

OVERVIEW OF PHILIPPINE JUVENILE JUSTICE AND WELFARE

*Jeza Mae Sarah C. Sanchez**

I. THE JUVENILE JUSTICE AND WELFARE LAW

Republic Act No. 9344 or the “Juvenile Justice and Welfare Act” defines the Juvenile Justice and Welfare System as a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programmes and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development.

Instead of using the word “juvenile”, Philippine laws made use of the word “child”. As defined in R.A. No. 9344, “Child” is a person under the age of eighteen (18) years. While “Child at Risk” refers to a child who is vulnerable to and at the risk of committing criminal offences because of personal, family and social circumstances. Some of the examples mentioned in the law are: being abandoned or neglected, and living in a community with a high level of criminality or drug abuse.

“Child in Conflict with the Law” or CICL on the other hand refers to a child who is alleged as, accused of, or adjudged as, having committed an offence under Philippine laws.

A child can commit an act or omission whether punishable under special laws or the amended Revised Penal Code which is referred to as an “Offence”. Under Republic Act 10630, offences which only apply to a child and not to adults are called “Status Offences”. These shall not be considered as offences and shall not be punished if committed by a child. Examples of status offences include curfew violations, truancy, parental disobedience and the like.

Before R.A. No. 9344 was enacted, children at risk and CICL were treated much like adult offenders as when former President Ferdinand Marcos, Sr. signed into law the Judiciary Reorganization Act 1980 which abolished the juvenile and domestic relations courts. As such child offenders were subjected to the same adversarial proceedings as their adult counterparts.

As an offshoot of the United Nations Convention on the Rights of the Child (UNCRC), the R.A. No. 9344 intends to deal with these children without resorting to judicial proceedings. Instead of punishing juvenile offenders and treating them as criminals, these child offenders will be provided by the State and the community with assistance to prevent them from committing future offences.

II. THE PHILIPPINES AS A JUVENILE JUSTICE ADVOCATE

As a signatory to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the most importantly the Convention on the Rights of the Child, the Philippines guarantees the protection of the best interests of the child in accordance with the standards provided for by these international laws.

In the Philippines, members of Congress had passed bills intended to make laws more consistent with the Philippines’ advocacy on juvenile justice. As much as the Philippines should be concerned with a juvenile justice system in harmony with international policies, the dominant goal is to achieve a standard national policy on CICL rather than an accurate reproduction of an international model on CICL.

*Administrative and Legal Officer of the Office of the Chief, Bureau of Jail Management and Penology, Philippines.

R.A. No. 9344, one bill passed into law, institutionalized the promotion of the well-being of child and their families, involvement of parents and guardians, promotion of diversion, avoiding deprivation of liberty and protecting the privacy rights of children.

R.A. No. 10630 further emphasized child-sensitive justice policies focused on the best interest of the child. This principle has been first laid down in the Doha Declaration.

III. THE PHILIPPINE JUVENILE JUSTICE SYSTEM

A. Diversion and Intervention Programmes

The main features of R.A. No. 9344 are the diversion and intervention programmes. During the diversion process, the responsibility and treatment of CICL will be determined on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings. If the CICL is found to be responsible for an offence, he/she will be required to undergo diversion programmes without resorting to formal court proceedings. During the intervention programmes on the other hand, they will undergo a series of activities to address issues that caused them to commit an offence. These may take the form of counselling, skills training, and education. The bigger the role these diversion and intervention programmes play in child behaviour development, the more acceptance and social legitimacy these programmes are likely to enjoy in resolving problems with CICL.

B. Age of Criminal Responsibility and the Presumption of Minority

R.A. No. 9344 likewise raises the age of criminal responsibility from nine years of age under Presidential Decree 603 to a minimum of 15 years old. CICLs aged 15 and above are also exempted from criminal liability unless the prosecution proves that they acted with discernment — the capacity to distinguish right from wrong. These child offenders are also afforded all the rights of a CICL until he/she is proven to be eighteen (18) years old or older under the “presumption of minority” rule. In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned are mandated to exert all efforts at determining the age of the CICL.

C. Restorative Justice

The concept of “restorative justice” as opposed to retributive justice has also been introduced by R.A. No. 9344. It espouses resolving conflicts with the maximum involvement of the victim, the offender and the community. It primarily aims to achieve reparation for the victim, reconciliation of the offender, the offended and the community, and enhancement of public safety. It also ensures that the child’s rights will not be infringed when he/she admits to the offence.

IV. THE PHILIPPINES’ TREATMENT OF CICL

A. Treatment of Children below the Age of Criminal Responsibility

If it has been determined that the child taken into custody is 15 years old or below, the authority which will have an initial contact with the child, in coordination with the Local Social Welfare Development Officer (LSWDO), has the duty to *immediately release* the child to the custody of his/her parents or guardian, or in the absence thereof, to the child’s nearest relative. If they cannot be located or they refuse to take custody of the child, the CICL may be released to any of the following: a duly registered nongovernmental or religious organization, a barangay official or a member of the Barangay Council for the Protection of Children (BCPC), LSWDO, or the Department of Social Welfare and Development (DSWD).

Authorities which have initial contact with the child refer to law enforcement officers or private citizens apprehending or taking custody of the CICL.

If the LSWDO determines that the child is abandoned, neglected or abused by his parents, and the best interest of the child requires that he/she be placed in a youth care facility or “Bahay Pag-asa”, the child’s parents or guardians shall execute a written authorization for the *voluntary commitment* of the child. But if there are no parents or guardians, or they will not execute it, the LSWDO or the DSWD shall file the proper petition for *involuntary commitment*. Only those who are at least 12 years old can be committed to a youth care facility.

B. Treatment of CICL Depending on Whether They Acted with or without Discernment

The social worker using the discernment assessment tools developed by the DSWD will come up with an initial assessment which is without prejudice to the preparation of a more comprehensive case study report. The local social worker can either release or commit the child to a youth care facility if he/she is 15 years or below or above 15 but below 18 years old but who acted without discernment. However, if the child is above 15 years old but below 18 and who acted with discernment, diversion should be implemented.

C. System of Diversion

If the imposable penalty for the crime is not more than six years' imprisonment, mediation, family conferencing and conciliation, or other indigenous modes of conflict resolution in consonance with restorative justice shall be facilitated by the law enforcement officer or Punong Barangay with the assistance of the LSWDO or members of the BCPC. Both the child and his/her family shall be present in these activities.

In victimless crimes where the imposable penalty is not more than six years' imprisonment, the LSDO shall develop an appropriate diversion and rehabilitation programme, in coordination with the BCPC. Again, involvement of the child and his/her parents or guardians is a must.

Where the imposable penalty for the crime committed exceeds six years' imprisonment, diversion measures will only be decided by the courts.

The diversion programme shall cover socio-cultural and psychological services for the child which may include: reparation of the damage caused, counselling, participation in available community-based programmes, or in education, vocation and life skills programmes.

At the level of the appropriate court, in addition to the programmes cited, diversion programmes can also include reprimand, fine or institutional care and custody.

A diversion programme will depend on the individual characteristics and the peculiar circumstances of the CICL. Some of these factors are: the child's feelings of remorse; the ability of the parents or the guardians to supervise, the victim's view; and, the availability of community-based programmes for rehabilitation and reintegration of the child.

In case of failure to comply with the terms and conditions of the contract of diversion as certified by the LSWDO the offended party can institute the appropriate legal action. Also, if no diversion took place because the imposable penalty exceeds six years, or the child or his/her parents does not consent to diversion, the case shall be filed according to the regular processes.

D. Release on Recognizance

Where a child is detained, the court shall order the release of the minor on bail or release on recognizance to his/her parents and other suitable person. The court has also the option to transfer the minor to a youth care facility. In no case shall the court order the detention of a child in a jail pending trial or hearing of his/her case.

E. Discharge of the Child in Conflict with the Law

When at the time of the commission of the offence, the child is under 18 years old and subsequently he is found guilty of the offence charged, the court shall place the CICL under suspended sentence without need of application. Suspension of sentence shall still be applied even if he/she is more than 18 years old at the time of the pronouncement of his/her guilt.

The court shall impose the appropriate disposition measures in consideration of the various circumstances of the CICL. Upon recommendation of the social worker who has custody of the child, the court shall dismiss the case if it finds that the objectives of the disposition measures have been fulfilled.

F. Confinement of Convicted Children in Agricultural Camps and Training Facilities

After conviction and upon order of the court to serve his/her sentence, a CICL may in lieu of confinement in a regular penal institution, serve in an agricultural camp and other training facilities that may be

supervised by the Bureau of Correction, in coordination with the DSWD.

G. Competent Authority

Family Courts have exclusive jurisdiction over cases involving children in conflict with the law. Jurisdiction is vested with Regional Trial Courts in places where there are no family courts.

V. THE PHILIPPINES' INSTITUTIONAL TREATMENT OF CICL

Republic Act No. 10630 or the Act Strengthening the Juvenile Justice System provided for the establishment of an Intensive Juvenile Intervention and Support Center for children (IJISC) under the minimum age of criminal responsibility in "Bahay Pag-asa".

The "Bahay Pag-asa" is a 24-hour child-care institution funded and managed by local government units (LGU) and licensed and/or accredited non-government organizations. Children in conflict with the law who are 15 to 18 years old shall be housed in these temporary shelters while awaiting trial and the judgement to be rendered by the courts.

The law also clarified procedures for children below the minimum age of criminal responsibility, including those who commit serious offences. It provides that any child aged 12 to 15 who commits a serious offence punishable by more than 12 years' imprisonment should be deemed a neglected child under the Child and Youth Welfare Code. As a neglected child, the minor should be placed in the IJISC. The same is true with a child who was previously subjected to a community-based intervention programme. He shall also be deemed a neglected child and as such shall undergo an intensive intervention programme supervised by the LSWDO. The child will undergo appropriate intervention programmes through the written authorization for voluntary commitment of the child as executed by the parents or guardians or through a petition in the court for the involuntary confinement filed by the LSWDO or DSWD.

The "Bahay Pag-asa" will be managed by a multi-disciplinary team composed of a social worker, a psychologist/mental health professional, a medical doctor, an educational guidance counsellor, and a member of the Barangay Council for the Protection of Children (BCPC). They will come up with individualized intervention plan for the child and his/her family.

Based on the recommendation of the multi-disciplinary team of the IJISC, the LSWDO or the DSWD, the court may require the parents of the CICL to undergo counselling or any other intervention that would advance the best interest of the child.

VI. THE PHILIPPINES' COMMUNITY-BASED (NON-INSTITUTIONAL) TREATMENT OF CICL

A. Who can avail?

One of the disposition measures that can be availed of by a *CICL under suspended sentence* is Community-based Rehabilitation wherein he/she shall be released to parents, guardians, relatives or any other responsible person in the community. The LSWDO shall supervise the CICL in coordination with his/her parents/guardian. Examples of these programmes are: competency and life skills development; socio-cultural and recreational activities; community volunteer projects; leadership training; spiritual enrichment; and, family welfare services.

A child under the *minimum age of criminal responsibility* shall also be subjected to a community-based intervention programme supervised by the LSWDO.

B. Cooperation between Community-based Treatment and Institutional Treatment

If the best interest of the child requires, the CICL shall be referred to a youth care facility or 'Bahay Pag-asa' managed by LGUs or licensed and/or accredited NGOs monitored by the DSWD.

As mentioned previously, a CICL who was previously subjected to a community-based intervention programme can be deemed a neglected child. As such, he/she shall undergo an intensive intervention programme supervised by the LSWDO.

VII. THE PHILIPPINES' SOCIAL INTEGRATION OF CICL

Aftercare support services shall be made to prevent re-offending. These will be given for a period of at least six months. These services could include life skills development, livelihood programmes and membership to existing youth organizations. The aftercare support services shall be provided by the LSWDO. However, licensed and accredited non-government organizations may also be tapped. As with the previous programmes, it will require active participation of both the child and his/her parents or guardians.

The ultimate objective of providing the children in conflict with the law with interventions that will improve their social functioning is for them to be eventually reintegrated to their families and to their communities as well.

VIII. THE PHILIPPINE JUVENILE JUSTICE SYSTEM

In its effort to articulate the Juvenile Justice System in laws, rules and guidelines, the method of its proponents has always been experimented serving as a working hypothesis which is continually being retested in the laboratories of youth detention homes.

Throughout the history of its implementation, R.A. No. 9344 and its progeny have been hailed as a medium of hope for CICL. During such times, the Juvenile Justice System also faced criticism and difficulty. As such, the Juvenile Justice System of the Philippines is at odds with itself as to whether or not the present system warrants reconsideration. Today, the Philippines should see this exigency.