

Call to Implement Republic Act 8369, “The Family Courts Act of 1997”

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The Board of Trustees Chaired by Fr. Gregorio L. Bañaga, Jr., CM, of the Catholic Educational Association of the Philippines (CEAP), unanimously approved the recommendation of the Advocacy Commission headed by Fr. Joel Tabora, S.J., President of Ateneo de Davao University, to support the Resolution passed by the Transformative Justice Institute on June 13, 2011 entitled: *“RESOLUTION URGING THE PHILIPPINE GOVERNMENT PARTICULARLY THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT TO MAKE THE NECESSARY BUDGET APPROPRIATION FOR THE PROPER IMPLEMENTATION AND COMPLIANCE OF REPUBLIC ACT 8369, THE FAMILY COURTS ACT OF 1997.”*

The Resolution states:

WHEREAS,

It has been noted by many advocates for the rights of women, children and family that many of the laws which are designed to maintain peace and harmony in the homes are not being properly applied in the Philippines because of the prevailing culture and patriarchal mindset, in many workers of the various pillars of justice in the Philippines which includes many Family Court judges;

That victim blaming is still rampant and appropriate provisions such as those under Sections 40 and 41 of Republic Act 9262, the Anti-Violence Against Women and Their Children Act

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of 2004, which states: “Sec. 40. *Mandatory Programs and Services for Victims.* – The DSWD, and LGU's shall provide the victims temporary shelters, provide counseling, psychosocial services and/or, recovery, rehabilitation programs and livelihood assistance. The DOH shall provide medical assistance to victims;” and, “Sec. 41. *Counseling and Treatment of Offenders.* – The DSWD shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement” are not properly applied, for lack of appropriate orders or directives from the courts;

That incidents of family dysfunctions are tremendously on the rise and many children are placed at risk. Some of them have turned out to be children in conflict with laws (CICL), who are involved in community violence;

That Restorative Justice under Republic Act 9344 or the Juvenile Justice and Welfare Act of 2006 is not taking place despite the fact that the law has taken effect more than five years ago. Its purpose to save the children from committing serious offenses or criminal acts and for them to become law abiding citizens are not realized because many of them continue to be exposed to violence in their homes and in the community. Many CICL are now involved in cases of rape and killings. Many of them appear insensitive to what they have done because of their having experienced abuse and violence in their lives;

That as early as fourteen (14) years ago, the Philippine government already recognized the need for Regular Family Court. Thus, Republic Act 8369 was passed and approved and Section 2 thereof states:

State and National Policies. - The State shall protect the rights and promote the welfare of children in keeping with the mandate of the Constitution and the precepts of the United Nations Convention on the Rights of the Child. The State shall provide a system of adjudication for youthful offenders which takes into account their peculiar circumstances.

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The courts shall preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy;

That on October 28, 1997 RA 8369 was approved. Yet, the same has not been fully implemented except for the Transitory Provisions under Section 17 which states: “Pending the establishment of such Family Courts, the Supreme Court shall designate from among the branches of the Regional Trial Court at least one Family Court in each of the cities of Manila, Quezon, Pasay, Caloocan, Makati, Pasig, Mandaluyong, Muntinlupa, Laoag, Baguio, Santiago, Dagupan, Olongapo, Cabanatuan, San Jose, Angeles, Cavite, Batangas, Lucena, Naga, Iriga, Legazpi, Roxas, Iloilo, Bacolod, Dumaguete, Tacloban, Cebu, Mandaue, Tagbilaran, Surigao, Butuan, Cagayan de Oro, Davao, General Santos, Oroquieta, Ozamis, Dipolog, Zamboanga, Pagadian, Iligan, and in such other places as the Supreme Court may deem necessary;”

That many of the present Family Courts in the Philippines are unable to function as envisioned by Republic Act 8369 since the present set of judges were merely designated by the Supreme Court without taking into consideration whether those judges are interested to function as Family Court judges or not;

That in the informal talks and interviews, many of the present Family Court judges express that they do not like being such Family Court judges and would rather be assigned in regular courts;

That it has been noted that many Family Court judges lack the appropriate gender sensitivity and responsiveness which are key factors for them to be able to handle the cases on women, children and family in accordance with the spirit of the various laws now existing;

That important provisions of Republic Act 8369 if properly implemented can result in changing mindsets of Family Court Judges and personnel; to wit:

Section 4 (b) Training of Family Court Judges. -The Presiding Judge, as well as the court personnel of the Family Courts, shall undergo training and must have the experience and demonstrated ability in dealing with child family cases.”

The Supreme Court shall provide a continuing education program on child and family laws, procedure and other related disciplines to judges and personnel of such courts;

That the other vital provisions of Republic Act 8369 that need immediate compliance and implementation to find solutions to the problems cited are, to wit:

Section 8. Supervision of Youth Detention Homes.- The judge of the Family Court shall have direct control and supervision of the youth detention home which the local government unit shall establish to separate the youth offenders from the adult criminals. Provided, however, That alternatives to detention and institutional care shall be made available to the accused including counseling, recognizance, bail, community continuum, or diversions from the justice system: Provided, further, That the human rights of the accused are fully respected in a manner appropriate to their well-being.

Section 9. Social Services and Counseling Division. - Under the guidance of the Department of Social Welfare and Development (DSWD), a Social Services and Counseling Division (SSCD) shall be established in each judicial region as the Supreme Court shall deem necessary based in the number of juvenile and family cases existing in such jurisdiction. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

Section 10. Social Services and Counseling Division Staff. -The SSCD shall have a staff composed of qualified social workers and other personnel with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and other social services that may be needed in connection with cases filed with the court: Provided, however, That in adoption cases and in petitions for declaration of abandonment, the case studies may be prepared by social workers of duly licensed child caring or child placement agencies, or the DSWD. When warranted, the division shall recommend that the court avail itself of consultative services of psychiatrists, psychologists, and other qualified specialists presently employed in other departments of the government in connection with its cases.

The position of Social Work Adviser shall be created under the Office of the Court Administrator, who shall monitor and supervise the SSCD of the Regional Trial Court.

Section 11. Alternative Social Services.- In accordance with Section 17 of this Act, in areas where no Family Court has been established or no Regional Trial Court was designated by the Supreme Court due to the limited number of cases, the DSWD shall designate and assign, qualified, trained, and DSWD accredited social workers of the local government units to handle juvenile and family cases filed in the designated Regional Trial Court of the place.

WHEREFORE, In order to reverse the problematic situations in many families and communities in the Philippines, where domestic and family violence as well as situations of children in conflict with laws (CICL) are on the rise, the Philippine government particularly the Executive and Legislative branches of government are urged to immediately act in implementing Republic Act 8369. In this regard, Section 15 of Republic Act 8369 which reads: "Appropriations. - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following in its enactment into law and thereafter," be implemented so that Regular Family Courts shall be created by the Judiciary as soon as possible.

In this regard, the various pillars of the justice system composing the Transformative Justice Institute appeal to non-government organizations, the academe particularly the Catholic Educational Association of the Philippines (CEAP), church-based organizations, government agencies and the other sectors of the Philippine society with concerns on justice and peace to support this call. Let them be furnished with copies of this resolution.

Let copies of this resolution be furnished His Excellency President Benigno C. Aquino, III, PNOY, the Honorable Senate President Juan Ponce Enrile, and the Honorable Speaker of the House Feliciano R. Belmonte, Jr. for their information and immediate action.

Likewise, let copies of this resolution be furnished the Honorable Chief Justice of the Supreme Court and the Honorable Court Administrator as well as the Honorable Chairperson of the Philippine Commission on Women (PCW), the Honorable Secretary of the Department of Social Welfare and

Development (DSWD) and the Honorable Secretary of the Department of Health (DOH) for their information and support.

Signed this 13th day of June 2011 during the 44th TJI Dialogue at the AACCTS Center - 16 Jade Street, Doña Luisa Phase I, Matina, Davao City.

By way of response to the above resolution, the Supreme Court through Atty. Jose Midas P. Marquez of the Office of the Court Administrator sent a letter dated 20 July 2011 quoted as follows:

ATTY. ADORACION P. CRUZ-AVISADO, Ph.D.
Executive Director
Transformative Justice Institute (TJI)
Davao City

Dear Dory,

May I extend my gratitude to you, and to the Transformative Justice Institute (TJI) for advocating for the implementation of Republic Act No. 8369 or The Family Courts Act of 1997. The resolution your organization has passed, aptly sent to our President, is much needed. We, in the judiciary, have likewise been praying for this.

Family courts were created by law to resolve cases involving the welfare of women and children. Thus, RA 8369 is a very valuable piece of legislation as it specifically addresses the needs of our women and children for a fast and fair justice.

Unfortunately, more than a decade since the enactment of the law has passed and family courts have yet to be created. The designation of family courts by the Supreme Court from existing courts of general jurisdiction has impeded the efficiency of our courts all over the country.

Indeed, the Judiciary needs all the help that it can get, and we are extremely grateful that your organization has come forward to support the judiciary on this matter.

Just the same, let me assure you of our utmost dedication in making our present designated family courts effective and efficient.

Thank you, and more power to TJI.

(SGD.) JOSE MIDAS P. MARQUEZ

The Office of the President of the Philippines thru Deputy Executive Secretary, Nora C. Oliveros also sent a copy of their endorsement to the Department of Budget and Management (DBM) as follows, to wit:

Office of the President of the Philippines
Malacañang
FINANCE AND ADMINISTRATION OFFICE
1ST Endorsement
17 June 2011

We are respectfully referring to the Honorable Secretary Florencio B. Abad, Department of Budget and Management, for information and appropriate action, resolution letter from the Office of Transformative Justice Institute (TJI), Davao City, Province of Mindanao, requesting to His Excellency President Benigno Simeon C. Aquino, III, to make the necessary Budget Appropriation for the proper implementation and compliance of Republic Act 8369, The Family Courts Act of 1997.

Please advise this Office of any action taken on the matter.

(SGD.) NORAC. OLIVEROS
Deputy Executive Secretary

Considering the response from both the Supreme Court and the Office of the President plus a persistent follow-up that shall be done by the CEAP including the Philippine Commission on Women (PCW) which is under the Office of the President, we are hoping that RA 8369 shall be given its rightful budget allocation and that the regular courts will soon operate all throughout the country.

For a better appreciation on the part of the readers of this Mindanao Law Journal, we are publishing *en toto* the entire text of RA 8369.

REPUBLIC ACT NO. 8369

AN ACT ESTABLISHING FAMILY COURTS,
GRANTING THEM EXCLUSIVE ORIGINAL
JURISDICTION OVER CHILD AND FAMILY CASES,
AMENDING BATAS PAMBANSA BILANG 129, AS
AMENDED, OTHERWISE KNOWN AS ACT OF 1980,
APPROPRIATING FUNDS THEREFOR AND FOR
OTHER PURPOSES.

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

Section 1. *Title.* - This Act shall be known as the "*Family Courts Act of 1997*".

Sec. 2. *Statement of National Policies.* - The State shall protect the rights and promote the welfare of children in keeping with the mandate of the Constitution and the precepts of the United Nations Convention on the rights of the Child. The State shall provide a system of adjudication for youthful offenders which takes into account their peculiar circumstances.

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The courts shall preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy.

Sec. 3. *Establishment of Family Courts.* - There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.

Sec. 4. *Qualification and Training of Family Court Judges.* - Sec. 15 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

"Sec. 15. (a) *Qualification.* - No person shall be appointed Regional Trial Judge or Presiding Judge of the Family Court unless he is a natural-born citizen of the Philippines, at least thirty-five (35) years of age, and, for at least ten (10) years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as indispensable requisite.

"(b) *Training of Family Court Judges.* - The Presiding Judge, as well as the court personnel of the Family Courts, shall undergo training and must have the experience and demonstrated ability in dealing with child and family cases.

"The Supreme Court shall provide a continuing education program on child and family laws, procedure and other related disciplines to judges and personnel of such courts."

Sec. 5. *Jurisdiction of family Courts.* - The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age but not less than nine (9) years of age or where one or more of the victims is a minor at the time of the commission of the offense: Provided, That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred.

The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the "Child and Youth Welfare Code";

b) Petitions for guardianship, custody of children, habeas corpus in relation to the latter;

c) Petitions for adoption of children and the revocation thereof;

d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;

e) Petitions for support and/or acknowledgment;

f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "*Family Code of the Philippines*";

g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree No. 603, Executive Order No. 56, (Series of 1986), and other related laws;

h) Petitions for the constitution of the family home;

i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;

j) Violations of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," as amended by Republic Act No. 7658; and

k) Cases of domestic violence against:

1) Women - which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement; and

2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.

If any question involving any of the above matters should arise as an incident in any case pending in the regular courts, said incident shall be determined in that court.

Sec. 6. *Use of Income.* - All Family Courts shall be allowed the use of ten per cent (10%) of their income derived from filing and other court fees under Rule 141 of the Rules of Court for research and other operating expenses including capital outlay: Provided, That this benefit shall likewise be enjoyed by all courts of justice.

The Supreme Court shall promulgate the necessary guidelines to effectively implement the provisions of this Sec.

Sec. 7. *Special Provisional Remedies.* - In cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused of defendant upon verified application by the complainant or the victim for relief from abuse.

The court may order the temporary custody of children in all civil actions for their custody. The court may also order support pendente lite, including deduction from the salary and use of conjugal home and other properties in all civil actions for support.

Sec. 8. *Supervision of Youth Detention Homes.* - The judge of the Family Court shall have direct control and supervision of the youth detention home which the local government unit shall establish to separate the youth offenders from adult criminals: Provided, however, That alternatives to detention and institutional care shall be made available to the accused including counseling, recognizance, bail, community continuum, or diversions from the justice system: Provided, further, That the human rights of the accused are fully respected in a manner appropriate to their well-being.

Sec. 9. *Social Services and Counseling Division.* - Under the guidance of the Department of Social Welfare and Development (DSWD), a Social Services and Counseling Division (SSCD) shall be established in each judicial region as the Supreme Court shall deem necessary based on the number of juvenile and family cases existing in such jurisdiction. It shall provide appropriate social services to all juvenile and family cases filed with the court and recommend the proper social action. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

Sec. 10. *Social Services and Counseling Division Staff.* - The SSCD shall have a staff composed of qualified social workers and other personnel with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and other social services that may be needed in connection with cases filed with the court: Provided, however, That in adoption cases and in petitions for declaration of abandonment, the case studies may be prepared by social workers of duly licensed child caring or child placement agencies, or the DSWD. When warranted, the division shall recommend that the court avail itself of consultative services of psychiatrists, psychologists, and other qualified specialists presently employed in other departments of the government in connection with its cases.

The position of Social Work Adviser shall be created under the Office of the Court Administrator, who shall monitor and supervise the SSCD of the Regional Trial Court.

Sec. 11. *Alternative Social Services.* - In accordance with Sec. 17 of this Act, in areas where no Family Court has been established or no Regional Trial Court was designated by the Supreme Court due to the limited number of

cases, the DSWD shall designate and assign qualified, trained, and DSWD accredited social workers of the local government units to handle juvenile and family cases filed in the designated Regional Trial Court of the place.

Sec. 12. *Privacy and Confidentiality of Proceedings.* - All hearings and conciliation of the child and family cases shall be treated in a manner consistent with the promotion of the child's and the family's dignity and worth, and shall respect their privacy at all stages of the proceedings. Records of the cases shall be dealt with utmost confidentiality and the identity of parties shall not be divulged unless necessary and with authority of the judge.

Sec. 13. *Special Rules of Procedure.* - The Supreme Court shall promulgate special rules of procedure for the transfer of cases to the new courts during the transition period and for the disposition of family cases with the best interests of the child and the protection of the family as primary consideration taking into account the United Nations Convention on the Rights of the Child.

Sec. 14. *Appeals.* - Decisions and orders of the court shall be appealed in the same manner and subject to the same conditions as appeals from the ordinary Regional Trial Courts.

Sec. 15. *Appropriations.* - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following in its enactment into law and thereafter.

Sec. 16. *Implementing Rules and Regulations.* - The Supreme Court, in coordination with the DSWD, shall formulate the necessary rules and regulations for the effective implementation of the social aspects of this Act.

Sec. 17. *Transitory Provisions.* - Pending the establishment of such Family Courts, the Supreme Court shall designate from among the branches of the Regional Trial Court at least one Family Court in each of the cities of Manila, Quezon, Pasay, Caloocan, Makati, Pasig, Mandaluyong, Muntinlupa, Laoag, Baguio, Santiago, Dagupan, Olongapo, Cabanatuan, San Jose, Angeles, Cavite, Batangas, Lucena, Naga, Iriga, Legazpi, Roxas, Iloilo, Bacolod, Dumaguete, Tacloban, Cebu, Mandaue, Tagbilaran, Surigao, Butuan, Cagayan de Oro, Davao, General Santos, Oroquieta, Ozamis, Dipolog, Zamboanga, Pagadian, Iligan, and in such other places as the Supreme Court may deem necessary.

Additional cases other than those provided in Sec. 5 may be assigned to the Family Courts when their dockets permit: Provided, That such additional cases shall not be heard on the same day family cases are heard.

In areas where there are no Family Courts, the cases referred to in Sec. 5 of this Act shall be adjudicated by the Regional Trial Court.

Sec. 18. *Separability Clause.* - In case any provision of this Act is declared unconstitutional, the other provisions shall remain in effect.

Sec. 19. *Repealing Clause.* - All other laws, decrees, executive orders, rules or regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

Sec. 20. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved October 28, 1997.