



*Republika ng Pilipinas*

## **Komisyon ng Karapatang Pantao ng Pilipinas**

*(Commission on Human Rights of the Philippines)*

### **CHR SUPPORTS THE PASSAGE OF THE ANTI-CHILD PORNOGRAPHY LAW**

**An Advisory from the Commission on Human Rights**

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#### **CHR (IV)-A2009-002**

The Commission on Human Rights (CHR) accords high priority in the call for action against child pornography and therefore congratulates the legislators in crafting a law that affords special protection for children against the exploitative and horrific effects of child pornography.

The passage of the proposed anti-child pornography law is in clear compliance with Government's obligations as State Party to international human rights laws, namely, the UN Convention on the Rights of the Child (UNCRC) and the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography. Particularly for the latter Optional Protocol, the Philippine Senate ratified the same almost seven (7) years before on May 28, 2002. Thus, CHR is highly enthused that Congress continues to undertake steps to legislate the Optional Protocol into a domestic law. While international treaties duly ratified are deemed part of the law of the land, the wisdom of adopting these international instruments into national laws ensures the exploited child the facility to file a case.

It is a fact that the UN Committee on the Rights of the Child places particular emphasis on the need for legislation as a basis for protection against sexual exploitation. In this connection, the CHR hopes that Congress welcome the opinions and recommendations of these esteemed experts in the United Nations whose mandate was given because of their deep and holistic knowledge of child protection modalities and mechanisms. A number of these recommendations are infused in the present CHR Advisory.

The first consideration of legislators for an Anti-Child Pornography Law is to **declare illegal the possession of pornographic materials and the use of children in the deviant act of pornography**. Criminalization of these acts is necessary and one of the first hurdles for the drafters of the law is **how to define child pornography**. For instance, the identification of other criminal acts (i.e., use of cartoons or animated figures or cut-outs of children's faces imposed on pictures of adult bodies) and the applicability of the Electronic Evidence Act requires further study by this body as does the proposed law's effect on the basic right to

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privacy. Indeed, the CHR is concerned that the enforcement component of the Anti-Child Pornography Act will necessitate from key stakeholders not only the commitment to enforce it but the innovative and creative talents to contribute in the crafting of a law that will not infringe on the basic human rights of any person.

Two, in the treatment of children who may have been lured into these illegal and immoral activities, Congress is reminded that it is obligated to **handle and treat these children, not as criminals, but as victims**. This is in congruence with our obligation to provide the highest level of protection to our children as per our status as a State Party to the UNCRC.

Three, **special protection measures must be formulated in a holistic and consultative manner** such that the House will be guided by the voices and expertise of child advocates, from educators to law enforcers, to social workers, to officers of the judiciary, to NGO practitioners, to rehabilitation and reintegration experts.

Indeed, **the ideal law should encompass promotive, preventive and protective environments available to children and their families**.

The **response continuum should provide the victim and his/her family access to services** that can heal the wound of the exploitation.

The **mechanisms for redress of grievances should be rights-based, accessible, and available with all actors accountable and working in a transparent, participative manner**.

Four, let the **law enhance and institutionalize the role of child participation** to validate these protection mechanisms to be prescribed by the law.

Five, **allocate resources** that will strengthen not only government institutions that will capture, prosecute and bring to justice these criminals but ensure that these resources be funneled to schools, communities and families so that these important social venues of children are equipped to deal with the menace of child pornography.

Six, the **child perspective, meaning that ideals and aspirations of the UN CRC, should permeate all services** from monitoring and reporting of cases, to legal services, to counseling, rehabilitation and reintegration. For the law to have child perspective will require ample resources, and therefore political will, to support and sustain these services.

The CHR is hopeful that an integration of the ideals of the child perspective in the Anti-Child Pornography Law can trigger a snowball effect to encourage the Government to adopt a **more centralized and harmonized National Child Policy** which is a cross-sectoral policy area concerned with Government measures and

action that are designed to implement the UNCRC<sup>1</sup>. Indeed, a national strategy to implement the UNCRC will ensure that the intentions of the UNCRC will permeate all aspects of Government policy and all public actions that affect children and young people<sup>2</sup>.

Seven, the CHR agrees that parents are primarily responsible to their children and therefore criminal liability of parents need to be assessed and closely examined by the drafters of the proposed law. However, much support must be infused in order to ensure the continuing education of parents, the communities and school authorities. The CHR believes that this is perhaps one of the most important component in the preventive program of a National Child Policy.

Eight, to complement the aspired holistic treatment of the problem of child pornography, the ideal law should also **strengthen national, regional and international cooperation** to eradicate child pornography. The CHR, by virtue of its mandate under the Juvenile Justice and Welfare Act, as the institution that will ***ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights***, expresses its interest in being a permanent member of any institutional mechanism that will be created or amended because of the proposed anti-child pornography law. This recommendation is in pursuance of the desire to harmonize all existing child-friendly laws. CHR also occupies a unique position of being a conduit between government and the non-government institutions as well as national and international bodies.

Finally, CHR recommends for a PERMANENT mechanism to be appended with the Department of Social Welfare and Development (DSWD) that will oversee the implementation of the proposed law. The DSWD is the most appropriate agency to chair this inter-agency mechanism that should ideally be composed of government agencies and non-government institutions dealing with children-victims or at high risk for exploitation within the definition of child pornography. To support the expansive work of the inter-agency body, the CHR proposes that a permanent SECRETARIAT be institutionalized and that its functions be defined by the Anti-Child Pornography Law. The Secretariat is envisioned to coordinate the efforts of the institutional mechanism and shall serve as the repository of information necessary to implement the law.


In conclusion, the CHR is aware that existing factors such as access to the internet; the lucrative, cross-border sex tourism; and the prevalent prostitution industry of this country compounded by the social ills of poverty, moral depravity, poor education and lackluster governance make child pornography a very real problem. The first line of defense for any child is indubitably a healthy and robust legislative and institutional framework that is able to envelope the child with layers of protection in accordance always with the principle of promoting the best

<sup>1</sup> Factsheet: Strategy to Implement the UN Convention on the Rights of the Child, Ministry of Health and Social Affairs of Sweden, March 2004.


<sup>2</sup> Id.

interests of the child. Therefore, the immediate passage of the proposed Anti-Child Pornography Law is urged to be a priority in the legislative agenda of the Government.

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