



*Republika ng Pilipinas*

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

*(Commission on Human Rights of the Philippines)*

### **RE: THE IMPLEMENTATION OF THE RANDOM DRUG TESTING OF SECONDARY AND TERTIARY STUDENTS**

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

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#### **CHR (IV)-A2009-001**

The contentious issue of random drug testing of students who are minors, or those below 18 years of age, has invited people and institutions to engage in a lively debate balancing the interests of the State and that of the individual child.

The CHR, which is constitutionally mandated as the guardian of human rights and the monitor of government compliance with international human rights obligations is calling on all involved agencies to take all necessary precautions to ensure that the drive to fight the scourge of drug use among the Filipino youth is tempered by full respect and protection of the rights of these youth.

The CHR reminds that President Gloria Macapagal Arroyo has made human rights a vital part of her administration's priorities, development and foreign policy agenda. Human rights respect and protection is not contrary to peace and order efforts, rather a necessary framework to be built into the overall strategy to achieve individual and community security.

The CHR has earlier called for the deferment of the random drug testing program rather than implementing it on February 2, 2009. Considering the government's decision, as is its discretion, to commence the program on February 4th, the Commission nevertheless finds it necessary to issue this advisory wherein the CHR recommends strongly the inclusion of the following elements in the Guidelines for the random drug testing program to be reflected in all student handbooks, in addition to the prerequisites imposed by the Dangerous Drugs Act and other pertinent protective legal measures in place that are favorable to the child (among others discussed further below) :

1. The identity of the student sampled, who tested positive, who tested negative and who refused the random drug test, must be **confidential and protected at all cost**. Necessarily, disciplinary measures are to be

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imposed for violations without prejudice to filing of a suit or a case by the aggrieved child or his/her family against the erring individual or institution.

2. A clear provision that there is a commitment (and therefore parallel accountability) on the part of the schools, testing centers and pertinent government agencies, that **the samples for the random test will only be used for drug testing and for no other purpose.**
3. A provision which **prohibits the school or any agencies to impose any sanctions, criminal or administrative, against the child found to be a user or a dependent.**
4. A provision which **prohibits the school or any agencies to impose any sanctions, criminal or administrative, on a child that refuses to undergo the random-drug test.**
5. A provision which **prohibits the school or any agencies to impose any sanctions, criminal or administrative, on a child or his parent/s, whose parent/s refuses for the child to undergo the random-drug test.**

### MANDATE

The Commission on Human Rights, in contextualizing its position on the matter, finds guidance in the 1987 Constitution which declares that the State is expected to *value the dignity of every human person and guarantee full respect for human rights* (Article II, Section 11). The same Constitution created the Commission envisioning an independent office dedicated to, *“investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights; provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection ; monitor the Philippine Government's compliance with international treaty obligations on human rights; and request the assistance of any department, bureau, office, or agency in the performance of its functions”* (Article XIII, Section 18).

For the particular sector involving children and young people below the age of 18 years, the above Constitutional mandate has further been enhanced by the passage of the Juvenile Justice and Welfare Act directing the Commission to *“ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society”* (Section 11).

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## HUMAN RIGHTS OF THE CHILD

As a basic premise, it must be clarified that the Commission on Human Rights supports in principle any anti-drug campaign undertaken by the Government. In fact, in the realm of random drug testing, the CHR (the Second Commission and the Third Commission) has on two occasions at least, interposed no objection to the requirement of mandatory drug test for issuance of a driver's license (CHR-A06-2001) and the conduct of drug testing of government employees (CHR (III) No. AD-2003-02).

However, on the issue of random drug testing of secondary and tertiary students, **the Commission reminds the Government that these measures implementing the random drug test should be fully compliant with international and Constitutional standards upholding, promoting and protecting the rights of the child.**

The Government is advised to internalize the spirit and principles of the United Nations Convention on the Rights of the Child which forms part of the law of the land and as such, **the Government as a State Party to the Convention, must “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” (Article 4).**

The Convention is very clear in recognizing that **a child as an individual is entitled to the protection of his or her human rights.**

Article 16 of the Convention states that **“no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”**

The Commission fears that in the absence of guidelines formulated in a democratic, consultative manner this random drug testing focused on the youth of this land can potentially put the child's human rights in danger of being violated.

The basic human rights of the child against arbitrary or unlawful interference with one's privacy; the right of the child to be protected in his or her person, effects and correspondence; and the right of the child against unlawful searches and seizures are immediately destabilized by the implementation of a random drug testing campaign. This random drug testing measure has the capacity to make the Filipino child insecure in his or her own person which is completely antithetical to the ideals and protective stance of the Convention which this Government is duty-bound to implement.

## THE NEED FOR FURTHER STUDY OF THE GUIDELINES

The need for further study is justified because there has not yet been an impact assessment and evaluation on the 2003-2005 random drug testing conducted on the students. For instance, have the results of those tests



**influenced the adoption of a more strategic policy direction on the part of the government in addressing the drug menace?** In fact, one of the purposes of the random drug testing in accordance with the General Guidelines for the Conduct of Random Drug Testing for Secondary and Tertiary Students is the assessment of the effectivity of school-based and community-based prevention programs. Sadly, no study was undertaken by the Government.

Also, it has not been shown to prove **how the government tracked, monitored, rehabilitated and reintegrated the drug users that were elicited in the test.** This bodes unfavorably on the program as it means that the mechanism's effectivity and avowed objective, also reiterated by the Supreme Court in SJS vs. Dangerous Drugs Board and PDEA (G.R. No. 157870, November 3, 2008), of "stamp[ing] out illegal drug and safeguard[ing] in the process 'the well-being of [the] citizenry, particularly the youth, from the harmful effects of dangerous drugs'" was not shown to have been met.

While the Government must be credited for the on-going education drive in the social systems where one finds Filipino children and youth, other stakeholders like the parents, the children and the community, have within their ambit of rights the right to demand accountability and transparency and to pose the question on whether or not the education and whether the awareness-raising campaign versus illegal drugs has merited the same attention in policy, practice and resource allocation as the random drug testing.

The issue of resources is an imperative consideration juxtaposed with any Government measure to be undertaken. When the Philippines is beginning to see the looming danger of the global financial crisis, when workers are being laid off, when businesses are closing and when investors are withdrawing, government spending in these resource-strapped times must be rationalized, strategic and reflective of the pressing needs of the time.

Children, it must be appreciated, are not full-fledged employees. They are not situated similarly with the employees who are made to undergo drug testing. Children are not self-actualized adults that have deeper understanding of the parameters of their rights and more capable of defending any infringes thereto. Most importantly, minors should not be likened to government employees or officials as employment in the government is a privilege. Minor-students, on the other hand, have the **right to invoke and demand the fulfillment of their right to education** obliging the Government to respect the **child's right to education as a CONSTITUENT (as distinguished from "ministrant") function.**

There is now a burning need to re-examine the whole landscape of anti-drug campaign in the Philippines. In the area of random drug testing, the Government is reminded of the ruling of the Supreme Court which, while declaring constitutional the random drug testing on students, still maintained that the same is only effective until "***a more effective method is conceptualized and put into action.***" It is incumbent upon this Government to rally to the call of the judiciary and provide the public with a more effective, rights-based method.

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## EXAMINING THE GUIDELINES

The CHR refers to the RA 9165, or the Comprehensive Dangerous Drugs Act of 2002, which provides the following conditions which must be satisfied before undertaking random drug testing, to wit:

1. The testing is conducted pursuant to related rules and regulations as contained in the school's student handbook; and
2. The testing is conducted with notice to the parents.

The Implementing Rules and Regulations (IRR) of RA 9165 enhanced the above conditions by directing the Department of Education and the Commission on Higher Education to see to it that the provisions be implemented. The IRR then went on to discuss the various roles of the stakeholders (i.e. government agencies, family, schools, communities) and the objectives of the programs involving said stakeholders. But quite apparent is the absence of a prescribed guidelines in the IRR for rules and regulations to be adopted in the school's student handbook. This is in sharp contrast to the treatment of employees to undergo drug test who can rely on an IRR provision entitled, "Guidelines for the National Drug-Free Workplace Program" (Section 48). The issue now is whether or not the Guidelines is sufficient to provide the cloak of protection for a child.

SJS vs. Dangerous Drugs Board and PDEA ruled in favor of constitutionality in the conduct of the random drug test amongst secondary and tertiary students. The Philippine Supreme Court relied heavily on Vernonia School District vs. Acton (515 U.S. 646) where the US Supreme Court subjected the questioned school policy and procedure to scrutiny and ruled that a drug-testing policy can be upheld when the following safeguards are imposed:

1. The uniformity of the tests among all students;
2. The exclusive use of samples for drug-testing, and for no other purpose;
3. The limited number of school personnel who can have access to the drug-testing results; and
4. The drug-test results cannot be used for law enforcement purposes and internal disciplinary function.

The case of Vernonia was expressly considered by the US Supreme Court as a legitimate Fourth Amendment issue, and the school policy was therefore tested on grounds of "reasonableness" of the search to pass the test of constitutionality. Deferment of the implementation of the random drug test in the Philippines was precisely sought by the CHR to give time for the Government to come up with a template to be adopted by schools in implementing this measure. It is further urged that the formulation of the specific rules and regulations should be guided by the test of **reasonableness** in

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order to remove any Constitutional infirmity violative of the right of the child against unlawful searches and seizures.

The existing Guidelines also **do not contain any provision clearly and categorically prohibiting the use of drug-testing for purposes of punishing students found to be drug users or dependents.** While it is true that rehabilitation and counseling of the latter are provided for in the Guidelines, the freedom appended to the schools to formulate its own rules and regulations does not effectively hinder these schools to imposing disciplinary measures against the child which might potentially be highly punitive. In fact, letter (m) under the section on *Treatment of Random Drug Test Results* of the Guidelines provide "in the event that it is determined that the student is a drug dependent, the school may impose the appropriate sanctions against the student as provided for in the school's student Handbook and the Manual of Regulations for Private Schools, provided that in the case of public secondary schools, if the student is later on found to have been rehabilitated, the student shall then be allowed to re-enroll."

This situational dissonance effectively will run contrary to the standards of Vernonia and therefore will go beyond the rationalization of the SJS case which was based on testing the constitutionality of the law within the singular parameter of the right against illegal searches and seizures, and definitely not within the parameter of the right against self-incrimination. If both the IRR and the existing Guidelines are silent on any assurance that the results of the test cannot and will not be used for any law enforcement purpose or punitive school administrative measures, the Government is urged to appreciate that this tract should require further study on its part to fortify its position that evidence gathered from mandated random drug-testing will not be violative of the right of the child against self-incrimination.

At this juncture, the CHR also expresses its concern about letter (h) of the said Guidelines or the provision entitled *Enforcement of Compliance* which states, thus: "*Students who refuse to undergo random drug testing shall be dealt with in accordance with rules and regulations of the schools..*" This provision is highly problematic as it is arbitrary and therefore open to different interpretations of the schools. Clearer standards should be in the guidelines on how a particular student will be dealt with and the only way to flesh out these guidelines is through a thorough, exhaustive and meaningful consultations amongst government stakeholders, school administrators, parents and the children themselves.

The notice to be given to parents is another requirement for the conduct of random drug test. This notice is designed for the parents not only to be informed that his or her child was randomly selected for a suspicion-less drug test but also for the parents, as primary and natural guardian, to walk the child through the whole process and its possible repercussions. The existing Guidelines, however, seems to have reduced the notification to parents into a mere procedural and ministerial matter, when it provided that while notification may be sent at any

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time during the school term, "*failure to return the acknowledgment receipt shall not be a bar to the conduct of the drug testing.*" The CHR feels that a clear provision should be in place that recognizes this possibility and an assurance that no punitive action should be declared against the child if the parents refuse to allow the former to undergo the random test.

## RECOMMENDATIONS

The CHR recommends strongly the inclusion of the following elements in the Guidelines to be reflected in all student handbooks, in addition to the prerequisites imposed by the Dangerous Drugs Act and other pertinent protective legal measures in place that are favorable to the child:

1. The identity of the student sampled, who tested positive, who tested negative and who refused the random drug test, must be **confidential and protected at all cost**. Necessarily, disciplinary measures are to be imposed for violations without prejudice to filing of a suit or a case by the aggrieved child or his/her family against the erring individual or institution.
2. A clear provision that there is a commitment (and therefore parallel accountability) on the part of the schools, testing centers and pertinent government agencies, that **the samples for the random test will only be used for drug testing and for no other purpose**.
3. A provision which **prohibits the school or any agencies to impose any sanctions, criminal or administrative, against the child found to be a user or a dependent**.
4. A provision which **prohibits the school or any agencies to impose any sanctions, criminal or administrative, on a child that refuses to undergo the random-drug test**.
5. A provision which **prohibits the school or any agencies to impose any sanctions, criminal or administrative, on a child or his parent/s, whose parent/s refuses for the child to undergo the random-drug test**.

The student handbook is a critical tool in the conduct of the random drug test which necessitates that all students must have individual copies of the same, lacking which there can be no proper implementation of drug-testing in schools. And since handbooks are distributed at the start of the school year, the period between February and May before the next school year can serve as additional time for the refinement of the Guidelines. The modality for the formulation of the same should accommodate a more consultative process.

**Child participation** in the development and implementation of local and national policies is highly encouraged by the Commission. Let the children be part of the solution. The children's voices must have the possibility and opportunity to influence public policy. The CHR encourages the Government to organize an **anti-drug youth summit** that should be designed to elicit

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recommendations from the youth in how to prevent and address the drug problems. These recommendations will thereafter be endorsed to pertinent branches of government for consideration. This will indubitably showcase the willingness of this government to include the children in governance.

The CHR further encourages the stakeholders (i.e. DDB, Department of Education, Commission on Higher Education, TESDA) **to engage the cooperation of the parents and dialogue with the concerned sectors and representation of the youth/student sector.** Students generally are not adults and thus parental consent is an imperative to any activity that infringes on the child's right to privacy.

The Commission is hopeful that the Government continues to aspire to prioritize the issues of children especially in the context of the reprehensible danger brought on by the use, sale, production and distribution of illegal drugs in the country. The Commission encourages the Government to put more efforts in enhancing its **education drive in schools and local communities against the drug menace.**

**Infuse more funding and resources** to local communities locked in on promoting more **child-friendly spaces** (i.e. libraries, sports facilities) and **child-friendly programs** (i.e.. youth in governance).

The Government must enhance avenues of assistance for the youth that have fallen into the cracks by **giving funding and technical support to the rehabilitation and social welfare systems**, particularly in the local communities. The interventions provided for by the Government must not only administer to children in school but must also provide help to the out-of-school youths that are most vulnerable to the traps of the drug menace.

It needs to be reiterated that in a policy viewpoint, the unit of analysis in addressing the endemic drug problem should be focused on the institutional roots of the problem NOT on the potential and most vulnerable victim of the drug menace: the Filipino child.

The Commission is open to the public for any queries on the matter and **should there be feared violations of the rights of the child in the conduct of the random drug test, please contact any of the CHR offices in the regions and in the Central office.**

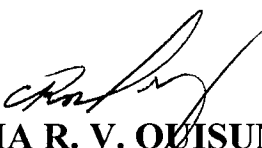
In view thereof, if the Government should continue the conduct of the random drug testing despite the very strong reservations posed by this Commission, that the implementors of the random drug test be guided by the discussions herein above and to integrate the recommended elements into their respective agencies' or schools' policy, practice and internal guidelines or handbook.

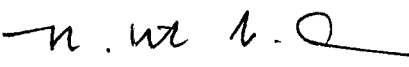
The Commission further urges the Dangerous Drugs Board, as the policy arm of the executive government in dealing with the drug menace, to convene as soon as possible so as to come up with amended Guidelines to be endorsed and formally adopted by the Board where such Guidelines comply with the principles and provisions of the United Nations Convention on the Rights of the Child. These Guidelines must also carry the minimum requirements that must be present and standardized in all student handbooks.

The Commission reminds the Filipinos, children and adults alike, that the equal rights of children are an inalienable, integral and indivisible part of all human rights and fundamental freedoms. As such, the **child has every right to expect the full protection of the law** against any interference or attack. All stakeholders must work together in providing protection and affording opportunities to the children of this country. Finally, all government measures must be designed and guided with the **best interests of the child** so that the child will have the access and opportunity to a life lived with dignity and humanity.

Issued this 2<sup>nd</sup> day of February 2009 at Quezon City, Philippines.

  
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