

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 ' P12:08

SENATE

S. NO. 27

RECEIVED BY: 

Introduced by Senator Flavio

EXPLANATORY NOTE

On 20 November 1989, the United Nations General Assembly unanimously adopted the CONVENTION ON THE RIGHTS OF THE CHILD. The "CONVENTION" (for brevity) in sum brings together in one (1) comprehensive code on the legal benefits and stipulations concerning children of the world. It enshrines three (3) main areas of children's rights, namely: survival, development and protection and further stresses that these rights apply to all children regardless of race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. As signatory thereto, the Philippines through the Senate and in accordance with Article 47 of the 'Convention' and in compliance with Section 21, Article VII of the 1987 Constitution, unanimously concerned in the ratification of the Convention and finally adopted the same on 26 July 1990.

By virtue of such ratification (Senate Resolution No. 109), the precepts of the 'Convention' are deemed part of the law of the land.

The ratification of the 'Convention' is not merely a manifestation of our determination to cooperate with the family of nations as member thereof, but more so an assertion of the Philippines, unwavering commitment to the protection of children's welfare not only as humanitarian exercise but as a matter of serious obligation.

As such, Congress is committed to undertake all efforts to uplift the conditions of the Filipino children through the protection and promotion of their rights and welfare.

There are at present several laws and ordinances upholding, protecting, and/or promoting, the rights and welfare of the Filipino child. The two recent and thus noteworthy laws are RA 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act" and RA 7658, An Act Amending in Section 12, RA 7610 (on Child Employment).

This notwithstanding, violations and malicious disregard of children's rights and welfare are to date increasing. Evil men remain undeterred in their commission of evil against children.

Clearly, what we have done is inadequate to fully protect our children. For one, notwithstanding the constitutionally recognized role of the State as 'PARENS PATRIAE' or 'guardian of the rights of the people,' there is the conspicuous absence of a government agency independent and powerful enough to function exclusively as a true and aggressive 'watchdog' that might be called 'Champion of Children's Rights.'

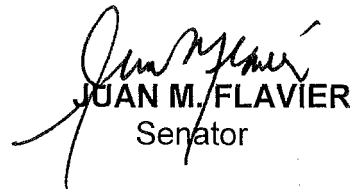
RA 7610 is comprehensive enough in defining and providing penalties for the different acts and/or omissions of child abuse, exploitation and discrimination. But the law does not mandate the creation of a body that shall exclusively be in charge of pursuing and ensuring the successful prosecution of perpetrators.

Existing public and private agencies have proven to be effective in reporting and monitoring child abuses, exploitation and discrimination. But they have not been as effective in the prosecution and ultimately the successful final conviction of violators of children's rights. For more often than not, the complainants, due to financial reasons, among others, abandon and/or lose interest in pursuing the case. Hence, the criminals go scot-free, remaining unrestrained to commit their crimes all over again.

What we need therefore is a body which shall be powerful and aggressive enough to initiate investigation and pursue the prosecution, on its own, of any all incidences of child abuse, exploitation and discrimination. The body must be independent, with special juridical capacity to legally initiate a complaint and/or intervene in any and/or all cases, criminal or otherwise, child abuse, exploitation, and discrimination, particularly but not limited to cases where the parent, guardian, teacher or person having care or custody of the child fails or is unable to FULLY represent and protect the child's rights. We need, therefore, a guardian exclusively of children's rights. We ought, to create the Office of "TANODBATA".

We owe to the children the best we can give. Obviously we have not done so. They need a Tanodbata of their own. And they need it now.

Approval of this bill is earnestly sought.


JUAN M. FLAVIER
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC)
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S. NO. 27

Introduced by Senator Flavier

AN ACT
CREATING THE OFFICE OF TANODBATA AND PROVIDING FUNDS
THEREFOR

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. – This Act shall be known as “Tanodbata Act.”

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State as ‘PARENS PATRIAE’ of the Filipino people, particularly of the Filipino children, to provide not only special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development but also to ensure the prosecution and conviction of perpetrators of child abuse, exploitation and discrimination. The State shall intervene and initiate criminal complaints on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to initiate and/or pursue the prosecution for child abuse, exploitation.

SEC. 3. Definition of Terms. – (a) “Children” refers to persons below eighteen (18) years of age which shall include the conceived but unborn child or those over eighteen (18) years but who are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

(b) “Office” means the office of Tanod Bata.

(c) “Child Abuse” refers to any act or omission as defined and penalized by Republic Act No. 7610, otherwise known as the

“Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” and/or crimes against children, including the conceived but unborn child as provided for by the Revised penal Code and other pertinent laws.

SEC. 4. The Office of the Tanodbata. – There is hereby created the independent Office of the Tanodbata, composed of the Chief Tanodbata and three (3) Deputy Tanodbata.

SEC. 5. Appointment of the Chief and Deputy Tanodbata. – The Chief Tanodbata and the Deputies shall be appointed by the President. The Chief Tanodbata shall have the rank and receive the salary of an associate justice of the Court of Appeals while, the deputies shall have the rank and receive the salary of a judge of the Regional Trial Court RTC).

SEC. 6. Qualifications. – The Chief Tanodbata and his Deputies shall be natural-born citizens of the Philippines, and at the same time of their appointment, at least thirty-five (35) years old, of recognized probity and independence, members of the Philippine Bar and have proven ability and experience to analyze problems of law, administration, and public policy. They must have for five (5) years or more been a judge or engaged in the practice of law in the Philippines and shall not have been actively involved in partisan politics.

SEC. 7. Disqualification. – The Chief Tanodbata and his Deputies shall not, during their tenure in office, engage in the practice of any profession or in the management of any business, or be financially interested directly or indirectly in any contract with or in any franchise or privilege granted by the Government or any subdivision, agency, or instrumentality thereof including government-owned or controlled corporations.

SEC. 8. Term of Office. – The Chief Tanodbata and his Deputies shall serve for a term of seven (7) years without reappointment.

If the Office of the Chief Tanodbata becomes vacant for any cause, the Senior Deputy Tanodbata shall serve as Acting Chief Tanodbata until a Chief Tanodbata shall have been appointed for full term.

SEC. 9. Organization of Office. – The Office shall have one (1) Executive Director and an Administrative Officer, a Finance, Management and Planning Office, a Legal Office and an Investigation and Prosecution Office.

The Executive /director shall have the rank of a judge of the Metropolitan Trial Court and shall receive the same salary. Each of the aforesaid offices shall be headed by a Director which shall have the rank and receive the salary of a Clerk of Court of the Regional Trial Courts.

The Investigation and Prosecution Office shall, aside from the Director, have three (3) special prosecutors and three (3) investigators or one (1) special prosecutor and one (1) investigator for Luzon, Visayas and Minadanao. The Special Prosecutors shall have the rank and receive compensation equivalent to that of an Assistance City Prosecutor (Assistant Fiscal); while the investigators shall have the rank and receive the salary of a Regional Trial Court Assistant Sheriff.

The Legal Office shall aside from the Director have three (3) Legal Officers or one (1) each for Luzon, Visayas and Mindanao. They shall also have the rank and receive salary equivalent to an Assistant City Prosecutor (Assistant Fiscal).

The Administrative Office shall consist of the General Services Division and Personnel Division.

The Finance, Management and Planning Office shall consist of the Budget Division, Accounting Division and Management Planning Division.

All of these officials shall be appointed by the President upon recommendation of the Chief Tanodbata. The Chief Tanodbata may also select, appoint, and compensate in accordance with law and within the amount available

by appropriation, such other assistants and employees as may be necessary to discharge the responsibilities of the Office under this law.

When the Chief Tanodbata is disabled or absent and so notifies his office, the Senior Deputy Tanodbata shall have authority to act on his stead.

The Chief Tanodbata may delegate to other members of his staff any of his authority or duties under this law except his power of decision in all cases and duty of formally making recommendations to administrative agencies or reports to the President or to Congress.

SEC. 10. Powers, Functions and Duties. – The Office shall have the following powers, functions and duties.

1. Investigate, on complaint by any person or on its own, and initiate court action, criminal or otherwise, or in any manner proceed against any person, corporation or firm for any and all commissions of child abuse;
2. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made, and the form, frequency and distribution of its conclusions and recommendations;
3. Issue subpoena to compel any person to appear, give sworn statement/testimony, or produce documentary or other evidence which the Office deems relevant to a matter under his inquiry.
4. Utilize the personnel of its office and/or with the approval of the Secretary of justice, designate or deputize any fiscal/state prosecutor or lawyer of the Justice Department to act as special investigator or prosecutor to assist the Office in the investigation and prosecution of child abuse case;
5. Appear in any court as special prosecutor in any criminal action and/or complainant in any case involving the commission of child

abuse when in its judgment its intervention is necessary or when requested by the Court;

6. Direct any government agency to render assistance and furnish information necessary to children's rights and welfare, in order to enhance the condition of Filipino children and improve its own functions;
7. Prepare and present to the President and Congress an annual report on its accomplishments, disposition of cases, other relevant funds, problems and obstacles encountered, financial and other administrative information as well as its insights and recommendations, when clearly in the public interest, subject to law and regulations relating to protection of witness, the rights of the victim, the collateral rights of the accused and his/her defense, sound prosecution practice and proper administration of justice;
8. Ensure that legislation relating to the protection of children's interest is observed;
9. Propose measures which can strengthen children's safety under the law;
10. Propose measures which can strengthen children's safety under the law;
11. Ensure that sufficient information is given to the public and private sectors concerning children's rights and measures required for children; and
12. Promulgate such rules and procedures and exercise such other functions or duties as may be provided by law.

SEC. 11. Matters Appropriate for Investigation and Prosecution. –

The Office shall have the authority to conduct preliminary investigation; to file information therefore and to direct and control the prosecution, even on its own, of facts and/or omission of child abuse as defined and penalized by RA 7610

and/or crimes against children including the conceived and unborn as provided for by the Revised Penal Code and other pertinent laws.

SEC. 12. Action on complaints. – The Office of the Tanodbata may receive complaints from any source concerning child abuse. At no expense to the complainant, the Office shall immediately conduct a suitable investigation into the matters complained of. If after completion of the investigation the Office finds a prima facie case of child abuse, it shall file the complaint with the proper court or government agency, whether or not the private complainant thereof who initially brought the matter to the attention of the Office is willing to pursue the complaint/case. The Office may on its own still pursue the prosecution of the case for child abuse even if the parent, guardian or any other person, having care and custody of the child has entered into an out-of-court settlement of the case.

The Chief Tanodbata, his Deputies, investigators and prosecutors, whether regular members of his staff or designated by the Office as provided for in Section 10, shall have the authority to administer oaths, to issue subpoena duces tecum, to summon and compel witness to appear and testify under oath before them and/or bring documents and other things under their control and to secure the attendance or presence of any absent or recalcitrant witness through application before the courts having jurisdiction of the place where the witness or evidence may be found.

SEC. 13. Duty to Render Assistance to the Office of the Tanodbata. – Any public official or employee when called upon or required by the Office, is duty bound to render assistance to the office, otherwise he shall be subject to administrative disciplinary action.

SEC. 14. Obstruction. – Any person who shall willfully obstruct or hinder the proper exercise of the office's functions or who shall, after due hearing, be punished with a fine not exceeding FIFTEEN THOUSAND PESOS (P15,000.00), without prejudice to any criminal or other administrative liability.

SEC. 15. Franking Privileges. – All official mail matters and telegrams of the office addressed for delivery within the Philippines shall be received, transmitted and delivered free of charge.

SEC. 16. Appropriation. – The amount of FIFTEEN MILLION PESOS (P15, 000.000.00) is hereby authorized to be appropriated equally from the savings of the Department of justice, Department of social Welfare and Development and from the Office of the President as the initial amount to implement the provision of this Act.

Thereafter a regular appropriation shall be included in the annual General Appropriations Act for the support and maintenance of the office.

SEC. 17. Separability Clause. – Any part or provisions of this Act which may be held invalid or unconstitutional shall not affect its remaining parts or provisions.

SEC. 18. Repealing Clause. – All laws or parts thereof inconsistent with any provision of this Act are hereby repealed or modified accordingly.

SEC. 19. Effectivity. - This Act shall take effect upon completion of its publication in at least two (2) newspapers of general circulation.

Approved,