

# **ACCESS TO JUSTICE FOR CHILDREN: PHILIPPINES**

*This report was produced by White & Case LLP in April 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The CRC was ratified by the Philippines on 21 August 1990. The CRC is not incorporated directly into national law in the Philippines; rather, its rights and principles must be specifically implemented through national legislation to be directly enforceable.

<sup>1</sup> Nonetheless, the CRC can be cited as an instructive authority in national case law.<sup>2</sup>

### **B. Does the CRC take precedence over national law?**

The CRC does not take precedence over national law, although national law is interpreted where possible in a manner consistent with the CRC.<sup>3</sup>

### **C. Has the CRC been incorporated into national law?**

The CRC has not to date been directly incorporated into national law.<sup>4</sup> However, several principles from the CRC have been used as a standard for national laws. The principles of the CRC can be found not only in the Declaration of Policy, but also in the body of the laws itself. These principles are enshrined in many national laws focused on the promotion and protection of the rights of children, such as Republic Act No. 7610<sup>5</sup> (“Child Protection Act” or “Child Abuse Act”) and Republic Act No. 9262<sup>6</sup> (“Anti-Violence Against Women and their Children Act”), among others.<sup>7</sup>

### **D. Can the CRC be directly enforced in the courts?**

The CRC cannot be directly enforced in Philippine courts, but is referred to and guides the courts in the interpretation of domestic legislation.<sup>8</sup>

### **E. Are there examples of domestic courts using or applying the CRC or other relevant**

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<sup>1</sup> Child Rights International Network, ‘Philippines: national laws’, *available at*: <https://www.crin.org/en/library/publications/philippines-national-laws>.

<sup>2</sup> Ibid.

<sup>3</sup> *Agnes Gamboa-Hirsch v. Hon. Court of Appeals and Franklin Harvey Hirsch*, G.R. No. 174485, 11 July 2007

<sup>4</sup> CRIN, *supra* note 1.

<sup>5</sup> An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes [Child Protection Act of 1992], Republic Act No. 7610.

<sup>6</sup> An Act Defining Violence Against Women and Their Children Providing for Protective Measures for Victims, Prescribing Penalties Therefore and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262,

<sup>7</sup> Comments provided by the Child Rights desk (Adhikain para sa Karapatang Pambata - AKAP) of the Ateneo Human Rights Center (AHRC), Philippines, August 2015.

<sup>8</sup> CRIN, *supra* note 1.

international instruments?

The CRC has been cited as an instructive authority in national case law.<sup>9</sup> Examples include: (1) *Pharm. and Health Care Assoc. of the Philippines v. Health Sec'y Francisco T. Duque III*, G.R. No. 173034 (October 9, 2007); (2) *Malto v. People of the Philippines*, G.R. No. 164733 (September 21, 2007); (3) *Concepcion v. Court of Appeals*, G.R. No. 123450 (August 31, 2005); and (4) *Olivarez v. Court of Appeals*, G.R. No. 163866 (July 29, 2005).

## **II. What is the legal status of the child?**

### **A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?**

Under the Civil Procedure Rules and the Criminal Procedure Rules, as well as pursuant to the Child Protection Act, children and their representatives are entitled to bring cases in Philippine courts to challenge violations of their rights.<sup>10</sup>

### **B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?**

The Civil Procedure Rules and the Child Protection Act of 1992 both set forth guidelines for the participation of children in civil court proceedings. Section 5 of the Civil Procedure Rules provides that a child may sue with the assistance of his/her father, mother, guardian, or if he/she has none, a “guardian *ad litem*.”<sup>11</sup> A guardian *ad litem* is defined as “a person appointed by the court where the case is pending for a child who is a victim of, accused of, or a witness to a crime to protect the best interests of the said child.”<sup>12</sup>

Similarly, section 27 of the Child Protection Act of 1992 provides that complaints alleging unlawful acts committed against children may be filed by:

- (a) The offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relatives within the third degree of consanguinity;
- (d) Officers, social workers or representatives of a licensed child-caring institution;
- (e) Officers or social workers of the Department of Social Welfare and Development;
- (f) The Barangay chairman; or
- (g) At least three concerned responsible citizens where the violation occurred.<sup>13</sup>

The Criminal Procedure Rules also allow children or their representatives to initiate certain court proceedings. Section 5 of the Criminal Procedure Rules provides that all criminal actions either commenced by complaint or by information shall be prosecuted

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<sup>9</sup> See Written Replies to the list of issues to be taken up in connection with the consideration of the third and fourth periodic reports of the Philippines (CRC/C/PHL/3-4), Committee on the Rights of the Child, Fifty-second Session, 14 September – 02 October 2009.

<sup>10</sup> See 1997 RULES OF CIVIL PROCEDURE; 2000 REVISED RULES OF CRIMINAL PROCEDURE, Child Protection Act of 1992.

<sup>11</sup> 1997 RULES OF CIVIL PROCEDURE, rule 3, §5.

<sup>12</sup> RULE ON EXAMINATION OF A CHILD WITNESS, A.M. No. 004-07-SC, 21 November 2000.

<sup>13</sup> See Child Protection Act of 1992, at §27.

by a public prosecutor, or a private prosecutor if authorised by the Chief of the Prosecution Office or the Regional State Prosecutor subject to the approval of the court.

<sup>14</sup> Notably, however, an offended party, even if a minor, has the right to initiate the prosecution of the offences of seduction, abduction and acts of lasciviousness.<sup>15</sup> These actions may be initiated by the child independently unless incompetent or incapable of doing so, in which case, the child's parents, grandparents, or guardian may file the necessary complaint.<sup>16</sup>

C. In the case of infants and young children, how would cases typically be brought?

Cases of such kind would typically be brought by the child's parent or guardian, or another complainant, as described in part II.B above.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Children are entitled to receive legal aid from the Philippines Public Attorney's Office (PAO) in certain types of cases if the case passes an initial merit determination and the child qualifies for financial assistance.

Republic Act No. 9406 provides that the PAO shall independently discharge its mandate to render, free of charge, legal representation, assistance and counselling to indigent persons in criminal, civil, labour, administrative and other quasi-judicial cases.<sup>17</sup> According to their website, the PAO has certain standards that a case/person must meet before qualifying for free legal assistance, including an initial merit determination and an indigency test based on monthly net income.<sup>18</sup>

The PAO will also take certain cases on a provisional basis. This includes those brought under the Anti-Violence Against Women and their Children Act, where immediate preparation and filing of pleadings is necessary to avoid adverse effects to the victims. It also includes those brought under the Juvenile Justice Act,<sup>19</sup> where there is an immediate need of counsel.<sup>20</sup>

Certain groups are also qualified to provide legal assistance pursuant to established Memorandum of Agreements and Department of Justice Directives. This includes the Department of Social Welfare and Development in filing petitions for a declaration that a child is abandoned or neglected.<sup>21</sup>

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<sup>14</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 110 §5.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> An Act Reorganizing the Public Attorney's Office (PAO), amending for the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known as the "Administrative Code of 1987", as amended, granting Special Allowance to Officials and Lawyers, and Providing Funds Therefor, Republic Act No. 9406, §2.

<sup>18</sup> Public Attorney's Office, 'Persons qualified for legal assistance', *available at*: <http://www.pao.gov.ph/28/Persons-Qualified-for-Legal-Assistance>.

<sup>19</sup> An Act Establishing A Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefore and for Other Purposes, [Juvenile Justice and Welfare Act], Republic Act No. 9344, 28 April 2006.

<sup>20</sup> Public Attorney's Office, *supra* note 18.

<sup>21</sup> Ibid.

In addition to the foregoing, the Child and Youth Welfare Act of 1974 provides, as a general principle, that every child has the right to the care, assistance, and protection of the State, particularly when his/her parents or guardians fail or are unable to provide for his/her fundamental needs for growth, development, and improvement.<sup>22</sup>

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Neither the Civil Procedure Rules nor the Rules of Criminal Procedure provides for any restrictions or parental approval requirements for a minor or his/her guardian *ad litem* to bring cases or initiate prosecutions.

In fact, children are also presumed to be competent witnesses and it is up to the opposing party to prove that they are not.<sup>23</sup>

### **III. How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Children and their representatives may initiate legal proceedings in civil courts to challenge violations of their rights under domestic law, following the Rules of Civil Procedure. Civil actions typically request compensation in the form of money damages, but may also seek an injunction ordering a party to carry out or cease a particular action.<sup>24</sup>

If the violation amounts to a crime, the Rules of Criminal Procedure provide that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor, or a private prosecutor if authorised by the Chief of the Prosecution Office or the Regional State Prosecutor subject to the approval of the court.<sup>25</sup>

An administrative appeal against a decision of an executive government department may be brought to the head of an executive department by the party adversely affected.<sup>26</sup> The adversely affected party may also file a petition for judicial review.<sup>27</sup>

In cases involving complaints about constitutional violations in the Philippines, a petition for a writ of Amparo or a writ of Habeas Corpus may be filed. The writ of Habeas Corpus extends to "all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is

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<sup>22</sup> Child and Youth Welfare Act, [Child and Youth Welfare Act of 1974], Presidential Decree No. 603, 10 December 1974, Art. 3, par. 10.

<sup>23</sup> RULE ON EXAMINATION OF CHILD WITNESS, §6.

<sup>24</sup> See, e.g., 1997 RULES OF CIVIL PROCEDURE, Rule 38, § 5.

<sup>25</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, § 5.

<sup>26</sup> Administrative Code of 1987 [Administrative Code], Executive Order No. 292, Book VII, sections 19 - 20.

<sup>27</sup> Ibid. at § 25.

withheld from the person entitled thereto.”<sup>28</sup>

Amparo is defined as “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.”<sup>29</sup> The petition may be filed directly by any person whose aforementioned rights have been violated, or by any person or entity related to the aggrieved party, which can be as follows: any member of the immediate family of the aggrieved party; any ascendant, descendant or collateral relative of the aggrieved party, in default of those mentioned in the preceding paragraph; or any concerned citizen, organisation, association or institution,<sup>30</sup> if there is no known member of the immediate family or relative of the aggrieved party.

Children can also make complaints about violations of their rights to the Child Rights Center within the Commission on Human Rights of the Philippines (CHRP). The Child Rights Center, which functions as an Ombudsman for Children, investigates human rights violations against children, initiates legal action, and monitors and reports on all violations of the CRC involving civil rights and freedoms, and special protection.<sup>31</sup> The CHRP has established some remedies for breaches of children’s rights, including legal aid services and financial assistance for education, psychosocial recovery and rehabilitation services to victims of abuse, armed conflict, and involuntary disappearances.<sup>32</sup>

**B. What powers would courts have to review these violations, and what remedies could they offer?**

Civil courts have the power either to award money damages or to issue an injunction. In civil proceedings, it is possible to apply to the court for a preliminary injunction pending the proceedings to ensure that no further action is taken on the matter in dispute as the case progresses.<sup>33</sup> In judicial review proceedings, courts may reverse the decision made by an executive agency.<sup>34</sup> In relation to Amparo petitions, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate.<sup>35</sup>

**C. Would such a challenge have to directly involve one or more individual child victims,**

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<sup>28</sup> 1997 RULES OF COURT, Rule 102, § 1.

<sup>29</sup> RULE ON THE WRIT OF AMPARO, A.M. No. 07-9-12-SC, 25 September 2007, §1. The concept of the writ is of Mexican origin, where it serves as the legal remedy for the protection of any individual rights guaranteed by the Constitution. The amparo remedy of the Philippines, on the other hand, is of a relatively limited purpose. It only deals with the violation or threatened violation of the right to life, liberty and security of the people which includes the problem of extrajudicial killings and enforced disappearances.

<sup>30</sup> *Ibid.* § 2.

<sup>31</sup> Commission on Human Rights of the Philippines, ‘Special programs’, available at: [http://www.chr.gov.ph/MAIN%20PAGES/services/special\\_progs1.htm](http://www.chr.gov.ph/MAIN%20PAGES/services/special_progs1.htm).

<sup>32</sup> UN Committee on the Rights of the Child (CRC), *Written replies by the Government of the Philippines to the list of issues (CRC/C/PHL/Q/3-4) prepared by the Committee on the Rights of the Child in connection with the consideration of the 3rd and 4th periodic reports of the Philippines (CRC/C/PHL/3-4)*, 3 September 2009, CRC/C/PHL/Q/3-4/Add.1, available at: <http://www.refworld.org/docid/4ab09d370.html> [accessed 19 August 2015].

<sup>33</sup> See, e.g. 1997 RULES OF CIVIL PROCEDURE, Rule 38, § 5.

<sup>34</sup> Administrative Code, *supra* note 26 at Book VII, § 25.

<sup>35</sup> RULE ON THE WRIT OF AMPARO, *supra* note 29 at § 18.

or is it possible to challenge a law or action without naming a specific victim?

The Administrative Code provides that any party aggrieved or adversely affected by an agency decision may seek judicial review.<sup>36</sup>

In order to seek judicial review, the victim must be named. In the case of children, however, their identities are protected and in the official court records that the public has access to, the names of children are changed into aliases such as “AAA.”<sup>37</sup>

Bringing other legal proceedings typically requires the identification of a specific victim, although hearings may be held in private where necessary to protect the interests of any child. Courts may also give other orders for the protection of parties and deponents.<sup>38</sup> Children are also allowed to testify in the judge’s/justice’s chambers, through live-link television testimony, and the judge/justice may order the public to momentarily leave the courtroom when they child witness (whether victim or accused) is testifying or feeling uncomfortable.<sup>39</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

The Civil Procedure Rules allow for group litigation.<sup>40</sup> When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all.<sup>41</sup> Any party in interest shall have the right to intervene in the suit to protect his/her individual interest.<sup>42</sup>

In the landmark case of *Oposa v. Factoran*,<sup>43</sup> a group of minors duly represented and joined by their parents filed a petition to order the Department of Environment and Natural Resources to cancel all existing Timber and License Agreements (TLA) and to cease and desist from further processing applications for new TLAs pursuant to the right of the people to a balanced and healthy ecology. The minors assert that they represent their generation as well as the generation yet unborn. On the issue of legal standing, the Supreme Court held that the minors can, for themselves and for the succeeding generations, file a class suit based on intergenerational responsibility.<sup>44</sup>

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Courts have recognised the standing of organisations and associations to file a case as a

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<sup>36</sup> Ibid.

<sup>37</sup> REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC, 24 November 2009, §11.

<sup>38</sup> 1997 RULES OF CIVIL PROCEDURE, rule 23, §26.

<sup>39</sup> RULE ON EXAMINATION OF A CHILD WITNESS, A.M. No. 004-07-SC, 21 November 2000, §25.

<sup>40</sup> 1997 RULES OF CIVIL PROCEDURE, rule 3, § 12.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993.

<sup>44</sup> Comments provided by the Child Rights desk (Adhikain para sa Karapatang Pambata - AKAP) of the Ateneo Human Rights Center (AHRC), Philippines, August 2015.

“real party-in-interest”. The court in *Executive Secretary v. Court of Appeals*<sup>45</sup> stated that “[a]n association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organisation has standing to assert the concerns of its constituents”.<sup>46</sup> This was reasserted in *Purok Bagong Silang Association, Inc. v. Yuipco*,<sup>47</sup> where the court ruled that an association has the legal personality to represent its members because the results of the case will affect their vital interests.<sup>48</sup> In the case of *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary and Ors*,<sup>49</sup> the Supreme Court found that the petitioner “should be considered as a real party-in-interest which stands to be benefited or injured by any judgment in the present action”.<sup>50</sup>

In civil litigation, a person who has a legal interest in the matter, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, intervene in the action.<sup>51</sup> The motion to intervene may be filed at any time before rendition of judgment by the trial court.<sup>52</sup>

An officer, social worker or representative of a licensed child-caring institution may file complaints in cases of unlawful acts committed against children under the Child Protection Act of 1992.<sup>53</sup>

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Civil cases may be filed in the first level courts and second level courts. First level courts include Metropolitan Trial Courts, the Municipal Trial Courts in Cities or Municipalities, and Municipal Circuit Trial Courts.<sup>54</sup> Second level courts are Regional Trial Courts in the 13 regions of the Philippines.<sup>55</sup> The Rules of Civil Procedure provide guidance on the required documents and Rule 141 of the Rules of Court provides details on required fees.<sup>56</sup>

The Family Courts Act of 1997 (R.A. 8369) mandates that every province and city, or in case the city is the capital of the province, the municipality with the highest population

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<sup>45</sup> *Executive Secretary v. Court of Appeals*, 429 SCRA 81, May 25, 2004.

<sup>46</sup> *Ibid.* 96-97.

<sup>47</sup> *Purok Bagong Silang v. Yuipco*, 489 SCRA 382, 4 May 2006.

<sup>48</sup> *Ibid.*, 396.

<sup>49</sup> *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary*, G.R. NO. 173034, 9 October 2007.

<sup>50</sup> *Ibid.*

<sup>51</sup> 1997 RULES OF CIVIL PROCEDURE, rule 19, § 1.

<sup>52</sup> *Ibid.* rule 19, § 2.

<sup>53</sup> Child Protection Act of 1992, § 27.

<sup>54</sup> Baker & McKenzie, ‘Dispute resolution around the world: Philippines’, available at: [http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw\\_philippines\\_2011.pdf](http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_philippines_2011.pdf).

<sup>55</sup> *Ibid.*

<sup>56</sup> RULES OF COURT, rule 141.

in the country designates one court as a Family Court. The Family Court hears specific cases related to relations of spouses and cases involving children. Cases involving petitions for guardianship, custody of children, habeas corpus in relation to custody of children, petitions for adoption and revocation of adoption, petitions for annulment, declaration of nullity and other cases relating to marital status and property relations of spouses, petitions for dissolution of conjugal partnership of gains, petitions for support and/or acknowledgement, summary judicial proceedings under the Family Code of the Philippines (E.O. 209), petitions for declaration of status of children as abandoned, dependent or neglected, petitions for voluntary or involuntary commitment of children, petitions for suspension, termination or restoration of parental authority, petitions for constitution of the family home, cases against minors under the Dangerous Drugs Act, all violations of the Child Protection Act of 1992, cases of domestic violence against women and children and criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) or where one or more of the victims is minor at the time of the commission of the offence are required to be heard in Family Courts.

Administrative decisions may be challenged first at the Court of Appeals.<sup>57</sup> The Administrative Code provides guidance on filing judicial reviews.<sup>58</sup>

Criminal cases where preliminary investigation by a proper officer is not required may be filed directly with the Municipal Trial Courts and Municipal Circuit Trial Courts (first level courts). The Rules of Criminal Procedure provides guidance on required documents and procedures.<sup>59</sup>

An Amparo petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.<sup>60</sup> A Habeas Corpus petition may be filed before the Supreme Court, the Court of Appeals or the Court of First Instance.<sup>61</sup>

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As described in part II.D, children are entitled to receive legal aid from the Philippines PAO in certain types of cases if the case passes an initial merit determination and the child qualifies for financial assistance.<sup>62</sup>

The courts of Philippines charge various filing and administrative legal fees.<sup>63</sup> Exemption from these fees is available to certain indigent litigants whose gross income

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<sup>57</sup> Administrative Code, Book VII, § 10 - 26.

<sup>58</sup> Ibid.

<sup>59</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 111, section 1.

<sup>60</sup> RULE ON THE WRIT OF AMPARO, section 2.

<sup>61</sup> RULES OF COURT, Rule 102.

<sup>62</sup> See Public Attorney's Office, *supra* note 18.

<sup>63</sup> RULES OF COURT, rule 141..



and that of their immediate family is below a certain level.<sup>64</sup> The rules do not provide specific exemption for children complainants or their representatives.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

It appears that many law firms in the Philippines are willing to provide legal services on a pro bono basis.<sup>65</sup> In 2009, a requirement was made that all practising lawyers provide a minimum of 60 hours of free legal aid services annually in all cases involving “marginalised and poor litigants”; continuation of the practice depends on being issued a certificate attesting to these pro bono service hours.<sup>66</sup> In addition, some attorneys do take cases on contingent fee arrangements.<sup>67</sup> A list of human rights lawyers is available at [www.hg.org](http://www.hg.org).<sup>68</sup>

The Integrated Bar of the Philippines (IBP) provides legal assistance to indigent Filipinos through its Legal Aid Program, which includes 83 local legal aid committees throughout the Philippines. The committees provide free legal counselling, advice and representation before courts, quasi-judicial or administrative bodies to individuals who pass the means and merit tests. Regarding means, an applicant must earn less than P14,000 annually if residing in Metro Manila, and less than P10,000 if residing outside Metro Manila. Regarding merit, the cause of action must have a legal basis.<sup>69</sup>

A number of non-governmental organisations (NGOs) provide free legal aid to poor and marginalised groups and communities. For example, member organisations of the Alternative Law Groups (ALG) provide legal aid to such groups, including impact litigation, in public interest matters such as human rights, gender equality and the environment.<sup>70</sup> Philippine law schools, including the Ateneo de Manila Law School in Makati City and the University of the Philippines College of Law, also provide free legal assistance via their clinical programs.<sup>71</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Civil cases may be brought subject to the prescription of actions provided by the Civil

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<sup>64</sup> Ibid.

<sup>65</sup> See ‘List of lawyers’, available at:

[http://photos.state.gov/libraries/manila/299618/dellutajc/List%20of%20Attorneys%20as%20of%20July%2011\\_%202011.pdf](http://photos.state.gov/libraries/manila/299618/dellutajc/List%20of%20Attorneys%20as%20of%20July%2011_%202011.pdf).

<sup>66</sup> Latham & Watkins, ‘A survey of pro bono practices in 71 jurisdictions’, August 2012, p. 230, available at:

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

<sup>67</sup> See Philippine Attorney, available at: <http://>

<sup>68</sup> HG Legal Resources, ‘Human rights lawyers and law firms in Philippines’, available at:

<http://www.hg.org/law-firms/human-rights/philippines.html>.

<sup>69</sup> Latham & Watkins, p. 231.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

Code.<sup>72</sup> However, prescription does not run between parents and children, during the minority or insanity of the child, and between guardian and ward during the continuance of the guardianship.<sup>73</sup> For claims against unrelated third parties, the Civil Code provides that prescription runs against minors who have parents, guardians or other legal representatives, but is unclear as to whether prescription will run against minors who do not.<sup>74</sup>

As to criminal violations against children, section 5 of the Anti-Violence Against Women and their Children Act of 2004 provides prescriptive periods of 10 years or 20 years.<sup>75</sup> The 10-year prescriptive period applies to acts such as causing a child to engage in any sexual activity which does not constitute rape, and causing mental or emotional anguish, public ridicule or humiliation to a child.<sup>76</sup> The 20-year prescriptive period applies to acts such as causing, threatening or attempting to cause physical harm to a child.<sup>77</sup>

The institution of both criminal and civil cases falling under the Child Protection Act of 1992 is governed by the Rules of Court and other issuances of the Supreme Court.<sup>78</sup> The prescriptive period for filing depends on the gravity of the offence and the corresponding penalty for the offence.<sup>79</sup>

The Philippines Administrative Code does not provide a limitation period for filing judicial review of administrative decisions.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Rules of Evidence set out the kinds of evidence that are admissible in both civil and criminal proceedings, including documentary evidence, object evidence and testimonial evidence.<sup>80</sup>

In a civil case, the party with the burden of proof must establish his/her case by a preponderance of evidence.<sup>81</sup> In a criminal case, the guilt of the accused must be proven beyond reasonable doubt.<sup>82</sup> In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>83</sup>

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<sup>72</sup> An Act to Ordain and Institute the Civil Code of the Philippines [Civil Code of the Philippines], Republic Act No. 386, art. 1139-1155.

<sup>73</sup> Ibid. art. 1109.

<sup>74</sup> Ibid. art. 1108.

<sup>75</sup> Anti-Violence Against Women and their Children Act of 2004, § 24.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> IRR of RA 7610

<sup>79</sup> Comments provided by the Child Rights desk (Adhikain para sa Karapatang Pambata - AKAP) of the Ateneo Human Rights Center (AHRC), Philippines, August 2015.

<sup>80</sup> REVISED RULES ON EVIDENCE, Rule 130.

<sup>81</sup> Ibid. Rule 133, §1.

<sup>82</sup> Ibid. § 2.

<sup>83</sup> Ibid. § 5.

Children cannot be witnesses if their mental maturity renders them incapable of perceiving the facts of which they are examined and of relating them truthfully.<sup>84</sup> Also, as a filial privilege, children may not be compelled to testify against their parents or other direct ascendants.<sup>85</sup>

The Rules on Examination of a Child Witness set forth procedures specifically designed for children according to their capacities in court proceedings.<sup>86</sup> Under the rules, the court may appoint a guardian *ad litem* for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child.<sup>87</sup> The responsibilities of the guardian *ad litem* include, but are not limited to: attending all interviews, depositions, hearings, and trial proceedings in which a child participates; making recommendations to the court concerning the welfare of the child; explaining, in language understandable to the child, all legal proceedings, including police investigations; and assisting the child and his/her family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings.<sup>88</sup> The guardian *ad litem* has access to all reports, evaluations, and records<sup>89</sup> necessary to effectively advocate for the child, except privileged communications.

The Rules on Examination of a Child Witness also provide for various measures for the benefit of a child witness, including creating a comfortable courtroom environment, provision of interpretation assistance, giving testimony at appropriate hours ensuring the child is well rested, using toys or other items to assist the testimony process, etc.

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Accurate, recent statistics showing the average duration of a civil dispute were unavailable. The range can be from two years to twenty years. The Rules of Criminal Procedure and Rules of Civil Procedure both prescribe time limits for various proceedings in criminal and civil cases. In relation to Amparo petitions, the court shall render judgement within 10 days from the time the petition is submitted for decision.<sup>90</sup>

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

In civil cases, an appeal from a judgment or final order of a Municipal Trial Court may be taken to the Regional Trial Court exercising jurisdiction over the area to which the former pertains.<sup>91</sup> Appeals from Regional Trial Courts may take one of the following forms: (i) an ordinary appeal to the Court of Appeals from a judgment or final order (with certain exceptions where no appeal is allowed) of a Regional Trial Court; (ii) petition for review to the Court of Appeals in cases decided by the Regional Trial Court in its appellate capacity; or (iii) in all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for *certiorari* review.<sup>92</sup>

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<sup>84</sup> Ibid. Rule 130, §21.

<sup>85</sup> Ibid. § 25.

<sup>86</sup> RULE ON EXAMINATION OF A CHILD WITNESS, § 8.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid. § 5.

<sup>89</sup> Ibid.

<sup>90</sup> RULE ON THE WRIT OF AMPARO, § 18.

<sup>91</sup> 1997 RULES OF CIVIL PROCEDURE, rule 40.

<sup>92</sup> Ibid. Rule 41, § 2.

Civil case appeals may be taken within 15 days after notice to the appellant of the judgment or final order appealed from.<sup>93</sup> Where a record on appeal is required, the appellant must file both a notice of appeal and a record on appeal within 30 days after notice of the judgment or final order.<sup>94</sup> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration.<sup>95</sup> No motion for extension of time to file a motion for new trial or reconsideration is allowed.<sup>96</sup>

In criminal cases, any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy.<sup>97</sup> Cases decided by the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be appealed to the Regional Trial Court.<sup>98</sup> Cases decided by the Regional Trial Court may be appealed to Court of Appeals or to the Supreme Court in certain statutory situations (e.g. death, *reclusion perpetua*, or life imprisonment).<sup>99</sup> Cases decided by the Court of Appeals may be appealed to the Supreme Court.<sup>100</sup>

Criminal appeals must be taken within 15 days from promulgation of the judgment or from notice of the final order appealed from.<sup>101</sup> This period for perfecting an appeal will be suspended from the time a motion for new trial or reconsideration is filed.<sup>102</sup> If notice of the order overruling the motion is served upon the accused or his counsel, the balance of the period begins to run.<sup>103</sup>

Regarding decisions on Amparo petitions, any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both. The period of appeal is five working days from the date of notice of the adverse judgment. The appeal shall be given the same priority as in habeas corpus cases.<sup>104</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The Philippine's legal system is a blend of the Roman civil law and the Anglo-American common law systems. The civil law system, which is based on the Constitution, statutes, treaties and conventions, operates in the areas of family relations, property, succession, contracts, tort and criminal law. Nonetheless, Philippine law also includes case decisions because the Civil Code provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."<sup>105</sup> Therefore, a negative decision may have long-term and

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<sup>93</sup> Ibid. Rule 40, § 2.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 122, § 1-3.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid., § 6.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> RULE ON THE WRIT OF AMPARO, § 19.

<sup>105</sup> Civil Code of the Philippines, art. 8.

wide-reaching impacts depending on the level of court. For example, decisions of the Supreme Court establish jurisprudence and are binding on all other courts.<sup>106</sup>

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

In civil cases, a final and executory judgment or order may be executed on motion within five years from the date of its entry.<sup>107</sup> After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.<sup>108</sup>

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The opportunities for children to be heard in judicial and administrative proceedings have increased in the Philippines under the Council of Welfare for Children, which was established in an effort to comply with the requirements of Article 12 of the CRC.<sup>109</sup> Judges, court social workers, prosecutors, defence lawyers, police officers, and jail officers are being trained on child sensitive procedures for court proceedings. Court appointed special advocates (CASA) and guardians *ad litem* have been trained to assist children to intervene in the courts, although there is no statute providing for CASAs.<sup>110</sup> CASAs are volunteers who are organised through the CASA-GAL Foundation and Ateneo Human Rights Center, with support from UNICEF.<sup>111</sup> At present, however, the CASA-GAL trainings are in hiatus due to lack of volunteers and financial support.

Many child protection laws have been mentioned aside from the Child Protection Act of 1992 such as the Anti-Violence Against Women and their Children Act of 2004, the Anti-Child Pornography Act of 2009,<sup>112</sup> the Juvenile Justice and Welfare Act of 2006, as amended, and the Elimination of the Worst Forms of Child Labor amending the Child Protection Act.<sup>113</sup> The Supreme Court of the Philippines has also issued several Administrative Matters containing rules for the protection of children such as the Rule on Examination of a Child Witness<sup>114</sup> and the Rule on Violence against Women and their Children.<sup>115</sup>

*This report is provided for educational and informational purposes only and should not*

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<sup>106</sup> Baker & McKenzie, *supra* note 54.

<sup>107</sup> 1997 RULES OF CIVIL PROCEDURE, Rule 39, § 6.

<sup>108</sup> *Ibid*.

<sup>109</sup> Yale Law School, Representing children worldwide, 'Philippines', November 2005, available at: [http://www.law.yale.edu/rcw/rcw/jurisdictions/asse/philippines/frontpage.htm#\\_edn2](http://www.law.yale.edu/rcw/rcw/jurisdictions/asse/philippines/frontpage.htm#_edn2).

<sup>110</sup> *Ibid*.

<sup>111</sup> *Ibid*.

<sup>112</sup> An Act Defining the Crime of Child Pornography, Prescribing Penalties Therefor and for Other Purposes [Anti-Child Pornography Act of 2009], Republic Act No. 9775, 17 November 2009.

<sup>113</sup> An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as amended, otherwise Known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act", Republic Act No. 9231, 19 December 2003.

<sup>114</sup> RULE ON EXAMINATION OF A CHILD WITNESS, A.M. No. 004-07-SC, 21 November 2000.

<sup>115</sup> RULE ON VIOLENCE AGAINST WOMEN AND CHILDREN, A.M. No. 04-10-11-SC, 19 October 2004.

*be construed as legal advice.*