

Responding to the Call for Restorative Justice

Adoracion P. Cruz-Avisado¹

Introduction

*Restorative Justice*² refers to a principle in conflict resolution which requires the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and, reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by getting the offender, the victim and the community to participate in prevention strategies.

In the past, children in conflict with the law (CICL), who used to be labeled as juvenile delinquents or youthful offenders, were detained inside prison cells along with adults accused or convicted of crimes. In Davao City, the Juvenile Welfare Unit (JWU) for the youth used to be located within the City Jail compound where adult detainees or offenders are detained/imprisoned, albeit in separate facilities such that the CICL could not interact with the adult detainees and offenders. The JWU used to house only male children female CICL were lumped together with adult female detainees and convicts. Efforts to improve the conditions for the detention and imprisonment of CICL have resulted in some improvement but the female youth offenders are still detained at the same compound as the adult female offenders.

Jail conditions in the Philippines are generally despicable. Oftentimes, jails are overcrowded, with jails that can accommodate only about three hundred (300) persons, for instance, actually housing over a thousand people. Rehabilitation is virtually impossible to achieve under such conditions.

¹Atty. Adoracion P. Cruz-Avisado is the Executive Director of the Transformative Justice Institute (TJI) as well as the Avisado Advocacy, Consultancy, Counseling and Training Services Center (AACCTS Center); a member of the Society for Judicial Excellence and the Sub-Committee on Social Context and Gender of the Philippine Judicial Academy (PHILJA); a resource person for the National Commission on the Role of Filipino Women (NCRFW) and the Department of Justice for trainings in the Gender Sensitive Manner of handling cases; and, a member of the Board of Trustees of the Ateneo de Davao University. She teaches gender subjects at the Graduate School of the Ateneo de Davao University and is a staunch advocate of gender and development (GAD), the rule of law, peace and development, human rights, women and children's rights, and access to justice for all.

² RA 9344, sec. 4(q).

Age of Criminal Responsibility

The principle of restorative justice has been recently integrated in a Philippine statute, under Republic Act 9344,³ entitled the “Juvenile Justice and Welfare Act of 2006,” which establishes a comprehensive juvenile justice and welfare system. Section 6 of RA 9344 provides:

“Minimum Age of Criminal Responsibility. A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.”

A number of people find Section 6 of RA 9344 objectionable since children who are fifteen (15) years of age can already distinguish right from wrong. Thus, they argue that 15-year old children who kill, rape or commit other forms of heinous crimes ought not to be freed from criminal responsibility. They contend that the age for exemption from criminal liability should have been raised from nine (9) years old to twelve (12) years old only instead of to fifteen (15) years old. In relation to the law on statutory rape, they point out that girls who are under twelve (12) years of age are considered victims even if the act was committed with their consent; ergo, 12-year old girls are considered to be already capable of giving consent. Corollarily, CICL who are twelve (12) years or older should not be freed from criminal responsibility, they say.

With gangsterism among teenagers on the rise, most law enforcers negatively react to raising the age exemption from criminal responsibility to fifteen (15) years old. They are apprehensive that criminalities committed by teenagers shall further increase.

On the other hand, those who support the law assert that society has to help reform CICL and restore them to their rightful place in society. CICL should

be properly corrected and rehabilitated. Their becoming CICL is not their fault thus, they need help from the National Government, the Local Government Units (LGUs), their families and the community to be rehabilitated in a manner that will not scar them for life. The CICL deserve the opportunity to transform their lives for the better. Hopefully, the usual scenario where aggrieved parties are heard screaming “*mabulok ka sana sa bilangguan!*” (May you rot in jail!) shall be a thing of the past. Rotting in jail literally happens to detainees. They languish inside prison cells even as they await completion of the trial of their cases. As a result, CICL lose the opportunity to go to school and be transformed to become responsible individuals and citizens.

Government Social Services

The call for participation of all those involved in a case of CICL, including lawyers and other members of the community, intends to give meaning to the “*community based programs*”⁴ of RA 9344. These are programs established and developed in a community setting for purposes of intervention and diversion, as well as rehabilitation of the CICL for reintegration into their families and the community.

The LGUs, acting through their respective social service and development offices, as well as the Department of Social Welfare and Development (DSWD), play very significant and vital roles. In particular, the LGUs are required to develop comprehensive juvenile intervention programs that pertain to diversion, intervention, and the juvenile justice and welfare system, among others.

*Diversion*⁵ refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings. The law also provides for a “*diversion program*”⁶ which to that the child in conflict with the law is require undergo after he/she is found responsible for an offense without resorting to formal court proceedings.

*Intervention*⁷ refers to a series of activities designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program, including counseling, skills training, education, and other activities that can enhance his/her psychological, emotional and psychosocial well-being.

*Juvenile justice and welfare system*⁸ provides CICL with child-appropriate proceedings, including programs and services for prevention, diversion,

⁴ RA 9344, sec. 4 (f)

⁵ *Id.*, sec. 4 (i)

⁶ *Id.*, sec. 4 (j).

⁷ *Id.*, sec. 4 (l).

⁸ *Id.*, sec. 4 (m).

³ RA 9344 was passed on March 22, 2006 and approved by the President on April 28, 2006.

rehabilitation, reintegration and aftercare to ensure their normal growth and development. The juvenile justice and welfare system, when properly set in place and operationalized, is to be the key to achieving restorative justice.

Need for Caring Lawyers

Lawyers are at the frontline in dealing with cases of CICL. They are duty bound to help in the implementation of RA 9344, bearing in mind the Declaration of State Policy therein,⁹ which states:

The following State policies shall be observed at all times:

- (a) The State recognizes the vital role of children and youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.
- (b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.
- (c) The State likewise recognizes the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty and exploitation, and other conditions prejudicial to their development.
- (d) Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as, having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and

⁹ *Id.*, sec. 2.

desirability of promoting his/her reintegration. Whenever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.

- (e) The administration of the juvenile justice and welfare system shall take into consideration the cultural and religious perspectives of the Filipino people, particularly the indigenous peoples and the Muslims, consistent with the protection of the rights of children belonging to these communities.
- (f) The State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law.”

As a lawyer, I believe that a hands-on participation in restorative justice is an act of patriotism. As a Christian, I believe that it is a demonstration of love, care and concern for the children. Children must be guided to become productive members of society, following the example of Jesus Christ:¹⁰

Then little children were brought to Jesus for him to place his hands on them and pray for them. But the disciples rebuked those who brought them.

Jesus said, “Let the little children come to me, and do not hinder them, for the kingdom of heaven belongs to such as these.”

When he had placed his hands on them, he went on from there.”

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¹⁰ Matthew 19:13-15, New Testament, Holy Bible (NIV)