

# JUSTICE FOR CHILDREN: DETENTION AS A LAST RESORT

Innovative Initiatives in the East Asia and Pacific Region



# JUSTICE FOR CHILDREN: DETENTION AS A LAST RESORT

## Innovative Initiatives in the East Asia and Pacific Region

For every child  
Health, Education, Equality, Protection  
ADVANCE HUMANITY



ISBN: 974-680-229-1

## Acknowledgements

Many people contributed to the preparation of this document. The research and original drafting was undertaken by Ms. Julie Bergeron, UNICEF EAPRO. Special appreciation is noted for the following individuals and organisations:

### **UNICEF East Asia And Pacific Regional Office (EAPRO)**

Ms. Margie de Monchy,  
Regional Adviser Child Protection  
Ms. Monika Sandvik-Nylund,  
Consultant, Juvenile Justice and Child Abuse  
Mr. Stanford Smith, Consultant Editor  
Ms. Inthira Chutinthararak,  
Programme Assistant

### **Cambodia**

Bar Association of Cambodia, especially the  
Legal Representation for Children in Need of  
Special Protection Unit:  
Mr. Yim Sary, Attorney and Team Leader  
Mr. Loung Sokha, Attorney  
Mr. Chum Sophea, Attorney  
Ms. Keo Chea, Judicial Assistant  
Ms. Sarah Mills, Consultant, Legal Protection for  
Children, UNICEF Cambodia  
Mr. Sokea Keo, Project Assistant, Section Child  
Protection, UNICEF Cambodia

### **New Zealand**

Inspector Chris Graveson, New Zealand Police  
Mr. Mark Cousins, Sergeant, Officer in Charge  
Youth Services, New Zealand Police

### **Palau**

Mr. Michael J. Rosenthal, Minister of Justice,  
Republic of Palau Ministry of Justice

### **Philippines**

Attorney Antonio C. Auditor, Executive  
Director, FREELAVA  
Mr. Geronimo T. Jacalan, Program Officer/Centre  
Director of Balay Pasinlungan  
Ma. Victoria Cardona and Tricia Oco,  
Attorneys at Law, ATENEO Human Rights  
Center (CASA/GAL)  
Ms. Minerva Ambrosio, Attorney at Law,  
CASA/GAL Volunteer  
Judge Nimfa Cuesta-Vilches  
Mr. Johnny Miranda,  
President, ABAY Foundation  
Mr. Alberto Muyot, Project Officer for Juvenile  
Justice, UNICEF Philippines  
Mrs. Mary Grace Agcaoili, Training Officer  
Juvenile Justice, UNICEF Philippines

### **Thailand**

Attorney Wanchai Roujanawong,  
Director General, Department of Juvenile  
Observation and Protection, Ministry of Justice  
Ms. Kitiya Phornsadja, Project Officer,  
Child Protection, UNICEF Thailand

# CONTENTS

<b>INTRODUCTION .....</b>	<b>5</b>
<b>CHAPTER 1 – THE LEGAL FRAMEWORK FOR CHILDREN .....</b>	<b>9</b>
Child-Sensitive Procedures For Children – Thailand .....	10
<b>CHAPTER 2 – LEGAL ASSISTANCE FOR CHILDREN .....</b>	<b>21</b>
Legal Representation For Children In Need Of Special Protection (LRCNSP) – Cambodia .....	22
Court Appointed Special Advocates/Guardians Ad Litem: CASA/GAL Volunteers – Philippines .....	32
<b>CHAPTER 3 – DIVERSION AND RESTORATIVE JUSTICE .....</b>	<b>43</b>
Community-Based Prevention And Diversion Programme – Cebu City, Philippines .....	44
Police ‘Youth Aid Diversion’ Project – New Zealand .....	54
The Restorative Justice Programme – Palau .....	66
Community-Based Programme And Services For Juveniles In Conflict With The Law – Alalay Ng Bayan Foundation Inc. (ABAY) – Quezon City, Philippines .....	74
<b>CHAPTER 4 – REHABILITATION AND RE-INTEGRATION PROGRAMME ....</b>	<b>87</b>
Balay Pasilungan Project Of FREELAVA – Cebu City, Philippines .....	88
<b>CONCLUSION: CHALLENGES AND LESSONS LEARNED .....</b>	<b>101</b>

## **Global Facts on Juvenile Justice<sup>1</sup>**

- **It is estimated that over 1 million children worldwide are deprived of their liberty<sup>1</sup>**
- **80 percent of children will only commit one offence in their lifetime**
- **50 to 70 percent of crimes are committed by about 5 to 10 percent of the population**
- **It is estimated that there is an 80 percent likelihood of deterring first-time juvenile offenders from committing further offences, a group which represents 90 percent of juveniles who come in contact with police**

# INTRODUCTION

Juvenile justice is an issue that affects not only children involved in criminal activities but also child victims of poverty, abuse and exploitation. For example, street children and illegal child immigrants are often treated as criminals. Child victims of trafficking and sexual exploitation are often re-victimised in criminal justice systems. Improving justice for children, including juvenile



justice laws, policies and procedures is one of the most important strategies for enhancing the protection of children in society. This has been highlighted in several recent global documents, most notably the outcome document of the UN General Assembly Special Session on Children held in May 2002 - A World Fit for Children.<sup>1</sup> UNICEF, along with partner agencies, has committed itself to supporting efforts to improve justice for children as recognised in its Medium Term Strategic Plan 2002-2005. The document, UNICEF's Approach on Juvenile Justice identifies detention as the last resort for children. In East Asia and the Pacific (EAP) region a number of countries are making efforts to bring their juvenile justice systems in line with international standards and to fully safeguard the basic rights of children who come into

contact with the law. International standards for juvenile justice call for:

- Establishment of national legislation and programmes that foster diversion alternatives to deprivation of liberty (with detention a measure of last resort) and restorative justice;
- Creating circumstances in administrative and other government processes that are in the best interests of the child. This refers to judicial systems that are child sensitive and that minimise trauma, recognising that childhood is the most formative period of a person's life and the time when individuals are most sensitive and strongly influenced;
- Fully safeguarding children's rights, including the most basic protection rights, and the right to participation by children in the decisions which affect their lives (including judicial and administrative decisions);
- Aligning national legislative and judicial programmes with international law on juvenile justice and international good practices in this area.

In 2001 UNICEF conducted an Overview on Juvenile Justice in the East Asia and Pacific Region in co-operation with 22 countries.<sup>2</sup> In general, it was found that despite improvements in legislation, many children continue to be arrested, found guilty, and convicted for petty crimes as first time offenders. Updated information also shows that children with previous records of abuse, violence at home and in schools, substance abuse, and histories as street children often end up in the juvenile justice system. In the Philippines, for example, 81 percent of youth offenders were reported to

## Definitions

**Juvenile justice** refers to all the offences committed by children and young people (below the age of 18) whether: discovered or not; reported or not to the police or any other law enforcement agency; brought before a judicial, administrative or other body; sentenced or not. Children may also be considered an offender for acts that would not be punishable if committed by an adult (e.g. status offences; vagrancy). The terms 'juvenile delinquents', 'juvenile offenders', 'children in conflict with the law' and 'children in contact with the law' have the same meaning for the purposes of this document.

**Restorative justice** makes the offender responsible for reparation of harm caused by the offence; gives the offender an opportunity to prove his positive capacity and qualities; tackles guilt feelings in a constructive way; and involves others who have a role in conflict resolution including victims, parents, extended family members, schools and peers. It also provides an interesting approach to making diversion and de-institutionalisation fully compatible with 'justice' for children and in accordance with international standards.

**Diversions** refers to channelling children away from the formal justice system through alternative procedures and programmes.

**Alternatives to detention** may refer to: a police caution or warning; a written or verbal apology; written essays on the effects of the crime committed; community service/work; restitution to the victim; participation in a life skills course; counselling or therapeutic treatment for drug or alcohol abuse; or other restorative justice programmes.

**Deprivation of liberty** refers to placement of a child in any kind of establishment from which he or she cannot leave at will.

**Pillars of justice** in this document normally refers to key actors in the juvenile justice system: judges, prosecutors, police (law enforcers), correction and probation officers, and civil society (also e.g. churches, religious leaders).

have previous records of abuse.<sup>3</sup> Children are sometimes regarded and treated as criminals because of their status as street children, as illegal immigrants or as non-citizens in the case of some ethnic minorities. Reports indicate that these children may be locked up in custodial institutions due to insufficient welfare services, poor liaison between police and social workers, and/or lack of proper records on their person.

Child victims of sexual exploitation, trafficking, abuse and violence at home, school and

institutions are also reported to be subject to criminal procedures in some countries. As a result, many children are being held in police custody and detention without sufficient cause. Contrary to international standards and national legislation, some children are: detained with adults;<sup>4</sup> kept in unhealthy conditions; subjected to inhuman treatment; not provided with access to education; and detained for lengthy periods of time. Three countries (Cambodia, Mongolia and Papua New Guinea) reported that over 50 percent of accused children are detained at the

pre-trial stage, and for periods of time that are in breach of international standards and national law. It is also significant that children are also at risk of contracting HIV/AIDS and experiencing drug and substance abuse while in detention.<sup>5</sup>

There has been a marked increase over the past few years in activities focused on improving juvenile justice in the East Asia and Pacific region. Legislation is being brought in line with international standards and the capacity of key actors is being developed to implement new policies in the context of child rights. A relatively new trend is the development of pilot projects for diversion or re-integration of juvenile offenders into society, as well as the establishment of child sensitive procedures and systems of legal assistance for children. However, some of these initiatives already show signs of success.

In order to reduce the juvenile crime rate and the number of children deprived of their liberty and, improve the lives of these children, it is useful to examine past and current programmes.

The identification and promotion of 'good practices' for children in conflict with the law is

needed to strengthen programme interventions. Based on various reviews, it is clear that a holistic approach to juvenile justice should be used as the underlying strategy for programming interventions.

This document highlights a number of these initiatives that are promoting international standards on juvenile justice for children in conflict with the law. These programmes show how governments, civil society, non-governmental organisations, communities and ordinary citizens are working to protect children, provide for the needs of children, and ensure that their rights are respected. Hopefully the application of new approaches, refining of existing mechanisms and an increased focus on juvenile justice will result in fewer children experiencing the trauma and negative consequences of inappropriate juvenile justice procedures. A particular focus of the initiatives highlighted here are programmes that attempt to reduce the number of children sent to prison or detention centres for petty crimes (diversion), and those that set up community-based alternatives to incarceration of children (restorative justice).

---

1 A World Fit for Children, para. 44.

2 Updated information can be found in several documents including: Report to the Technical Regional Workshop on Juvenile Justice, UNICEF EAPRO, July 2002 and Towards A Region Fit for Children: An Atlas of the 6th East Asia and Pacific Ministerial Consultation, UNICEF EAPRO, 2003. See also Annex 1 of this publication for updated information on juvenile justice projects in EAP countries.

3 "The Cycle of Violence: Child Abuse and Children in Conflict with the Law", paper prepared by Alberto T. Muyot, UNICEF Project Officer for Juvenile Justice, Philippines, September 2002.

4 14 EAP countries report having provisions for separation of children, though these are not always applied in practice. See updates in Towards a Region Fit for Children: An Atlas for the 6th East Asia and Pacific Ministerial Consultation, UNICEF EAPRO, 2003.

5 Study on Children at Risk of HIV/AIDS and Drugs in Five Detention Facilities in Thailand, Save the Children UK, 2003.





Credit: UNICEF Thailand

1

# THE LEGAL FRAMEWORK

# CHILD-SENSITIVE PROCEDURES FOR CHILDREN – THAILAND

As a result of collaborative efforts by court officials, children’s rights organisations and child advocates, Thailand has enacted progressive legislation creating ‘child sensitive’ procedures for children involved in the criminal justice system - whether as witnesses, victims or offenders. Through the innovative use of video-linked television systems for taking depositions of children, training of key actors in the criminal justice system, and mandatory attendance of child counsels, psychologists or social workers during proceedings, these new laws have contributed to a process that is much more responsive to the needs and rights of children.

## KEY ACTORS AND PARTNERS

### Subcommittee on Law Reform

Founded in 1996, the Subcommittee is composed of 14 members, including representatives from:

- The Office of the Attorney General;
- The Court of Justice, specifically the Juvenile Family Court and the Appeals Court;
- The National Police Office;
- The National Commission for Women’s Affairs (NCWA);
- The National Youth Bureau (NYB);
- The Department of Public Welfare;
- NGOs and other local groups, including Fight Against Children Exploitation (FACE), the Centre for Protection of Children Rights (CPCR), and the Women Lawyers Association of Thailand;
- UNICEF Thailand.

### Goal and Objectives

#### Goal

- Development of child-sensitive procedures for children which reflect the provisions of the Convention on the Rights of the Child (CRC) and related international standards

#### Objectives

- Establish a video link system for use in the justice system throughout Thailand
- Increase awareness of juvenile justice issues through advocacy
- Strengthen the capacity of key actors in the justice system through training and development of training manuals
- Prevent children from being victimised by the justice system

## PROJECT BACKGROUND

### **1995: Creation of the Subcommittee 1996-1999: Preparation of the draft Act and revised Act on Child Sensitive Procedures for Child Victims and Witnesses**

Formation of this Act would not have been possible if the Subcommittee on Law Review had not taken the initiative. Between 1996 and 1999, meetings of the Subcommittee were held twice a month to discuss provisions of the law. It took three drafts and three years to reach an agreement on the draft law, which was then submitted to Parliament. It is worth mentioning that the initial draft did not extend protection to child offenders. Pursuant to Parliament's recommendations to extend the scope of the law, the Subcommittee revised the draft and included child offenders in the new draft that was re-submitted to Parliament in 1999. Although children were not directly involved in the drafting process, NGO representatives were present at the meetings and reported to the Subcommittee feedback received from children.

### **2000: Child-sensitive procedures included in the revised Criminal Procedures Act**

A significant legislative change was the 1999 Criminal Procedures Act, which came into force in September 2000. This was coupled with the 2000 Regulation on Protection of Children's Rights in Criminal Cases.

Procedures under the new law make videotaped deposition of child victims, witnesses, and offenders compulsory and allow the Court to arrange for video-links. In addition, it prevents the child from enduring repeated questioning and suffering the trauma of having to give his/her testimony repeatedly and having to face the abusers.

According to the law, persons who are compelled to be present either at the investigation or court hearings of child offenders are:

- child offenders;
- children's advocate/counselors;
- psychologists or social workers;
- prosecutors; and
- the police.

Only a qualified social worker or psychologist can question children. However, a derogation can be granted in extremely urgent cases with reasonable cause, if the inquiry official cannot wait for a psychologist or social worker.

### **2003: Further revision of the Criminal Procedures Act**

The mechanisms and systems set up to provide child-friendly procedures for all children in contact with the justice system, as provided by the Act of 1999, have become overburdened. The workload of courts, police, social workers has expanded and there is a fear that this could adversely affect the quality of interviews and investigation. As a result a revision of the Act is currently underway. Under the proposed revision, all child victims would continue to have access to child-friendly procedures. However, it is suggested that child-sensitive procedures would not automatically be applied in cases of serious offences, even if the offender is a child. However, exclusion would only be possible with a court order and only if the child admitted his/her guilt. It should be noted that under the 1999 Constitution all children still have the right to request child-sensitive procedures.

Efforts to reform juvenile justice laws by the subcommittee also include: revision of the Law on the Establishment of the Juvenile and Family Court; relevant civil and penal codes; and the Draft Child Protection Act replacing the Child Welfare Act of 1973; as well as development of national standards for the 'protection of children deprived of their liberty'.

## PROJECT DESCRIPTION

### Key Activities

#### Advocacy

In the area of legislative advocacy, children's rights organisations and proponents were very active in lobbying for the enactment of child-sensitive procedures in the justice system. Since the adoption of the Act, the Office of the Attorney General and UNICEF Thailand have emphasised the need to raise awareness among the key pillars of justice, including civil society, for effective implementation of the law. This has been addressed through mass media, use of posters and brochures, meetings and training, and various other means.

#### Training and Development of Manuals

In order to enable the key pillars of justice, especially courts and police, to more effectively implement this Act, specialised training was also considered necessary. Since September 1999, the Office of the Attorney General, the National Youth Bureau (NYB) and UNICEF Thailand have provided assistance for multi-sectoral training for all the key pillars of justice; and specific training for social workers, family court judges; prosecutors and police. Training materials and manuals for Training of Trainers (TOT) have been developed for Family Court Judges, Office of Attorney General, Department of Public Welfare, and the National Youth Bureau.

#### Installation of video-link equipment

To fully implement the new law, it was necessary to install television video-link equipment in courtrooms. Installation of the equipment in all provinces of Thailand was completed in January 2002. Initial sets of equipment were made available to all 76 provinces with UNICEF's support. In some of the provinces a second set of equipment was procured with government funding and/or publicly-raised funds.

### Problems encountered

In the implementation of the Act, a number of challenges and difficulties have been encountered.

- Delays were experienced for implementation of activities under the Act due to restructuring within the Ministry of Justice and lingering budget effects of the economic crisis of 1997.
- Technical and structural challenges also delayed implementation such as difficulty in installing equipment and in arranging interviewing rooms and courtrooms appropriately.
- A lack of professional psychologists and social workers resulted in having to reduce the qualifications for eligibility to undertake the 21-day training on child-sensitive procedures and become registered with the justice system.
- Courts have been reluctant to use the new system, primarily because they did not believe in its sustainability. However, the situation has improved over the years due to strong advocacy efforts and training.
- Police have made complaints regarding the new procedures, primarily because they have resulted in increased caseloads. Although in some cases the social worker or psychologist manages to make the environment more suitable for children, it does occur that police continue to ask questions in a very investigative and 'tough' manner.
- Contrary to the best interests of the child and the law itself 'consultants' are sometimes used to film investigations, including the questioning of the children. These 'consultants' have yet to be trained sufficiently on ways to raise questions appropriately when dealing with children.

## IMPACT

There has been no impact assessment yet on the implementation of the revised procedures, though UNICEF Thailand is planning to conduct an assessment in 2004. However, some initial achievements for implementing the new procedures can already be seen as follows:<sup>6</sup>

- Video equipment and child-friendly rooms have been set up in all 76 provinces in accordance with the Criminal Procedures Amendment Act for Children. This process was completed gradually over an 18-month period.
- Over 12 multi-sectoral training workshops for about 1,400 key ‘pillars of justice’ have been conducted throughout Thailand, including police. Training was conducted by the National Youth Bureau with UNICEF support.
- Approximately 720 prosecutors received Training of Trainers courses. Training was conducted in 12 separate regions of the country.
- Approximately 90 Family Court judges attended a national Conference on Child-Sensitive Procedures.
- Over 400 professional and paraprofessional social workers and psychologists (approximately 6 or 7 per province - with a higher number in Bangkok) received a three-week training course. Those who passed the course received accreditation to allow them to assist children during investigations and court hearings.
- Between 6 to 10 cases per day in each court are dealt with using the new child-sensitive procedures.

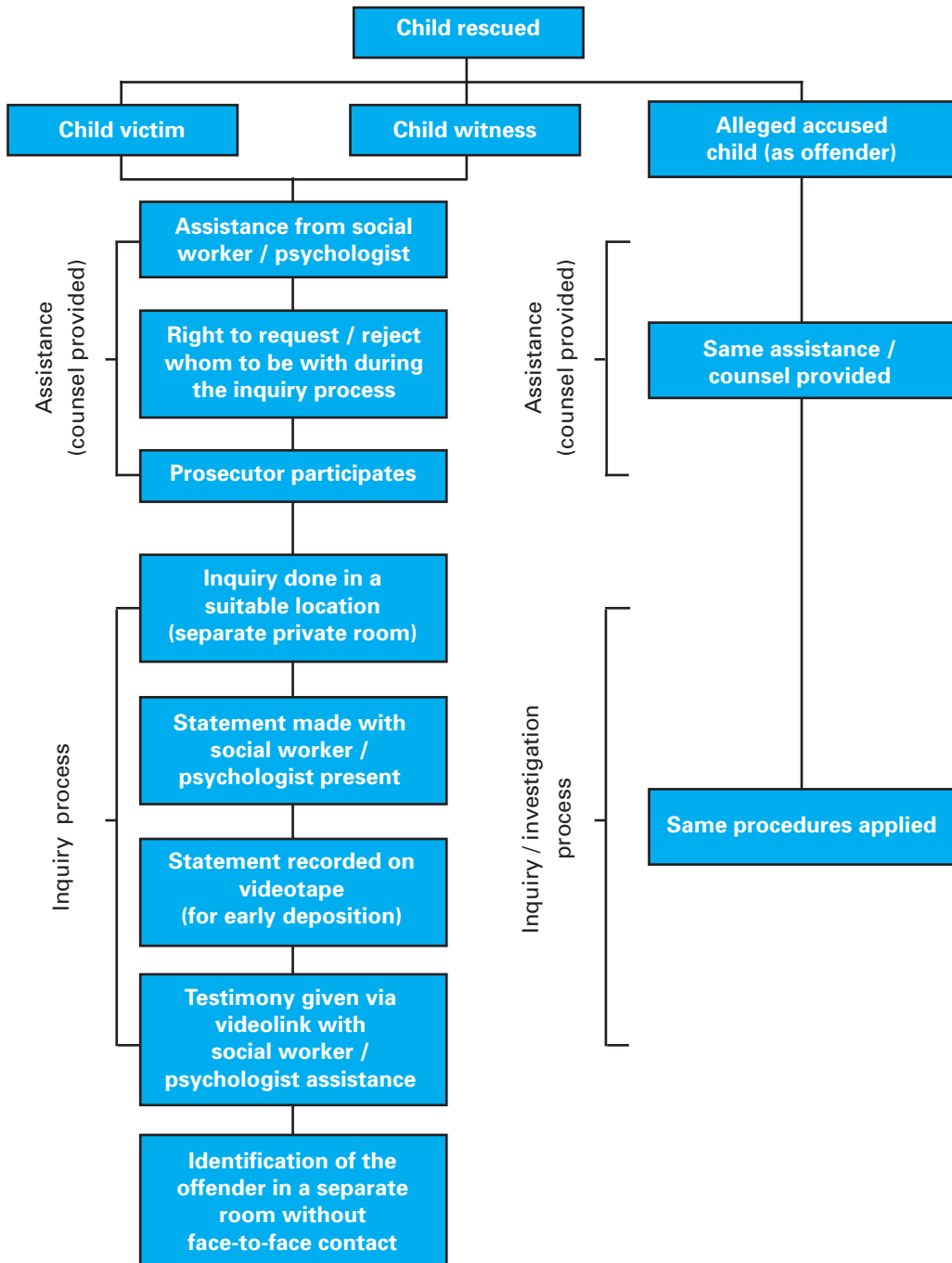
## RESPONSIVENESS AND RELEVANCE

This law is in compliance with international standards on juvenile justice. Article 2 of the CRC which states that every child, whether boy or girl, should be ensured their rights without discrimination. While the law lays the ground for non-discrimination as required by the CRC, it remains to be seen to what extent the Act will also be sensitive to the needs of children belonging to minorities (e.g. hill tribes and other ethnic groups). The law also reflects Article 3 of the CRC related to the ‘best interests of the child’ as being of primary consideration. Article 40(3) of the CRC emphasises that “State parties shall promote the establishment of laws, and procedures [...] specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law [...]”. The question can be raised whether Thailand will still be in full compliance with Article 40 if a current proposal to revise the Act (in which case some categories of child offenders would no longer automatically be covered by the Act) is passed.

The police, and particularly the Family Court, do play an important role in ensuring that these statutory principles and objectives are achieved. Their role in determining outcomes is twofold: in interviewing; and providing hearings for all children in a ‘child-friendly environment’.

In Thailand, society is more and more recognising the benefits of providing special judicial procedures for children. They see that victims especially can be shielded from being further victimised, and that if they are treated in a sensitive way by the police and judiciary, they are more likely to recover from the trauma of abuse.

## Flow chart of child-friendly judicial procedures under the 1999 Criminal Procedure Amendment Act



**Source :**

Economic and Social Commission for Asia and the Pacific: "Good Practices in Combating Sexual Abuse and Sexual Exploitation of Children and Youth in Asia", 2001

## Reactions to the New Act

- Since the creation of this law, court officials can 'see' with their own eyes what child victims have been going through. Courts no longer deal with a piece of paper, which summarises, sometimes incorrectly, the statements of child victims [Attorney Wanchai, Roujanawong, Director General, Department of Juvenile Observation and Protection, Ministry of Justice]
- For the community, there is a clear benefit from the use of these procedures for child victims and witnesses. Yet the assumption that child offenders are just 'bad boys' and would be better off detained is still too common. [Kitiya Phornsadja, UNICEF Child Protection Officer, Thailand]
- Children are less afraid to make declarations when they are not on their own to face interrogations from the police. [Attorney Wanchai Roujanawong, Director General, Department of Juvenile Observation and Protection, Ministry of Justice]

## INNOVATIVENESS

Thailand is one of the first countries in the region, with the Philippines to have established 'child-sensitive' procedures for children in the justice system. This was possible because the Subcommittee did not wait for the Office of the Attorney General to take the lead in drafting the Law on Child Sensitive Procedures. The creation of this Subcommittee was initiated by children's advocates based on their concern, good will and role as advocates.

The participation of well-respected judges<sup>7</sup> in the Subcommittee, training workshops and conferences contributed tremendously to demonstrating the benefits of this law - not only for children but also for the whole society.

## SUSTAINABILITY

Although initial external funding was necessary to support establishment of the video link equipment, sustainability of this project no longer depends on external funding. Remuneration for psychologists and social workers is provided through a regulation of the Ministry of Justice with the consent of the Ministry of Finance.

The current cost is about 500 Baht (US\$ 12) for each case. The remaining participants in the process (police, court officials and attorneys) do not receive additional compensation when they have to adhere to this process.

The Office of the General Attorney in each province is now responsible for expenses related to (re)installation of interview rooms, video-taping and related equipment (particularly batteries for microphones). These batteries are extremely expensive, so it has been decided that they will be replaced by electric equipment. This will be fully covered by the Government, as electricity costs are already included in the Government budget.

Sustainability of the procedures is directly linked to the strong involvement of the Advocate for Children and other supporters who assisted in developing and promoting the creation of this law. There is a continuous need to revise the law in order to reflect the changing needs of children and the community, and the capacity of the justice system.



## CASE STORY

In March 2002, a 14-year-old boy visiting a temple fair was lured by a man who at the time was a Buddhist monk. The man took the boy to his quarter and sexually assaulted the boy throughout the night. The following morning the victim went to see the police, which led to the arrest of the monk. At the inquiry level, the prosecutor's questioning of the boy in the presence of a psychologist was officially video recorded. At the court hearing, the prosecutor only submitted a medical report stating the boy might have had anal sex and a confirmation from the inquiry official that the boy had reported so. The prosecutor would not bring the boy to the court hearing in person because his father had not granted permission. The father feared further humiliation for his son. The Court also concluded that the defense cannot bring the boy to the Court for testimony, as it would be unbeneficial to the child and cause further distress. Therefore, under the Criminal Procedures, Section 133 bis and Section 172 bis 3, the Court ordered the attorney and the plaintiff to bring forward the video of the boy's interrogation to be viewed in Court. The video testimony was considered together with other evidence submitted. The offender was found guilty and received a prison sentence.

## LESSONS LEARNED

### **Justice systems for children should respect the rights of all children.**

Children who come in contact with the law, whether as offenders, child victims or child witnesses, should be treated equally. This does not imply one system of justice for all children but recognises that within different procedural rules for various categories of child cases, the rights of each child must be respected.

### **'Good laws' and regulations are not enough.**

Laws and regulations can only address a small part of the problem. Advocacy and training on juvenile justice, the CRC and the entire system of legal protection for children in Thailand is necessary for strengthening implementation of the law.

### **Awareness raising and education activities for parents and community members are necessary in order to improve attitudes, especially towards child offenders.**

Civil society needs to be educated on child rights in order to support appropriate justice for children. Children also need to be educated. Too often victims are afraid of reporting their cases because

they feel intimidated by the offenders and by the process they may have to go through with police and/or the courts. Especially for child offenders there is a need to build their trust in the police.

### **Multi-sectoral training promotes co-ordination and commitment from all key actors or pillars of justice involved in bringing about changes to law implementation.**

Partly as a result of multi-sectoral training co-ordination among the pillars of justice has improved. They now work together, and discuss and plan appropriate responses to children's issues. In addition to multi-sectoral training more specific training is needed for some of the justice pillars (i.e. social workers, police and court officials). To make the law more effective, training should be integrated into each department/ministry's internal training programme.

### **It is important to be flexible in the process of selecting social workers and psychologists.**

It became clear that there is a lack of professionally trained psychologists and social workers in Thailand. Therefore, it became

necessary to be more flexible in determining qualifications for those psychologists and social workers who could be considered eligible for training and certification to support children in court. Under the new procedures, it was decided to extend the selection process to all social workers and psychologists, both professional and para-professional recognising that they all have to pass the training programme to become certified.

**Child-sensitive rooms and equipment should also be widely available.**

The Office of the General Attorney should not be the only place where child-sensitive rooms are established. In some cases, it was very inconvenient for children who lived far away to come to the provincial centre for their interviews. Thus, child-sensitive rooms and equipment should be available in as many locations as possible/feasible.

**Continued capacity building is needed to ensure effective use of video equipment.**

Although the capacity of professionals to manage the process has been increased, much remains to be done. There is a special need to ensure that video equipment (video-link cameras and microphones) are used effectively.

**Further training of police in child questioning techniques is needed.**

Children, especially child offenders, have difficulty trusting the police, and the fact that the police do not always use appropriate language with children does not help this situation. If questioning is done incorrectly, the process of questioning and taking statements can have serious impacts on the mental health of children, and may result in incorrect statements during the inquiry.

**It is important to ensure the confidentiality of cases.**

The confidentiality of cases needs to be ensured and improved. For example, no 'consultants' should be invited/admitted during the filming of child investigation and questioning.

**Structural changes are needed to improve the implementation process.**

Police are still reluctant to fully endorse the child protections encompassed by the new law. There is clearly a need to promote behaviour change in this area. Therefore, it is proposed that a Special Police Unit be created. The staff of this Unit would receive special training on child rights. The police seem very receptive to this idea.

## CONTACT INFORMATION

<b>Contact:</b>	Mr. Trakul Vinitnaiyapak, Director General, Department of International Affairs, Ministry of Justice
<b>Country:</b>	Thailand
<b>Name of Organisation:</b>	Office of The Attorney General
<b>Address:</b>	Ratchadapisek Road Na Huppei Road, Bangkok 10200
<b>Telephone:</b>	+66 2 222 8121
<b>Fax:</b>	+66 2 221 0858
<b>Area of Work:</b>	Legal Protection

---

<sup>6</sup> Based on interview with Attorney Wanchai and Kitiya Phornsadja of UNICEF Thailand.  
<sup>7</sup> Justice Wacharin Patchekvinyuskul and Justice Jaran Pakdithanakul.





Credit: Cambodia's Child Protection Unit

# LEGAL ASSISTANCE

# LEGAL REPRESENTATION FOR CHILDREN IN NEED OF SPECIAL PROTECTION – CAMBODIA

In Cambodia, children in conflict with the law and child victims do not always receive appropriate legal representation.<sup>8</sup> This includes the right to have access to justice, to obtain redress, and to have legal assistance in the preparation of their defence.

As the arrest and detention rate for juvenile offenders has increased over the years, many children have suffered from violations of basic rights while in detention, including violence and abuse, poor health services and food supplies, and high risk to contract HIV/AIDS and/or other sexually transmitted diseases. Recently, as a result of the legal assistance provided by the Child Protection Unit of the Cambodia Bar Association, some juveniles have been released from custody or acquitted, and important services are being made available for them, including education. The assistance these juveniles are receiving can make the difference between freedom and independence, and months or even years of being “forgotten” within the criminal justice system.

## KEY ACTORS AND PARTNERS

### **Bar Association of Cambodia, Special Unit**

The Cambodia Bar Association was created by law in 1995. All lawyers practising in Cambodia must be registered by the Bar. It is headed by a President and governed by a Bar Council. As of November 2002, there were 222 practising lawyers registered as members of the Bar. The Legal Aid Department of the Bar Association is established by law and is devoted to the legal representation of the poorest. The Child Protection Unit is set up within the Legal Aid Department.

### **UNICEF Cambodia**

With a view to improving legal protection for children, especially children in conflict with the law, UNICEF Cambodia has been involved since 2000 in the area of juvenile justice through a number of projects. One of UNICEF’s main activities in this field is to provide support to the Bar Association of the Kingdom of Cambodia to provide proper legal protection for children in conflict with the law.

### **Other partners**

The Ministry of Justice; LICADHO (human rights NGO); provincial and municipal courts; the higher courts; the Child Protection Network at the provincial and municipal level; the Ministry of Interior - Law Enforcement against Sexual Exploitation of Children project (LEASEC); and the newly established Lawyer Training Centre of the Bar Association of Cambodia.

## Goal and Objectives

### Goal

- To improve access to justice for children in conflict with the law and child victims, and provide proper legal representation for these children.

### Objectives

- To increase awareness among NGOs and government institutions working with and/or for children regarding legal services available to children in conflict with the law and child victims - in order to refer approximately 15 cases monthly to the lawyers' team.
- To encourage and enable the Child Protection Networks to refer cases to the lawyers' team whenever necessary.
- To provide children accused of criminal offences and child victims with free legal representation and access to justice, including release of children from police custody whenever possible.
- To produce and distribute a specialised publication regarding court cases on children's rights to all professionals so that: they become sensitised to children's rights issues; a debate on children's rights and juvenile justice is made possible; and doctrine and jurisprudence on these matters is further developed.

## PROJECT BACKGROUND

Legal protection for children in contact with the law in Cambodia is not sufficient. Due to a shortage of funds for legal aid lawyers, lack of lawyers specialising in children's issues, low interest in handling such cases, and in some circumstances judges not appointing lawyers as required by law, children in conflict with the law too often have their rights denied. This includes

the right to have access to justice, to obtain redress, and to have legal assistance in the preparation of their defence.

Many children are arrested illegally by police, charged by prosecutors and then sent to the investigating judge. Investigating judges generally issue detention warrants immediately, without considering the details of the case. It is generally observed that laws are not fully respected by judges, prosecutors, the judicial police and local authorities. For juveniles accused of criminal offences, the following problems are especially important:

- There is currently no special law on child justice;
- Children are sometimes treated as adults by law enforcement;
- Judicial police arrest the child suspect without proper evidence;
- Judicial police arrest or place the child suspect in police custody without indictment from the prosecutor;
- Too often suspects or the accused children are detained for several months beyond the limited period indicated by law; and
- In many instances, police, prosecutors, judges and prison officers do not make sufficient efforts to inform the child's parents that he/she has been arrested and detained.

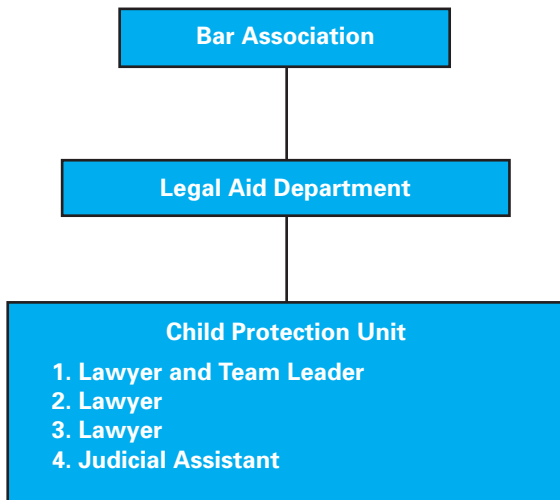
Based on increasing reports of children in conflict with the law<sup>9</sup> and child victims not always receiving proper representation, UNICEF supported the creation in May 2000 of a Child Protection Unit within the Bar Association, and signed a Memorandum of Understanding to run the project "Legal Representation for Children in Need of Special Protection". This project started with two lawyers providing legal representation in 7 provinces. This project now has nationwide coverage (24 provinces) and is composed of 3 well-trained lawyers and one judicial assistant with a specialisation in child protection, including juvenile justice and issues relating to exploitation and abuse of children.



## PROJECT DESCRIPTION

### Structure

The structure around the Child Protection Unit can be outlined as follows:



### Key Activities

#### **On-the-job training for the team lawyers and judicial assistant.**

UNICEF experts, including experts in juvenile justice and children's rights, continue to provide training to the Child Protection Unit team members and facilitate networking with, and training by, other relevant NGOs and government agencies.

#### **Legal representation of children in conflict with the law and child victims.**

The Child Protection Unit undertakes a number of activities in relation to legal representation, including:

- Receives cases of and represents children accused of criminal offences and child victims. Only poor children, children from poor families or children in the care of NGOs or Government institutions are eligible. Criteria to avoid conflict of interest (such as requests by

lawyers to represent both child victims and child offenders when both are involved in the same case) have also been developed. Due to a heavy workload and conflicts of interest, the Child Protection Unit sometimes must refer cases to other legal aid or defence organisations.

- Maintains a database on the numbers of cases received, accepted and referred, and documents cases referred to and handled by the Child Protection Unit. In order to prepare cases, the Child Protection Unit conducts investigations by lawful means, including interviewing witnesses and local authorities. The Child Protection Unit also requests medical examinations and opinions by medical specialists whenever required.
- Visits detained children in prisons to monitor their situation, including gathering case statistics such as the number of children in detention.
- Liaises with NGOs (working with and/or for children), existing child protection networks, prison authorities in Phnom Penh and Kandal provinces, police, and Social Affairs authorities. This is necessary in order to encourage these groups to refer children to the appropriate social services (including psycho-social support when necessary), ensure contact with their families, and collect information related to juvenile detention. Social workers in particular might also be involved in interviewing the child, visiting incarcerated children and introducing psycho-social information to the Court.

#### **Sensitisation of law professionals and other actors in child justice.**

The Child Protection Unit publishes and distributes a leaflet in Khmer and English describing the Unit and its activities in order to increase awareness among NGOs and government authorities (e.g. Ministry of Social

Affairs, Faculty of Law, Senate, National Assembly, Constitutional Council, police) regarding legal representation of children. To date, 2,150 copies of the leaflet have been distributed to all court levels.

The Child Protection Unit also publishes a quarterly journal which aims to disseminate court decisions related to children's issues, with commentary from lawyers and a list of articles related to children's rights. The journal ensures that the identity of the child is protected. The publication is distributed free of charge to: all courts; legal organisations; members of the Bar Association; the Council of Jurists; concerned Ministries; the CNCC; National Assembly and Senate; the Dean, interested professors and the library at the Faculty of Law; Ministry of Justice Library; NGOs; Committee on CRC; Legal Aid of Cambodia; Cambodian Defender's Project; and the National Library.

#### **Documentation Centre**

Legal books and other reference documents relating to children's rights, juvenile justice and child victims have been collected and are deposited with the Child Protection Unit. The documents are an important resource for the Child Protection Team as well as for other lawyers and practitioners.

## **IMPACT**

There has been no project evaluation to date. However, some understanding regarding the

impacts of the Legal Representation for Children in Need of Special Protection project can be drawn from interviews with the project implementers as well as documents made available.<sup>10</sup> Based on these sources, some key impacts of this project are as follows:

#### **Over 354 children in conflict with the law and child victims have been provided legal assistance between May 2000 and December 2002.**

This figure represents 260 cases of children in conflict with the law and 94 cases of child victims. 200 children have been represented/defended before the Court and the remaining cases were in process as of the end of 2002. Most of the cases for which representation is provided to children in conflict with the law are related to the following offences: theft, robbery, battery with injury, and rape. It is worth mentioning that the objective of 15 cases per month is sometimes exceeded; amounting to 25 in some months.

#### **The number of cases of children in conflict with the law and child victims reported and referred to the Bar Association has increased since May 2000, rising from 57 in 2000 to 150 in 2002.**

This seems to indicate that the service is known and recognised as being beneficial. It is interesting to note that the majority of cases of children in conflict with the law referred by the Courts and in some cases by a representative of the Cambodia Office for High Commissioner for Human Rights. However, child victims are more often referred by local human rights NGOs such

### **CASE STORY**

A boy was accused of committing petty larceny and beaten by security staff in the Central Market in the capitol of Phnom Penh. The Child Protection Unit intervened in this case following an order to provide legal assistance. The Unit lawyer negotiated with the head of the market to reach a settlement such that the boy was released. Some financial compensation was provided to the boy in order to help him with medical costs. This is one successful example of diversion that resulted from legal assistance provided by the Child Protection Unit.

as, the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), Cambodian Human Rights and Development Association (ADHOC), Cambodian Women's Crisis Centre (CWCC), the community-based Child Protection Network, as well as by friends and family of the victim.

**Among the children represented to date, 26 juveniles have been acquitted and 8 released on bail thereby avoiding detention.**

Keeping these children out of institutions means that they can stay with their families in their communities and continue to go to school. The Child Protection Unit actively encourages juveniles to go to school following acquittals.

**The often lengthy period of time for which children are detained while awaiting trial has been reduced as a result of the legal intervention of the Bar Association.**

Some children, languishing in jail because they were 'forgotten', were provided free legal assistance by the Child Protection Unit. The Child Protection Unit monitors children who are held pending trial and makes representations where children are kept detained over the limit of time proscribed in the law.

**Some children suspected of committing a criminal offence have been diverted from the formal criminal justice system.**

In some cases diversion is used; however, this is very limited in practice, as there is currently no legal basis to keep children away from the justice system.

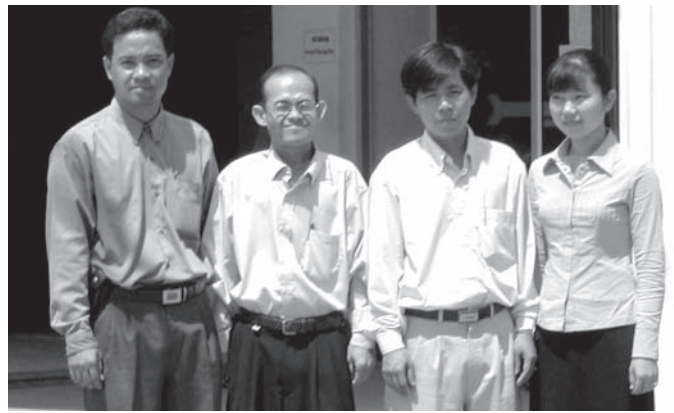
**Innocent children who are incidentally kept in prison with their convicted mothers have also been assisted by NGOs.**

When a pregnant mother is sentenced to imprisonment and gives birth to a child, the child is also raised in jail. Too often this incarceration is for a lengthy period of time and adversely affects the child's mental and physical health. Human rights NGOs keep track of these children

and provide medical services and health checks for them. The Child Protection Unit works to secure these children's release from prison.

**Child witnesses have received legal protection through this project.**

Although the project does not generally provide assistance to child witnesses, if a child witness is involved in a case in which a child victim receives legal assistance from the Child Protection Unit, the child witness may also receive legal protection.



The Child Protection Unit of the Cambodia Bar Association: Mr. Loung Sokha, Mr. Chum Sophea, Mr Yim Sary (Team Leader) and Ms. Keo Chea. Credit: Cambodia's Child Protection Unit

**As a result of frequent training provided to the Child Protection Unit, physical and other abuse by law enforcement officers toward children has been reduced.**

However, children are still facing violations of their rights by members of law enforcement agencies, and a change in police approach and behaviour remains relatively limited at present. UNICEF's plan to include child justice in its training of police officers commencing in 2004 should be able to effect more of a change in this regard.

**Relevant national and international laws applicable to children, especially the CRC, are invoked before the courts and consequently more and more children are ensured a proper trial in line with national and international standards.**

The Child Protection Unit has assisted the judges and court officials to better understand the CRC. However, awareness raising on this issue is fairly new, and more advocacy is needed to continue to encourage the judiciary to fully comply with the CRC's provisions in the court's handling of children's cases. UNICEF's discussions with the new School of Judges and Prosecutors will see all these law professionals in Cambodia trained on child protection issues, including child justice.

## RESPONSIVENESS AND RELEVANCE

This project is in compliance with international standards on juvenile justice, in particular Article 40 of the CRC which "recognises the right of every child alleged as or accused of having infringed the penal law"... "to have legal or other appropriate assistance in the preparation and presentation of his or her defence". Although not all children can be provided legal assistance due to limited number of staff and project budget, the free legal assistance provided is helpful to safeguard the rights of some of the poorest children.

As a result of the legal representation children feel more confident about the court process and feel more comfortable telling the truth. International standards on legal assistance have also been incorporated into national law, such as Article 10 of UNTAC Criminal Law<sup>11</sup> of 1992 which guarantees the right to legal assistance for any child (or adult) accused of a misdemeanour or crime. However, as mentioned below (see Lessons Learned), the national legislation for protection of children is still weak and needs to be reformed in order to provide full protection for children (e.g. child-sensitive procedures for children need to be established).

## Reactions to the Project

- The court is grateful to have the services provided by the project, and often calls on the Child Protection Unit lawyers to represent children in need of assistance. They have recognised that it is often easier to ask the children questions if a lawyer is representing them.
- NGOs and social services welcome the assistance of the lawyers in the representation of children, as it is difficult to find lawyers for children. Children do not generally know their rights, so NGOs refer children who come in conflict with the law to the Child Protection Unit lawyers.
- The Community's understanding of the benefit of having children legally represented has increased.

## SUSTAINABILITY

The Bar Association has established a Legal Aid Department composed of 10 lawyers (not counting the Child Protection Unit). It is funded by contributions from members of the Bar and by the Royal Government of the Kingdom of Cambodia. Lawyers at the Legal Aid Department may represent clients anywhere in the country.

The Bar Fund is derived from dues paid by all members, as well as other contributions. A special account has been established for providing income to lawyers who defend the poor. This special account may receive donations or aid from private or international organisations as well as foreign governments in order to provide for the defence of poor people.

Funds required to sustain the project are very reasonable, about US\$ 25,000 to 30,000 per year. Since the creation of this project, UNICEF has been the primary sponsor with an allocation of approximately US\$ 102,000 for the initial phase. In order to make the project fully sustainable however, it would be necessary to institutionalise this project or attract additional donors.

## LESSONS LEARNED

**Legal representatives for children find it difficult to advocate for diversion and restorative justice approaches as they do not yet exist in the law. Continued advocacy for law reform on juvenile justice is critical.**

There is no diversion system currently available under Cambodian law. Due to a lack of legal basis, it is difficult for lawyers to argue that a child should be dealt with outside of the court system. It is clear that a greater impact on reducing the number of children in detention would be achieved if diversion were legally established. As for child victims, it has been pointed out that approximately 40% of children are sometimes unable to testify before the court

because they feel scared. Within this context it is suggested that child-sensitive procedures be established. UNICEF Cambodia plans to support a pilot project on child-friendly courts starting in 2004 if funding permits.

**Law reform is needed to promote that recommendations for services be included in Court decisions involving youth offenders and child victims.**

In Cambodia, courts do not include in their decisions specific recommendations on services to be offered to child offenders. It would be helpful to advocate for inclusion of such provisions and require courts to seek advice from social workers/NGOs to identify what services are available. Appropriate recommendations from judges would mean that services would depend on the court directives, not on people's voluntary assistance. It is important that any new legislative provision requiring adequate services for youth offenders and child victims be workable in the Cambodian context, given that currently there are limited services available for these children.

## CASE STORY

"Mok", a 16 year old boy, was on his way to visit relatives with some of his friends. They noticed a crowd of people demonstrating outside a hotel and stopped to watch. Suddenly, he and his friends were arrested by the police and accused of participating in the demonstration. They were also accused of attempting to steal hotel property. Another young man, 17 years of age had a similar experience. The boys told the police that they didn't participate in the demonstration, in fact did not know the reason for the demonstration, and had no intention of stealing hotel property.

They were accused by the prosecutor to the Phnom Penh Municipal Court of attempted theft contrary to the Criminal Law. The investigating judge issued a warrant of temporary detention 3 days later. The Team Leader of the Child Protection Unit, who represented the boys, successfully argued to get them out of temporary detention.

At the trial, the Team Leader said that the boys did not attempt to steal property, arguing that there was insufficient evidence to convict them in this case and that according to the Constitution, any case of doubt shall be resolved in favour of the accused. The Court acquitted the boys of any criminal wrongdoing.

**Judges are not always responsive to the recommendations of children’s advocates, especially in child victim cases.**

More efforts are needed to strengthen relationships among key justice actors. Multi-sectoral training, for instance, could help in strengthening their collaboration and understanding of each other’s roles and responsibilities - including the special needs of child victims and children in conflict with the law. This may also result in a reduction in the number of children abused in jail.

**Visits to youth offenders in prisons are essential to strengthen the relationships and trust between youth and children’s advocates.**

This also allows monitoring of human rights violations of children in detention, such as the right to: be free from violence and abuse; health problems (including HIV/AIDS’ threats); and the right to receive sufficient and proper food. Too often children’s advocates are powerless in this respect.

**Progress is linked to political will and economic circumstances.**

Current high-ranking officers of the Ministry of Justice are very supportive of the idea of having new legislation on child justice. It is unknown, however, whether the new leaders will have the same position after the national election in July 2003. It will be important for UNICEF to advocate if necessary with the new leaders the continuation of the drafting process.

**The success of the cases represented by the Child Protection Unit depends on court professionalism and independence, as well as adherence to the principles in the CRC.**

In practice, courts are not independent and training of judges and prosecutors has been limited. In general, courts do not pay much attention to the CRC or other human rights

instruments. With the establishment of the new School for Judges and Prosecutors, it is hoped that professionalism, skills and knowledge about children’s protection issues will increase. Although there are some judges that understand and respect the CRC, their actions are constrained by the limits of current criminal law provisions.

**Transportation costs for getting children to the court has been a problem in some cases.**

This problem occurs mainly in the case of child victims. Generally, child offenders who are awaiting trial and receive legal assistance are detained in prisons or youth rehabilitation centres in the court’s vicinity. There is no funding allotment for this cost at the moment.

**More advocacy work is needed to reach children in remote areas who are in need of special protection and legal assistance.**

To date, children in some provinces have not received any legal assistance because not enough advocacy has occurred in these areas, particularly in remote areas. In order to fill this gap, it is suggested that communication be further developed and more linkages made with NGOs working for the benefit of children. UNICEF Cambodia has recently applied for supplementary funds to create a Bar Association Child Protection Unit satellite office, which if successful would see better access for children in other parts of the country.

**There is a need to encourage passage of the proposed Penal Code, especially the provisions related to corruption.**

Corruption in the courts and among government staff means that justice is not always served. The proposed Penal Code will have stronger provisions on corruption, and the proposed Law on Judges should also help to address this problem.

## CONTACT INFORMATION

<b>Country:</b>	Cambodia
<b>Name of Organisation:</b>	Bar Association of the Kingdom of Cambodia, Child Protection Unit
<b>Address:</b>	#231, Street 63 P.O. Box 1587 Phnom Penh, Cambodia
<b>E-mail:</b>	Ircnsp_bakc@forum.org.kh
<b>Telephone:</b>	+855 23 21 7575
<b>Fax:</b>	+855 23 21 3658
<b>Area of Work:</b>	Legal Representation of Children

---

8 According to the law, a “child in conflict with the law” or “child victim” refers to a person below the age of 18 years of age.

9 According to LICADHO and the Department of Prisons of the Ministry of Interior, the number of arrests and detention of youth offenders is reported to have increased between 1995 and 2002. The average population of minors in the Youth Rehabilitation Centre and Prison totalled 188 in 1997 and increased to 632 in 2002.

10 Legal Representation for Children in Need of Special Protection, a project presented to UNICEF by the Cambodia Bar Association, Phnom Penh, 2003. See also Legal Representation for Children in Conflict with the Law, Reporting Document from January 2000 to December 2002. See also Progress Report to the German National Committee for UNICEF, Cambodia Child Protection Programme: Programme Against Trafficking of Cambodia Children in Thailand, March 2002.

11 Full title: Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period.





# COURT APPOINTED SPECIAL ADVOCATES/GUARDIANS AD LITEM : CASA/GAL VOLUNTEERS – PHILIPPINES

This volunteer programme provides a mechanism for skilled and trained child advocates to provide services to children and youth in conflict with the law. The “special advocates/guardians” interview everyone involved with their assigned case, ascertain how the needs of children can be met and what resources and services are available. These volunteers may also represent, and plead the case of the child as well as make recommendation to the court, as to what they believe is best for the child and providing the judge with information that will help the court make an informed decision.

“CASA/GAL is a laudable programme, but it is only we who can give it real meaning for children. Children who, when they find themselves in courts for the first time, cry out for help, but whose voices we do not hear because we are not there! Thanks to CASA/GAL for being there!”  
(Judge Nimfa Cuesta-Vilches)

## KEY ACTORS AND PARTNERS

### **CASA/GAL (Court Appointed Special Advocate/Guardians Ad Litem)**

Although the CASA/GAL programme was created in late 2000, it was formally incorporated in July 2002 to provide leadership in implementing the programme. CASA/GAL volunteers are used and appointed by the Family Courts. Volunteers must be over 18 years of age though they are generally between 35-60 years old. Technically, they may come from different backgrounds, but in practice most come from non-governmental organisations. Some volunteers work full-time and others part-time, helping child offenders or child victims on an individual basis. No legal experience is required to work as CASA/GAL volunteers. However, a high level of commitment is necessary as some programmes require a commitment of more than a year.

### **Ateneo Human Rights Center**

The Child Rights Desk of the Ateneo Human Rights Center, located in Manila, houses the secretariat for the CASA/GAL Foundation. The Centre has a legal aid programme that litigates cases, and one of its priority areas is children’s issues. The Centre is also a pioneer in legal research and provision of legal training on children’s rights. Its vast resources, and the fact that it is a law school-based organisation, enhances its capability to effectively aid the Agency in its goal of developing quality CASA/GAL programmes and services.

### **Philippines Judicial Academy (PHILJA),**

CASA/GAL implements its project in collaboration with the Philippines Judicial Academy, which is a separate component of the Supreme Court of the Philippines. Before being assigned by a judge, CASA/GAL volunteers receive specific training from PHILJA and other partners.

## Family Courts

The Family Courts have exclusive jurisdiction to hear and make judgements on criminal cases where the youth accused is between 9 and 18 years of age, and where children are victims of abuse, neglect, exploitation and discrimination.<sup>12</sup> Judges of the Family Courts have direct control and supervision of the youth detention home and alternatives to detention and institutional care.<sup>13</sup> Training continues to be provided for family court judges and the 'pillars of justice', contributing to the creation of a network of officials who now handle children's cases collaboratively and with more sensitivity.

### Goal and Objectives

#### Goal

- To advocate for the best interests of children in court by promoting and supporting the development, growth and continuation of quality CASA/GAL programmes and services throughout the Philippines.

#### Objectives

- To represent the best interests of the child, including the well-being of the young person (promoting his/her health and happiness), and reasonable responses by authorities in proportion to the child's circumstances and/or the nature of the offence said to have been committed.
- To talk with a wide variety of people involved in children's cases and support objectivity in their recommendations.
- To present written reports to the court, and when appropriate, speak in the courtroom on behalf of the child's best interests.

## Other Partners

The Bar Association and UNICEF Philippines are partners of CASA/GAL and PHILJA. To date, PHILJA and its partners have organised training seminars for both trainers and volunteers of CASA/GAL in Manila Luzon, Visayas and Mindanao. The Children's Legal Bureau of Cebu City and Children and Family Services Inc. (CFSI) of Baguio City have also organised training, though the CASA/GAL system is not yet formalised in these cities.

## PROJECT BACKGROUND

The first comprehensive court for children and families was set up in the Philippines in 1925. It became the forerunner of the Juvenile and Domestic Relations Court and then Family Courts. What is the situation 75 years later? In terms of youth offences, a high estimate of 10,749 cases involving child victims and 10,117 cases involving children in conflict with the law have been documented.<sup>14</sup> Although the Philippines ratified the CRC in 1990, the courts' responses to these children did not change at that time, mainly because children were not heard personally or even through a representative. Nevertheless, when the Child and Youth Welfare Code (Presidential Decree 603, 1974) and the Child Protection Act (Republic Act 7610, 1992) were enacted, the concept of guardians ad litem (GAL)<sup>15</sup> existed to help children. However, the role of GALs were not clearly defined and the impact on children was less than adequate. Because the representation of children was still a problem in the Philippines, they decided to look at similar programmes for Court appointed advocates for children in the United States.

The CASA/GAL programme was launched in Manila at the end of year 2000 based on the models seen in the United States. The launch coincided with the adoption by the Supreme Court of the new Rule on the Examination of a Child Witness, which provided for the

appointment by courts of a guardian ad litem for a child who is a victim of, accused of, or is a witness to, a crime. The Rule was the first of its kind to clearly define the role of a court appointed guardian ad litem.

Since December 2000, over 150 CASA/GAL volunteers and trainers have been trained in Manila through seminars and training of trainers (ToT) courses.<sup>16</sup> A two-volume CASA/GAL training manual was developed to support these in-depth training courses focused on: the national legal system, understanding court processes, interview techniques, and confidentiality; roles of volunteers; and learning about children and their families and child development. Those who receive training hear from all the pillars of justice and social workers on many related subjects. As early as December 2000, the first two CASA/GAL volunteers were

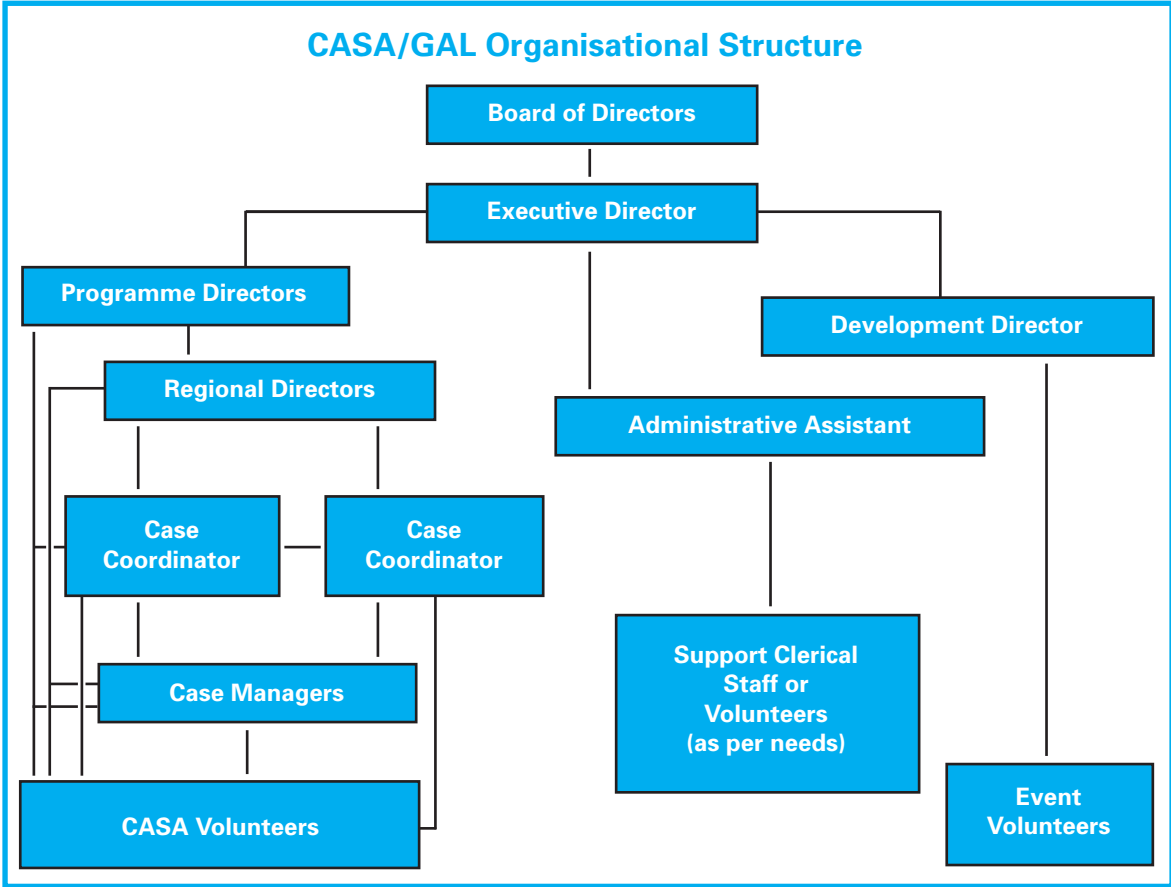
appointed by a Family Court in Manila, and their intervention resulted in the release of two detained children.

CASA/GAL volunteer training has also been conducted in the island groups of Luzon (July 2001); Visayas (September 2001); and Mindanao (October 2001). People from Cebu City have been invited to attend the CASA/GAL training, and the Children’s Legal Bureau (CLB) has carried the idea further by training more people from NGOs. It is expected that CASA/GAL will be replicated in Cebu City as well, probably in 2003.

**PROJECT DESCRIPTION**

**Structure**

CASA/GAL has an organisational structure that clearly describes job hierarchy and chain of command; nevertheless all work together as a



team with the aim of making a difference in children's lives. The structure of CASA/GAL has undergone some changes over the years, especially through the expansion of the programme. The chart above illustrates the current structure.

## Key Activities

The use of a conventional courtroom may be intimidating to children. In addition, the language used in court is often too complex for children to understand. Because they are specifically appointed to respond and advocate for the interests of particular children and their families in court, CASA/GAL volunteers are regarded as one of the most important forms of assistance to children and their families. CASA/GAL volunteers have become a powerful voice for children, representing the best interests of the most vulnerable group of children, whether victims or those in conflict with the law. By representing children in court, the CASA/GAL volunteers have significantly helped family court judges in handling children cases.

Once screened and trained, CASA/GAL volunteers are assigned to a case by a judge. Their main activities are described below.

### Investigation

Volunteers research thoroughly the background to the case, review documents, and interview everyone involved, including the child offender or abused child. The volunteers are very helpful in that they often bring to the attention of the court hidden facts and interests.<sup>17</sup>

### Facilitation

Volunteers ascertain how the needs of the children can be met and what resources and services are available. In some occasions they also provide transportation to government offices in order to obtain services or evaluations which otherwise would be unavailable.

### Advocacy and Representation

CASA/GAL volunteers speak up for, represent, and plead the case of the child even during mediation, then make reports to the court, recommending what they believe is best for the child and providing the judge with information that will help the court make an informed decision.

### Monitoring

CASA/GAL volunteers can be instrumental in ensuring that a child or his/her family receives services that the court has ordered - such as an independent background review, counselling, or special education testing. During the lifespan of a case, a CASA/GAL volunteer monitors the child's situation. Hence, CASA/GAL volunteers may be the only constant the child knows as he/she moves through the complex justice system.

## IMPACT

Although there has been no evaluation of the project to date, some insight regarding the impact from the use of volunteers can be drawn from interviews and available documents such as donor or progress reports. Based on this information, the following impacts of the CASA/GAL programme have been identified:

### A reduction in the number of 'forgotten' and institutionalised children.

A review of out-of-home placements indicates that the programme has contributed to: a reduction in the number of children 'forgotten' and the number of children 'set adrift' in foster care or institutional placement. It was noted that a Manila court (Branch 98) has appointed CASA/GAL volunteers to provide assistance to approximately 500 children every year (about 350 child victims and 150 children in conflict with the law).

## CASE STORY

"Flor" (not her real name) is a 14 year old girl who was helped to file charges against her abusive stepfather. Her parents separated several years ago and since then Flor has had no contact with her father. After the separation her mother began living with another man.

According to Flor, her "stepfather" was cruel and often beat her, her mother and her half-siblings. In her sworn statement, Flor said that he repeatedly raped her at home. He also threatened to kill her, and because of these threats Flor did not immediately disclose her ordeal to anyone. Finally she told a neighbour who accompanied her to the Barangay office. The Barangay officials then reported the matter to the Department of Social Welfare and Development (DSWD) in Manila.

A rape charge was filed against her "stepfather". The case is now pending before the Regional Trial Court of Manila, Branch 48. In May of this year, a Family Court Judge asked a social worker to volunteer her services as a CASA/GAL volunteer for the minor. The Court instructed the CASA/GAL volunteer to determine what other services or assistance could be extended to Flor.

Initially Flor was uncooperative. She denied the abuse, and refused to divulge details about the rape because she was embarrassed. A psychological evaluation found Flor to possibly have a schizophrenic disorder. She underwent psychiatric treatment and was given medication, but she had adverse reactions to the medication.

After some time, Flor showed marked improvement. When she was able to talk to her half-siblings by telephone, they became her support group. She started interacting with the other children in the community, participated in the activities, showed interest and initiative in doing chores, ate her meals regularly and improved her personal hygiene. She learned to put her trust in her CASA/GAL volunteer and gradually started talking about her experiences.

The CASA/GAL volunteer social worker is working to assess available resources within the family and community to provide for Flor's needs. Flor wants to be reunited with her mother and siblings. Unfortunately this does not appear feasible at this time as the volunteer learned that the mother was still afflicted with a mental disorder and is incapable of taking care of her children. Flor's biological father is not interested in taking custody of her as he has another family now. Despite earnest efforts to locate the grandparents and other relatives, the social worker was unable to do so. The CASA/GAL volunteer has developed a set of recommendations to protect and promote Flor's best interests. These included:

**Custody** Flor should remain in the custody of the DSWD for the duration of the legal proceedings and thereafter, a suitable home for her is found. Her siblings should also remain in the custody of the DSWD until a suitable placement for them is also secured.

**Visitation contact** Supervised visitation between Flor and her half-siblings should be arranged on a regular basis.

**Treatment** Flor should be referred as soon as possible to the CPU-PGH for counselling and treatment of her various emotional and psychological illnesses. Her mother's mental illness should be treated at an appropriate institution.

**Other recommendations** Home study of the father and other relatives should be undertaken to determine the best placement for Flor and her half-siblings. DSWD social welfare services should continue to seek and assess other placement options such as foster or adoptive families.

**A reduction in the number of children being traumatised by their experience in Court.**

CASA/GAL has reduced this problem through the use of alternative methods of having children testify, such as using video and audio-taped depositions and/or live-link television.

**The experience of children in institutions has been substantially improved.**

Most of the youth in detention are there for petty crimes and tend to be first time offenders. Experience shows that if these children are treated appropriately they are unlikely to commit a crime again. However, it is also true that more impact is likely to be seen on children that are first time offenders. Interviews indicate that children often face a terrifying experience in detention, which can make them feel victimised again.

to child rights. Children are not just objects of pity but are seen as active persons with rights. The children need CASA/GAL and community volunteers to protect, promote and advocate for their rights. One example is that children who may be abused by their own families are now offered help by the community. In the past, domestic violence and child abuse were often seen as family matters, which should be solved by the family without community interference.

**The programme has already been replicated in other areas of the country.**

CASA/GAL has been replicated to date in three major Islands of the Philippines including Luzon; Visayas and Mindanao.

## RESPONSIVENESS AND RELEVANCE

The project is in compliance with international standards on children in conflict with the law and child victims, especially: Articles 12(2), 19, 37, 39 and 40 of the CRC; the Beijing Rules; the Riyadh Guidelines; and Rules for Juveniles Deprived of their Liberty. International standards have been incorporated into Philippines national standards. Section 15 of the Rules on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders requires that a GAL be appointed for children in conflict with the law during trial if the parent or guardian of the child: (i) is not present or; (ii) will not cooperate with the child or; (iii) the interests of parents/guardians and those of the child are in conflict. For child victims, under Section 19 of the Implementing Rules and Regulations of Republic Act No. 7610, when a case is filed for the crime of child abuse or exploitation, or when there are child witnesses or child subjects in court cases, a GAL is appointed to represent the child's best interests. In particular, the Rule on the Examination of a Child Witness provides for appointment of guardians ad litem for a child victim or a child accused of a crime. Under this Rule, the guardian ad litem 'shall promote the best interests of the child' (Section 5).



Participants at a CASA/GAL Awareness Seminar.  
Credit: CASA/GAL Foundation

**The network of law enforcement officials, social workers, NGOs and communities providing support to children has been strengthened, and these key actors have become more sensitive to the rights and needs of children.**

Credit for these developments has been given to the multi-sectoral training for the five 'pillars of justice'. Involvement of the community and NGOs working closely with children has also assisted the Court in handling cases of children in a more sensitive manner. Training has shifted the community's perspective from child welfare



Gender perspectives are included in the training modules. The regional training is also designed to ensure that cultural differences are reflected. Participants in the training generally represent both sexes and a broad range of ages, educational and professional backgrounds, religions and cultural backgrounds.

### Reactions to the CASA/GAL Programme

- “Judges more or less know what their role is, but they must receive the information they need about the child. While the entire system seems to be well represented, nobody actually spoke up for the vulnerable children. CASA/GAL became a friend of the court.” (Judge Nimfa Cuesta -Vilches)
- “When I applied to be a CASA/GAL volunteer I was persuaded of its importance. I immediately appreciated the usefulness for the humanitarian treatment of children who had to be in the judicial process” (Maria Isabel G. Ongpin, CASA/GAL)
- “I am struck by our luck! The CASA/GAL programme was launched in Manila at the end of 2000 and coincided with passage of the Rule on the Examination of a Child Witness.” (Alberto Muyot, Attorney, UNICEF Philippines)
- “CASA/GAL has made a substantial difference on these children’s lives. I have seen it with my own eyes!” Judge Nimfa Cuesta-Vilches).
- “This programme has already gained momentum and will continue to prosper as more citizens and courts learn about it.” (Maria Isabel G. Ongpin, CASA/GAL)

## SUSTAINABILITY

The fact that CASA/GAL depends on volunteers drafted from NGOs and community groups that already work on children’s issues has helped to ensure sustainability. Thus limited funds are needed to support the programme. The major costs include the operational costs for CASA/GAL and funds for training. To date UNICEF has funded the development of training materials and the Training of Trainers while the Assisi Foundation, a local NGO, funded the operational costs of the national CASA/GAL. At the local level, the CASA/GAL volunteers rely on local NGOs. While they are doing volunteer work they may also shoulder other financial costs, such as helping a child. Family Court Judges are also tapping local resources and rely primarily on these resources. Signs of recognition in one way or another are also important and have certainly encouraged volunteers to stay in the programme.<sup>18</sup>

## INNOVATIVENESS

The CASA/GAL is a unique programme based on the new Rule on the Examination of a Child Witness. This was the first time that a Filipino organisation adopted such an ‘evolving concept’.<sup>19</sup> While Court Appointed Special Advocates have been mentioned in previous laws, there is more focus on this in the Rule on Examination of a Child Witness, which took effect in December 2000. The new provisions provide for a comprehensive and clearly defined role for guardians ad litem to represent the best interests of children in conflict with the law, child victims and child witnesses. The timing was right for the CASA/GAL. The programme was welcomed as a support for implementation of these new provisions.

The reliance on volunteers from the community has increased understanding and commitment to children. The CASA/GAL programme is a voluntary project open to anyone. However, it

requires an investment of the necessary time (within a flexible structure) and a strong commitment. Nevertheless, even people with heavy work schedules have decided to get involved in this project.

## LESSONS LEARNED

**The CASA/GAL volunteers have played a key role in implementing the Rule of Examination of a Child Witness. “If you take them [the volunteer] out, there is nothing”<sup>20</sup>**

Court judges respect the autonomy of the CASA/GAL volunteers and their understanding of children’s problems and needs. CASA/GAL volunteers know best the services and programmes available, and can properly assess which of these services are most appropriate for a particular child.

**Volunteers need to be given some leeway; there is no need to create a rigid system.**

It is important to have a flexible system for CASA/GAL. Questions have been raised whether there is a need to put into place a system of accreditation. While some believe that a system of accreditation would be helpful in recognising the volunteers’ commitments, others believe that it may be risky to have a rigid system, as this might encourage volunteers to feel it is their ‘right’ to ask for funding. It should be noted that currently CASA/GALs work on a voluntary basis without regular compensation or salary. Reimbursements are given only for expenses incurred in the work. Certificates of appreciation or reward could also be used to recognise the volunteers’ commitments, as well as improve public relations and recruitment of new volunteers.

**Court personnel and other key justice system actors dealing with children need to be introduced to the CASA/GAL programme.**

While some court personnel have become familiar with the programme and the principles of child rights and the new procedures, others still need more information. One way to do this is through multi-sectoral training for the ‘pillars of justice’ and related training on children’s rights.

**It is important to implement activities carefully in order to avoid further victimisation or abuse of children.**

This includes careful screening of potential volunteers, as well as some form of quality control (e.g. in the form of impact assessment) of the training and services provided. Further victimisation may also occur if children are handled by individuals who do not understand children’s needs.

**It is important to involve community actors and NGOs in the work of the court to ensure that children are handled properly and provided with appropriate services.**

Members of their own community are closest to the child and know best the needs of the child and of the child’s family. The community is part of the ‘pillars of justice’ system, and it is important that community level actors are given an opportunity to guide and assist children throughout the entire judicial process.



Newly arrested children in a police detention cell where conditions are very poor. Credit: CASA/GAL Foundation



## CONTACT INFORMATION

<b>Contact:</b>	Sedfrey M. Candelaria President, CASA/GAL Foundation
	Ma. Victoria Cardona Ma. Tricia Oco Attorneys at Law, ATENEO Human Rights Center
	Minerva Ambrosio Attorney at Law, working as CASA/GAL
<b>Country:</b>	Philippines (Manila)
<b>Name of Organisation:</b>	CASA/GAL Foundation ATENEO Human Rights Center
<b>Address:</b>	G/F ATENEO Professional Schools 20 Rockwell Drive, Rockwell Centre
<b>E-mail:</b>	scandelaria@aps.ateneo.edu
<b>Telephone:</b>	+63 2 899 7691 to 96, local 2109 to 2117
<b>Fax:</b>	+63 2 899 4342

---

12 Family Court Act No.8369, Section 5.

13 Family Court Act No.8369, Section 8.

14 "Setting the Context for CASA/GAL Volunteer Advocacy", Judge Nimfa Cuesta-Vilches, Manila, Philippines, April 2001.

15 Ad Litem means "referring to the case at law". "Guardian ad litem" refers to a person who acts on behalf of a minor who is a defendant in a court case.

16 According to Judge Nimfa Cuesta-Vilches.

17 Judge Nimfa Cuesta-Vilches.

18 Prof. Sedfrey Candelaria, PHILJA.

19 Prof. Sedfrey Candelaria, PHILJA.

20 Judge Nimfa Cuesta-Vilches.





*Credit: FREELAVA*

# DIVERSION AND

# COMMUNITY-BASED PREVENTION AND DIVERSION PROGRAMME – Cebu City, Philippines

The Community Based Prevention and Diversion Programme serves the community and children of Cebu City in two ways: as a prevention measure in keeping children away from the justice system, and in providing support to the reintegration process of children in conflict with the law. More specifically, peer facilitators (who work closely with the Children’s Justice Committee) provide an opportunity for children in conflict with the law to share their experiences, circumstances and difficulties - leading to an exchange of ideas on how to help one another and ways of being useful to the community. FREELAVA is also developing a system of data collection and monitoring based on this prevention and diversion programme.

## KEY ACTORS AND PARTNERS

### **Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (FREELAVA)**

FREELAVA is a non-profit organisation established in 1983 in Cebu City, Philippines. It is an umbrella organisation for community-based organisations, government organisations, and academic and civil minded individuals pooling their resources together to achieve a common mission. Its coverage is limited to the province of Cebu, including the cities of Cebu, Mandaue, Lapulapu, Danao and Toledo. It supports three major projects: free legal assistance; rehabilitation of offenders; and a prevention and diversion programme for offenders. Together these projects cover 22 Barangay. At present, the projects are run by 28 staff members, 150 community volunteers, 100 education programmes volunteers, 50 peer volunteers and 22 area coordinators.

### **Children’s Justice Committee (CJC)**

This Committee was formed in April 2002, primarily to work for the settlement, reconciliation, and mediation of reported cases involving children in conflict with the law. It is composed of a chairman and co-chairman (both members of the Barangay justice system), and nine other members which may include the police, Barangay councillors, city social workers, youth confederation members, the Barangay secretary, community volunteers, and peer educator and child development officers.

### **Partners**

Government agencies (including the Departments of Interior, Justice, Social Welfare and Development, Education, Culture and Sport, local government officials, Philippine National Police, the Commission on Human Rights), UNICEF Philippines, NGOs (including Save the Children, the Cebu Task Force on Street Children, and the Stop Abuse of Minors Association), the media, churches and schools.

## Goal and Objectives

### Goal

- To reduce the number of youths re-offending and children in detention through community-level prevention, diversion and mediation programmes for children in conflict with the law.

### Objectives

- To promote awareness of the need for well-trained child's rights advocates and/or community volunteers (CV's).
- To increase public awareness of the needs for community level government officials to respond to the needs of children, in particular through the proper administration of justice among children in conflict with the law.
- To enhance awareness among children in conflict with the law and others regarding their ability to participate in providing support and a positive influence on the values of children of their same social level and economic status.
- To design, formulate and initiate an appropriate mechanism in the community that will properly administer the disposition of cases of children in conflict with the law - preventing children in conflict with the law from entering formal judicial procedures, their subsequent detention in jail, and re-offending.

## PROJECT BACKGROUND

The Children's Justice Committee (CJC) was formed in April 2002 as a community-based structure established by NGOs and FREELAVA. The CJC serves as a mechanism within the

Barangay Council for the Protection of Children (BCPC) to promote community level prevention, diversion and mediation measures for children in conflict with the law.

FREELAVA provides assistance to the CJC's members through guidance for implementing the project in their own localities. FREELAVA is in the process of developing a manual on the Community Diversion Programme for children in conflict with the law and a system of referral for cases and other psycho-social interventions targeted toward children in conflict with the law. Psycho-social interventions include: legal and medical services; counselling; formal education; temporary shelter (if necessary); values formation; and provision of basic needs. Seminars and training sessions are also being provided to the members of the Children's Justice Committees to enhance skills and knowledge in handling children in conflict with the law.

Through the CJC, proper procedures for handling the mediation process are followed with the participant (youth offender), the parents or guardians, and the complainant. The CJC advocates diversion and mediation even more in cases when the complainant favors the arrest of minors. In addition to responding to reported cases, the CJC also plans and implements crime prevention activities for children.

## PROJECT DESCRIPTION

### Key Activities

#### Response to a Report or Arrest

When a case is referred to the CJC by the community or the police, the Committee members convene to verify the facts of the complaint, report or arrest and verify the whereabouts of the victim and the child in conflict with the law. Community volunteers immediately inform the parents of the child and explain the mechanisms of the diversion

programme to the complainant. CJC members refer the children in conflict with the law to the community scouts for safekeeping and counselling while settlement/mediation is on-going.

### **Settlement/Mediation**

The CJC members summon both parties to discuss possible settlement/mediation of the case and to schedule subsequent meetings (normally cases are processed straight away). Usually a 15 day 'cooling off' period for both parties (if agreeable to all parties) is suggested. Community volunteers intervene by visiting the offended party to explain the purpose of the diversion programme for children in conflict with the law. If all parties agree to the mediation, the offender is asked to present his/her written or oral apologies to the victim and/or verbal reasons explaining why he/she committed the crime(s).

Mediation must be heard in a private room, usually in one of the rooms of the CJC's Centre. It is not necessary that all CJC members be present, with the exception of the arresting officer who is responsible for conducting the mediation. In practice, however, 10 persons, including involved parties and members, are normally present, including a social worker whenever possible. In case no settlement is reached a formal filing of the case takes place. In these cases community volunteers continue to provide necessary assistance to the child offender.

### **Post-Settlement/Mediation**

Where settlement is reached, CJC members recommend steps for further psycho-social intervention for the child offender through a center-based or family-based approach. It is up to the discretion of the CJC to make recommendations as there are no guidelines available for the decision-making process regarding programmes available for youth offenders in light of their profile. Neither is there any written agreement on programmes to be

undertaken by the youth offender. Community volunteers continue to monitor the child in conflict with the law through center/family visits. The secretariat of the CJC keeps track of records through a system of data collection and monitoring.

### **Crime Prevention and Diversion Programmes**

FREELAVA offers a number of programmes to support crime prevention and children in conflict with the law who have been diverted from the formal justice system. This begins with community mobilisation or 'organisation' in order to identify and select community volunteers and Peer Educators (PEs), establish a structure and provide training. With the support of these community members the following activities are offered:

- Skill training is provided to out-of-school youth in co-ordination with other government and non-governmental organisations. The most common training activities where children participate include practical electrical training, plumbing, automotive repair, refrigeration, carpentry, and culinary arts among others;
- Livelihood programmes are targeted to parents of the children to augment family income. These include micro loans to fund livelihood activities such as small-scale vending, pig raising, dressmaking, etc;
- Educational assistance through the provision of school supplies, school uniforms and enrolment fees is supported by FREELAVA to almost 400 children every year. Many PEs and high risk young adults have benefited from the programme, particularly those endorsed by the members of the CJC's;
- Value formation seminars and informal group discussions are conducted and facilitated by the community volunteers to address ways to improve parenting skills; to discuss diversion and restorative justice; to provide information on the rights of children, based on the UN Convention on the Rights of the Child; and to educate people on local laws and ordinances

pertaining to children. Participants are primarily parents and relatives of children in conflict with the law, as well as youth beneficiaries;

- STD & HIV/AIDS education and awareness activities are conducted by FREELAVA staff especially in red-light areas of Cebu City to address the protection, prevention, and proper treatment of sexually transmitted diseases (STD) and HIV/AIDS;
- Group counselling is organised by peer facilitators and community volunteers as a means of follow-up for children in conflict with the law who are back in the community (there are currently 120 community volunteers operating in all target areas of the project). The peer facilitators link the identified children in conflict with the law with other minors in the community in order to invite them to participate in group discussions. The peer facilitators and community volunteers receive training in order to facilitate these discussions in an appropriate and supportive manner; and
- Psycho-social interventions provided include, counselling; case management support; educational, legal and medical assistance; and referrals to other institutions for further psycho-social interventions.

#### **Monitoring children in conflict with the law**

In collaboration with three pillars of justice - namely, the police, the Bureau of Jail Management and Penology (BJMP) and the community, FREELAVA innovated a system of data collection and monitoring of children in conflict with the law. The records of minors in jail from a specific Barangay are checked and tallied with Police records as well as with records kept by the Barangay Tanod and the Lupon Tagapamayapa. This procedure is reviewed every six months. In the process, FREELAVA carefully examines the possibility of aliases used by some of the minors. Once finalised, the BCPC receives a copy of the data of juveniles in conflict with the law in their Barangay. This serves as a baseline for the provision of appropriate

interventions needed by each minor.

## **IMPACT**

Children's Justice Committees have been established and are now functioning in nine Barangays. These include the Barangays of Ermita, Tingo, Pasil, Suba, Dulj-Fatima, Carreta, San Roque, Pahina Central and T. Padilla. Within this context, the following impacts of the project have been noted:

#### **Reduction in the numbers of child offenders sent to detention.**

Over 72 children reported to have committed petty crimes between October and December 2002 were prevented from institutionalisation and detention due to the assistance of the CJC. Instead of facing detention, these children entered into a process of mediation. Diversion options were made available to all of these children. For instance, 52 of these children were asked to do community service and the community volunteers ensured regular monitoring of their cases.

#### **Reduced crime rate.**

Before this project started, 150 cases were reported to the police or Barangay, and some of these were prosecuted through the court system. Less than one year after the beginning of the project, only 30 to 40 cases were reported to the Barangay and subsequently settled.

#### **Indications of reduced risk of youth re-offending.**

In December 2002, the CJC mediated 53 cases. According to CJC's members, of these only 4 individuals had committed another offense as of March 2003.

#### **Increased self-confidence among peer educators.**

The children organised as peer educators/facilitators have already exhibited self-confidence through active participation in various activities in the communities.



**Increased interest in community volunteering.**

Twelve new individuals have been recommended to be active community volunteers for the project. They would similarly undergo a series of seminars and training sessions, particularly in the areas of diversion, restorative justice and sensitivity to children.

**Increasing numbers of children in conflict with the law returning to school.**

Because FREELAVA encourages the child offenders to continue their schooling, several children have decided to do so. Of the 27 former child offenders enrolled in formal education for 2002-2003, 15 continued studying.

The primary reason for the remaining 12 children to drop out of school was reportedly due to financial need. This indicates the need to expand financial support for access to education. Nevertheless, these children continue to be active participants of the FREELAVA project, and are provided with some other programmes to help them to not re-offend.

**Development of a monitoring system with database on cases diverted by the CJC.**

This was an unintended and very positive outcome of the project. The activity started in June 2002, a few months after the establishment of the diversion project.

## CASE STORY

Carlo, a 17 year old out-of-school youth from Barangay Ermita, Cebu City, was caught by the local police after he snatched a necklace from a woman riding a public utility vehicle. The arresting officers brought him to the police station while waiting for the victim to arrive to file appropriate charges.

In the police station, the head of the Child and Women's Desk, also a member of the Children's Justice Committee of Barangay Ermita, interviewed both the child and the victim. The officer suggested the case be settled through the CJC instead of the Barangay Hall, considering that Carlo was a minor. The police officer informed the CJC in Barangay Ermita about Carlo's case and advised the chairman and the secretary to contact Carlo's mother to tell her to go to the police station immediately.

Together with Carlo's mother, the CJC chairman and the secretary went to the police station and explained to the arresting officer and the victim about the role of the CJC in the community with regards to children in conflict with the law. Both the arresting officer and the victim agreed to bring the case to the CJC.

In the Barangay Hall, mediation took place between Carlo and the victim, together with the arresting officer. Carlo was informed about the conditions of mediation and that he was required to ask for forgiveness from the victim. He also had to return the necklace he had taken from her.

During the mediation, Carlo promised the members of the CJC, in the presence of the victim, the arresting officer and his mother, that he would attend the various activities of the CJC and that he would join the group of peer facilitators in his community.

Carlo is now an active peer facilitator and has been helping the community volunteers in conducting activities, particularly related to crime prevention and rehabilitation among children and youth likely to commit crimes.

## RESPONSIVENESS AND RELEVANCE

The importance and relevance of the CJC is recognised. The project staff encountered no difficulty in organising the CJC in the nine Barangays. Almost all of the newly-elected Barangay officials have shown support to the project. Furthermore, most Barangay chiefs have recognised the CJC as the most active sub-committee of the Barangay Council for the Protection of Children.

According to CJC members, the mediation process responds to the needs of all parties. The project primarily receives referrals from the police and community for minor crimes (mainly for snatching, sniffing glue and a few cases of theft). To date, over 200 youth offenders, mainly boys and mostly first time offenders - though 30 percent are repeat offenders - were mediated through this process. It is reported that no one has rejected the diversion process to date, and all parties involved appear to be satisfied with the outcome. Given that the CJC is dealing with several youth offenders with drug-related problems, they plan to establish a special drug counselling programme to respond to the special needs of these children.

The Peer Educator programme serves the community in two ways: as a prevention measure; and also in providing support to the reintegration process of the children in conflict with the law. As mentioned above, the programme provides an opportunity for these children to share their experiences, circumstances and difficulties, which leads to an exchange of ideas on how to help one another and ways of being useful in the community.

This project is in compliance with international standards on juvenile justice, in particular Article 9 of the Riyadh Guidelines on institutionalisation of comprehensive prevention plans at all levels, including: monitoring and evaluation; community involvement through a wide range of

services and programmes; interdisciplinary cooperation; and youth participation in prevention policies and policies in process. It is also in line with Article 40(3b) of the CRC, which indicates that States Parties shall promote the establishment of diversion systems instead of recourse to the formal court system.

The project is also gender sensitive. The programme would contribute to local government officials becoming more sensitive to children and making officials more gender-fair in their approach to children in conflict with the law.

### Reactions to the Project

- "I am selling 'rugby' (a soft drug, similar to glue) and most of my customers are children. After the informal group discussion on diversion, I will think twice and most probably stop my activity." [adult's statement]
- "We are happy that you have this kind of project and beneficial activities, but why only now?" [adult's statement during a group discussion]
- "I certainly learned many things, especially about the rights of my children. Now I realise that I am also neglectful to my children." [adult's statement]
- "Many times I envy my classmates when they have money to buy things they like in school. I also thought of stealing so that I could also have money of my own. But every time I think of stealing, I stop because I always remember the staff of FREELAVA who are helping me and the other children." [child's statement]
- "I joined to become a Peer Educator because I like to assist the other children just as FREELAVA assisted me." [child's statement]

## INNOVATIVENESS

The project is the first of its kind in the Philippines that is building a model for community diversion. Formalising the concept through the organisation of the CJCs, peer education, and involvement of community members are seen as distinctive features of the project. Another innovation of is the proactive effort to gather data and monitor cases of children who are in conflict with the law.

## SUSTAINABILITY

Funds required to sustain the project on diversion are very reasonable, at about US\$ 16,000 per year. In order to make it fully sustainable, however, FREELAVA would like to institutionalise the project.

Although most of the current funding will finish at the end of 2002, there are commitments to fund this project for the next 2-3 years. At the moment the sponsors are Caltex, the Path Foundation, Foundation Wash, and UNICEF.

The pool of potential community volunteers does not seem to be abating. Instead, the growing interest among community members to become volunteers is very encouraging and crucial for the continuation of the project.

## LESSONS LEARNED

**The support of the general public is important for crime prevention and for the promotion of diversion.**

It is not enough to just improve the juvenile justice system. The general public has to support and be involved in the change process. The sources of problems faced by children in conflict with the law are in families, schools and the community. Additionally, diversion and restorative justice need to be accepted and supported by communities.

**The buy-in of police officers is key for making community-level diversion a success.**

Police officers are the first point of contact with law enforcement and the justice system for children in conflict with the law. The decisions made at this level are decisive for whether a child will be diverted or channelled to the formal justice system. Thus, the support of the Police Force as well of individual police officers for diversionary practices is of key importance. Having police officers who are members of the CJC has also proved useful in advocating for diversion in concrete cases.



*Credit: FREELAVA*

**It takes some time for the community to understand the importance of the project and support its implementation.**

Community views on this project were rather negative in the beginning, but key actors have now become more receptive. At first Barangay Tanods tended to turn over children in conflict with the law to the Police Station, which automatically led to filing of formal cases. After Project staff approached Barangay chiefs with their concerns, the Chiefs of the Barangay Tanods were invited to become permanent member of the CJCs. Since then, the number of short cuts used in the handling of child offenders that result in detention have diminished.

**It is important to ensure and recognise the participation of community volunteers.**

The CJC has agreed to summon a community volunteer whose case is up for mediation. Identification cards are issued to make them feel that they are recognised and valuable to the process – and especially to children in conflict with the law.

**The quality of community volunteers and peer educators needs to be monitored.**

Although most of the peer educators and community volunteers fulfil their tasks in an acceptable manner, some less positive experiences have also been reported. Potential new Peer Educators and community volunteers need to be carefully screened and criteria for disqualification of volunteers need to be established. The community volunteers and project staff decided that if a community volunteer is found to be involved in illegal activities or fails to attend programme activities, he/she should no longer be a part of the project. Similar guidelines should be established for peer educators.

**Further consideration needs to be given to the development of diversion guidelines.**

Currently, there are no guidelines to help the CJC members identify the best diversion options for their cases and it has been questioned whether this is satisfactory. While most cases before the CJC are petty crimes and easy to address, they tend to seek the advice of law enforcement officials for more serious cases, on a case-by-case basis. There is current discussion as to whether it would be helpful to develop basic guidelines for the CJC on diversion options and processes.

**Youth peer educators are important in order to reach out to children in conflict with the law.**

Most peer educators really want to make a difference. Young people can benefit each other in many ways, because they speak the same language, and may feel more comfortable tackling specific issues and exchanging their

views with other youth. Peer counselling seems to be particularly helpful for repeat offenders. Peer educators who were once offenders also may have more credibility and often encourage the children in conflict with the law to do worthwhile activities and become good citizens in their community.

**Positive media coverage promotes the importance and beneficial effects of diversion projects.**

Inviting former children in conflict with the law to participate in media forums has proven to be valuable. Children are given the chance to explain how they were able to cope with life after their offence through the assistance of the many sectors of the community. This can also bring high levels of satisfaction for youths, parents and teachers and encourage their efforts.

**The Project must be prepared to respond to increasing expectations and needs of 'clients'.**

For instance, some diverted young offenders asked for financial support to cover their health expenditures. Because FREELAVA did not have sufficient funds to respond to such a situation, project staff decided to create an emergency fund where all adult beneficiaries (parents) are encouraged to deposit 1 peso every day. This small fund has allowed FREELAVA to respond to urgent needs, which has proven to be very helpful.

**A centralised system for data collection and monitoring of the justice system is needed.**

At the programme level, monitoring is mainly the responsibility of the organisation or agency that handles each particular project. FREELAVA, for example, has decided to collect its own data for the cases it handles. More systematic data collection would improve monitoring and programming.

**The membership of Gender and Development Officers is a positive factor for the project.**

The GAD Officers are trained in dealing and reaching out to children. They are already sensitive to the rights and needs of children.

## CONTACT INFORMATION

<b>Contact:</b>	Anthony C. Auditor, Executive Director
<b>Country:</b>	Philippines (Cebu City)
<b>Name of Organisation:</b>	FREELAVA
<b>Address:</b>	Rm. 207, 2/F, Mingson Building Cebu City, Philippines 6000
<b>Telephone:</b>	+63 2 256 2718
<b>Fax:</b>	+63 2 254 7739
<b>E-mail:</b>	freelava@mozcom.com
<b>Area of Work:</b>	Prevention and Diversion Programmes

---

6 Based on interview with Attorney Wanchai and Kitiya Phornsadja of UNICEF Thailand.  
7 Justice Wacharin Patchekvinyuskul and Justice Jaran Pakdithanakul.



# POLICE ‘YOUTH AID DIVERSION’ PROJECT – New Zealand

In New Zealand, the police deal with 80 percent of youth offenders (under 17 years)<sup>21</sup> through warnings or diversion options. Of these, more than 75 percent do not recommit following the police intervention. In order to have the greatest impact and reduce the likelihood of repeat offenses, police interventions must be made in an appropriate manner that involves the youth’s family. This also implies that risk factors be addressed, and that services and programmes are available for youth offenders and their family as identified. In addition, interventions should be based on good practices, teaching new skills in an active way and addressing the ‘four corners’ of young people’s lives.

## KEY ACTORS AND PARTNERS

### Police Youth Aid

Police Youth Aid is a programme implemented by the national police service, known as the New Zealand Police, throughout the country. It deals with the majority of young people who are apprehended or who are considered “at risk of offending”. Youth Aid Officers are not present at the incident but receive reports regarding youth offences. The police also run youth education and youth development programmes, which have been successful in reducing offences by young people.

### Youth Justice Co-ordinator

The position of Youth Justice Co-ordinator was created under the Children, Young Persons and Their Families Act of 1989 (hereafter referred to as the ‘Act’). The Justice Co-ordinator is employed by the Department of Children, Youth and Their Families and has the responsibility for convening Family Group Conferences (FGCs). When the Youth Justice Co-ordinator holds a FGC he/she acts as the facilitator and records what is agreed to. Youth Justice Co-ordinators also perform other duties as prescribed in the Act.

### Youth Courts

Youth Courts hear charges brought against young persons. The Court is presided over by a Youth Court Judge who is a District Court Judge selected to sit on the Youth Court through a warrant granted for this purpose. When a young person appears in the Youth Court they are assigned a ‘Youth Advocate’ who is a lawyer selected to undertake this role. Lawyers cannot decide to be a Youth Advocate on their own. In the opinion of Youth Aid Officers, young people whose family engages their own lawyer are disadvantaged by not having a specialist Youth Advocate to represent them.

### Other Partners

Actors in the Social Service sectors, especially in the fields of health and education; Department of Child, Youth and Family; Ministry of Justice; and Ministry of Social Development.

## Goal and Objectives

### Goal

- To reduce the number of youth repeat offenders and children dealt by the Youth Court through promotion of prevention, diversion and Family Group Conferences (forms of restorative justice for children in conflict with the law).

### Objectives

- To create, promote and support a safety net of effective, easily accessible and culturally appropriate youth services.
- To try to become involved with youth and child offenders as early as possible in order to prevent escalation of problems.
- To try to avoid overreaction in the responses given to youth offenders, and deal with situations in the most effective but yet least intrusive and disruptive way possible.
- To strengthen and empower children, young people and their families in order to ensure that all young people are properly protected and cared for.
- To properly administer the disposition of cases of children in conflict with the law through warning and diversion options, thus preventing children in conflict with the law from entering into the formal judicial process and re-offending.

new scheme dealt with young offenders and also undertook a limited 'talk in school' programme.

### 1968: The Youth Aid programme established

The Juvenile Crime Prevention Section was given responsibility for the Youth Aid programme and the first national co-ordinator of Youth Aid was appointed. Police retained the authority to make the final decision regarding whether or not to prosecute the offender although consultations with all parties were an important part of the process.

The basic objectives of the section were related to crime prevention; rehabilitation of offenders; provision of specialised services to assist other members of the service with their work; provision of specialised services to supplement other police services; and public relations/community relations (as Youth Aid expanded and gained experience).

The General Instructions for Youth Aid at that time stated: "The underlying purpose of the police scheme shall be to keep the welfare of children and young people at the forefront when dealing with delinquency, and [...] efforts are to be directed towards steering them away from [...] bad behaviour and generally assisting them to develop into good citizens.[...]." Operational police were encouraged to exercise their discretion and, where possible, avoid arresting young offenders. Instead, reports were forwarded to the Youth Aid section for recommendation as to further action.

After making enquiries into the young offender's background, decisions regarding how to deal with the offender were made after discussions with the various network members. The family of the offender and the victim of the offence did not participate in this decision-making process but their views, if known, were considered. Actions to deal with the offenders were aimed at rehabilitation, with less emphasis on holding the offender accountable for his/her actions.

## PROJECT BACKGROUND<sup>22</sup>

### 1957: 'Juvenile Crime Prevention Section' scheme established by police

Two members of the police were appointed in Christchurch to establish a pilot scheme known as the 'Juvenile Crime Prevention Section'. The



Although the discussion process was important, police still retained the authority to make the final decision on whether or not to prosecute the offender.

### **1974 – 1975: The Children and Young Persons Act passed**

This act formalised discussion procedures and required police to consult with a Department of Social Welfare social worker prior to prosecution and before a summons could be issued against a young offender (between 4 and 17 years of age). Child offenders (under 14 years) could not be charged with an offence (except murder and manslaughter) but instead were warned, referred to Children's Boards or a complaint was lodged against their parents indicating that the child was in need of care, protection or control.

Youth Aid officers did not sit on Children's Boards. This task was delegated to a police sergeant or senior sergeant - in some cases appointed because of availability rather than suitability. Children's Boards had some success but were weak in the sense that decisions tended to be made by 'experts'. Families and victims were not involved in the process and consultation was not required at all if a young offender was arrested.

In arrest cases, the consultation process and Youth Aid were completely bypassed. Youth Aid dealt with only minor offences by child offenders. Unfortunately, the powers given to police and the Social Welfare Department by the 1974 Act were on occasions used for wayward behaviour rather than for care and protection or criminal behaviour. Courts continued to make decisions regarding detention, and boys and girls continued to be detained, often for long periods of time in Social Welfare facilities. This was justified as being for 'their own good' yet often for quite minor matters.

### **1976 – 1988: The Law Related Education Programme established in 1976 as a separate**

### **section of the Youth Aid; Child Abuse Teams instituted in 1988.**

This led to a reduction in Youth Aid involvement especially with the introduction of the physical and sexual abuse teams. Social workers now dealt with victims without the need to refer to Youth Aid. The physical and sexual abuse teams are now known as Child Abuse teams, with detectives, social workers and other professionals working together co-operatively.

A sergeant was appointed as a coordinator, a first step towards recognising that the various sections required different skills and should operate as independent units.

### **1989: The Children, Young Persons and Their Families Act adopted, signifying a move to an 'accountability model.'<sup>23</sup>**

The new Act separated care and protection from Youth Justice and introduced procedures to ensure that they be treated separately. The Act placed great emphasis on involving family members (including extended family members) in decision-making regarding appropriate interventions for young offenders. Youth justice placed an onus on police to deal with offenders by way of diversion unless it was inappropriate in consideration of the seriousness of the offence and the nature and number of previous offences committed by the young person. The new system holds the offender accountable and seeks reconciliation with the victim. The Act also had a major impact on police, Youth Aid and all other agencies dealing with young people. The changes to Youth Justice were primarily a move from a 'welfare model' to an 'accountability model'.

### **Roles and Functions of Police/Youth Aid Officers**

Youth Aid officers play a key role in the youth justice process, including seeking appropriate solutions through warnings, diversion and other methods of dealing with offenders (including those committing serious offences) without resort to youth court or Family Group Conference.

The law does not preclude any offence from being dealt with in this way. The Youth Aid officer decides if there is an alternate way of handling the case, taking into consideration the attitude of the young person and of the family, toward the offender. The majority of offences dealt with through this process are property offences such as shoplifting, property damage, offences involving motor vehicles, burglary and driving offences.

When the offence involves more than minor violence, Youth Aid officers believe it is important that the victim be able to confront the young person. Therefore a number of these types of cases are dealt with by a Family Group Conference and may not proceed to Youth Court. The fact that Youth Aid officers agree to keep such matters out of Youth Court is strong evidence that the programme is dealing with serious youth offences by alternative means.

A Youth Aid officer is a fully qualified police officer who had chosen to specialise in dealing with young people and their families. It is his/her responsibility to manage matters pertaining to children and young people, including:

- Implementing alternative methods of dealing with young offenders, other than through criminal proceedings, where appropriate;
- Representing police at Family Group Conferences under the 'Youth Justice' and 'Care and Protection' provisions of the Children, Young Persons and Their Families Act of 1989;
- Liaising with schools, government agencies and organisations concerned with the care, protection and rehabilitation of children and young persons who have come to notice of the justice system - in particular Youth Justice Coordinators, Care and Protection Coordinators, and Care and Protection Resource Panels;
- Providing guidance and assistance to parents, schools and/or other persons and organisations on matters related to the care and protection of, or offences committed by,

- children and young persons, when requested;
- Providing input to in-service training, as well as guidance and assistance to other police force members when they deal with children and young persons; and
- Prosecuting or supporting prosecutors in Youth Courts, and appearing on behalf of the police in application for declaration proceedings initiated by police in the Family Court. Police in New Zealand prosecute in the court except in serious cases in which the accused has pleaded not guilty, or when the matter is being deliberated before a jury. The Youth Court judges prefer Youth Aid Officers to prosecute in Youth Court as the officers are familiar with all aspects of the case and, most importantly, they understand and work to achieve the objectives and principles of the Act.



*Youth undertaking community services.  
Credit: Youth Aid New Zealand Police*

### **Stages in Police Diversion for Youth Offenders**

Channeling juvenile offenders away from the court system can be done at different points of the justice process, though decisions by the Police and Youth Aid Officers must consider a number of factors before determination of the most appropriate action (section 209).

These include:

- Nature and circumstances of the offence;
- Previous offences committed by the child or young person;

- Degree of involvement of the child or young person;
- Attitude of the child or young person toward the offence;
- Response to the offence by the child or young person's family;
- Attitude of the family to the child or young person;
- Proposals to make reparations or apologise to the victim(s);
- Effect of the offence on the victim(s);
- Victim's views on the proposed method of disposition;
- Effect of previous sanctions or punishment imposed on the child or young person;
- If the public interest requires criminal proceedings.



*Youth Aid Officers are key actors in making police-level diversion effective. Credit: Youth Aid New Zealand Police*

### **Arrest**

Under the 1989 Act, police retain the power of arrest when the arrest is required for specific reasons. However, once the situation is under control police generally prefer to release the young person into the care of their parents and look at other less serious options as appropriate. The criminal justice system and the Youth and Family Courts are only used as 'last resorts' after other options, such as warnings, diversion, and Family Group Conferences have been exhausted.

Statistics show that most children and young people will only come to the notice of police for one offence. Unless there is a need to keep the young offender in custody or bail is required, they are released. Police are able to release a young person on bail to appear in Youth Court at a later date, which means that young people are not kept in police detention while having to wait for a court appearance. In fact, money is not put up for bail. In the place of bail there is consultation with the young person and their family in which the young person agrees to abide by certain conditions.

### **Warning**

A verbal warning can be given by any police officer or Youth Aid Officer, or any other person authorised by the police. When a child or young person commits a minor offence, police are encouraged to consider giving a verbal warning. If the victim is satisfied and the young offender is not considered to be a persistent offender, the officer issues a warning on the spot and the parents of the offender are advised in writing. Reports are available which provide information on 1,794 youth offenders from 16 areas (all dealt with by Youth Aid), indicating that almost 50 percent of these are dealt with through verbal warnings.<sup>24</sup>

### **Diversion Options**

For more serious offences, or when it is determined that the young person needs to take more responsibility for what he/she has done, diversion options may be used. This is generally done through a specified plan, in some cases a written contract between the Youth Aid Officer, the accused youth and his/her parents. Essentially, the plan is any action that tries to "put right" the damage done and prevent it from happening again. It may include one or more of the following options:

- Verbal or written apologies to victims;
- Repairing or paying for stolen or damaged property;

- Working directly for the victim or for a community group;
- Making a donation to charity;
- Curfews;
- Restriction from associating with co-offenders or other 'bad influences';
- Counselling for the offender to address underlying causes of the offending behavior;
- Sport activities or increased hobbies to prevent boredom that may lead to committing offences;
- Improvement in school attendance and homework;
- Writing an essay to show that the offender has understood what he/she has done wrong.

Statistics show that under this programme 32 percent of young offenders are diverted through one or more of the options above. Of these, providing an apology is the most common diversion option (65%), followed by work in the community (33%), reparations (21%), attendance at a cultural, school or training programme (19%), curfews and other restrictions (11%), donations (4%) and others (15%).<sup>25</sup>

### **Family Group Conferences (FGC)**

A FGC is a meeting organised and conducted by a co-ordinator from the Child Youth and Family Courts. It involves the young person, their family, the victims, the police, usually a Youth Aid representative and other relevant individuals such as teachers. The young person is asked to admit to the charges and the conference members consider the offence. Then everyone works together to help the family put forward a plan to prevent the youth from committing the offence again, as well as to make restoration to the victims. These options are similar to those imposed under the diversion options listed above, except in cases where the Youth Court is involved.

In these situations, involving the Youth Court could result in more serious conditions being imposed, such as supervision orders and prohibition from driving. A Family Group

Conference is the start of more formal proceedings and can be called for in two ways:

#### • **From the Youth Court**

Statistics show that 20 percent of youth offenders commit more than one offence. As some of these are serious and/or repeat offenders, they are channelled to the Youth Court. After appearing before the Youth Court, the Judge will order that a FGC be convened. The FGC will develop a plan to prevent repeat offending, will hold the young person accountable for his/her offences, and will make recommendations on a range of issues. These include bail conditions such as curfews, restriction of personal associations and residential clauses often made by the judge that can lead to arrest if not followed. If the young offender completes the plan, the judge may reward him/her with a 'discharge without conviction'. When a Youth Court judge is sentencing a young person they are required to take into consideration decisions, recommendations, or plans that may have been made or formulated by a Family Group Conference. The Family Group Conference can thus have a significant influence on the course of action taken by judges in these cases, and for youth who has not previously been before the Youth Court this can mean a discharge without conviction.

#### • **Directly from Youth Aid**

Statistics indicate that 8 percent of cases dealt by Youth Aid Officers are diverted to FGC. When a Youth Aid Officer receives a report of an offence and believes that it is in the public interest for the young offender to be prosecuted, the officer will consult with a Youth Justice Co-ordinator. In a case where the co-ordinator believes the police have no other appropriate diversion options available, a FGC will be convened by the co-ordinator, and Youth Aid will represent the police. Family members are allowed to present a plan that would give the offender one more chance and keep them out of the Youth Court (this

principle is also stipulated in the Act). The authorities should only disregard the plan if it is impractical, unreasonable, and inconsistent with the Act, and if so they should be prepared to negotiate with the family to modify any unsuitable aspects of the plan. In practice, very few FGCs end in disagreement. For example, it was reported that only 62 out of 1,465 FGCs ended without agreement in 1991. In case of a disagreement, the police may commence proceedings to have the matter heard in a Youth Court.

## IMPACT

An impact assessment was conducted, called Achieving Outcomes in Youth Justice<sup>26</sup> which focused on FGCs and included publication of several reports on the Youth Aid Project.<sup>27</sup> The assessment highlighted the following impacts:

### **The arrest rate of young offenders dropped dramatically after the implementation of the Act from 450 per month to 150 per month.**

The fact that the Act has been accepted and used by the police has clearly contributed to the reduction in the number offences committed by youth.

### **Diversion options, FGCs and cautions were reported to have a greater impact on young offenders than traditional methods.**

Interventions that focus on getting tough with young offenders almost always fail (e.g. random curfews are not effective except if combined with appropriate rehabilitation services).<sup>28</sup> Reports show, for instance, that FGCs appear to be associated with reduced likelihood of repeat offending because it deals with young people and their parents in ways that do not shame them or give them the message that they are bad people. Consequently, 60 percent of youth coming into contact with the law have only one FGC.<sup>29</sup> However, it seems that the more FGCs a young person has, the less effective they become.

### **The FGC system has reduced remands and summons appearances at Youth Courts.**

The warning and diversion process has significantly reduced the numbers of young people being processed through the formal Youth Justice system. The FGC system allows all parties, including the young person's family, to provide input, and agreement by participating parties is required. Thus, the specialist Youth Advocates process is not viewed as being adversarial, and as a result there are very few hearings based on 'not guilty' pleas.

### **83 percent of the juveniles are diverted away from the court system.**

Of these, 75 percent of the juvenile cases are handled by the police alone. The remainder is dealt with by way of FGCs and/or the Youth Court. Successful outcomes from police diversion have been observed.

The risk that a first time offender will commit a second offence is reduced. This is primarily because the family is empowered through diversion to deal with the offender in a timely manner. The young person is thus kept out of the formal youth justice system, reducing the likelihood of repeat offending.

## RESPONSIVENESS AND RELEVANCE

Youth Aid Officers are responsive to the needs of young offenders, as well as the need for accountability to the victims and the community. They also assist parents who seek advice regarding the recent behaviour (or related problems) of their child after they have been advised of their child's behaviour. With more serious offences, the Youth Aid Officer has to seek other ways to hold the offender accountable, if possible without resort to Youth Court. This may involve visits to the home of the offender, a check on their personal history, obtaining the view of the victims, and considering a set of factors related to the nature of the offence and the attitude of the offender.

## CASE STORY

Three youths, aged 14, 15 and 16, broke into a rugby club which was to be used for a wedding the following day. The youths took some of the sound system as well as four crates of wine set aside for the wedding table. Luckily, the offenders were located early on the following morning and all property was recovered and returned just before the wedding was to commence. However, the incident caused great distress to the bride's parents and the bridal party, and turned their wedding plans into chaos.

The three youths were all first-time offenders and the matter was dealt with by alternative action. First, a meeting was held at the police station with all the officials of the wedding, including the bride, groom, and the three accused boys and their parents. The youths were given a full grilling on the problems they had caused and how they had nearly ruined a very special day. The offenders then explained to all present how they became involved and apologised to the victims. They also made commitments regarding where they wanted to be in 3 years' time.

They also signed a contractual agreement to:

- Provide a written apology;
- Undertake 20 hours of community work (painting a fence at a local school);
- Provide a \$30 music voucher from each offender to the bride and groom; and
- Agree to be grounded unless in the company of parents and until all tasks were completed.

In the end, all actions of the contract were completed and the victims were very happy with the actions taken.

The police who exercise powers under this Act must exhibit due regard for gender and ethnicity. The Maori are over-represented in the Youth Justice system, as are Pacific Island young people, in statistics on violent crimes. A serious problem is the high proportion of young men who do not have positive adult male role models in their lives and commit offences.

This project is fully in compliance with international standards on juvenile justice - in particular with Article 40(3b) of the CRC which indicates that state parties shall promote the establishment of diversion systems instead of going through the formal court system. This principle has been incorporated into the 1989 Act, which states that offences should be dealt

with at the lowest possible level, and should emphasise restorative and rehabilitative responses and accountability for actions in ways that are offence-related. They should be done within time frames that are related to the age of the child or young person and consideration should be taken of other relevant factors before determination of the best options.

## INNOVATIVENESS

This project is unique in the East Asia and the Pacific region, and has also been viewed as a model from other parts of the world. Family Group Conferencing, for instance, was initiated in New Zealand in 1989 and since then several countries within and outside the region have



expressed great interest in replicating this approach. Thailand has already started designing a pilot project based on the Family Group Conferencing model.

Diversion options and plans developed within FGC require imagination, innovation and good management skills - especially by the Youth Aid Officer - to ensure that young offenders are held accountable in a manner that is appropriate to the offence and contribute to reconciliation with the victim. It must also provide them with the opportunity to develop in a responsible, beneficial and socially-acceptable way.

### Reactions to the Project

- "To deal with young people, you need infinite patience, infinite wisdom and infinite experience."<sup>30</sup>
- The majority of young people respond very well to the project interventions, and are involved in the decision-making process. The agreement of the child is required in any diversion or FGC plan.
- A survey of the workload for Youth Aid Officers shows that despite an increase in work, 94 out of 101 Youth Aid Officers consider the youth justice provisions of the Act an improved method for dealing with most young offenders.

## SUSTAINABILITY

The main cost of the Youth Aid Project is the funding of police positions to carry out the project activities. Other costs involved are office expenses and use of vehicles to enable home visits and proactive work with the community.

Residential interventions are more costly and require greater effort to succeed compared to diversion and non-residential interventions. In only a few instances, such as those involving very serious crimes, institutionalisation may be necessary in order to protect the public. Custody on its own has no impact on rates of repeat offending and can slightly increase it. While a diversionary response for a low risk offender has been estimated to cost up to NZ\$1,000 per young person, the most expensive court-based process has been estimated to cost over NZ\$27,000.

## LESSONS LEARNED

### **Assessment of risk factors in each individual case contributes to more effective intervention.**

The better these risks are addressed, the greater the likelihood of successfully preventing further offending. Because the police officers are often familiar with the youths or children they are dealing with, there is a risk that some of them under-diagnose risk factors and assume they 'know' the case. Consideration could be given to the development of an assessment tool to aid in assessing the needs of the young persons.<sup>31</sup>

### **Positive outcomes require quality staff.**

Youth Aid Officers are key actors in making diversion options successful. Police staff who relate well to young people are able to establish warm and friendly relationships, and yet also set limits and enforce the rules.

### **Further discussion is needed regarding the development of national standards for diversion.**

The lack of national standards for decision-making on diversion options may lead to inconsistency. On the other hand, the current situation is more flexible and allows more room for taking family and community factors into account.

### **Diversion and FGC can also be used for more serious crimes.**

The Act does not put any restriction on the use of diversion options, including using FGC for

more serious crimes, such as cases of abuse and rape. The final decisions about whether to use the court system or not should be made on a case-by-case basis.

**Co-ordination between Youth Aid Officers, Youth Justice Co-ordinators and other agencies is essential.**

All practitioners in the youth justice process must work together and should meet on a regular basis to discuss cases and agree on an appropriate course of action when an intervention is required.

**The Youth Aid Section benefits from the support of the police force.<sup>32</sup>**

It is reported that on-going education for police officers regarding the role of Youth Aid can be helpful in strengthening recognition and understanding within the police force as a whole.

**Family and other significant adults can have a great impact on young offenders.**

Efforts should be made to identify key support persons and significant adults in each case. Parents and community members can be very helpful to young persons in trouble with the law. In addition, warnings issued by adults significant to the juvenile can have a great impact. Consideration should be given to extending the

authorisation to issue warnings beyond the police force, for instance to a teacher, coach or grandparent.

**A first-time juvenile offender must be viewed first and foremost as a young person in the process of growing up and not a criminal.**

Experience has shown that many children and young people commit petty offences as a normal part of growing up. This understanding should be reflected in our dealings with first-time offenders. However, this must be combined with interventions appropriate to the level of the offence.

**An independent Advisory Group would be beneficial to improving the Youth Offending Strategy.**

Establishment of an independent Advisory Group would provide a forum for discussing initiatives and developments in the Youth Justice Sector for implementing the Youth Offending Strategy. The Group could also provide feedback and advise on policy from the community and practitioners to senior government officials in the Youth Justice Sector.<sup>33</sup> The Group should include several key actors dealing with young offenders, such as social workers and police officers.

## CASE STORY

“I was 14 years old when I sexually abused a young girl, mainly because I wanted to prove to my peers that I was not gay. I was invited to go to the police for mediation. The girl’s family expressed their anger; it was a very hard process for them and for me. We all cried very much. I regretted it, and at the end of the mediation, I presented my apology to the family of the victim, who accepted it. They did not want me to go to jail, but insisted I undergo a lot of therapy.

“Several years have now passed, and I have done well in my life. I am in the Navy and am happy. I am still very sorry about what I did and I will never do it again. Thanks to the youth police officer, and to the victim’s family who gave me the chance to show that I could put things right”.



## CONTACT INFORMATION

<b>Contact Person:</b>	Inspector Chris Graveson
<b>Country:</b>	New Zealand
<b>Name of Organisation:</b>	New Zealand Police
<b>Address:</b>	Office of Commissioner of Police 180 Molesworth Street, Wellington
<b>E-mail:</b>	chris.graveson@police.govt.nz
<b>Telephone:</b>	+64 4 474 9499
<b>Fax:</b>	+64 4 470 7140
<b>Area of Work:</b>	Diversion (police level)

21 According to the 1989 Act on Children, Youth and Families, a 'child' is a boy or girl under the age of 14 years and a 'young person' is a boy or girl of or over the age of 14 years but under 17 years of age at the time of the offence.

22 A History of Youth Justice in New Zealand, Emily Watt (commissioned by the Principal Youth Court Judge Becroft), New Zealand, January 2003.

23 Unfortunately, the 1989 Act still does not recognise a child as a person below the age of 18. All persons above 17 years can be prosecuted in adult courts (Youth Courts are available only for youths between 14-16 years). However, it is worth mentioning that New Zealand is presently reviewing its obligation to those aged 17 years of age.

24 Police Youth Diversion: Report to Youth Aid Officers, Institute of Criminology Research Team, December 2001.

25 Police Youth Diversion: Report to Youth Aid Officers, Institute of Criminology Research Team, December 2001.

26 The report is available at the Social Police website ([www.msd.govt.nz](http://www.msd.govt.nz)) under "Publications" (as of July, 2003).

27 See also: Final Report: Police Youth Diversion, prepared for the New Zealand Police Ministry of Justice, by the Crime and Justice Research Centre, Victoria University of Wellington through Victoria Link, New Zealand, January 2002; and Counties Manukau Youth Crime Trend Analysis 1994-2001, Alexa Van Straaten, New Zealand, September 2002.

28 Tough is not Enough 'Getting Smart about Youth Crime', a research review on what works to reduce unlawful behaviour by young people, Ministry of Youth Affairs, New Zealand, June 2000.

29 The Youth Justice Plan for Child Youth and Family, Department of Child Youth and Family, Wellington, April 2002.

30 Judge Lovegrove, a Wellington Youth Court Judge.

31 Youth Offending Strategy: Preventing and Reducing Offending and Re-offending by Children and Young People, Ministry of Social Development, Wellington, New Zealand, April 2002.

32 Youth Justice in Focus: Conference Proceedings, Wellington, New Zealand, 1998.

33 "Court in the Act", a newsletter co-ordinated by the Principal Youth Court Judge (Judge Becroft), Wellington, New Zealand, No.6, May 2003.



# THE RESTORATIVE JUSTICE PROGRAMME – Palau

The traditional systems of Palau appear to play an important role in the acceptance and success of a new Restorative Justice Programme based on practices developed over thousands of years. The Restorative Justice Programme has provided a means of reconciliation and healing for both the victim and the accused, fostered problem resolution, settled disputes, and provided a degree of restoration to victims of crime.

“I strongly believe that increased involvement by traditional leaders will benefit the criminal justice process.” Minister of Justice Michael Rosenthal

## KEY ACTORS AND PARTNERS

### The Republic of Palau

Palau is one of the countries known as Pacific Island Countries, and is governed by a national government, and sixteen state governments. Each state has its own form of constitutional government that includes roles for traditional leaders. The national government has an executive, judicial and legislative branch. The President, Vice President, and twenty-five members of the bicameral legislature are all popularly elected.

### The Ministry of Justice

This is one of eight cabinet level ministries in the executive branch, and contains the Office of the Attorney General, Bureau of Immigration and the Bureau of Public Safety. The Ministry of Justice is responsible for most law enforcement in the country, including investigating and prosecuting crimes and incarcerating prisoners.

### Palau Restorative Justice Programme

This programme was established by the Ministry of Justice without legislation as an alternative to criminal prosecution. It has a separate office, a co-ordinator who is in charge of the overall programme, two part-time mediators who assist in running mediation conferences, and three support staff.

## Goal and Objectives

### Goal

To teach the skills of reconciliation, forgiveness and spirituality to all participants.

### Objectives

- Promote respect for the law;
- Address the fundamental problems leading to criminal activity which are frequently not addressed through the current justice system practices of arresting criminals and punishing offenders;
- Provide a means of reconciliation and healing for both the victim and the accused;
- Teach problem resolution;
- Settle disputes and address root problems which cause criminal activity;
- Satisfy and provide a degree of restoration to victims of crime;
- Reduce recidivism;
- Encourage respect for the law and society by personalising the justice system processes;
- Save time and money for the court and prosecutors by reducing the number of cases that proceed to trial;
- Improve the educational, spiritual and social conditions of offenders.

## PROJECT BACKGROUND

In June 2001, the Ministry of Justice established the Palau Restorative Justice Programme (PRJP) as an alternative to criminal prosecution. The programme was established without legislation following a Pacific Conference on Juvenile Justice held in May 2001, supported by UNICEF, at which the concept of restorative justice was presented. The Minister of Justice of Palau, Michael J. Rosenthal, attended the conference and initiated the PRJP on his return with a specific but not exclusive focus on youth offenders. The Programme has been modified from time to time to best meet the needs of the persons served by the Programme.

In Palau, traditional practices and attitudes play an important role in the acceptance and success of restorative justice activities. These traditional customs have developed over thousands of years and continue on today. Villages are at the heart of the traditional Palauan social system. Each village has from seven to eleven 'clans', ranked from the highest to the lowest. Each clan has a chief, who is almost always male, and is chosen by the women of the clan. Matrilineal members have the most power in the use of land and the selection of the chiefs. The four highest clans are considered the 'corner posts' of the village. The chief of the highest-ranked clan leads the village council of chiefs, which historically meets in a Bai, a traditional Palauan structure. The fundamental role of the council of chiefs is to maintain harmony in the village with a focus on showing respect for chiefs and elders. In the past this included bowing to chiefs and stepping off a footpath to allow an oncoming chief or elder to pass.

The council of chiefs sets rules for each village and if a person disobeys, that person and his/her entire family could be called upon to address the infraction. Sometimes fines are levied against the chief or elder of the clan. Fines can be in the form of Palauan money but is most often in the

form of sharing fish or other food, or providing assistance to the victim and his/her family. In determining the punishment for infractions, one chief serves as a prosecutor and two other chiefs sit in judgement. Decisions are final and cannot be appealed. While a fine is the most common result of a violation, punishments include loss of property, exile, and in the past even death. In cases of murder, a male who murders another male may be required to act as the son of the family who has lost their son. Even today the traditional system imposes punishments for infractions of customary law.

A critical component of the traditional system is respect (*Omengull*). Youth are taught to respect chiefs (*Rubaks*), as well as older women (*Mechas*) and men. This type of respect is also taught through the Restorative Justice Programme. Judicial power is vested in the Palau Supreme Court, which consists of a trial and appellate division. Criminal cases are brought through information prepared by the Office of the Attorney General, and some individuals accused of misdemeanours are given criminal citations issued by police officers. Punishments range from a fine and several days in jail to life imprisonment, but do not include the death penalty. Persons under 11 years of age are presumed incapable of committing a crime. Persons between 11 and 18 years of age may be tried as an adult depending on the severity of the crime and the maturity of the individual. The Palau Restorative Justice Programme (PRJP) is now providing an alternative to criminal prosecution for many of these cases.

## PROJECT DESCRIPTION

Some general parameters have been set for the types of cases that are referred to the Restorative Justice Programme. Cases that are usually not referred to the Programme include those involving a sexual offence or substantial violence; cases where the offender has a felony conviction within the past three years; cases with

pending felony charges; and/or cases involving crimes without a victim. However, a case-by-case determination is made on each matter and special consideration is given to youth offenders. In cases channelled to the Restorative Justice Programme, the following processes are employed:

- **Parties agree to participate in the Restorative Justice Programme.**

If a case appears appropriate for the Programme, the victim and the offender are contacted independently to determine if they are willing to participate. More than 95 percent of the parties agree. Cases that are initially determined not appropriate for the programme



*In Palau's Restorative Justice Programme the offender and the victim meet face-to-face with members of the community.*

are sent to the Attorney General for prosecution, but can later be referred to the Restorative Justice Programme. This may happen, for example, in cases of domestic violence, where the victim of the abuse expressly states that she or he is unwilling to go to court. Thus, cases that would otherwise have gone unrecognised by the justice system get processed through the PRJP. The PRJP provides an opportunity for the accused and the victim to identify and acknowledge the abusive behaviour and to address the problems associated with the abuse.

- **Conferencing.**

After the parties agree to participate in the programme, a conference is held at the Ministry of Justice with traditional leaders, family members and community representatives. The conference proceeds under the leadership of the Restorative Justice Co-ordinator or one of the mediators. At the conference the offender must acknowledge the improper actions, accept responsibility, and the victim must have the opportunity to tell the offender about the consequences of the criminal act. All participants at the conference, including the offender and the victim, determine the appropriate terms to provide restoration for the victim and society.

- **The terms of the written agreement.**

The terms of the written agreement, which all participants sign, specify actions that the offender must complete within one year or less. If community service is assigned the person supervising the offender is requested to advise the parties involved when the offender completes the terms of the agreement, or if he/she fails to complete them. To date, there have been few cases in which the offender has failed to perform the terms of the agreement. During this part of the process children have a chance to speak and be involved in the juvenile justice process, as is provided by the Convention of the Rights of the Child.

- **Consequences of compliance or non-compliance by the offender.**

If the offender fulfils the terms of the agreement, no criminal case is filed and the offender does not receive a criminal record. If the offender fails to fulfil the terms of the agreement, or commits another crime during period of fulfilling the terms of the agreement, the case may be referred to the Office of the Attorney General for prosecution. No statements or evidence obtained in the restorative justice process is used against the accused in any subsequent prosecution.

- **Making the victim “whole”.**

Each Restorative Justice Programme agreement requires that the offender complete several actions. When there has been a loss to the victim, the offender will be required to “make the victim whole” through payment of restitution or replacement of damaged or stolen items. The offender is often required to give something back to the community. Instead of imposing a fine, which would be sent to the National Treasury, offenders make a contribution equivalent to a certain dollar amount in food or supplies to a group such as the Senior Citizens or the Belau National Hospital.

- **Religious and behavioural health**

The majority of agreements also include a religious and behavioural health component. For example, as part of community service, some youths attend church, though this is not required. Some youths in the programme also attend mandatory meetings on addiction (similar to the Alcoholics Anonymous programme). The PRJP is not intended to be a free ride, and sentences imposed by the Court are considered for comparison. However, it is important that the members of the conference have the latitude to decide the correct restorative activities.

## IMPACT

As the Palau Restorative Justice System was initiated just one and a half years ago, the long-term impacts cannot yet be assessed. However, there are already some positive results.

**About 50 percent of all criminal cases have been referred to the Restorative Justice Programme.**

More than 300 cases have been referred to the Palau Restorative Justice Programme during the past one and one half years. Prior to the launch of the Programme there were approximately 400 criminal cases processed each year by the Office of the Attorney General. Offenders, victims, family members, participants and society are all

beneficiaries. While this is one measure of success, it will take time to judge the ultimate impacts of the Programme. A database for tracking cases has recently been established, in part, to assist in measuring the impacts of the Programme.

**The Programme has been accepted by the court, the prosecutors and the community.**

The Restorative Justice Programme has been accepted as a logical part of the justice system by members of the Justice profession and by the community especially as it draws upon many aspects of traditional systems for dispute resolution. If the Programme can teach people problem resolution skills and lead to dispute settlement, the Programme will have significant long-term success in reducing criminal activity and improving the quality of life in Palau.

## RESPONSIVENESS AND RELEVANCE

The restorative justice approach seems to fit very well with Palau culture. As Palau is a small country, and many victims and offenders are related through family and clan, healing wounds and resolving conflicts is critical. In the court system the accused may never speak and instead has a hired or appointed advocate act on his/her behalf. A basic precept of the PRJP is that the offender and the victim meet face to face with members of the community to begin a healing process. In the majority of cases, victims appear to genuinely forgive the offenders and let go of their anger. Often agreements include a religious and behaviour health component.

The Palau Restorative Justice Programme fully complies with the CRC and all other relevant international instruments on juvenile justice including diversion and restorative justice. The Programme also fulfils participatory rights of children – whether victims or offenders – who are always given an opportunity to express their views and to be heard. The PRJP was established without national legislation.

A number of cases referred to the PRJP have also involved women who had been assaulted or battered by males. Many of these women would have declined to pursue the matters if the cases had proceeded through the normal criminal court process. Had it not been for the PRJP, these matters would otherwise not have been resolved.

### Reactions to the Project

- “The [PRJP] has given me a second chance in life and I would like to thank the Co-ordinator and the Minister of Justice for letting me join the programme.”
- “I would like to express my sincere thanks for all these respected gentlemen who have joined in [the PRJP] to bring us this important moment of our life to learn to forgive and forget, and teach us and restore once again the friendship that parted ways a long time ago.”
- “I thank God almighty, for I feel I was given a second chance in life, and now, I will work to better myself for my family and prove that I am a good person and responsible citizen.”

### INNOVATIVENESS

Because the project has been established without legislation and builds upon customs and traditions, it was implemented quickly. This has also, for now, resulted in no external funding for the programme, and only minimal funds and resources have been diverted from other parts of the Ministry of Justice to run the project.

Criminal Justice issues are multi-dimensional. Thus the PRJP has been co-ordinating with other agencies involved in youth affairs and drug prevention to ensure a holistic approach. This

includes the Ministry of Education, Ministry of Health, Ministry of Community and Cultural Affairs, state and national youth affairs organisations, and the Palau Supreme Court. It is hoped that a process can be established to follow youth involved in PRJP to ensure continued support from the community and government.

### SUSTAINABILITY

Unfortunately, the Programme has experienced constraints and is currently not operating at this time. This is the result of three factors. First, the Palau National Congress enacted the Speedy Trial Act which requires that individuals accused of crimes be charged within thirty days of arrest. This eliminates the time required to complete the Programme in cases of arrest. Second, there has been an increase in the types of crimes dealt with by criminal citations, such as minor assault and battery. These were the types of cases that were generally referred to the Restorative Justice Programme. Lastly, the Restorative Justice Co-ordinator has ended his employment with the Ministry of Justice.

Given the success of the Programme, options to overcome this problem are currently being assessed, and it is hoped that necessary staff will be put in place shortly. As mentioned above, the reduction in cases sent to the Palau Supreme Court reduces the costs of the Court and prosecutors. With fewer inmates, the costs to run a prison can be reduced as well.

Because the Programme was established without legislation and is not codified in the law, it will require the commitment of people in the community and the Executive Branch to ensure its continuation. However, not being codified in law also makes the Programme very flexible. Thus, it may be possible to modify the Programme in response to changes in the Justice system, such as the enactment of the Speedy Trial Act and the increased use of citations.



## CASE STORY

An individual was arrested for placing rocks in a neighbour's vehicle gas tank. The individual performed community service for a local church and has continued to attend church every Sunday. The youth recently received final confirmation, graduated from High School and will be attending the Palau Community College in the fall of 2003. She has had no problems since. Below is the letter she wrote in regard to her participation in the PRJP.

October 16, 2002

To: Mr. Rosenthal Minister of Justice

First, I want to thank our Lord above for guiding me to the right choice of life.

Second, I'm glad this programme changed my life.

In past years, I did many bad choices and I didn't think about going to church. I always disobeyed my parents and thought that they were wrong and I was right. But on October 2nd 2002, the panel judges made me realise that I was making lots of bad choices for the past years and my parents were right all along.

On October 2, 2002 in the conference room, I was angry and embarrassed at the same time. But the panel judges touched my deepest heart. I was so sad that day, but that day I made up my mind to do what they all had to say, and invite God to come in to my heart and guide me to make the right choice. When I was in this programme, I was glad to learn many things from the judges and the most important thing I learned from one of them is, "Success in life is equal to success in school."

Now, I have 96 hours to complete my community service. Maybe it will take longer time to complete, because I'm an athletic person and I'm involving in many kinds of sports. So, I will try to go to church on weekdays, but I'll never miss the first mass on every Sunday.

Today, I'm a changed person. My friends keep questioning me about my new appearance of life, especially my personality. I'm doing well in school, except my U.S. History class, but I'm doing my best to catch up. I'm listening to my parents and I'm proud of myself. I'm glad I'm making the 'Right Choice'.

I want to thank you for coming up with a good programme for a people like me, when I was a bad decision maker. I hope it will continue to help others who will make a bad choice. Thank you again and a special thanks to the panel judges who were there to give me special, important information and advice. Thank You! May the precious Lord above bless us all and guide us in every path...

Love,

(Name Withheld)



## LESSONS LEARNED

### **Traditional customs play an important role in the acceptance and success of restorative justice.**

The reported success of the Restorative Justice Programme is partly due to the fact that it has built upon values, such as healing wounds, that are inherent to the Palau society.

### **Consideration of the needs of the victim and the offender, as well as, of their families and the community are critical to success.**

The Programme has focused on dealing not only with children in conflict with the law but also with the victim, the families and the community as a whole. It is a learning and healing process that necessarily involves all affected parties. This should lie at the core of any replications of the Programme. Children are also always given the right to voice their opinions and to provide input.



*The Restorative Justice Programme takes into consideration both the needs of the victim as well the offender.*

### **The process needs to remain flexible.**

The added value of the Restorative Justice Programme also lies in the fact that the project allows for more flexibility than the Court and prosecutors.

### **Longer-term gains can be reached as the Programme seeks to get to the root of the problem.**

The Restorative Justice Programme allows the parties involved to address root causes, deal with these issues and to reach a correct restorative solution. This increases the likelihood that the situation will not recur in the future.

### **A competent and respected staff is necessary for this type of programme.**

Respect (*Omengull*) is an important component of the Programme. It is necessary that the staff themselves be respected and be committed to the outcomes.

### **Back-up for staff should be considered.**

It may be appropriate to utilise more than one individual to implement this kind of programme and to plan for back-ups in order to ensure sustainability and avoid delays in implementation in case staff are unable to continue their assignments.

### **Some situations cannot be resolved through this Programme.**

Not all cases can be resolved through the Restorative Justice Programme. Some young people are unwilling to participate in the Programme and other persons fail to complete the Programme. For now, those who do not complete the Programme are referred to the Office of the Attorney General for prosecution. If more resources were available, the Programme could work to follow up with these youth and work to ensure successful resolution.

## CONTACT INFORMATION

<b>Contact Person:</b>	Michael J. Rosenthal, Minister of Justice Republic of Palau Ministry of Justice
<b>Country:</b>	Republic of Palau
<b>Name of Organisation:</b>	Ministry of Justice
<b>Address:</b>	P.O. Box 6067 Koror, Palau 96940
<b>E-mail:</b>	Justice@Palaunet.com
<b>Telephone:</b>	+680 488 3198
<b>Fax:</b>	+680 488 4567
<b>Area of Work:</b>	Restorative Justice

# COMMUNITY-BASED PROGRAMME AND SERVICES FOR JUVENILES IN CONFLICT WITH THE LAW – ALALAY NG BAYAN FOUNDATION INC. (ABAY) Quezon City, Philippines

**ABAY is a unique, church-based initiative that endeavours to help juveniles in conflict with the law by promoting restorative justice through community-based alternative programmes and services. It is envisioned as a positive catalyst to restore broken personal and social relationships, and continuously promotes the ideals of human development. ABAY acts as a steady anchor in the lives of young people who are often in an environment of turmoil and indifference.**

## KEY ACTORS AND PARTNERS

### **ABAY**

A church-based, multi-sectoral association, organised by representatives from the UP Church of the Risen Lord, Puno United Methodist Church and the Village United Methodist Church, as well as members from other local Churches in Quezon City district in the Philippines. Its purpose is to undertake comprehensive protection and integrated development programmes for juveniles in conflict with the law. The initiative covers the City of Quezon and recently extended its coverage to Manila and the 11 cities and 4 municipalities of the National Capital Region. ABAY has eight staff members and 200 volunteers.

### **Partners**

UNICEF Philippines; the Philippine National Police – National Capital Regional Police Office (PNP-NCRPO); Family Courts; the Department of Justice and the Judiciary; the Bureau of Jail Management and Penology; the Department of Social Welfare and Development; Churches; NGOs; and communities.

## Goal and Objectives

### Goal

- To help juveniles in conflict with the law by promoting restorative justice through community-based alternative programmes and services.

### Objectives

- To support implementation of the Rule on Juveniles in Conflict with the Law (JICL) by providing stakeholders of the juvenile justice system with a wide range of community-based rehabilitative programmes and services.
- To work hand-in-hand with government and non-governmental organisations in building the social infrastructure that can support diversion programmes for juveniles in conflict with the law.
- To provide information and education so that all the children in the country know and understand their right to diversion.
- To assist advocacy efforts aimed at encouraging the proper authorities to provide separate detention cells for juveniles in conflict with the law from the moment of initial contact up to the time of transfer to the Department of Social Welfare and Development facilities.
- To work for the full integration of the project into the overall development programs of the Local Government Units (LGUs) in the country.

## PROJECT BACKGROUND

The Community-Based Programmes and Services for Juveniles in Conflict with the Law, and specifically the diversion programmes, were created in 2002. The project grew out of a national policy articulated by the Supreme Court in the Rule on Juveniles in Conflict with the Law. The projects use a holistic strategy that is focused on putting into action and making reality of the intent of the new Supreme Court Rule. Through establishment of a wide range of

non-institutional/community-based rehabilitative programmes and services, Family Courts in the National Capital Region of the Philippines can now readily access these services in order to effectively address the special needs of the juveniles in conflict with the law. The programmes and services provide support for youth offenders from the moment of arrest/prehension, or issuance of a warrant of arrest/summons, up to the time of his/her full re-integration into the community as a responsible and productive individual. In short, the project covers not only the whole juvenile justice process, but goes beyond to address the causes of many problems plaguing society.

The project attempts, as far as possible, to adequately address the needs of the juveniles in conflict with the law throughout the rehabilitative period - up to their full re-integration into the community. As this project is implemented, it will eventually become a permanent feature in the social milieu of the community. The project was originally introduced in Quezon City in the latter half of 2002. In April 2003, the project was extended to Manila and was further extended to the 11 cities and 4 municipalities of the National Capital Region in May 2003.

## PROJECT DESCRIPTION

### Key Activities

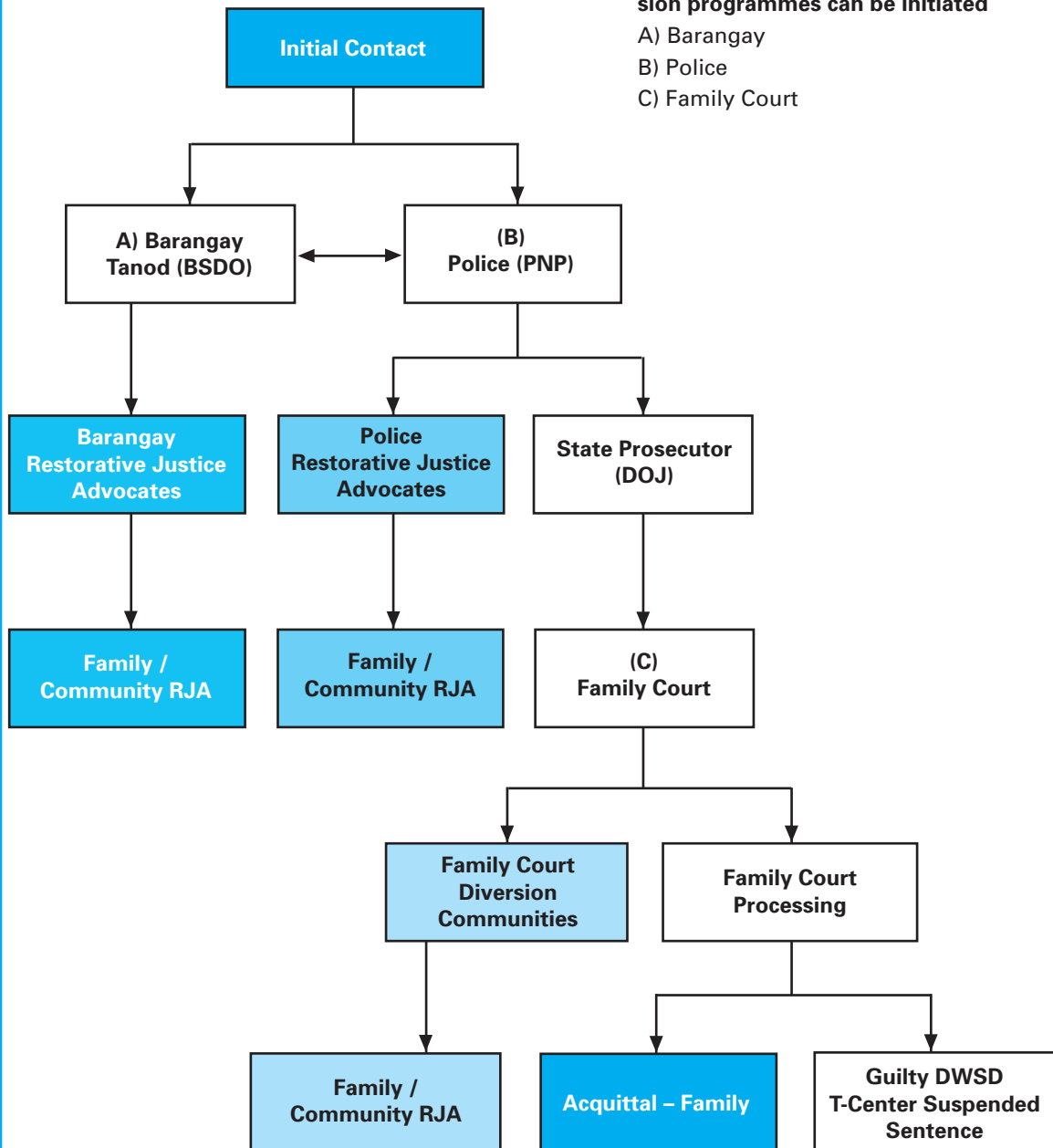
#### Implementing Diversion Programs for Juveniles in Conflict with the Law.

In the Philippines, diversion of juveniles can be initiated at three levels, namely through the Barangay<sup>34</sup>; by the police<sup>35</sup>; or at Family Court level (see flowchart over). To date, ABAY has only received referrals from the Family Court, primarily because the Rule on Juveniles in Conflict with the Law is intended for the Family Courts. The ABAY project is still in the process of building the social infrastructure to support diversion at the police and Barangay levels in various communities. Many stakeholders in the Juvenile Justice system are still acquiring basic knowledge and understanding of diversion

## Diversion Flow Chart for Juveniles in Conflict with the Law

There are 3 stages in the Juvenile Justice Administration where diversion programmes can be initiated

- A) Barangay
- B) Police
- C) Family Court



procedures through training and seminars conducted by ABAY.

ABAY applies diversion approaches for disputes of a non-serious nature, as the law dictates that diversion is possible only in cases where the maximum penalty for an offence by a juvenile is imprisonment of not more than 6 months.<sup>36</sup> Offences committed by diverted juveniles thus include, petty-theft, vagrancy, substance abuse, violation of city ordinances etc. Helping these juveniles is the immediate objective of the diversion programme under the Rule of Juveniles in Conflict with the Law.

As soon as the Family Court Diversion Committee completes conferencing, and the proceedings are signed by all parties (the juvenile, guardians/parents and complainants), the Family Court social worker refers the juvenile to ABAY for community-based rehabilitative services (the Family Court provides ABAY with a copy of the document signed by all the parties). ABAY immediately conducts a home visit and orients the juvenile and his/her family regarding the programme to be provided by ABAY for the juvenile. These services include:

- Legal/para-legal assistance;
- Educational assistance (formal and non-formal education);
- Health care;
- Counselling (individual and family);
- Support for moral and spiritual development;
- Livelihood and entrepreneurial support;
- Job-referral and placement;
- Social life skills and character formation; and
- Recreation and leisure.

#### **Building the Community Social Infrastructure to Support Diversion.**

Diversion as an alternative to incarceration or institutionalisation through community-based programmes and services requires the formation of support groups involving individuals, groups and institutions within the community. These

groups may include professionals, businessmen, church members, schools, media, national government agencies, Barangays, youth groups and families. The formation of a cohesive community is a continuing activity and challenge in the process of development. This is a component of the programme that involves tremendous effort and manpower resources.



*ABAY Volunteers, April 2002 in Quezon City, the Philippines*

## **Problems Encountered**

ABAY has faced some difficulties in implementing diversion for juveniles in conflict with the law at the Quezon City Family Court. Specifically:

- Frequent delays in processing diversion cases due to busy schedules of prosecution and defence lawyers as well as difficulty to simultaneously convene all other relevant parties (victim, offender, parents/guardians) for court proceedings.
- Some defence lawyers do not 'value' cases that could qualify for diversion and are therefore not interested to accept such cases, which often tend to deal with petty offenders.
- While in general receptive, the Family Courts' Diversion Committees are still in a learning mode in relation to implementation of diversion.
- Local NGOs and local government units (LGUs) are not well-informed about diversion

approaches, and therefore are not able to establish community-based programmes and services that support implementation of diversion practices. LGUs are also generally not prepared to support diversion programmes due to lack of understanding regarding diversion. Local and national leaders are more focused on politics than on novel solutions to social ills plaguing the country.

- Negative attitudes among community institutions such as schools, Barangays, and neighbourhoods against juveniles that have been in conflict with the law poses an extra challenge to the implementation of diversion. The idea of restorative justice is also very new, and due to lack of understanding of restorative justice, organisations and entities have problems putting the idea into practice.





## IMPACT

No impact assessment has been undertaken as this project is relatively young. However, some effects resulting from ABAY's diversion programme can already be seen. Diversion is being implemented in many Family Courts in Quezon City, Manila and some other cities and municipalities in the National Capital Region of Manila. Furthermore, diversion at police-level is being implemented in many police stations in Metro Quezon City District, Manila and in other police stations all over the National Capital Region. Multi-sectoral training in these areas conducted in 2002-2003 is believed to have contributed to the wider implementation of diversion for juvenile offenders.

Other positive effects of the programme include:

### **Interest shown in public schools.**

Public school administrators and principals have shown significant interest in the diversion programme and are now developing their own special education programmes for this sector of the student community.

### **Business and professional groups are positively responding to this new programme, incorporating the principle of restorative justice.**

In the entire National Capital Region, shopping mall owners are discussing ways to handle juvenile shoplifters in accordance with the Rule on Juveniles in Conflict with the Law, with diversion approaches in mind. They are formulating specific interventions in coordination with police and community social workers.

### **ABAY arouses the academic community.**

The project has aroused the interest of the academic community from Quezon City and other parts of the country. ABAY has become a resource for academic research activities. Diversion has been the subject of masters and doctoral theses and researchers have requested material and information about diversion and the experiences of ABAY with this new project.

### **The number of youth offenders being held at Molave Youth Home has been reduced.**

At the start of the diversion programme in Quezon City, the number of youth detainees was as high as 180, but has gone down to the current level of 145. Thus, more children are being released from Molave Youth Home of Quezon City due to diversion approaches. It is projected that in the National Capital Region, the diversion programme, if implemented and promoted vigorously, could prevent more than 500 juvenile cases yearly from entering into the formal justice system due to diversion.

### **The ABAY re-integration programme provided services in the cases of over 50 children.**

Of these, 22 were provided with formal education, and 28 with non-formal education. All underwent individual and family counselling and received health care assistance. In addition, 11 parents were referred for job placement since the beginning of the programme.

### **In Quezon City 18 police station officers participated in the police training in April 2002 and another 78 police officers participated in the September 2002 training.**

In Manila, 18 police Women & Children's Desk Officers participated in a three-day, multi-sectoral training course, conducted in April 2003. Other pillars of the criminal justice system also participated. The training was focused on juvenile and restorative justice and diversion. Both training were organised by ABAY and supported by UNICEF Philippines.

## RESPONSIVENESS AND RELEVANCE

This project is in compliance with international standards on children in conflict with the law, as outlined in the Convention on the Rights of the Child and the JDL's Rules 79-80. International standards have also been incorporated into the Philippines national standards, that promote reparation, reconciliation and reassurance through preventive measures and appropriate sanctions at the community level. The ABAY



programme supports enforcement of the Philippine's Rule of Juveniles in Conflict with the Law (2002), that provides for diversion in minor cases<sup>37</sup>. These include a provision, which aims to ensure that juveniles in conflict with the law are spared traumatic experiences during arrest, investigation and detention in the hands of the police. ABAY, together with the community volunteers, tries to prevent the police from committing abuses, harassment, intimidation, extortion, illegal detention and other unlawful acts as enumerated in the new Rule. Below are more specific examples.

In principle every child, boy or girl, can be referred to ABAY by the Family Courts and be provided alternative services as listed above. However, to date, only boys have been sent to ABAY. This is mainly because 90 percent of juvenile cases reported are committed by boys, and only 10 percent by girls.

The project is not gender discriminating. It responds to all kinds of cases involving either gender. In terms of ethnicity, the project respects customs and traditions, especially in the area of restorative justice where indigenous ethnic practices are abundantly manifest: the Barangay Justice System is indigenous in origin and its features are restorative in character.

The services offered to assist children to re-integrate into the society are in compliance with a child's right to participate and express their views. Children's views are respected and considered to be of paramount importance. Demonstrating respect is in itself important for the child's personal rehabilitation and development. Children provide feedback regarding programmes and services made available to them during a monthly monitoring report. The juvenile is asked by the judge to discuss the kind of services he/she has received and to make comments about these programmes and their effects. In this way, the juvenile participates in the proper implementation of the programmes and services, to ensure they are acceptable and beneficial to his/her well being. The parents of

the juveniles are also asked to provide feedback on the programmes and services offered, as well as on the juveniles' rehabilitation and development during the diversion period.

This project also responds to the needs of the Family Court as diversion cases reduce the backlog of cases, leaving the Family Courts to concentrate on more serious cases, since petty offences which qualify for diversion no longer require court trials. Through ABAY the Family Court is assured of an after-care rehabilitation programme for diverted juveniles in conflict with the law through support groups within the community, and social workers no longer need to formulate separate diversion programmes for each juvenile in conflict with the law. Monitoring of juvenile cases is also done by ABAY through regular monthly monitoring reports, a function previously assigned to court social workers.

### Reactions to the Project

- To children in conflict with the law ABAY allows them to have a second chance in life.
- To the staff and volunteers, ABAY is perceived as an agent of change in the individual, family and community lives of people.
- To the Family Court, ABAY is considered a welcome assistant and service provider of rehabilitation and after-care services for juveniles and their families.
- In the community, ABAY is considered a strong educational, unifying agent that arouses civic consciousness and engenders interconnectedness among community members. To church members, who operate ABAY, the diversion programme for juveniles in conflict with the law is a novel avenue for undertaking outreach activities for youths, families, and communities.

## INNOVATIVENESS

The project is innovative in that it was initiated by an NGO but in response to a national policy issued by the Supreme Court. While the policy is articulated in the Rule on Juveniles in Conflict with the Law, a non-governmental organisation developed the project concept for its implementation, without waiting for the government to come up with guidelines. As a result of this unusual situation, ABAY was able to offer the Department of Social Welfare and Development a project concept for national implementation. In this aspect the project is trend-setting and a pioneering initiative in the country.

The humane approach of the project is unique in the criminal justice system, which is typically retributive. This innovative approach to implementing the Rule on Juveniles in Conflict with the Law is a welcome development in the search for an effective strategy to promote a holistic juvenile justice programme.

The ABAY project, the first of its kind in the Philippines and in Southeast Asia, is unique as a church-based, multi-sectoral association of volunteers offering programmes and services to juveniles in conflict with the law. The volunteers' dedication, competency, tenacity and respect are well-recognised by all the pillars of justice, especially the courts and civil society.

The programme has initiated a unique working relationship with the Family Court Diversion Committees by offering various community-based programmes and services in lieu of institutionalisation. ABAY representatives attend regular Diversion Committee meetings and Family Court judges' monthly meetings. ABAY is the only NGO that provides services directly to individuals involved with the Family Courts.

ABAY has entered into a Memorandum of Agreement with the National Capital Regional

Police Office (NCRPO), making the police part-owner and implementers of diversion programmes at the police level. To achieve this goal, ABAY conducts capacity-building sessions with the police all over NCRPO. The police have made diversion a community-based approach to peace and order problems in the community.

Regular feedback is provided by ABAY to the Committee on the Revision on the Rules of Court (of the national Supreme Court). These reports aim to help the committee evaluate the programme's impact in order to consider future developments related to diversion. This could eventually lead to some improvement or revision of the Rule on Juveniles in Conflict with the Law.



*Children acting the National Anthem at the launching of the ABAY Programme in Quezon City, Philippines April 2002. Credit: ABAY Foundation*

ABAY has initiated dialogues and meetings with different sectors of the community, informing them about diversion, with the ultimate purpose of establishing diversion activities in their communities. Through this process, community members are encouraged to assist with the rehabilitation of juveniles in conflict with the law in their communities, and not simply rely on government interventions or institutional care provided by the government or NGOs.

The project is participatory in practice, involving all stakeholders of the criminal justice system, especially the community pillars in which the

burden of rehabilitation and re-integration of the juveniles in conflict with the law rests. As a consequence of this programme, civic consciousness, mutual concern, co-operation, and interconnectedness among community members is fostered - conditions which are considered indicators of peace and development.

## SUSTAINABILITY

The project design is cost-efficient because ABAY does not have to maintain a residential centre for the rehabilitation of juveniles in conflict with the law. Residential centres are expensive to maintain. In contrast, the home and the community are the normal environment for the growth and development of a child whether he/she is in conflict with the law or not. ABAY recognises the international standards concluding that institutionalisation should be the last resort in the rehabilitation of juveniles in conflict with the law.

However, ABAY has to struggle with financial constraints to support the many services needed that are not available within the community. The size of this project mainly depends on availability of funds. US\$ 100 per year for each child is needed to support a comprehensive programme over a period of at least 5 years (2004-2009). During the initial phase, UNICEF has assisted through sponsoring activities such as training of the pillars of justice and other implementers of diversion programmes in the community. UNICEF has also provided educational supplies to juveniles in the diversion programme.

The ultimate strategy for sustainability is the integration of this programme into each city's development plans. At present, ABAY is a member of the Quezon City Development Council. Hopefully, within the next two years, the diversion programme will be adapted by the city. In Manila, ABAY is being asked to draft a city ordinance creating a Comprehensive Protection

## CASE STORY

Pogi, a 17 year old high school drop-out living in the slum areas of Quezon City, was arrested for illegal possession of a deadly weapon, which he claimed he was carrying for a friend. After being brought to the police station, a criminal charge was brought against him by Barangay officials. He was put in jail with adults whose cases ranged from drug dealing to arson.

During the three weeks of incarceration Pogi said the adult inmates beat him and gave him "tasks" to do. When Pogi's mother found him after one week and tried to provide bail, she was told to "keep the money so the boy would learn his lesson". Pogi was transferred after three weeks to the Molave Youth Detention Center, a prison facility for minors. Inmates at Molave are educated through an in-house public school and engage in activities supported and organised by several NGOs.

Prior to his first hearing, the Barangay official who filed the case dropped it on the recommendation of the Diversion Committee of Quezon City Regional Trial Court. Two months after the initial arrest, Pogi was released and put under the care of the ABAY programme, which reintegrated him into society. He was given support to return to his family, deal with his prison experience, learn new skills, and focus on education.

Pogi feels that the stay in the detention centre and his experience with ABAY have made him a better person. Since his release he has helped his mother with household chores, and is now selling sliced pineapple at a market in Quezon City. He no longer hangs out with his old friends, and is learning to play the guitar with the support of ABAY. His sister, who was unable to afford college, is now attending with support from ABAY, and Pogi says he now also has school to look forward to. Pogi is a good example of how ABAY can provide opportunities for juvenile offenders to have a new lease on life.

and Development Programme for juveniles in conflict with the law. In the meantime, in other cities and municipalities, the groundwork for such efforts are still being worked out with the various political interests. Consequently, the need for external funding assistance is necessary to sustain the programme and to establish it more firmly. Within the next five years, ABAY will have to struggle to make this programme acceptable to the various political interests within the prevailing political atmosphere.

## LESSONS LEARNED

**Promotion of dialogue among the key pillars of justice through training and workshops has resulted in greater unity in promoting the ‘best interests’ of the child.**

The training workshops have created an increase in co-operation and understanding of the best interest of the child. However, despite progress, it is clear that continuous efforts to train stakeholders are still very much needed in order to eliminate undesirable prejudicial practices relating to juveniles in conflict with the law.

**A community-based reintegration programme can contribute to a reduction in societal bias and animosity towards juvenile offenders.**

Interaction with other community-level actors promoted a greater understanding for the humane features of diversion. In spite of progress being made, there is still a need to address prejudice against and improve understanding of children in conflict with the law among the stakeholders of the Juvenile Justice Administration, as well as the community at large.

**Institutionalisation of the programme requires a massive information/education campaign.**

In order to sustain and further develop the diversion programme, there is a need to inform the public about the Rule on Juveniles in Conflict with the Law, and promote diversion and restorative justice at the national and local levels.

**Increased resource mobilisation is needed in order to expand the caseload capacity and reach of ABAY.**

ABAY cannot afford to increase the number of cases it receives under the current conditions. To do otherwise could undermine the sustainability of the project. Thus, ABAY should strengthen its own internal resources in order to sustain this project, and solicit external funding support.

**A broad-based coalition is important for an effective response to juvenile offenders.**

Everyone has a role to play in supporting, improving and expanding community-based initiatives for children in conflict with the law. Concerted efforts must be undertaken with all stakeholders to improve community life in general as well as ensuring the availability of important basic services and services specific to reintegration of juvenile offenders.

## CONTACT INFORMATION

<b>Contact Person:</b>	Johnny Miranda, President
<b>Country:</b>	Philippines (Quezon City)
<b>Name of Organisation:</b>	Alalay Ng Bayan Foundation, Inc. (ABAY)
<b>Address:</b>	UP – Church of the Risen Lord UP Campus Dliman, Quezon City, Philippines
<b>E-mail:</b>	crl@sfi.com.ph & loljun@yahoo.com
<b>Telephone:</b>	+63 2 928 7674
<b>Fax:</b>	+63 2 920 4502
<b>Area of Work:</b>	Diversion Programmes

---

<sup>34</sup> The Barangay refers to a local judicial administrative unit and is the result of a long tradition of settling disputes and conflicts among members of Filipino communities. The Barangay Justice System has been institutionalised and is still functioning.

<sup>35</sup> According to ABAY, the police could begin using diversion approaches sometime in 2003. Training is still needed in order to make sure that the concepts of diversion and restorative justice for juveniles are well understood.

<sup>36</sup> Section 20 of the Rule on Juveniles in Conflict with the Law, 2002.

<sup>37</sup> Section 20 of the Rule on Juveniles in Conflict with the Law, 2002.





Picture: FREELAVA

# REHABILITATION AND REINTEGRATION



# BALAY PASILUNGAN PROJECT OF FREELAVA – CEBU CITY, PHILIPPINES

The Balay Pasilungan programme is a processing centre for released youth offenders that provides temporary shelter and a continuing rehabilitation programme to support their return to normal life. The programme offers various youth development activities prior to reintegration with families and mainstream society. It is the first project of its kind in the Philippines, founded in Cebu City in 1996. It is run by an NGO catering mainly to male former young offenders in a homelike environment.

## KEY ACTORS AND PARTNERS

### **FREELAVA - The Free Economic Education, Legal Assistance of Volunteers Association Inc.**

A non-profit organisation established in 1983 in Cebu City, Philippines, FREELAVA is an umbrella organisation of community-based organisations, government organisations, and academic and civil minded individuals. Through FREELAVA these groups pool their resources to achieve a common mission. The organisation's coverage is limited to the province of Cebu, including the cities of Cebu, Mandaue, Lapulapu, Danao and Toledo. FREELAVA supports three major projects: free legal assistance; rehabilitation of offenders; and prevention and diversion programmes for offenders. Together these projects cover 22 Barangay. At present, the projects are run by 28 staff members, 150 community volunteers, 100 education programmes volunteers, 50 peer volunteers and 22 area coordinators.

### **The Cebu City Task Force on Street Children (CCTFSC)**

An umbrella organisation operating in Cebu City with a membership of 22 government and non-government organisations, managing both community and center-based programmes and services. Balay Pasilungan maintains close collaboration and networks with many of these organisations, including the Public Attorney's Office, Prosecutors Office, various Courts, Department of Social Welfare, Integrated Bar of the Philippines, Barangay Councils for the Protection of Children, the Parole and Probation Office as well as many academic institutions and non-governmental institutions.

## Goal and Objectives

### Goal

- To reduce the number of repeat youth offenders.

### Objectives

- To provide basic residential care and continuous rehabilitation services to youth offenders.
- To enhance the capacity of these children to cope with the trauma and negative impact of incarceration and stigmatisation.
- To provide these children with activities that are geared toward their development, commensurate with their capacities and interests.
- To provide a venue for children to reflect on their lives and their futures.
- To re-establish the relationship between society and these children after the children's release from prison or from diversion programmes.
- To help society understand the situation of these children and prepare society to accept these children through family intervention and community education.
- To assist these children to reintegrate into the community through re-establishing their relationship with society, building their self-capacity and preparing them to face the possible consequences as an ex-offender after their release from prison.

## PROJECT BACKGROUND

The Balay Pasilungan Project was established in 1996 as a home (temporary shelter) for released youth offenders of Cebu and services to support their reintegration into society. The initiative was supported by Attorney Valenzona who was a member of the FREELAVA Board of Directors at the time.

The Project was initiated out of concern for the lack of community support for released youth offenders. It was observed that a significant and widespread segment of society continues to hold the view that children and youths who have experienced prison life are undesirable elements of society, despite the degree of modernisation that has been achieved in the Philippines. A released youth offender is usually subject to criticism and ridicule in the community. Even worse, he/she automatically becomes the prime suspect in any case of misconduct and crime that may occur in the community.

The stigma of being an ex-offender is usually attached to him/her in whatever he/she does and wherever he/she goes, hindering any attempt at possible self-development and other worthy endeavours. The chances of living a normal life are more or less denied to him/her. This situation sometimes influences the ex-offender child to become involved again in illegal activities that may result in him/her going back to jail or even committing more serious offences.

The centre's capacity is normally limited to 30 youth offenders, though it currently provides shelter and assistance to 36 children.

## PROJECT DESCRIPTION

### Key Parameters

Balay Pasilungan primarily serves boys who tend to come from the major jails of Cebu City and Cebu Province. A judge permits the boys to stay at the centre either because of suspended sentences or through the centre's application of release on recognisance (for cases in which the court trial is ongoing and the centre accepts responsibility to present the youth in all court hearings). Sometimes the community-based diversion programme of FREELAVA and Task Force on Street Children of Cebu City also refer children to the centre.

The criteria of selection of the clients of Balay Pasilungan are:

- boys 18 years of age or younger; and
- a released first offender from any of the major jail facilities of Cebu.

Priority is given to those who qualify under these criteria and are willing to be admitted in the centre. In some exceptional cases the centre agrees to also consider applications from other children, such as second-time offenders; girls offenders (14 cases so far); and 'walk-in' clients who are not offenders.<sup>38</sup>

Minors stay in the centre while their cases are pending in court or while serving suspended sentences up to a maximum of six months. However, services may be continued depending on the readiness of the child and the family. For example, it was reported that some children had to continue with the programme for more than the maximum six months. Children who stayed in the centre longer include children whose court hearings are pending due to the relatively slow judicial process in the Philippines or children whose parents/families are incapable of providing support during reintegration.

Offered programmes will be terminated if the child has served his/her suspended sentence and shows behaviour that qualifies them to be integrated to the family and community or if the child exhibits inappropriate behaviour that would be risky for the safety of the other children. To date, only three clients have fallen under the latter category. In these cases, it is the procedure of the centre to report to the court the observations of the rehabilitation team via the social worker. It is then up to the court to revoke the order of suspension. The court may have the child serve his/her sentence in a penal institution or other options that the court may find appropriate. In most of these cases, the court pronounces judgment and has the children serve their sentence in a penal institution.

## **Programmes and Services Offered**

The activities proposed to youth offenders vary depending on the phase of the child's case and are implemented gradually. The general objective is to provide a continuing rehabilitation programme in the centre as the children return to normal life through various child/youth development activities prior to reintegration into the mainstream of society. The different phases, approaches and activities available for youth offenders in relation to their goals are as follow:

### **Phase 1: Pre-admission activities (while still in prison)**

#### **Objective:**

To identify qualified minors and prepare them for admittance to the centre.

#### **Activities:**

- Jail visitation;
- Case follow-up;
- Rehabilitation: The Jail Coordinator conducts rehabilitation activities, such as group discussions and value formation activities, in jail in order to observe the behaviour of the boys and gather information to determine which boys are qualified to be transferred to the centre;
- Information dissemination; and
- Family/community orientation and counselling: The Jail Coordinator contacts the offender's family to ask for permission to provide orientation for the centre programmes and services, and facilitates their support to the child who is to be admitted to the centre. If a child has no parents or guardians the Jail Coordinator seeks advice from the Department of Social Welfare.

### **Phase 2: From admission to preparation for social reintegration (1st – 4th month)**

#### **Objective:**

To provide rehabilitation activities that allow the child to recover emotional strength, build

capacity to restore social functioning, and possibly achieve a change in values and behaviour.

**Activities:**

- Counselling sessions: conducted by the social workers, psychologists and centre administrators to assist the minor to understand and accept the reality of the situation and facilitate his/her decision making;
- Psychosocial testing, analysis and treatment in order to identify minor behaviour that will become the basis for individual therapy and intervention. Priority is given to those who are in need of psychosocial treatment, close supervision and management;
- Medical testing and management;
- Case handling and management: social workers support the minor by representing him/her in court during court hearings and by submitting reports to the court about the child's behaviour in the Centre. They also gather information about the minor through interviews, counselling and home visitations. Based on the information gathered the problems and needs of the child are analysed and the appropriate intervention designed;
- Values formation seminars: the rehabilitation team conducts individual and group counselling; guided group interactions; reflection sessions; workshops; behavioural monitoring; structured learning experiences; community shows; community service; and the 'Kool Adventure Camp'. They also facilitate spiritual activities based on local traditions in order for the clients to learn some positive values and appreciate the value of life;
- Social and cultural programs such as 'videoke', family day and family interaction, summer camps, centre visits, historical field trips, Christmas conventions, formation of modern and cultural dance groups, and interactions with students and organisations;
- Sports (based on the choice of the child and available resources);
- Drug education/awareness and treatment,

usually conducted twice a year; and

- Health education: including information sharing about adolescent sexuality; seminars on personal hygiene, safety and first aid; and techniques to quit smoking.

**Phase 3: Rehabilitation Programmes (5th – 6th month)**

**Objective:**

To provide rehabilitation activities that allow the child to recover his/her emotional strength, build capacity to restore social functioning.

**Activities:**

- Preparation for school programmes;
- Enrolment in formal/non-formal education courses;
- Skills training (such as basic photography, silkscreen printing, basic furniture and house painting, welding and machine shop, cooking and culinary arts, tailoring, high speed sewing, refrigeration, car repair, food processing and preservation, and basic electronics);
- Job seeking/hiring support system (assistance provided by social workers);
- Career assessment programme;
- Family reintegration;
- Referral to other institutions for long-term assistance programmes; and
- Follow-up care and communication.

**Phase 3: Self-supporting programmes (5th – 6th month)**

**Objective:**

To provide self-supporting activities that can be used by the minor as a resource for income generation even after his/her stay in the centre.

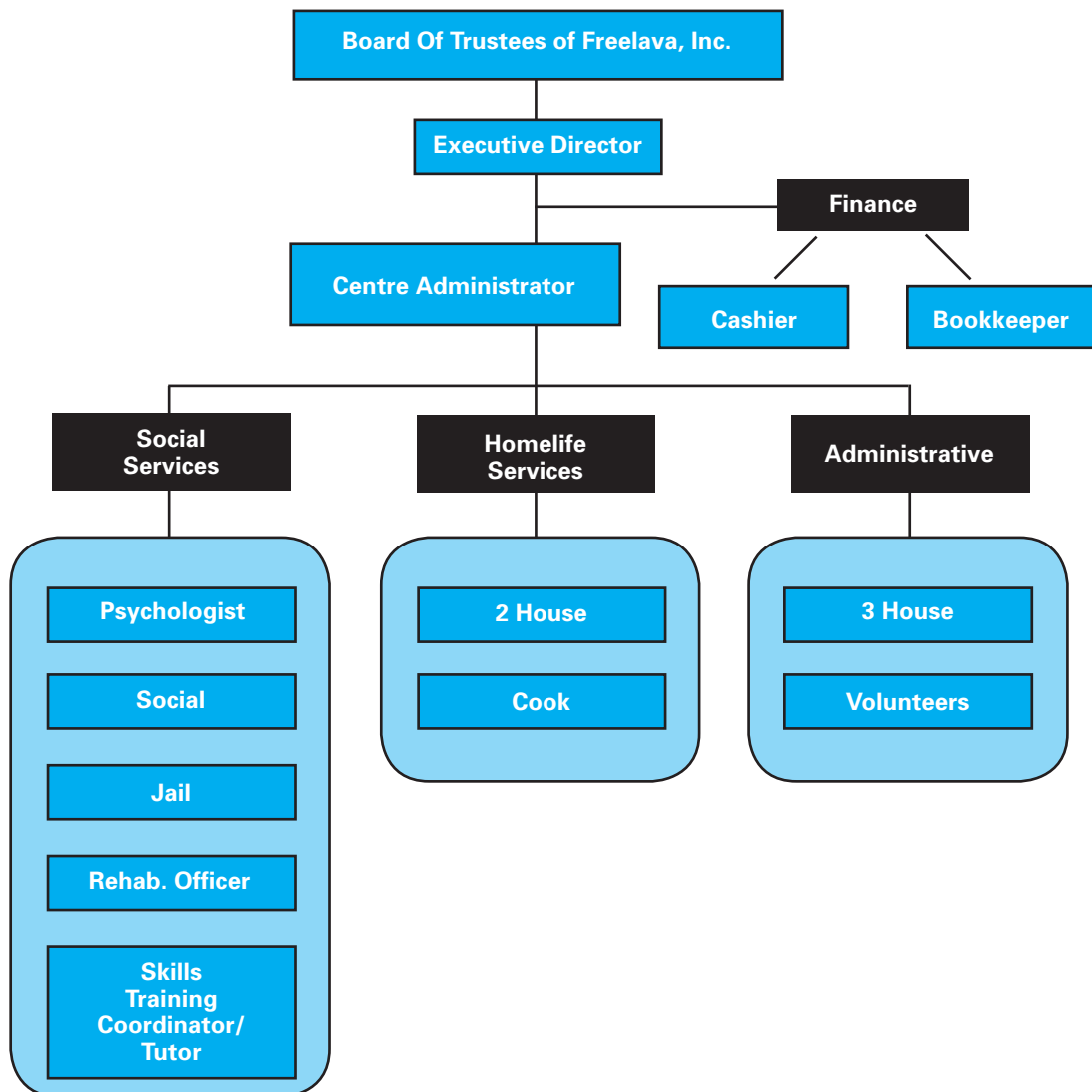
**Activities:**

- Preparation for school programmes;
- Enrolment in formal/non-formal education courses;
- Skills training (such as tailoring, sewing, candle making, basic agriculture, basic

electrical technology, automotive repair, basic electronics, refrigeration and air-conditioning, computer literacy, culinary arts and cooking, plumbing, silk screening, painting, cooking, and backyard gardening). These skills assist the child/youth in developing self-esteem and affirming that he/she can do something;

- Job seeking/hiring support system (assistance provided by social workers);
- Career assessment programme;
- Family reintegration;
- Referral to other institutions for long-term assistance programmes; and
- Follow-up care and communication.

## ORGANISATIONAL STRUCTURE OF BALAY PASILUNGAN PROJECT



## IMPACT

Since the creation of this centre the FREELAVA staff have collected information (including compilation of case studies) and data on children who have received the services of the programme, and the staff continue to monitor carefully all cases. Interviews with staff<sup>39</sup> and review of donor reports<sup>40</sup> highlight the following impacts:

### **Reduction in the number of youth offenders being held in detention centres.**

Since 1997 more than 700 children have been referred to FREELAVA and received rehabilitation and re-integration services. Since the beginning of the programme, 507 children in conflict with the law have been admitted to the centre and benefited from its programmes and services.

### **Reduction in the number of children living away from their families by over 200 since 1996, due to reintegration into their families.**

The centre has helped in the reintegration of 201 children with their families since the creation of this programme. Some other children (generally 13-15 years of age) were also referred to non-custodial institutions for long-term assistance.

### **Over 81 children were provided with formal education and 152 with non-formal education (from August 2000 to the end of December 2002).**

FREELAVA's staff helped children re-enrol in public schools (located nearby the centre) during their stay at the centre. It has been observed that these children have responded positively, and in fact most of them received average marks for their academic performance. At present four children from the centre are also successful trainees at the Cebu State College of Science, Arts and Trade, enrolled in vocational courses. Even those who have returned home after the end of the programme are reported to have continued to go to school. FREELAVA's volunteers are still monitoring them.

### **66 children received skills training and a capability-building programme.**

Of these, most completed the training successfully. The skills were personally chosen by the children during consultation, and in fact, the children presented themselves to the staff to be included in the programme. According to the children, they believe that these courses will give them the advantage over others in finding jobs after their stay at Balay Pasilungan.



### **Values formation and sport programmes proved to be successful in many ways.**

As a result of the enrolment in this programme, children's respect for others increased, Filipino values were restored, relationships with family members improved and social skills were enhanced. Reports indicated that as a result of the spiritual enhancement programme, children have increased their self-esteem and confidence, learned how to appreciate people and have improved their social skills.

### **The health programme enabled the centre to identify individuals with health problems, in particular those having developed problems while detained.**

For example, coughs and skin infections were detected through this programme. Findings indicated that while previous chronic sniffing of volatile substances may explain coughs, skin disorders may have resulted from time spent in jail centres.

## CASE STORY

'John' was only 16 years old when he was admitted to Balay Pasilungan in 1998. He is the eldest son of Florencia who lives in a reclaimed area in Cebu City. John is an illegitimate child and has never seen his father. When he was 10 years old, his mother moved in with another man to whom she bore 3 children; 2 girls and 1 boy. John's stepfather works at the pier as a labourer. His mother stays at home and occasionally accepts laundry work. The family house is very small and made of scrap materials that John's stepfather gathered from the pier.

Despite the meagre income of the family, John's mother has managed to send him to school and take care of him. According to John, his mother cared for him and loved him the best she could. However, when he started high school he met some friends that had a bad influence on him. John says he got bored at home since his mother was too busy taking care of her other children and because most of his needs were no longer met. The family ate barely twice a day and there were times that they had nothing to eat at all. With his friends, he could eat, drink liquor and use drugs. The only way John and his friends knew how to purchase these things was by stealing. By then John had stopped school and rarely went home. John defined himself as a very bad person and a disgrace to his mother and his family. Then, in December of 1998, John and his friends were arrested for allegedly robbing a store.

According to John, his arrest was a blessing in disguise. When he reflects on that fateful incident, he feels that he was better off than his friends. Some of his friends have been shot by the police for no apparent reason while others are now inside maximum security prisons. John considers himself fortunate because from detention he was transferred to Balay Pasilungan to continue rehabilitation. John found out that his stay at Balay Pasilungan was a very worthwhile experience. At the centre he saw a brighter and better side of life.

In Balay Pasilungan he says he was able to find a conducive atmosphere that supported him in his decision to change for the better. He was able to find himself and explore his potential as a result of the warm support offered him by the staff. His values were strengthened and he was able to plan for his future by way of finishing his studies. In fact, John has received many awards for his active participation in various extra-curricular activities in school - achievements which made the staff of Balay Pasilungan very proud.

In March 2001, John was returned to his family after finding that he was ready to go home and his family was ready and able to accept him. John is currently a second year college student studying for a bachelor degree in criminology at one of the Universities of Cebu City. His dream is to become a policeman in order to help street children. He is also active in many community projects, advocating for the rights of children. John hopes that his story will serve as an inspiration to other children.



## RESPONSIVENESS AND RELEVANCE

This project is in line with international standards relating to children in conflict with the law, especially articles 12(1); 37; and 40(4) of the CRC and JDL's Rules 79-80. International standards have also been incorporated into national standards in the Philippines, including Presidential Decree 603 and Republic Act 7610.

Through the project children are given a chance to restore the damage caused in non-custodial settings. In line with international standards, the centre aims to put an end to the use of punitive approaches and custody of children. The environment in which children are placed encourages them to respect others and not use violence against others. In a few rare instances children have had to be taken out of the programme because they were considered a risk to others. However, separate facilities and services for children awaiting their sentences and those sentenced are not yet in place due to lack of staff and funds.

At present the Balay Pasilungan Centre does not respond to girl offenders, although some legal assistance has been provided. The decision to focus primarily on boys was made based on the results of a study conducted which indicated that a child in conflict with the law in the Philippines is generally a male between the ages of 14 and 17. In Cebu City, the population of male offenders is much greater than females. In one year, for instance, there may be between 200-250 male offenders committed to the city jail as compared with only 20-25 female offenders. The design of the programme was also a result of brainstorming sessions, discussions and consultations between and among the staff of the centre. It can be noted that when a girl offender is released from prison, if there is no chance for her to go back to her family, she is automatically referred to the Department of Social Welfare and Development or placed with

NGO partners for further rehabilitation/re-integration and temporary care.

Activities offered seek to respect the right of children to participate and express their views. Children are given the opportunity to provide feedback regarding programmes, activities and services through a questionnaire that they are invited to fill out. As far as possible, staff take into account the feedback provided by children in order to make appropriate changes to the programme. Furthermore, opportunities have also been given to some children in the centre to share their views - not only with other children, but also with representatives of government, local organisations and the community. Between August and December 2002, for example, some of the children in the programme were invited to participate in activities organised with FREELAVA's partners. This included: a national workshop on street children and juvenile justice; the National Children and Youth People's Forum; and the Cebu City Summit on Children.

## SUSTAINABILITY

While financial needs are relatively limited, external funding is necessary to maintain the delivery of the programmes and services. Less than US\$100,000 was required to sustain the three-year programme from 1997-2000. Terres des Hommes and Caltex provided the necessary funds for the whole operation of the Centre and the skills training. UNICEF Manila has also assisted in providing equipment (such as computers) and sponsoring integrated activities such as the 'Kool Adventure Camp' and vocational training programmes.

The project is fully funded until 2003, and project proposals have been drafted for the next phase and are ready to be sent to possible donors. It is expected that the next phase will be funded again by Terres des Hommes of the Netherlands. The possibility of



## Reactions to the project

- “I’ve found hope in the Centre.” [statement from a child]
- “We treat our children with respect in considering their needs and encouraging them to strengthen their relationships with their families. Every child is treated with humanity and respect by the staff and peers in a manner which takes into account his needs. This is in line with CRC Art.37c. They are not labelled as criminals but as children in need of assistance. The centre encourages family visits on a daily basis and as a result, relationships between parent-child have been strengthened.” [statement from a staff member]
- “We thought at first that who we have as neighbours are criminals, but when we learned about the centre’s objectives, we wanted to involve ourselves in helping the children.” [statement from a neighbour/ community member]

‘institutionalising’ the project with government funds is also being discussed among the members of the board. FREELAVA is also hoping that another funding agency located in Germany will offer support for setting up a permanent home for the project.

## INNOVATIVENESS

This project is the first of its kind in the Philippines run by an NGO catering to male former young offenders. The project is also unique in the sense that the concept of the Balay Pasilungan programme was to establish a home atmosphere, “a home before home”. Using this approach, the following features of this

one-of-a-kind project include:

- A home-like facility. It is part of the design of the project that the structure or building should have the appearance and features of a typical Filipino house;
- A home-like atmosphere. The staff assume the titles and responsibilities of parents and kin. Staffs are called Nanay (mother), Tatay (father), as well as “uncle” and “aunt”;
- A neighbourhood setting. The facility is purposely situated in the community where constant interaction of children in the neighbourhood and the society is ensured. Children can go out to attend school, hear mass regularly and participate in community activities;
- An open facility. The children can go out of the centre. They are allowed to accept visitors everyday and go on home visitation if their parents are unable to pay them a visit; and
- A rights-based approach. The United Nations’ Convention on the Rights of Child and the Child and Youth Welfare Code of the Philippines serves as the guiding principles of the project.

This model has already inspired interest from several countries in the region. Following visits by representatives from these countries several mentioned their interest in replicating the programme.

## LESSONS LEARNED

**Open dialogue with representatives of the community can result in a shift to more supportive, child-friendly attitudes towards children in conflict with the law.**

The dialogues and consultations with members of the communities and schools, initiated by Balay Pasilungan to address the negative attitudes towards children who have experienced prison life, proved to have some positive affects. They also encouraged the children from the centre to participate in activities held in schools and communities. With these strategies and

activities the children are gradually able to gain the support and the understanding of the community.

**Most children are resilient, and able to go on with their life upon being released from the centre.**

The centre provides support and hope for these children. At the same time, the staff explain to them that the services provided are temporary. This understanding is necessary, otherwise their reintegration into the society may be difficult.

**Psychological testing, counselling and therapy have been very helpful for children who had suffered from abuse and violence.**

It is reported that between 30 and 40 percent of the children brought to the centre have suffered from abuse (mostly physical) or violence at home prior to committing crimes. The health education programme was very useful in detecting cases of abused children and providing appropriate services to them. In most of the cases, as a result of this programme, the children became more involved socially.

**Children who are violent towards other children in the centre need to be referred to another centre.**

The security of other children must not be jeopardised. Maintaining a violent child at the centre can also be harmful to the child who exhibits violent behaviour.

**Community service is one way of establishing rapport with neighbours near the centre.**

Community service undertaken by the children at the centre proved to be a way of showing people that despite of their past experiences, the children still have the chance of changing their behaviour for the better if given the right opportunity.

**Recreational activities are an important part**

**of the rehabilitation programme.**

Sports activities can provide an opportunity for the children to regain confidence, self-esteem and improve their camaraderie and sportsmanship. Screening of carefully-selected films is a good activity which can help reinforce learning.

**The adventure camp proved to be a worthwhile activity for the children.**

The camp helps children to feel more inspired and allows them to share their experiences and views with their peers. Adventure camping is an activity where children have to undergo a series of obstacles and problems-solving challenges in order to pass and become a certified adventure camper.



*The FREELAVA Peer Facilitator programme at work. Credit: FREELAVA*

**Discrimination against children in conflict with the law at school is far from eliminated, and advocacy for behaviour change is still needed.**

The centre must continue its advocacy in schools to encourage school staff and school principals to adopt positive attitudes toward children in conflict with the law, and foster their full inclusion into the school system.

**Skills training programmes should be offered in-house.**

Many children under the responsibility of the centre need phased programmes for integration. Some may commit petty crimes again when on

their own without supervision. This has occurred when children are on their way to training programmes located outside the centre. In-house training programmes provide the opportunity for

productive activity with supervision and would support an improved rate of completion. At the moment, only about 50 percent of the trainees complete this programme.

## CONTACT INFORMATION

<b>Contact:</b>	Tony C. Auditor, Executive Director, FREELAVA
<b>Country:</b>	Philippines (Cebu City)
<b>Name of Organisation:</b>	FREELAVA
<b>Address:</b>	899 C. Caimito Street Brgy. Basak, San Nicolas Cebu City, Philippines 6000
<b>Telephone:</b>	+63 2 262 1796 & 254 7739
<b>Fax:</b>	+63 2 254 7739
<b>Area of Work:</b>	Rehabilitation and reintegration programmes

---

<sup>38</sup> Social workers normally refer these children to other agencies/institutions that cater more appropriately to their needs.

<sup>39</sup> Interviews with Mr. Antony C. Auditor, Mr. Gerry Jacalan and other staff.

<sup>40</sup> See especially Progress Report Aug-Dec 2002 on the Balay Pasinlungan Project, submitted to 'Terre des Hommes' (Netherlands), prepared by FREELAVA, Cebu City, Philippines, January 2003.





*Picture: Restorative Justice Programme, Palau*

# CHALLENGES AND LESSONS LEARNED

A number of innovative initiatives focused on promoting juvenile justice have been featured in this document. Various pilot projects for diversion and restorative justice models for child offenders are beginning to show some results. When it is necessary that children/young people become involved in the formal justice system child-sensitive procedures and appropriate legal representation are proving to be beneficial.

However, there are still many challenges facing juvenile justice systems in the region to bring them in line with international standards that support the rights of the child. It is hoped that the sharing of experience through the projects presented in this document will inform continued efforts towards improving systems of justice for children. In this context, the following key challenges and lessons learned have been identified, especially for promoting 'detention as the last resort'.

**Using diversion not only reduces the number of children deprived of their liberty, but also decreases the rate of repeat offending by young people.**

Early and/or inappropriate involvement of youth in the criminal justice system has been recognised globally to have long-lasting negative impacts on them, as well as on society. Initiatives in the region have reinforced this fact with a demonstrated reduction in repeat offending. With child-sensitive procedures and proper support, young offenders can change their behaviour and become contributing members of society.

**Greater impact is likely to result from non-custodial interventions, which have also proven to be less costly.**

Juveniles who have benefited from programmes based on constructive, community-based and restorative responses rather than punishment and retribution are more likely to accept responsibility for their actions and understand the impact of their actions on others. However, this process is useful only if parents, civil society and others assist them, and at the same time empower them to take responsibility for their own behaviour. Encouraging meetings and

dialogue, whenever possible, between victims and offenders also appears to be a promising approach to juvenile justice.

**Laws and policies that recognise child-sensitive procedures and diversion for juveniles are important.**

Good laws are needed for effective diversionary and restorative justice practices for young offenders. While informal diversion is still possible in the absence of laws, advocacy for a child sensitive juvenile justice system and support for its implementation is more effective if the legal basis for diversion exists. However, it has also been noted that having good laws is not enough. Awareness raising and training is crucial to ensure that individuals and institutions that come in contact with children in conflict with the law make use of established juvenile justice practices. Lack of understanding for the gains of restorative justice and diversion can render good laws obsolete.

**Multi-sectoral training on juvenile justice helps to strengthen collaboration and co-ordination among the key pillars of justice including civil society.**

Multi-sectoral training of the key pillars of

justice, initiated to raise awareness and strengthen skills, has also proven to promote an increased collaboration between the various actors and stakeholders in juvenile justice. The different actors need to be aware of the roles and responsibilities of each other in relation to juveniles in conflict with the law. A broad-based coalition involving the judicial, law enforcement branches and the community is key for effective responses to juveniles in conflict with the law. Public-private sector partnerships can also be important to increase the number of services available to young offenders.

**The support of police officers is fundamental to the success of diversionary practices.**

Police officers are often the first point of contact for juvenile offenders. Decisions made at this 'lower-level' of law enforcement are often critical in determining whether a child/young person will be diverted away from or channeled into the formal justice system. In order to ensure that front-line police make decisions that are in the best interest of the child, they need to be equipped with awareness of international standards related to child rights, knowledge of national policy on juveniles in conflict with the law, and an understanding of the wide range of issues that relate to juvenile delinquency. Screening and quality control of staff is also important to avoid further victimisation of children. It has been noted that diversionary practices are more successful when police officers involved can relate easily to young people and know how to be fair and respectful, while at the same time, able to set limits and enforce rules.

**Effective interventions must address the multiple root causes of a young person's criminal behaviour.**

Experience has shown that most young people who come into conflict with the law are struggling with multiple social and economic issues in their homes and/or communities. These issues range from being on the streets as a result

of poverty and/or family dysfunction to coping with peer pressure in relation to risk-taking such as minor theft and substance abuse. Interventions need to be holistic to achieve maximum and sustainable impacts. They must recognise the root causes of a child's criminal behaviour and identify appropriate services to help the young person address the problems. Services needed may include support for basic education and skill training, employment, drug rehabilitation and family counselling.

**Prejudice and discriminatory attitudes towards young offenders are deep-rooted and need to be addressed.**

Despite training and awareness raising, negative attitudes toward young offenders persist. They continue to be regarded as 'bad boys and girls' and treated accordingly by government officials, members of society and school systems. Greater efforts are needed to explain to the public the underlying causes of inappropriate juvenile behaviour, promote responses which involve communities and civic groups, and strengthen commitment to children's rights articulated in the CRC and other international agreements. Community-based diversion and reintegration programmes have helped to build bridges and reduce animosity towards the young offenders, especially through community service activities and open dialogue.

**Children and young people need to be consulted in juvenile justice programmes.**

The right of children to be heard is reflected in a number of projects presented in this document. Their views can be sought, for instance, in the development of individual plans for rehabilitation and reintegration. Former young offenders also participate in some projects as peer educators and seem to be particularly effective in reaching out to children in conflict with the law. However, more efforts are needed to involve and consult with young people in the overall design and development of juvenile justice initiatives.

**More strategic interventions are needed to deal with young offenders who are repeat offenders and/or commit more serious crimes.**

Increased attention is needed to develop effective strategies and models for appropriate procedures for young offenders who commit more serious crimes. There are indications that restorative justice can also be used in cases where more serious crimes are committed by young people if interventions are well-designed and implemented early. It is, however, recognised that for a small group of child offenders diversion from detention may not be possible, especially if they are determined to be a danger to themselves and others. Juvenile justice systems that recognise diversion and restorative justice for young offenders must also ensure that child-sensitive procedures are applied in all cases.

**Increased attention is needed to address the specific needs of girl offenders.**

Because girls do not represent the majority of youth in contact with the law, the programming process does not always recognise their specific issues and they are often left out when piloting diversion initiatives. It should be kept in mind that girls are especially at risk of abuse at all

stages of judicial proceedings, especially during police custody and detention. Special efforts are needed to promote gender-sensitive procedures in advocacy and programming activities.

**Monitoring systems are needed to evaluate and assess the impact of pilot initiatives in juvenile justice and to support advocacy for legislative reforms.**

Comprehensive systems for monitoring the situation of juveniles who come in contact with the law are limited or non-existent in the region. Information is collected by various key actors in the enforcement of justice for juveniles, such as police stations, detention centres, courts and targeted juvenile justice projects supporting diversion and restorative practices. However, this information is often not accessible and/or not assessed inter-relationally in view of the situation as a whole. In order to ensure a successful, cost-effective response to juveniles in conflict with the law in line with international standards on child rights, a more comprehensive approach is needed to monitor the situation, to evaluate and improve the impact of diversionary approaches, and to advise policy change as required.





United Nations Children's Fund  
East Asia and Pacific Regional Office 19  
Phra Athit Road  
Bangkok 10200, Thailand

Tel: 66 (0) 2356 9425  
Fax: 66 (0) 2280 3563/4

[eapro@unicef.org](mailto:eapro@unicef.org)  
[www.unicef.org](http://www.unicef.org)