment* by spouse...." This must be correlated with Article 101 of the Family Code under which a spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without a just cause and without any intention to return. The article creates a presumption that the spouse has no intention of returning if there is a three-month continued absence from the conjugal home or failure to give information as to one's whereabouts for the same length of time. This is significant as it determines the period when the "abandoned" spouse may seek assistance. There is also the question of meritorious grounds under Section 6 which would exempt the employer from allowing flexible working schedule. These grounds have to be enumerated and circumscribed lest the exemptions defeat the purpose of the Act.

⁵¹ H. No. 5685, 10th Cong., 1st Sess. (1996). Filed by Rep. James Gordon on January 5, 1996.

Social Security

The concern under the area of social security is the child's right to benefit from social security, including social insurance, as provided for in the Convention.⁵² Paragraph 2 of Article 26 stresses that the child should benefit directly and indirectly through "persons having responsibility for the maintenance of the child...."

Existing laws, such as E.O. 195,⁵³ which provides for a Medicare Program to Filipino Overseas Contract Workers and their dependents, and R.A. 7309,⁵⁴ which creates a Board of Claims under the Department of Justice for victims of unjust imprisonment or detention and victims of violent crimes, relate to the grant of benefits to dependents in general. However, there is no law which specifically provides for children's social security.

Refugee Children

The 1951 Convention Relating to the Status of Refugees, of which the Philippines is a signatory, defines a refugee as any person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or when not having a nationality and being outside the country of the former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it."⁵⁵ Article 22(1) of the Convention on the Rights of Child focuses on the special protection which a state should grant a refugee child or to a child seeking refugee status. This protection and assistance include efforts to trace the child's parents in order to reunify him with his family.

The area of refugee children is largely ignored both by existing and proposed legislation. The only laws of significance here are E.O.

⁵² CRC, art. 26.

⁵³ Exec. Order No. 195 (1994), 90 O.G. 6078 No. 4 (October, 1994).

⁵⁴ Rep. Act No. 7309 (1992). Passed on March 30, 1992.

⁵⁵ GA Res 42a(v) of 14 December 1950 and amended by the Protocol relating to the Status of Refugees 1967. GA Res 2198(XXI) OF 16 Dec 1966.

249,⁵⁶ granting permanent resident status to certain Vietnamese citizens and Filipino-Vietnamese children pursuant to Sec 47 of the Immigration Act of 1940, E.O. 554,⁵⁷ creating the Task Force On International Refugee Assistance and Administration, and E.O. 332, reconstituting the Task Force.⁵⁸ Other than these, there are no laws specially concerned with their welfare and protection. Moreover, E.O. 249 is merely a grant of permanent residence status and, without a bill or legislative enactment providing social, educational, and economic programs by which these children may develop their skills so as to become productive individuals, this may well become ineffective.

Children of Minorities or Indigenous Populations

The Convention likewise refers to children of minorities and indigenous populations. Article 30 of the Convention states that "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 practice his or her own religion, or to use his or her own language." This article should be read in relation to the principle of non-discrimination and to the rights of the child to education and access to health care articulated in a number of provisions in the Convention.

The term "minority" refers to a group which differs from the dominant population in race, language, religion, or culture.⁵⁹ The United Nations has no fixed definition of "minority" and the terminology it uses to refer to such groups varies from one instrument to another. For instance, the UNESCO Convention Against Discrimination in Education uses the term "national minorities;" the Convention on the Prevention of the Crime of Genocide uses "national, ethnic, racial or religious groups;" the International Convention on the Elimination of All Forms of Racial Discrimination uses "racial and ethnic groups;" and the Covenant on Civil and Political Rights uses the term "ethnic, religious and linguistic minorities."

⁵⁶ Exec. Order No. 249 (1995), 91 O.G. 4730 No. 30 (July 24, 1995).

⁵⁷ Exec. Order No. 554 (1979), 75 O.G. 7725 No. 39 (September 24, 1979).

⁵⁸ Exec. Order No. 332 (1995), 84 O.G. 6019 No. 41 (October 10, 1988).

⁵⁹ CHANDRA, THE TERM "MINORITIES" AND ITS CONCEPT IN INTERNATIONAL LAW, in MINORITIES UNDER NATIONAL AND INTERNATIONAL LAW 11 (1985).

Absent a consistent and official term to refer to minorities, the U.N. Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities established two criteria for determining who are minorities. The objective criterion includes the possession of stable ethnic, religious, or linguistic characteristics that differ sharply from the majority population; numerical inferiority; occupation of a non-dominant position in society; and having the status of nationals of the state. Existence on the part of the group's members of the will to preserve its own character is the sole subjective criterion.⁶⁰

Although the welfare of the children of minorities and indigenous populations has long been a concern of Philippine legislation, there is hardly any national legislative program enacted in relation to them. The only provision of law affecting children of indigenous cultural communities is in R.A. 7610 which states that these children shall be "entitled to protection, survival, and development consistent with the customs and traditions of their respective communities."⁶¹ It likewise articulates the government's commitment to deliver basic social services, health, and nutrition, while respecting their use of indigenous health practices and traditional medicines. The Department of Education, Culture, and Sports is given the responsibility of developing an alternative system of education for minority children consistent with their culture and needs. Pursuant to Section 32 of R.A. 7610, the government promulgated the Rules and Regulations on Children of Indigenous Cultural Communities in November 1993 which created a Coordinating Committee for Children of Indigenous Cultural Communities to assist them in resolving disagreements or difficulties relating to discrimination and implementation of governmental and private programs intended to benefit said community. The rules also set out the procedure for filing a complaint for discrimination and impose the penalty of *arresto mayor* in its maximum period and a fine of not less than P5,000.00 nor more than P10,000.00.

⁶⁰ E. Aguiling-Pangalangan, *Emerging Conflict of Laws Issues in the Recognition of Minority Rights* (1989) (unpublished manuscript).

⁶¹ Rep. Act No. 7610 (1992), art. IX, sec. 17-21.

Children in Armed Conflict

Protocol II of the Geneva Convention provides for the protection of the civilian population and individual citizens against dangers arising from military operations.⁶² Similarly, Article 38 of the Convention on the Rights of the Child turns to the rights of children affected by armed conflicts. Here, two themes dominate: first, that States Parties undertake to respect international humanitarian law and apply it to children, and, second, that the minimum age of recruitment in the armed forces or participation in hostilities is 15 years of age. Moreover, States Parties are obliged to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”

This situation is addressed only in Art. X of R.A. 7610 which declares children as Zones of Peace who are not to be objects of attack nor to be recruited as members of the Armed Forces or other armed groups. Section 22 further mandates the government to deliver basic social services including education, primary health services, and public infrastructure such as schools and hospitals. There is, however, no mention of mechanisms for the rehabilitative care of children in situations of armed conflict, an obligation we took on under Article 39 of the Convention, to ensure the children’s physical and psychological recovery and social reintegration. On the other hand, the Department of Justice issued the Rules and Regulations on Children in Situations of Armed Conflict in January 1994. It defines “armed conflict” as any conflict between government forces and organized groups which involves the actual use of armed force and which disrupts normal social and economic policies and cultural activities in a specific geographical area. It likewise provides for the delivery of basic services such as education, primary health, and emergency health relief services to areas of armed conflict and assures free passage of service workers and flow of goods including medicinal supplies, foodstuffs, and other basic necessities to and from these areas.

⁶² PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS (1977), art. 13.

PROTECTION

The protection of the child is another area of concern in this study. The Philippine Legislature has focused on the child's right to a name, adoption, protection against child labor, drug abuse, and sexual and other forms of exploitation, rehabilitative care, and the proper administration of juvenile justice. In pursuing the protection of the child, they have relied on the basic premise of Article XV, Section 3, Paragraph (2) of the 1987 Constitution which states that:

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

Right to a Name

Senate Bill 1345,⁶³ entitled "An Act Allowing Legitimate Children to Bear the Surname of the Father or the Mother," seeks to amend Art. 174, Paragraph 1 of the Family Code.⁶⁴ The law gives legitimate children the right "to bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code." Under Article 364 of the Civil Code, the surname of the father shall be principally used by the child. The intention of the bill, which is "to ensure the fundamental equality before the law of women and men," is commendable, and so is its method, but its provisions are not consistent with such intent. Under Section 1, the consent of the father is still needed before the child may use the surname of the mother. On one

⁶³ S. No. 1345, 10th Cong., 1st Sess. (1995). Filed by Sen. Miriam D. Santiago on December 8, 1995.

⁶⁴ Art. 174, par. 1 of the Family Code states:

Legitimate children shall have the right:

1. To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;
2. To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and
3. To be entitled to the legitimate and other successional rights granted to them by the Civil Code.

level, this may be understandable considering that the aim of the clause is to avoid any confusion about the child's paternity. However, the lawmaker here is confronted with a dilemma: how can confusion about the child's paternity be avoided without resorting to the need for the father's consent which defeats the purpose of the bill?

The same question has been raised in various courts in the United States and they have viewed the issue from either of two perspectives: first, the constitutionality of a law that compels parents to give their child the father's last name which deprive them of a right to give their child another name e.g. mother's name; or second, the best interest of the child test.

In several cases, U.S. courts have held that the right to choose the child's name is derived from broader constitutional rights of privacy which may not be infringed without showing a compelling state interest. The state interest in registering children as presently required is "in order to trace relationships for purposes of determining devolution of property and title to lands."⁶⁵ This argument may have had some validity in earlier days but is considered ludicrous today since one does not have to be born in a state to inherit property located therein or from a citizen of that state nor is the indexing system efficient enough to recover the names of all heirs born in that state. The U.S. courts have likewise abolished laws giving the father the primary right to have the legitimate child bear his surname in favor of the best interest of the child rule⁶⁶ and that the child's best interest would be served by requiring him to bear a hyphenated name instead of the automatic preference for the father's surname.⁶⁷ This is the very same standard enshrined in Article 3 of the Convention.

Adoption

Several provisions of the Convention affirm the right of parents to take care of their own children. Yet, it considers a situation when a child may be deprived of his or her family environment and thus allows

⁶⁵ *Sydney vs. Pengrie*, 564 F. Supp. 412 (1982), *Doe vs. Hancock Country Board of Health*, 436 N.E. 2d 791 (1982), and *Jech vs. Burch*, 466 F. Supp. 714 (1979).

⁶⁶ *In re Schiffman*, 28 Cal. 3d 640, 169 Cal. Rptr. 918, 620 P. 2d 579 (1980).

⁶⁷ *Cohee v. Cohee*, 210 Neb. 855, 317 N.W. 2d 381(1982).

alternative care for the child.⁶⁸ Article 21 considers adoption as an alternative way of child caring and fixes standards to ensure that it is pursued in the best interest of the child.

Congress has also given emphasis on local or domestic adoption. Senate Bills 1405⁶⁹ and 1231,⁷⁰ and House Bills 6132,⁷¹ 6266,⁷² 6849,⁷³ and 6866,⁷⁴ all seek to amend existing laws and to institute policies on domestic adoption of Filipino children. The Domestic Adoption Bill has three major thrusts namely to increase the resources for domestic adoption promotion and services; to rectify several recognized deficiencies in prevailing laws; and to consolidate into a special law various provisions on domestic adoption found in several laws such as the Family Code, Civil Code of the Philippines and the Child and Youth Welfare Code.

The bill clarifies ambiguities with respect to the successional rights of the adopted and adopters and expressly and unequivocally make them compulsory heirs of each other. It likewise repeals a questionable provision in Article 192(2) of the Family Code which permits the adopters to rescind the adoption while the adopted is still a minor when the latter commits acts that "definitely repudiate the adoption." This provision places an undue burden on the child to behave properly at all times lest his actions be perceived to be tantamount to repudiation. It will be for the child's protection and in his or her best interest if rescission by the adopter is not allowed since biological parents do not have this option, anyway.

⁶⁸ CRC, art. 20.

⁶⁹ S. No. 1405, 10th Cong., 1st Sess. (1996). Filed by Sen. Leticia Ramos-Shahani on February 15, 1996.

⁷⁰ S. No. 1231, 10th Cong., 1st Sess. (1995). Filed by Sen. Leticia Ramos-Shahani on October 10, 1995.

⁷¹ H. No. 6132, 10th Cong., 1st Sess. (1996). Filed by Rep. Jose Carlos Lacson on February 6, 1996.

⁷² H. No. 6266, 10th Cong., 1st Sess. (1996). Filed by Rep. Mario Ty on February 16, 1996.

⁷³ H. No. 6849, 10th Cong., 1st Sess. (1996). Filed by Rep. Aquino-Oreta on April 25, 1996.

⁷⁴ H. No. 6866, 10th Cong., 1st Sess. (1996). Filed by Rep. Raul Daza on April 29, 1996.

Art. 184 of the Family Code does not allow aliens to adopt except:

- a) a former Filipino citizen who seeks to adopt a relative by consanguinity;
- b) one who seeks to adopt the legitimate child of his or her Filipino spouse; or
- c) one who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.

In *Republic v. Court of Appeals*, the Court held:

While James (an American) unquestionably is not permitted to adopt under any of the exceptional cases enumerated in par. (3)..., Lenita, however, can qualify...The problem in her case lies, instead, with Article 185 of E.O. No. 209, expressing as follows:

Art. 185. Husband and wife must jointly adopt, except in the following cases:

- (1) When one spouse seeks to adopt his own illegitimate child; or
- (2) When one spouse seeks to adopt the legitimate child of the other.⁷⁵

Reading Articles 184 and 185 together, neither James nor Lenita is eligible to adopt the child. The Supreme Court stressed that, had it not been for that technical impediment, the adoption could have been sanctioned. It underscores the tenet that the interest of the child and not bureaucratic technicalities should be the principal criterion in an adoption case. The Court expressed its helplessness in the face of the requirement of the law for joint adoption and could only recommend to the agencies concerned the importance of addressing inter-country adoption.

It is in view of the problem mentioned above that the Philippines signed the 1993 Convention on the Protection of Children

⁷⁵ G.R. No. 100835, October 26, 1993, 227 SCRA 401, 403 (1993).

and Cooperation in Respect of Inter-Country Adoption and passed the Inter-Country Adoption Act of 1995.⁷⁶ The law now grants aliens an opportunity to adopt Filipino children. On the other hand, the Domestic Adoption Bill goes a step further by allowing resident aliens to apply for adoption in the Philippines rather than in their home countries.

The need for inter-country adoption is brought about by the reality that there are, as yet, not enough Filipino families to absorb all of the Filipino children in need of families and homes. Thus, it is far better for a child to have a home, even with a non-Filipino family, than to remain in an institution. However, all other things being equal, it would be preferable for the child to be placed with adoptive parents who are familiar with the Philippines and who are cognizant of Filipino culture and values, rather than with parents abroad who have had no ties with this country or an understanding of our people. This approach would be consistent with the policy of considering inter-country adoption only as a last resort as enunciated in Sections 2 and 7 of R.A. 8043.

For these reasons, the bill provides that aliens who have been residents in the Philippines for at least three years may be qualified to adopt under the domestic adoption program. By permitting aliens to apply for adoption in this country, Philippine agencies have the opportunity to be involved in the entire process of the adoption, rather than delegate such processing to agencies abroad who may be less knowledgeable about Filipino children and adoption rules. For the prospective adoptive parents, instead of being screened by an adoption agency in a foreign country, they could be screened by the Department of Social Welfare and Development or by duly licensed Philippine child placement agencies, thereby ensuring that the applicants satisfy all the requirements under Philippine law. Moreover, for such individuals, during the trial custody period, home visits could be conducted by licensed Philippine social workers.

The bill incorporates safeguards designed to discourage, if not altogether prevent, unprincipled foreigners from applying for adoption.

⁷⁶ Rep. Act No. 8043 (1995).

The bill requires the applicant alien, first, to satisfy the residency requirement of three years and to obtain a certification from his or her embassy or consulate of his or her legal capacity to adopt. In addition, the law empowers the Department of Social Welfare and Development to require the alien to obtain, if necessary, additional documentation, such as clearances and references from his or her home country or place of last residence. Such requirements will help screen out or deter persons of undesirable backgrounds, as they would run the risk of being exposed in the process of their application and assessment.

In addition, the grave penalties provided for in the bill for any violation of its provisions are enough to further deter such abusive adopters. Section 24, Art. VI states that aliens guilty of offenses specified in the bill, after serving sentence, shall be immediately deported and perpetually excluded from the Philippines.

Of utmost importance is the focus given by the bill on penalties for violation of adoption laws. Those who petition in securing the adoption of a child contrary to the established procedure stipulated in the bill, including obtaining consent for adoption through coercion or fraud as well as exposing the child to be adopted to danger, abuse or exploitation, are penalized. The bill, however, provides for a five-year amnesty period for any person who have, prior to the effectivity of the proposed law, simulated the birth of a child. "Simulation of birth" refers to the pretension that a child was born of a woman who was not the biological mother and the registration of the child in the Registry of Birth as such. This is considered a crime against the civil status of persons and punishable by *prision mayor* and a fine.⁷⁷ The bill grants a reprieve to those who have simulated the birth of a child and gives them an opportunity to correct this by adopting the child legally in the light of studies conducted by the Department of Social Welfare and Development that around 500,000 children have been "adopted" this way. If the "parents" are not given a chance to rectify the simulated birth for fear of punishment, and if the fact of simulation is proven later on, the children will be left unprotected and bereft of the rights of legitimate children.

⁷⁷ REV. PEN. CODE, art. 347.

Child Labor

Article 32 of the Convention recognizes the right of the children to be protected from work that is exploitative and dangerous to their health and development. It obliges States Parties to implement necessary measures that, among others, regulate the working conditions of children and set minimum ages for employment. Various provisions in the Labor Code restrict the employment of children below 15 years of age, set rules on the hiring of children as apprentices⁷⁸ and as household helpers,⁷⁹ and with Article 110 of the Child and Youth Welfare Code, make it the duty of the family for whom the minor domestic helper works to provide the latter elementary education. Similarly, R.A. 7658 allows children below 15 years of age to work only when they are employed directly under the sole responsibility of their parents or legal guardians, such employment not being hazardous to them while allowing them opportunity to finish their education, or when the parents of a child, who participate in public entertainment or information, themselves sign the child's employment contract with the approval of the Department of Labor and Employment.⁸⁰

Senate Bills 905⁸¹ and 982⁸² center on the protection of children employed in the entertainment or advertising industry and offer specific measures to secure working children against abuse and exploitation. Senate Bill 1166,⁸³ on the other hand, gives working minors 20% higher wages than the prevailing minimum wage, grants them a three-day rest period, and pays them examination leave, among others.

These bills aim to expand the rights of working minors in accordance with the Constitutional mandate for the state to defend "(2) the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty,

⁷⁸ LABOR CODE, art. 58.

⁷⁹ Pres. Decree No. 603, (1975), art. 110.

⁸⁰ Rep. Act No. 7658 (1993).

⁸¹ S. No. 905, 10th Cong., 1st Sess. (1995). Filed by Sen. Anna Dominique Coseteng on August 24, 1995.

⁸² S. No. 982, 10th Cong., 1st Sess., (1995). Filed by Sen. Raul Roco on July 28, 1995.

⁸³ S. No. 1166, 10th Cong., 1st Sess. (1995). Filed by Sen. Ernesto Maceda on August 29, 1995.

exploitation and other conditions prejudicial to their development” and “(3) the right...to a family living wage and income.”⁸⁴

Child Abuse, Neglect, and Exploitation

The Convention provides for the protection of children from all forms of physical or mental violence, injury, neglect, and abuse while in the care of their parents.⁸⁵ It stresses the duty of the state to protect children from sexual abuse and exploitation by implementing all necessary steps to combat the inducement or coercion of children to engage in unlawful sexual activity, prostitution, and pornographic performances.⁸⁶ Furthermore, pursuant to Article 39 of the Convention, States Parties undertake to ensure the physical and psychological recovery and social reintegration of abused and exploited children in an environment which fosters their self-respect and human dignity.

R.A. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” is considered the landmark legislation in this field. The Act defines child abuse as “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 deed or words which debases, degrades, 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; or
- 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.”⁸⁷

The Act expands the persons who may file a complaint in cases of child abuse to include the offended party, his or her parents or

⁸⁴ CONST., art. XV, sec. 3(2) and (3).

⁸⁵ CRC, art. 19.

⁸⁶ CRC, art. 34.

⁸⁷ Rep. Act No. 7610 (1992), sec. 3 (b).

guardians, ascendants or collateral relatives within the third degree, officers or social workers of the Department of Social Welfare and Development (DSWD), the barangay chairman and at least three concerned and responsible citizens where the violation occurred.⁸⁸ Moreover, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated in October 1993 states that the report of child abuse may be made orally or in writing to the DSWD, to the police, or to a Barangay Council for the Protection of Children.⁸⁹ It makes reporting mandatory on the head of any public or private hospital or clinic, as well as the attending physician and nurse who examined or treated a child who appears to have suffered abuse within forty-eight hours from such knowledge.⁹⁰ Teachers, school administrators, law enforcers, and barangay officials and other government workers also have the duty to report all incidents of possible child abuse to the DSWD.⁹¹ Failure of hospital and government workers to report these cases will make them liable to pay a fine of not more than P2,000.00.

More importantly, R.A. 7610 embodies the principle that the best interests of the children shall be the paramount consideration in all actions concerning them. This principle has been recognized in both statute law⁹² and case law.⁹³ Clearly, this outweighs the doctrine of parental supremacy which is often invoked by law enforcement agencies to justify their reluctance to intervene in family-related violence. This hesitation stems from the autonomy enjoyed by the family in the eyes of the law which insulates it from unnecessary state intervention. Many issues relating to family law are essentially private in nature. However, the contemporary Filipino family is witness to the tension between the principle of family privacy, on one hand, and the protection of the varied interests of the individuals that comprise the family and

⁸⁸ Rep. Act No. 7610 (1992), sec. 27.

⁸⁹ DSWD Rules & Reg. on the Reporting and Investigation of Child Abuse Cases, sec. 3. (1993).

⁹⁰ DSWD Rules & Reg. on the Reporting and Investigation of Child Abuse Cases, sec. 4 (1993).

⁹¹ DSWD Rules & Reg. on the Reporting and Investigation of Child Abuse Cases, sec. 5 (1993).

⁹² FAMILY CODE, Pres. Decree No. 603 (1975), Rep. Act No. 7610 (1992).

⁹³ *Medina v. Makabili, supra*; *Luna v. IAC, supra*.

the state's interest in promoting marriage and family as institutions, on the other hand.⁹⁴

Compared to victims of assaults by strangers outside of the home, family violence renders the victims more vulnerable to future violence since they live with the perpetrators of the crime. It should be realized that "where maintaining the integrity of the family and building on its primary objective, there is risk that the battered child may suffer further harm, or where prosecution is successfully initiated, there is the possibility of reprisal."⁹⁵

R.A. 7610 likewise sets forth the penalties of *reclusion temporal* to *reclusion perpetua* for child prostitution, child trafficking, and the hiring, employment, and coercion of children to perform in obscene exhibitions and indecent shows and materials. In addition, it enumerates the sanctions for establishments and enterprises which promote or conduct these unlawful activities.⁹⁶

Parental authority of parents or lawful guardians found to have abused their children shall be suspended while those who are guilty of sexual abuse shall be permanently deprived of their authority,⁹⁷ which shall be transferred to the child's next of kin, the DSWD, or a duly accredited children's home, as the Court deems fit.⁹⁸ In addition, the appropriate criminal charges shall be filed against the abuser.

Complementing these laws are pending legislation in both chambers of Congress. House Bill 6101,⁹⁹ penalizing pedophilia and other sexual abuses and child trafficking committed overseas, gives extra territoriality jurisdiction over such offenses to Philippine courts.

⁹⁴ E. Aguilung-Pangalangan. *The Family Under Philippine Law*, in THE FILIPINO FAMILY: A SPECTRUM OF VIEWS AND ISSUES (1995).

⁹⁵ L. Ohlin and M. Tonry, *Family violence in Perspective*, in FAMILY VIOLENCE (1989).

⁹⁶ Rep. Act No. 7610 (1992), art. 4, 5, 6, and 7.

⁹⁷ DSWD Rules & Reg. on the Reporting and Investigation of Child Abuse Cases, sec. 14 (1993).

⁹⁸ DSWD Rules & Reg. on the Reporting and Investigation of Child Abuse Cases, sec. 14 (1993). See also Pres. Decree No. 603 (1975), art. 142-167, for the procedure for the involuntary commitment of a child who is abandoned or neglected.

⁹⁹ H. No. 6101, 10th Cong., 1st Sess. (1996). Filed by Rep. Temestocles Dejon, Jr. on February 5, 1996.

House Bill 6549,¹⁰⁰ amending R.A. 7610, divests abusive parents of authority over their children and transfers the same to their relatives or the Department of Social Welfare and Development while Senate Bill 1204¹⁰¹ imposes the death penalty for child prostitution and trafficking.

An area which has, for a long time, been overlooked by the government is the protection of streetchildren from abuse and exploitation. There is no law which specifically defines who are considered streetchildren nor there are any successful state-instituted programs that target them as a group since they are oftentimes clustered with the abused and neglected as well as working children.

Administration of Juvenile Justice

Article 40 of the Convention affirms the right of a child in conflict with the law to fair treatment and to the basic guarantees. A study conducted by the Department of Justice recommends the establishment of regional rehabilitation centers for youthful offenders.¹⁰² The same study points to the fact that youth offenders are exposed to the ruinous culture of violence which permeates penal institutions thereby stunting their growth and reintegration in society. For this reason, it proposes that rehabilitation centers be created whereby such unfriendly environment is suppressed and the children deposed to such environment be given more opportunity to become responsible and productive citizens.

P.D. 603 defines a youthful offender as a child who is over nine years of age but under 18 years of age at the time of the commission of the offense. It further states that a child, nine years of age or under, shall be exempt from criminal liability and shall instead be committed to the care of his parents or nearest relative. The same shall be done for a child over nine and under 15 at the time of the commission of the offense unless he acted with discernment. Articles 190 to 201 of this

¹⁰⁰ H. No. 6549, 10th Cong., 1st Sess. (1996). Filed by Rep. Reynaldo Calalay on March 13, 1996.

¹⁰¹ S. No. 1204, 10th Cong., 1st Sess. (1995). Filed by Sen. Ernesto Herrera on September 21, 1995.

¹⁰² E. Mallonga, *RA 7610: A Landmark Legislation in Child Protection* (1996) (unpublished manuscript).

law enumerate the rights of children arrested and the procedural requirements to ensure their rights in the course of the investigation, trial, and even after trial.

Congress also pursues the protection of children by establishing assistance centers in cases of conflict or crisis at home. These centers would also be able to monitor the activities of the children and could pave the way to discovering their needs and the programs which the government and society could provide for their protection and development. Lastly, the legislature is deliberating on measures that would further protect the child in the present justice system. Senate Bill 974¹⁰³ calls for the creation of an office called the *Tanodbata* to concentrate mainly on cases of child abuse, exploitation, and discrimination. On the other hand, Senate Bill 198¹⁰⁴ seeks to bring back the original law under Art. 192 of P.D. 603 which provides for the automatic suspension of sentence of a youthful offender. This was amended by P.D. 1179¹⁰⁵ which states that suspension of sentence shall be made only upon application of the youthful offender. The old law which provided for automatic suspension was more consistent with the objective of P.D. 603 to provide every child the right to be brought up in an atmosphere of morality for the strengthening of his character.

In *People v. Galit*,¹⁰⁶ the Supreme Court held that the recommendation alone by the DSWD for discharge is not sufficient and it is the trial court, before whom the recommendation is subject to judicial review, which decides whether or not to discharge the youthful offender. First of all, non-entitlement to suspension under Art. 192 is for those convicted of offenses punishable by death or life imprisonment. In this case, the Court included conviction for *reclusion perpetua*, thereby betraying a confusion between *reclusion perpetua* and life imprisonment. Second, the inclusion of youthful offenders under those not entitled to suspension assumes prematurely that they are already incorrigible offenders. Moreover, Senate Bill 198 also inquires into the

¹⁰³ S. No. 974, 10th Cong., 1st Sess. (1995). Filed by Sen. Francisco Tatad on July 28, 1995.

¹⁰⁴ S. No. 198, 10th Cong., 1st Sess. (1995). Filed by Senators Sotto, Romulo, and Maceda on June 30, 1995.

¹⁰⁵ Pres. Decree No. 1179 (1977).

¹⁰⁶ G.R. No. 97432, March 1, 1994, 230 SCRA 487 (1994).

destruction of records of a youthful offender so as to give him a second chance with his life. Destroying the child's records, once he has gone through rehabilitation, would erase the existence of his past offenses as if he has never violated any law or committed any offense.

A significant law which was passed recently is R.A. 8369, otherwise known as the "Family Courts Act of 1997." The Act establishes Family Courts, granting them exclusive original jurisdiction over child and family cases, including criminal cases where an accused is below 18 years but not less than nine years old, or when a victim is a minor,¹⁰⁷ and cases of domestic violence against women and children.¹⁰⁸

Under Article 33 of the Convention, States Parties vow to take all measures to protect children from illicit use of narcotic drugs. In the Philippines, R.A. 6425 was enacted in 1972 to deter the use and trafficking of such substances and imposes the penalty of *reclusion perpetua* to death, as amended by R.A. 7659. However, Section 30 of R.A. 6425 states that if a drug dependent voluntarily submits himself for treatment and rehabilitation in a center, he shall not be criminally liable for violation of the Act. It likewise extends the same exemption to a minor who is committed for treatment upon a sworn petition by his parents or guardians filed with the Court of First Instance of the province or city where the minor resides. After the minor undergoes rehabilitation, his or her parents may file a sworn petition for his release with the court which ordered his commitment.

In addition, the Act provides that in case of compulsory submission of drug dependents for treatment, after arrest, the sentence of the minor for this first offense shall be suspended. Instead, the court may place him on probation under the supervision of the Board and under such conditions as the Court may deem appropriate for a period of six months to one year.

¹⁰⁷ Rep. Act No. 8043 (1997), sec. 5(a).

¹⁰⁸ Rep. Act No. 8043 (1997), sec. 5(k).

DEVELOPMENT

Development rights of the children and youth consist of the following components: freedom of thought, conscience and religion, access to appropriate information, education, and leisure, recreation, and cultural activities.

Freedom of Thought, Conscience and Religion

The freedom of thought, conscience, and religion is a fundamental human right found in Article 18 of the Universal Declaration on Human Rights, Article 1 of the Declaration of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and Article 18 of the International Covenant on Civil and Political Rights. It is again found in Article 14(1) of the Convention on the Rights of the Child to underscore that children are direct holders and beneficiaries of this right. Article 14(1) recognizes the rights and responsibilities of the parents vis-à-vis the evolving capacities of their child, a principle earlier enunciated in Article 5 of the Convention. The States Parties vow to respect the right of parents to provide direction to the child in the exercise of his or her right consistent with the child's changing needs and capabilities. From this, an inference is drawn that parental right over the child is not absolute and should decrease as the child grows and matures.

The right of the child to freedom of religion encompasses the right to have or not to have a religion and the right to practice this religious belief. It should be noted that the Convention recognizes the right of the child to choose his or her own religion. This may conflict with the right of parents to give direction to the child and, by tradition, bring up their child according to their religious beliefs and practices as part of their parental right and duty. Although this might be difficult to explain in the light of the child as a possessor of rights, it is certainly defensible by using the best interest of the child argument.

The Bill of Rights guarantee the free exercise of religion¹⁰⁹ and allow religious instruction in public elementary and high schools at the

¹⁰⁹ CONST., art. III, sec. 5.

option of the parents.¹¹⁰ On the other hand, in the Child and Youth Welfare Code, the state promises to “respect the rights of the Church in matters affecting the religious and moral upbringing of the child”¹¹¹ and imposes on parents the duty to “admonish their children to heed the teachings of their Church.”¹¹²

Access to Information

Article 17 of the Convention emphasizes the duty of states to ensure that children have access to information through the dissemination of books and through the mass media. This addresses the importance played by information, in general, and broadcasting and mass media, in particular. It accepts the reality that electronic media pervades our daily lives and through it a surfeit of images and messages are communicated to the public mind, especially to the impressionable minds of children. These ideas in turn shape their views, loyalties and attitudes toward themselves, their families, communities, and country. Studied in relation to Article 29, this provision recognizes mass media as a potent tool in educating our children not only in obtaining formal knowledge but also in learning respect for human rights and fundamental liberties as well as tolerance and understanding for people and cultures different from their own.

Article III, Section 7 of the Philippine Constitution recognizes the right of the people to information on matters of public concern while Section 4 guarantees the freedom of speech, of expression and of the press. These rights apply to all, including children, but are in no way absolute. They do not extend to matters that may be deemed obscene or “works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political and scientific value.”¹¹³

Likewise, Article 95 of the Child and Youth Welfare Code restricts materials injurious to the child’s well-being, such as

¹¹⁰ CONST., art. XIV, sec. 3(3).

¹¹¹ Pres. Decree No. 603 (1975), art. 79.

¹¹² Pres. Decree No. 603 (1975), art. 83.

¹¹³ *Miller v. California*, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973).

unwholesome entertainment and advertisements. In 1974, the Movie and Television Review and Classification Board was created to regulate entertainment by approving or disapproving and deleting objectionable portions of movies, television programs, and related advertisements. A new law was also passed by Congress in 1997 known as the "Children's Television Act."¹¹⁴ The law was made in recognition of "the vital role of the youth in nation-building" and the need to "protect children's interests by providing television programs that reflect needs, concerns, and interests without exploiting them."¹¹⁵ It established a National Council for Children's Television¹¹⁶ which is tasked with the formulation of plans and policies for government and private sector action towards the development of high quality and locally-produced children's programs;¹¹⁷ monitor, review, and classify programs and advertisements aired during child-viewing hours;¹¹⁸ promote media education within the formal school system;¹¹⁹ and act on complaints committed in violation of the Act.¹²⁰ A National Endowment Fund for Children's Television, with an initial funding of P30,000.00, was also established in order to promote high standards of indigenous program development that "contribute to Filipino children's awareness and appreciation for their cultural identity, national heritage, and social issues that will, in turn, help them grow to be productive and nationalistic citizens."¹²¹ It should be noted, however, that the Act fails to specify how the council and its powers are related to that of the MTRCB.

The Right to Education

Under Article 28 of the Convention, States Parties are required to adopt measures to ensure the implementation of the child's right to education. Moreover, on the basis of equal opportunity, primary education should be compulsory and available free to all, and the

¹¹⁴ Rep. Act No. 8370 (1997), sec. 7(a), (c), (f) and (i).

¹¹⁵ Rep. Act No. 8370 (1997), sec. 2.

¹¹⁶ Rep. Act No. 8370 (1997), sec. 4.

¹¹⁷ Rep. Act No. 8370 (1997), sec. 7(a).

¹¹⁸ Rep. Act No. 8370 (1997), sec. 7(c).

¹¹⁹ Rep. Act No. 8370 (1997), sec. 7(f).

¹²⁰ Rep. Act No. 8370 (1997), sec. 7(i).

¹²¹ Rep. Act No. 8370 (1997), sec. 12.

development of different forms of secondary education should be accessible to all on the basis of capacity. States Parties further undertake to make educational and vocational information available to all children and to take measures to encourage regular school attendance.

There is an abundance of existing laws and proposed bills on this subject. Notable among the proposed bills are Senate Bills 200,¹²² 513,¹²³ 885,¹²⁴ and 898,¹²⁵ all of which provide government assistance to youths engaged in agriculture and thus may be consolidated. All four (4) bills are basically similar in content, except that Senate Bill 885 includes the National Youth Commission and the Department of Agriculture as the lead agencies for the project. The other bills have the Department of Agriculture alone as the lead agency. Other than this, the bills differ only in the amount of funding, Board composition, and age requirement for coverage. The bills were enacted in compliance with Article II, Section 13 of the Philippine Constitution which encourages the participation of the youth in nation-building. The bills should be given priority because they fill a glaring gap in our laws on education, *i.e.* the limitation of government assistance to students of vocational or technical schools. It is suggested, however, that government assistance should not be limited to students of formal and vocational schools but should likewise be extended to the youth who are in agrarian reform land grants and other related projects.

House Bill 4886¹²⁶ and Senate Bill 1247¹²⁷ are also variations on the same theme: the establishment of an integrated Philippine Youth Exchange Program for regional youth leaders. The policy objective involved here is the fostering of unity, friendship, and brotherhood among the Filipino youth, inculcation in the youth of patriotism and

¹²² S. No. 200, 10th Cong., 1st Sess. (1995). Filed by Senators Sotto, Romulo, Maceda and Osmena III on June 30, 1995.

¹²³ S. No. 513, 10th Cong., 1st Sess. (1995). Filed by Sen. Alvarez on June 30, 1995.

¹²⁴ S. No. 885, 10th Cong., 1st Sess. (1995). Filed by Sen. Webb on July 19, 1995.

¹²⁵ S. No. 898, 10th Cong., 1st Sess. (1995). Filed by Sen. Blas Ople on July 21, 1995.

¹²⁶ H. No. 4886, 10th Cong., 1st Sess. (1995). Filed by Rep. Edgar Avila on November 8, 1995.

¹²⁷ S. No. 1247, 10th Cong., 1st Sess. (1995). Filed by Sen. Gregorio Honasan on October 23, 1995.

nationalism, and prioritization of the youth's advancement in education, arts, culture, and environmental causes. This is actually patterned after the Ship for Southeast Asia Youth Exchange Program. The proposed program must however also include science and technology concerns.

The Constitution indubitably identifies in whose hands lay the responsibility for the education of the youth. Art. XIV provides that "The State shall establish and maintain a system of free public education without limiting the *natural right of parents to rear children*." (underscoring supplied.) The same provision guarantees the right of all citizens to quality education and mandates that education be made accessible to all by requiring elementary education for all children of school age. In keeping with this duty, Senate Bill 1200¹²⁸ proposes to increase the penalty for violations of the obligation of the parents to ensure that their children, at least, attain an elementary education. The bill penalizes parents or guardians who refuse, without valid and justifiable grounds, to send their children or wards to at least elementary school.

The primary goal of the bill is to ensure that every Filipino child of school age will acquire basic education as provided for in the Constitution. Both constitutional and statute law emphasize the natural duty and rights of parents to care for and raise their children. Our laws recognize the parents' claim to authority over their own household and in the rearing of their children according to their own beliefs, principles, and values. A question posed is whether or not bills or laws of this genre, imposing compulsory education and penalizing parents for non-compliance, unduly encroach on the doctrine of family privacy. American jurisprudence justifies the state's intrusion into the solemn and constitutional rights of parents by contemplating that "against these sacred private interests, basic in a democracy, stand the interest of society to protect the welfare of children, and the state's assertion of authority to that end...."¹²⁹

¹²⁸ S. No. 1200, 10th Cong., 1st Sess. (1995). Filed by Sen. Ople, Angara, Macapagal, Herrera and Fernan on September 18, 1995.

¹²⁹ *Prince v. Massachusetts*, 321 U.S. 158. (1944), 64 S. ct. 438.

While approval of the bill is recommended, three things must be pointed out. First, under the Family Code, parents do not have a duty to send their children to school, but only to provide them with "good and wholesome educational materials, supervise their activities, recreation and association with others...and prevent them from acquiring habits detrimental to their...studies...."¹³⁰ Second, the penalty of "community service" for the parent/guardian-violator is vague. Lastly, the bill only requires that a child should obtain an elementary education. Considering the state's recognition of the child as "one of the most important assets of the nation,"¹³¹ the reality that one's employment opportunities are defined by one's education and the fact that free secondary education is already provided for, the question of raising compulsory educational requirement to the secondary level remains.

One aim of education is for the youth to eventually be rewarded with employment opportunities. Nevertheless, there are those who have finished their courses but who cannot practice their respective professions because of a mandatory age requirement (21 years old) set by law. This is addressed by Senate Bill 622,¹³² in consolidation with Senate Bill 790,¹³³ which would allow persons who have successfully passed any governmental licensure examinations but who are below twenty-one (21) years of age to take their oath and to practice their profession. This bill is of special concern to students of nursing, where the failure to practice their profession due to the mandatory age requirement, is a contributory factor to their migration to other countries for employment.

In spite of the torrent of bills that highlight the significance of education, the recent Supreme Court decision of *Isabelo, Jr. v. Perpetual Help College of Rizal*¹³⁴ holds that admission to an institution of higher learning is a mere privilege, rather than a right on the part of

¹³⁰ FAMILY CODE, Art. 220(5).

¹³¹ Pres. Decree No. 603 (1975), art. 1.

¹³² S. No. 622, 10th Cong., 1st Sess. (1995). Filed by Sen. Orlando Mercado on July 3, 1995.

¹³³ S. No. 790, 10th Cong., 1st Sess. (1995). Filed by Sen. Orlando Mercado on July 6, 1995.

¹³⁴ G.R. No. 103142, November 8, 1993, 227 SCRA 591 (1993).

the student. In *Tan v. Court of Appeals*,¹³⁵ the court tackled the issue of the student's right to enroll in the school of her choice. It was held that even private schools are subject to reasonable regulation by the state since it is imbued with public interest. On the other hand, the court reaffirmed that private schools have the right to establish their own rules and regulations for the admission, discipline, and promotion of its students, and in the event of a confrontation with the parents over these rules, the school may request the affected children to enroll elsewhere to protect the welfare of the rest of the studentry, teachers, and management.

Right to Leisure, Recreation, and Cultural Activities

Article 31 of the Convention acknowledges the right of the child to rest and leisure and compels States Parties to ensure that the child participates fully in cultural and artistic life. The right to recreation should be taken hand in hand with the child's right to education. The child's full development can be achieved only when there is a balance between the two. Hence, in play and in his studies, the child's activities should be appropriate to his stage of development and capabilities. Likewise, the state should provide these opportunities to all children including those with disabilities, children of minorities, and refugee children.

Our legislators have focused on sports as the panacea for keeping the youth away from drugs and other vices. This is commendable, yet legislative efforts have been confined to the construction of sports complexes and playgrounds in various barangays. Of the eighteen (18) bills proposed under this area, eleven (11) are for the creation of sports complexes, one is for the creation of a playground, and another one for the creation of a youth center. These are not enough. The presence of such complexes does not guarantee a community of youth free from drugs and other vices. Such infrastructure should be coupled with specific programs addressing these particular vices, otherwise, they run the risk of being reduced to useless, significant mammoths. These programs include the institutionalization of the Palarong Pambansa, which is proposed by

¹³⁵ G.R. No. 97238, July 15, 1991, 199 SCRA 212 (1991).

House Bill 3518,¹³⁶ and the creation of the Philippine Sports Academy, as proposed by House Bill 5347,¹³⁷ or the Philippine College of Sports Development under House Bill 1481.¹³⁸ Programs which give sports a direction are meritorious since sports should not be seen as a mere instrument in the fight against drugs and other vices but should be regarded as an end in itself. The training of Philippine children and youth for excellence in sports, utilizing not just brawn but science as well, is a goal which should also be sought by legislation.

In contrast, only Senate Bill 1321¹³⁹ centers on the promotion of youth art and cultural development. The bill also fails to provide for the Digerati--the digital arts and media. Considering the pervasiveness of such technology today, this conspicuous omission is another illustration of our law's failure to keep abreast with technological advances. The expansion of the Internet, which has spawned a whole new category of arts, must be given attention and encouraged. Another defect of the bill is its all too-eager focus on awards. Provisions on how to jump-start the art and cultural scene, through seminars, training, and additional funding, would have improved the bill.

In fine, what can be gathered from the study of this area is the lack of focus and of a national plan in mind. While the bills and laws are well-meaning, such as those on sports complexes, they all suffer from a lack of direction. With each legislator following his or her own agenda, the numerous proposed bills are not properly coordinated with one another. It is not uncommon to find two bills covering the same topic and similar in both the number and wording of provisions, and having explanatory notes proceeding from divergent constitutional or family law provisions. As such, a National Legislative Program for the Youth must be established to serve as a guide for legislators in the

¹³⁶ H. No. 3518, 10th Cong., 1st Sess. (1995). Filed by Rep. Narciso Monfort on September 15, 1995.

¹³⁷ H. No. 5347, 10th Cong., 1st Sess. (1995). Filed by Rep. John Henry Osmena on November 28, 1995.

¹³⁸ H. No. 1481, 10th Cong., 1st Sess. (1995). Filed by Rep. Hernani Braganza on July 31, 1995.

¹³⁹ S. No. 1321, 10th Cong., 1st Sess. (1995). Filed by Sen. Franklin Drilon on December 15, 1995.

drafting of their bills. Such will prevent the repetition of bills covering topics which have already been addressed by prior laws.

PARTICIPATION

As the Convention clearly contemplates the child as a possessor of rights, he or she plays an indispensable role in decision-making processes on matters affecting his or her life. The child's participation rights consist of his or her right to an opinion,¹⁴⁰ freedom of expression,¹⁴¹ and freedom of association.¹⁴²

Right to an Opinion

Pursuant to Article 12 of the Convention, States Parties have a duty to assure a child who is capable of forming his or her own views the right to express those views freely. This means that the child should be given all pertinent information, including the nature and consequences of the matter at hand, so that he or she can reach an informed decision. It is inferred from the provision that in case the child's intellectual and emotional development is not sufficient for him or her to reach an intelligent conclusion, his or her views should nevertheless be "given due weight in accordance with the age and maturity of the child" in all matters affecting him or her. These would include decisions on questions relating to his or her family life, school, and community. It should be stressed that this participatory right is not absolute and yields to the best interest standard contained in Article 3 of the Convention.

Article 188 of the Family Code requires the written consent of the person to be adopted if he or she is ten years of age or older. Likewise, in Articles 49 and 214, in cases of declaration of nullity or annulment of marriage or legal separation, the Court shall decide on the matter of the custody of the children by taking into account all relevant considerations, including their moral and material welfare and the choice made by children over seven years of age. In spite of these express rules, there are considerable concern about the role of the

¹⁴⁰ See CRC, art. 12.

¹⁴¹ See CRC, art. 13.

¹⁴² See CRC, art. 15.

child's preference. First, the parent chosen by the child may be the more permissive parent and not necessarily the "better" one. Second, it may put undue burden on the shoulders of the child to be asked to make a choice and reveal that choice to others, particularly his or her parents. There are also procedural questions of where and how to find out the child's preference--whether it should be ascertained by the judge in open court or in his chambers; the lawyer, in the presence of the parents or without them; or even by a psychologist. Lastly, should the child's maturity, instead of his or her chronological age, be a more relevant test in deciding when a child should be consulted?

Article 4 of P.D. 603 states that "whenever proper, parents shall allow the child to participate in the discussion of family affairs...." The phrase "whenever proper" should be interpreted as "when it is in the best interest of the child." The initial determination of whether a child should be told of and allowed to participate in the discussion of family problems, for instance, should be left to the parents who are presumed to carry out their parental responsibilities with the best interest of their children as the primary consideration. It should be mentioned that the Convention has been criticized for the absence of a precise definition of the "best interest standard." Nevertheless, this is better left as a general and broad principle subject to the practices and beliefs of disparate societies which are deeply rooted in the self-image of diverse cultures and appraised in the context of the other provisions of the Convention.

The second part of Article 12 of the Convention centers on the child's participation in any judicial and administrative proceeding affecting him or her. The child may intervene in various ways—"directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." Our Rules of Court allow all persons who can perceive and make known this participation to others to be witnesses in all court trials subject to certain exceptions, one of which is when the witness is "of such tender age and inferior capacity as to be incapable of receiving correct impressions of the facts respecting which they are examined..."¹⁴³ In many decisions, however, the Court has repeatedly reexamined this

¹⁴³ Rule 130, Sec. 18 and Rule 132, Sec. 5, Rules of Court as revised.

principle. In *People v. Magallanes*, the Court held that "the lone testimony of the victim in a prosecution of rape, if credible, is sufficient to sustain a verdict of conviction and the mere allegation that a witness is of tender age will not suffice to disqualify her from taking the witness stand."¹⁴⁴

The Court has also re-characterized the child's tender age as a gauge of his or her incapacity of receiving correct impressions. In *People v. Tanduyan*,¹⁴⁵ a 13-year-old witness testified that the accused stabbed his uncle seven times. The defense argued that such accuracy was incredible but the Court decided that children are likely to be more observant of incidents which take place within their view than older persons. In *People v. Abitona*,¹⁴⁶ the Court went on to say that "children make the best witnesses because of their power of observation and recall as well as their innocence." In both cases, it was stressed that as long as the child witness fully understands the nature and character of the oath, his or her narration of events should be given absolute acceptance.

The child's right to bring a suit directly was likewise recognized in *People v. Alib*¹⁴⁷ where it was held that although the complainant was only 15 years of age, it was not necessary for her parent or guardian to file the complaint on her behalf as she has the preferred right to initiate the complaint.

Freedom of Expression

The child's right to freedom of expression should be taken in tandem with the right to access to information and the right to an opinion. The right to freedom of expression includes the freedom to seek, receive, and impart information, a right guaranteed under Article 13 of the Convention and the Philippine Constitution.¹⁴⁸ It is preconditioned on the right of the child to hold an opinion based on the information he or she acquires.

¹⁴⁴ G.R. No. 89036, January 29, 1993, 218 SCRA 109, 115 (1993).

¹⁴⁵ G.R. No. 108784, September 13, 1994, 236 SCRA 433 (1994).

¹⁴⁶ G.R. Nos. 96943-45, January 20, 1995, 240 SCRA 335, 340 (1995).

¹⁴⁷ G.R. No. 100232, May 24, 1993.

¹⁴⁸ See CONST., art. III, sec. 4.

The exercise of this right does not effect an abdication by the parents of their right and duty to care for their children and should be read with Article 5 of the Convention which stresses the parents' duty to provide guidance and direction consistent with the child's evolving capacities. Section 2 of Article 13 itself furnished restrictions to the rights as may be provided by law and as necessary in respect of the rights of others and for the protection of the public or morals. Congress has taken cognizance of this fact and has tried to involve the youth in the different branches of government so as to prepare them for their future responsibilities to society. Senate Bill 677¹⁴⁹ includes the membership of the chairman of the Sangguniang Kabataan in different organizations. The passage of this bill into law would change the present status of the SK Chairman as one who is merely an *ex-officio* member of Sangguniang Barangay,¹⁵⁰ broaden his or her powers, and give the barangay youth more representation in their immediate decision-making body.

Congress has recommended the deeper involvement of the youth in environmental protection programs. The proposal is meritorious because it recognizes both the significance and necessity of environmental protection and the potential of the youth in nation-building. Senate Bill 635¹⁵¹ also proposes to declare January 15 of every year as National Youth Day to maintain the lessons, experience and aspirations of the World Youth Day celebration in Manila in 1995. These show government support for activities which encourage youth participation in issues of global and societal importance. Furthermore, Senate Bill 1085¹⁵² seeks to declare a National Children's Broadcasting Day which will enable the state to carry out the objectives of the Convention to enable the child to express his or her views and thoughts and to be able to actively and significantly participate in matters directly affecting his or her own life.

¹⁴⁹ S. No. 677, 10th Cong., 1st Sess. (1995). Filed by Sen. Freddie Webb on July 3, 1995.

¹⁵⁰ *Mercado v. Board of Election Supervisors of Ibaan, Batangas*, G.R. No. 109713, April 6, 1995, 243 SCRA 422 (1995).

¹⁵¹ S. No. 635, 10th Cong., 1st Sess. (1995). Filed by Sen. Blas Ople on July 3, 1995.

¹⁵² S. No. 1085, 10th Cong., 1st Sess. (1995). Filed by Senator Leticia Shahani on August 15, 1995.

Freedom of Association

States Parties to the Convention recognize the rights of the child to freedom of association and to peaceful assembly. These rights may not be restricted except if necessary in the interests of national security, public order, the protection of public health and morals, or the protection of the rights of others.¹⁵³ Freedom of association refers to the right to join or not to join associations while the right to peaceful assembly is related to the child's right to free expression. These freedoms have formed the basis for the establishment of trade union and other civic-minded organizations.

These fundamental freedoms are protected in our Constitution¹⁵⁴ and in statute laws. Several provisions of the Child and Youth Welfare Code make it a duty of parents to encourage their child to associate with children of their own age with whom they can develop common interests¹⁵⁵ and to give their child "every opportunity to form or join social, cultural, educational, or recreational or religious organizations or movements and other useful community activities."¹⁵⁶ The Code also has a separate section on the duties of the community in relation to the child and provides for creation of youth associations and student organizations.¹⁵⁷ It also affirms the youth's right to peaceful demonstrations¹⁵⁸ and the right of working children to join the collective bargaining union of their own choosing.¹⁵⁹

At present, a vital law on the participation of children in nation-building is E.O. 139,¹⁶⁰ otherwise known as "Kabataan 2000," which is an expansion of the President's Summer Youth in Action Program. It provides for training and employment opportunities for the youth—both in-school and out-of school—in government agencies with the aid of

¹⁵³ CRC, art. 15.

¹⁵⁴ CONST., art. III, sec. 4.

¹⁵⁵ Pres. Decree No. 603 (1975), art. 52.

¹⁵⁶ Pres. Decree No. 603 (1975), art. 53.

¹⁵⁷ Pres. Decree No. 603 (1975), art. 99, 100, 101.

¹⁵⁸ Pres. Decree No. 603 (1975), art. 94.

¹⁵⁹ Pres. Decree No. 603 (1975), art. 111.

¹⁶⁰ Exec. Order No. 139 (1994), 90 O.G. No. 1 p. 6 (January 3, 1994).

private corporations. Interestingly enough, this is an executive program. No legislative action on the matter, in the form of either existing laws or proposed bills, exists.

CONCLUSION

Several laws have been passed consistent with the Convention's affirmation that, to reach their full potential, children should grow up in a happy and loving family environment. The study notes that the present bills on children filed in Congress are generally laudable. They aspire to provide the maximum safeguards to the children and thus secure a brighter future for them. Bills such as those concerning the protection of the integrity of the family, traditional or otherwise, the extension of child health and care to all children regardless of financial capability, and the protection of child laborers against exploitation or abuse, must be advocated before both chambers of Congress in order to avoid the subordination of such bills to proposed legislation concerning politics and economics. In addition, advocacy must also be carried out in areas where there is hardly any legislation such as in social security and the protection of refugee children. There is an urgency in enacting legislative measures to assist streetchildren and mobilize both government and the public to recognize and uphold the fundamental right of streetchildren to a wholesome family life and to equal opportunities.

This study also recommends that steps be undertaken to improve our juvenile justice system. One such improvement is the implementation of a continuous trial system to shorten the period for the disposition of cases involving youth offenders. This should be complemented with the amendment of the Rules of Court on the encroachment of the media or the public on the privacy of a youth offender during the investigation and trial of the case.

Lastly, state policies with regard to education and youth participation in nation-building should be actively pursued. The state should establish an educational system that is responsive to the capabilities and talents of the children and should guarantee that these talents are matched with opportunities. This should be done in consonance with the regulation of the mass media which play an

important role in shaping children's values and opinions. The state must also provide opportunities for the youth to participate in decision-making processes in government to make them effective partners in nation-building.

Existing legislation and proposed bills on children still leave much to be desired. While positive legislative steps have been taken with respect to the protection and development of children, many existing and proposed legislation lack either mechanisms for their proper implementation or a national guideline to coordinate them with other laws or bills. Parenthetically, attention must focus on the enactment of laws that will affect refugee children and children of minorities and indigenous populations. Laws that will address the issues of the standard of living and social security of all children are similarly wanting.

This study underscores the exigency of our continued commitment to safeguard the welfare of the children. However, in our eagerness to do right, we should not get lost in the frenzy of activities aimed at the full exercise of children's rights. It will do us well to remember that we should "give to them and receive from them...and let it be known among us that they are neither our projects or our possessions but messengers of light, illuminations of love."¹⁶¹ As adults, our responsibility is to pave the way to enable children to determine for themselves what is in their best interest. It is only within this framework that we can reconcile our role in making decisions we perceive to be in the best interest of the children and the realization that children are themselves holders of intrinsic human rights.

¹⁶¹ A Grateful Heart citing a poem by Daphne Rose Kigma.