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**A STUDY ON THE ARBITRARY DETENTION OF 'RESCUED' CHILDREN IN THE
PHILIPPINES**

Abstract

A little over ten years since the Juvenile and Justice Welfare Act of 2006 (JJWA) has been passed, lapses and gaps in the implementation still persist resulting to child rights violations against children-in-conflict-with-the-law and those at-risk of being so. One violation is the continuing deprivation of liberty to children. Despite the current law that mandates children to not be placed in jails, children 'rescued' during curfew operations or in similar instances (i.e. children committing status offenses) are still detained arbitrarily in makeshift detention areas at *barangay* (village) halls and at detention cells at police stations under conditions similar to that of prison, and at times, even with adult crime suspects. These children are then susceptible to further atrocities and abuses by authorities, from the onset of 'rescue' or arrest to their indefinite arbitrary detention.

This study attempts to bridge the gap of awareness and knowledge of the situation and conditions of children-at-risk (CAR) and children-in-conflict-with-the-law (CICL), who are likely

to fall as ‘ghost child prisoners’ or ‘police child prisoners’. Children are still subjected to treatment similar to what children over a decade ago undergone, before the law had been passed. Abusive and degrading treatment against children continue to persist in obscurity, hidden and barely made aware to the public. ‘Ghost child prisoners’ exist, and the atrocities children experience under the juvenile justice system remain to be either inadvertently or deliberately made unseen and invisible. As observed during initial contact of children up to their detention, a wide gap between the law on paper and what transpires in reality continues.

Key words: Juvenile Justice, Children in Conflict with the Law, Children deprived of liberty, ‘Rescued’ Children, Ghost Child Prisoners, Police Child Prisoners, Street Children

1.0 Introduction

It has been ten years since the Philippines passed the Juvenile Justice and Welfare Act of 2006 (JJWA) after enough pressure from the child rights advocates and defenders demanding a bill that must not place children, young as nine, in jails with hardened adult criminals. With JJWA, MACR is increased from 9 to 15. Intervention, rehabilitation and diversion from courts are emphasized. By 2013, it was amended to RA 10630, giving much more focus to prevention, community-based intervention and diversion programs, establishment of child-caring facilities and youth detention centers referred to as ‘Bahay Pag-asa’ (BPAs) and strengthening the Juvenile Justice and Welfare Council (JJWC), an inter-agency that coordinates with other relevant agencies and monitors the implementation of the JJWA.

It would appear, at least on paper, RA 9344 amended to RA 10630 is a laudable law on juvenile justice currently adhering to CRC, UN rules and guidelines on juvenile justice, and restorative justice framework. However, despite this, it is highly worth noting the lapses and gaps in the implementation still prevail. These lapses and gaps can result to more child rights violations. One rights violation is the continuing deprivation of liberty to children. As of late, there have been little studies probing on the onset of arrest and ‘rescue’ operations especially since JJWA’s amendment in 2013. Several legislators claim the law has been lenient and pampering children (Cepeda, 2016), however this research garnered the manner of handling CAR and CICL by the law enforcers had been less than lenient, but more on punitive.

1.1 Statement of the Problem

This paper focuses more closely on one particular child right violation—detaining children arbitrarily that deprives them of their liberty. Oftentimes, it goes unreported. It perpetuates to further abuse and child rights violations, taking place from ‘rescue’ of children during curfew operations or arrest without warrant from committing status offenses or violating local ordinances, to their arbitrary detention in either the barangay’s (village) makeshift detention area, or in detention centers, or at times even with adults at police stations. Mostly unrecorded, these children are dubbed as ‘ghost child prisoners’ and ‘police child prisoners’, and are under vulnerable conditions that make them more susceptible to further atrocities and abuses.

1.2 Research Objectives

Focusing from the initial contact of the child, whether it may be ‘rescue’ or arbitrary arrest, up to its detention, this research then intends to:

1. Assess child rights’ violations; and
2. Identify lapses and gaps in the implementation of JJWA.

2.0 Methodology

This research is qualitative, using semi-structured interview with key-informants coming from government agencies and non-governmental organizations, and from in-depth interviews with former child detainees and at risk. Experiences of abuse and child rights violations during “rescue”, arrest and arbitrary detention as disclosed by former child detainees and gathered from relevant key informants are the unit of analysis. Using judgment and convenience sampling, participants come from cities of Manila and Davao in the Philippines. Ethical consideration especially with interviewing former child detainees had been highly taken into account. Anonymity for certain key-informants and former children is observed.

3.0 Review of Related Literature

Children, around the world, have been held behind bars for long periods under inhuman conditions. The lack of record-keeping and the various institutions detaining children make the number of children in detention unknown (Bochenek, 2014).

Street children are often criminalized. A global study on the administrative detention of children (Hamilton, Anderson, Barnes, & Dorling, 2011) says a police detention of street children has been found out to be not region-specific but common to other parts of the world such as in Sudan, Congo, Vietnam, Bangladesh, Nepal, Pakistan and Sri Lanka. They are detained for short period of time, while their cases are being investigated, but in other cases, children can be detained for weeks and months until they are taken to the court or released.

Prior to the passage of a juvenile justice law that creates a juvenile justice system separate from that of traditional criminal system for adults, there have been separate studies to reveal the situation and condition of children, young as nine years old, arrested like adults, and jailed with adults in the Philippines. With the minimum age of criminal responsibility set to nine then, a study on discernment on out-of-school children in Manila reveals that their level of discernment is low. Even at the age of 18, respondents are found to be unaware of what is right and wrong, and that their actions are mostly based on meeting their needs and of others (Ortiz, 2000).

A participatory research on the situation of street children in Davao City, shows children and adolescent who frequent in the streets claimed that second to peers is the law enforcement who have inflicted abuse to them during arrest and detention for offenses like solvent use, vagrancy, theft and violation of curfew (Tambayan Center for the Care of Abused Children, Inc., 2000). Three studies published by Save the Children UK on the situation of CICL in Davao, (Ancheta-Templa, 2004) in Manila (Adhikain Para sa Karapatang Pambata, Ateneo Human Rights Center, 2004) and the overall situation of children in conflict with the law in the Philippines (Save the Children, 2004) reveal the lapses of child protection mechanisms in the criminal system, allowing abuses and degrading treatment of children that took place usually during arrest and detention. With the lack of a juvenile justice system, Caparas (2003) notes one wide gap is the traditional punitive approach of the criminal justice system. Children suffer police brutality during arrest. A documentary titled 'Bunso' (The Youngest) further discloses the atrocities and child-unfriendly conditions children, young as nine, experienced and had to survive from, when being jailed with adults.

It was on December 16, 2005 that the senate approved the passage of the Juvenile Justice and Welfare Act (JJWA) to divert children from criminal justice system and keep them out of jails (Dolan, 2005). A few years after the law has been enacted, a briefing paper submitted to the United Nations Committee on the Rights of the child reveals ghost child prisoners in police lock-ups and jails, criminal contamination during detention, and impunity that perpetuates jailing children with adults (Caparas, 2009).

Meanwhile, “rescue” operations at urban cities in Manila have been sprouting. Although not targeting children-in-conflict-with-the-law, but the street children and in need of special protection, the manner of rescuing can be likened to arrest. A study on rescue operations on street children claims such operations unnecessarily criminalized, stigmatized and traumatized children. Rescue operations are then described as indiscriminate, involuntary, harmful and ineffective (Nugroho, et al., 2008).

Since the JJWA had been amended in 2013, reports and studies made to critique it and its implementation mostly agreed on the lack of implementation of the law. A recent report that involved surprise visits at police stations and detention centers exposes abuses and inhuman conditions of children detained at cells at the police stations and at temporary holding centers under inhuman conditions (CLRDC & OMCT, 2016). Meanwhile, a study that involved respondents from the law enforcement and legislators’ critics on the minimum age of criminal responsibility and infers the juvenile system has been lenient (Bilog, 2014).

4.0 Findings and Discussion

4.1 The ‘rescued’ children

The term ‘rescue’ is just actually apprehension, says lawyer Tricia Clare Oco, the Executive Director of the Juvenile Justice and Welfare Council (JJWC) (personal communication, April 6, 2017). She further shares although the term sounds child-friendly, most child right violations occur during rescue and arrest, and that the responding police officers who are handling children are likely untrained by the JJWC.

In the Philippine’s juvenile justice system, Child at Risk (CAR) is differentiated from Child in Conflict with the Law (CICL). Children referred as CAR are children under vulnerable conditions that make them susceptible to be CICL. Looking at the RA 9344 amended to RA 10630 and its implementing rules and regulations, provision relating to ‘rescuing’ both CICL and CAR

is not enlisted. ‘Rescuing’ CAR is however cited in a recently developed Manual in Handling Children at Risk and Children in Conflict with the Law by the Women and Children Protection Center of the Philippine National Police (PNP), in collaboration with the JJWC, disseminated in 2016 to the police personnel. Rescue is not specifically defined but rescuing CAR is likened to rescuing a child victim. It then involves the police officers of Women and Children’s Protection Desk (WCPD) and coordination with a social worker. Although it mentions the need of social worker, it also states the police can immediately perform the operation even without the coordination of a nearby social worker if such coordination “would compromise the safety of the child” (p. 2). JJWA specifies children who committed status offense such as curfew violation and decriminalized acts such as sniffing rugby are to be considered as CAR, and is therefore subject to ‘rescue’ operation. However, in reality, rescuing CAR is not any different to arresting CICL.

‘Rescue’ operations are not limited to the jurisdiction of the police. Other government actors that perform this operation are the *barangay tanods*, who are functionaries regarded as safeguards of the *barangay* (village), the smallest government unit in the Philippines. In Davao, *barangay tanods* often patrol around to conduct this operation. The ideal set-up would be that these functionaries, at times accompanied by *barangay* officials, would roam the streets at late night to ‘rescue’ children. They are then expected to bring these children back home for safety. However, in most cases, children are detained in the *barangay* hall and neither do children feel safe and protected during the operation and detention. Girl children who are ‘rescued’ experienced molestation and other children suffered physical violence, electrocution, heads are shaved, threatened, verbally abused, displayed with weapons and detained in the *barangay* (Former street social worker, personal communication, April 19, 2017; Former child detainee, personal communication, April 19, 2017).

Apart from law enforcement officers conducting ‘rescue’ operations, some instances in 2012 in Davao City, children found loitering in the streets are being chased by unknown men in bonnets riding in motorcycles. They would corner a group of children, and would beat the children up with a whip. They would tell the children never again to wander around the streets at late nights. Davao City authorities denied being responsible for chasing and whipping children, and said they are to investigate it. In an interview, the then Mayor Duterte shared he did not know anything about it, but was in favor with it (GMA Network, 2012).

4.2 Jail or jail-like detention is still a place for a child

JJWA prohibits detention, suggest for alternative measures, and should it be necessary, only for a short period of time. Furthermore, it prohibits jailing children with adults. Arbitrary detention, and subsequent violations, abuses and torture of children are non-state sanctioned acts, and if a law enforcer does that, then it is a violation of the JJWA (T. Oco, personal communication, April 6, 2017).

From the report submitted by the Coalition to Stop Detention by Restorative Justice (2009) to the United Nations Committee on the Rights of the Child, ghost child prisoners are defined as “children arbitrarily arrested and detained without charges” (Caparas, 2009, p. 26). ‘Rescued’ CAR can then likely fall as ghost child prisoners. Meanwhile, the ‘police child prisoners’ are children “who are locked up, upon arrest, by law enforcers in police headquarters, stations, and sub-stations, all over the country usually in the company of adult crime suspects, pursuant to the PNP’s de facto standard operating procedure” (p. 29).

In Davao City, despite having a QRTCC that provides alternative holding place for children ‘rescued’, in an interview with a street organizer working at a child rights NGO at Davao City, it had been found out that there are still children detained in the police stations, placed in cells with adults and are not released until parents or relatives brought birth certificate to prove the child’s age (personal communication, April 21, 2017). In Mandaluyong City, children are beaten up by police and *barangay tanod*, brought and detained at police sub-stations, in cells with adults, and at times visible to the public, shared Fr. Shay Cullen (personal communication, April 5, 2017). Cullen is a founder of PREDA Foundation, an NGO based at Olongapo City that promotes and protects human rights and dignity especially of women and children. The foundation is also an NGO member of the JJWC.

The following are the abuses and atrocities detained children and deprived of their liberty fall into, taken from recent reports and interviews with key-informants:

(a) No separation between ‘rescued’ and arrested children

There is no apparent distinction between CAR and CICL. There have been many victims like girl children who have engaged into street prostitution or are victims of human trafficking but are treated as criminals, detained for so many weeks and months and gave in to sexual favors as the only ways they can get out (S. Cullen, personal communication, April 5, 2017).

(b) Prison-like conditions

The Bahay Pag-asa (BPA) is defined by JJWA as “a 24-hour child-caring institution established, funded and managed by accredited local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are above fifteen (15) but below eighteen (18) years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction (Section 4[s]).” The detention centers, some claiming to be Bahay Pag-asa, have rooms that are more like cells and are no different to that of jails—barred, overcrowded, unsanitary and poor in facilities. Majority of the centers still have rooms with steel bars which makes them more similar to prison cells (S. Cullen, personal communication, April 5, 2017). Most children are deprived of basic needs like clothing and food, and their emotional and mental needs also disregarded (Cabildo & Reysio-Cruz, 2016).

(c) Punitive Treatment and Torture

Acts of violence and abuse are perpetuated by the police against CICL or whose offenses committed are mostly minor economic crimes such as theft. The report submitted to Committee Against Torture reveal such acts are “beatings, punching, kicking, hitting with rifle, electric shock, tight handcuffing and submersion of head in water” (CLRDC & OMCT, 2016, p. 9). Furthermore, the same report reveals secret places of detention as in the case of Malabon Bayan Police Station that holds an isolation cell, a size of a refrigerator, six feet underground, under a bridge beside a river. CICL and other alleged criminals are heavily locked inside with steel bars, in total darkness, without communication. There are BPAs that are considered to have met minimum standards as required by the JJWA, but like in some police stations, have secret isolation cells (S. Cullen, personal communication, April 5, 2017; Child at Risk, personal communication, April 19, 2017).

(d) Lack of social work and management information system for monitoring

There are not enough licensed social workers hired. Only 23% of the target number are hired, according to JJWC. These social workers are also expected of other tasks apart from anything JJWA related. There is lack of social work, investigation, records and facilitation of birth certificate. Most detention centers are under-staffed. These staff are also under-resourced and lack capacity (S. Cullen, personal communication, April 5, 2017). Assessment by social worker of

whether the child is to be referred to a BPA or release in an intervention at the community-level can contribute to a CAR or CICL be deprived of liberty. There were cases where some children who are more of CAR than CICL are detained and deprived of their liberty for either being “troubled child”, or due to parents’ request, or for committing status offenses like violation of curfew (CLRDC & OMCT, 2016). Moreover, other challenge identified is the lack of database system to easily monitor and assess CICL and the impact of the JJWA (T. Oco, personal communication, April 6, 2017).

(e) Limited access to therapeutic, rehabilitative and development activities

Children have limited access or, at some cases, none at all, to therapeutic, rehabilitative and educational activities due to lack of facilities, programs and learning materials for children in detention centers (S. Cullen, personal communication, April 5, 2017).

(f) Prolonged detention

Children are subject for long periods of confinement in their cells or long periods of preventive detention. Children are usually detained from three to nine months and even up to a year (S. Cullen, personal communication, April 5, 2017). For committing minor crimes, such as stealing food, CICL can be detained without trial for more than a year (CLRDC & OMCT, 2016).

The lack of familiarity to the amended JJWA by the judges also contribute to prolonged detention of CICL. This is evident in the high number of children who turned 18 years-old while being deprived of liberty are then immediately transferred to adult jails (CLRDC & OMCT, 2016).

(g) Inaccessibility to justice

When children suffer abuses or torture during detention at police stations or BPAs, there are likely no venues for them to be heard, nor are there actual mechanisms facilitated for them to complain and press charges. During the entire process, from arrest to detention, PAO is barely existent. Children are then not informed of the status of their cases. They do not have legal representation to confide with their ordeal. Social workers are also inept to screen CICL of any abuse or torture, and in most cases children opt to keep quiet, fearing the authorities may get back at them and punish them even more (CLRDC & OMCT, 2016). There is lack investigation or prosecution against any law enforcement officer or police stations perpetuating abuse, torture and

arbitrary detention of children, shared Ma. Victoria Diaz of the Child Rights Center of Commission of Human Rights (CHR) (personal communication, April 25, 2017).

(h) Jailed as adults

Children are still being arrested and jailed as adults. Handling CICL can be a tedious task that recording and charging children as adults is then much easier for authorities. Children who appear older than what they claim to be their age are then recorded and treated as adults, unless children themselves can prove otherwise. The burden of proof is placed on the children (Program Manager of a Child Rights NGO, personal communication, April 20, 2017). If they or their parents and guardians are not able to provide proof of their age, then authorities can presume they are of majority age.

During an unannounced visit at Manila City Jail, the Commission on Human Rights (CHR) found six (6) young people who were minors when they were arrested. The lack of adherence to presumption of innocence and presumption of minority contribute to having children placed in detention cells with adults in the police stations and eventually be transferred in jails (M.V. Diaz, personal communication, April 25, 2017).

In highly urbanized cities without *Bahay Pag-asa* (BPAs) or any detention centers for CAR and CICL, children are then placed in various Bureau of Jail Management and Penology (BJMP) jails nationwide, mixed with adults.

(i) Extra-judicially killed

Children, usually males in their teens, who are often arrested and are in and out of prison for drug-related cases or repeat offenses of petty crimes like theft can be targeted for vigilante-style of killings. The consolidated report documented by a human rights groups at Davao City reveals 1,424 victims of summary killings from 1998 to 2015 by the alleged Davao Death Squad (DDS). Of this victims, 132 of them are children (Picardal, 2016). In an interview with a former child-at-risk whose peer has been allegedly summary executed, by an unidentified man on August 2015, the former CAR claimed it was a case of mistaken identity, as it was supposed to be his peer's brother who had been targeted in the 'kill list'. Although at times, the victims are waited on to turn eighteen before they are summary killed, there are few cases that minors, mostly who have committed recidivism, are targeted. The brother that was supposed to be executed, also of minor

age, has allegedly committed repeat offenses of theft (Child at Risk, personal communication, April 19, 2017).

4.3 The gaps in the implementation of rescue and detention

(a) Rescuing the children or rescuing from the children

Coupled with the use of ‘rescue’ to call an operation that arrest children, is the interpretation of ‘rescue’ in itself. It is questionable who these law enforcement officers are actually rescuing. Are they rescuing the children from harm, or are they rescuing their city or *barangay* from these children? With the way these officers have been performing their duty, it would appear that they are more of functioning under securing the public order of their jurisdiction, at the expense of children.

With this, it is apparent that there has been lack of distinguishing the difference between CAR and CICL. CAR who are supposed to be treated as child victims are then handled as offenders during ‘rescue’. This research does not say CAR and CICL are to be treated differently during ‘rescue’ and arrest respectively, as both should be handled in child-friendly manner, with respect to JJWA and the standard operating procedures of handling CAR and CICL. However, this research has inferred the manner of handling CAR is not much any different to apprehending or arresting CICL.

(b) Lack of awareness and training of key duty bearers

There has been lack of awareness and training of the key law enforcement officers, especially the police officers and *barangay tanods* who are responsible for the initial contact with the child. The same can be observed with the staff in holding centers or BPAs. Facilitation of awareness-raising and capacity building is barely existent, and if ever conducted, is ineffective to translate to practice. It is noteworthy that aside from the law enforcement officers handling the ‘rescue’ and arrest operations, other duty bearers like social workers, lawyers and judges also lack awareness and familiarity of the law.

The lack of enforcement and proper adherence also can be attributed to the misinterpretation of the JJWA in relation to other laws or ordinances. Offenses like vagrancy, prostitution, mendicancy and solvent use are considered as criminal acts when committed by adults. However, amended JJWA and its manual decriminalize these acts when committed by

children. The misinterpretation is seen when authorities treat children who violate state ordinances like they are adults. Instead of properly ‘rescuing’ these children at risk as mandated by the manual, apprehension and detention took place.

(c) Less of a social work, more of a police operation

The lack of social workers CICL are to be turned over to, their unavailability during night time of which most ‘rescue’ and arrest operations take place, and in addition, the lack of coordination between the PNP and the local city or municipal social service and development office can also contribute to children’s arbitrary detention. Moreover, if children are ever turned over to a social worker, the first option usually is deprivation of liberty, either in temporary detention centers or BPAs. Although children have not committed offenses and should then be subjected for an intervention other than detention, children are deprived of liberty for being ‘a trouble child’, upon the parents’ request, committing status offenses like curfew violation, and at times, so as to teach these children a lesson (CLRDC & OMCT, 2016).

This research also finds it problematic how the first contact of the ‘rescuing’ or arresting a child, if the purpose is of restorative justice and to divert the child from the adult justice system does not require the presence of social workers. The initial process then appears as a police operation that is not any different to arresting adults, not just to the child, but even to onlookers and the public. The ordeal then makes children feel like they are adult criminals.

(d) Lack of facilities: Less Houses of Hope, more prison-like detention centers

The amended JJWA mandates each province and highly-urbanized city to allocate BPA for CAR and CICL. However, as to date, according to JJWC, there have only been 38 operational BPAs around the country. Some cities like Valenzuela in Metro Manila would take CAR and CICL from other neighboring cities who do not have BPAs (S. Cullen, personal communication, April 5, 2017).

In other cases, detention centers that used to be juvenile jails function as temporary holding centers for CAR and CICL at cities that do not have BPAs. These detention centers do not meet the minimum standards. From being juvenile jails before, to seemingly comply with the law, their names have been changed into less-threatening terms, guising the still prison-like and inhuman conditions that children befall under. At times, they are also called as *Bahay Pag-asa*. The amended JJWA prohibits placing children in jails. However, these holding centers, although not called as jails, have living conditions similar to jails and deprive children of liberty. Furthermore,

the lack of BPAs and detention centers makes as an excuse for some cities and municipalities to detain children in the police stations and eventually lock them up to adult jails. Under the adult criminal system, these children are then subject to punishment, retribution and torture.

(e) Less restorative justice, more punitive culture

The lack of adherence to the spirit of JJWA could be stemmed from the lack of understanding on the framework of which the law is anchored on, which is restorative justice. Pilgrim Bliss Gayo, a human rights activist, child rights advocate and program coordinator of Terres De Homes – Germany that funds and support child rights NGOs in South East Asia, argues that the opposition to the concept of restorative justice itself impedes in the implementation, especially when the country is ingrained in a heavily punitive culture (personal communication, April 6, 2017). It is also telling that in the Philippines, corporal punishment is not yet prohibited and the positive discipline bill remains pending in the congress. The *de facto* norm and practice by the PNP has been traumatizing, dehumanizing and criminalizing children for life (Caparas, 2009). A punitive culture is not just within the PNP and law enforcement but also permeates in the community that believes punishment and retribution are means to teach children lesson, a community that does not enable a child-friendly environment. It hinders the respect, fulfillment and protection of child rights and contradicts restorative justice, and in turn opposes the spirit of the amended JJWA.

(f) Lack of sustainable alternative measures in the community

Anchored to the Convention on the rights of the Child and the UN rules and guidelines on juvenile justice, particularly the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or “Beijing Rules” and the United Nations Rules for the Protection of Juveniles Deprived of Liberty, the amended JJWA allows detention only when necessary, as last resort and for the shortest time. However, detention becomes the likely only option when community—the city or municipality and down to the smallest unit of government, the *barangay*—have no sustainable intervention and diversion programs for CAR and CICL. Although the law encouraged for alternative measures, in reality, it is barely practiced. There are few instances that a *barangay*, partnered with a child rights NGO can start up programs targeting CAR and CICL in their area, such as sports. Lack of budget and support from *barangay* officials can hinder the sustainability of these programs (Child Rights NGO worker, personal communication, April 21, 2017). To

further curb this lack of budget, the JJWC is persistent on the establishment of a comprehensive juvenile intervention program. In here, the programs can then be made part of the local development plan and thus can be allocated with budget accordingly. So far, only 32% of the local government units (LGUs) have been reached and provided with technical assistance with regards to this (T. Oco, personal communication, April 6, 2017). And as to its realization, it remains to be monitored. The JJWC chair further shared LGUs have been opened to JJWC's assistance and are happy of it. However, what can be problematic is the insufficient funds and resources, and the lack of prioritization of these programs especially amidst other programs for other sectors of the community.

(g) Impunity and lack of accountability

There is lack of investigation of police stations detaining and abusing children. There has been no police station or law enforcement officer investigated on arbitrary arrest and detention, abuse and torture of children. Neither have been detention centers been permanently closed because of inability to meet minimum standards. As to why there is a failure to investigate on these matters, especially on jailing children with adults, it is important to note the virtue of the prevailing *esprit de corps* among government employees (Caparas, 2009).

Grass-root mechanisms for complaints and redress on matters concerning CAR and CICL, especially when they are abused, tortured or detained arbitrarily are not placed. Poor children suffer the brunt of the lack of accountability by key duty bearers and government agencies. For example, in a case wherein children are unable to provide proof of age as they are not registered at birth, there is no facilitation as to how the parents can avail the late registration to secure a birth certificate for the child. There are other means as well in determining the age of the child of which the government could have facilitated as mandated by the JJWA, but at times, due to lack of resources, or so as to hasten the process, these means are not opted to. The burden of proof is shouldered on the child and his or her family.

There are other laws such as the Anti-Torture Act and the law on child abuse (RA 7610) that the CAR and CICL can depend on. However, pressing charges through these laws can be impossible especially without access to lawyers or without mechanisms that facilitate this. And most of the times, children and their families, coming from poor economic background and with low educational attainment, are also hardly aware of child rights and the laws that can protect them.

(h) Slow justice system

The Section 14 (1) of the Bill of Rights in the Philippine's 1987 Constitution particularly highlights on "due process of law", and states that (2) "the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf." In reality, this is hardly realized. Most often, justice is delayed and denied at the expense of the poor who have no or little access to lawyers. An accused could be in detained for years just waiting for his trial. The more there are accused denied of speedy trial, the more are detained, resulting to overpopulation in prison cells. Such circumstance is also the same for the case for CAR and CICL. Judges and public lawyers are often overwhelmed with cases, and even unfamiliar with the JJWA and child rights (CLRDC & OMCT, 2016). A child who committed a petty crime can wait in detention for a year or more for his trial. There are no specialized judges assigned to handle cases of CAR and CICL to hasten the process.

(i) Lack of political will, commitment and belief of child rights

To provide alternative measures of detention through community-based intervention and diversion programs, the support of the local government units (LGUs), from the cities, municipalities and down to the *barangays* is important. They are responsible for facilitating these programs and sustaining them. Moreover, they are mandated to allocate funds for the establishment of child-caring facility or *Bahay Pag-asa*. However, with little political will and interest for the protection and welfare of CICL and CAR by the political officials of the LGUs, little actualization of the JJWA implementation can take place.

Political will and few commitments from politicians contribute to the weak implementation and lack of adherence to the spirit of the amended JJWA (S. Cullen, personal communication, April 5, 2017). It is apparent that children cannot vote and guarantee votes for politicians. In a country that is marred of corruption, it is less likely that politicians vest interests on children, let alone children in the margins. Moreover, there are government officials who are either less aware of child rights or do not believe in them (Child Rights NGO Program officer, personal communication, April 21, 2017). With none or little awareness to child rights and the amended

JJWA, the state actors such government officials, law enforcement officers, social workers, staff of the BPAs and detention centers, lawyers and judges are less likely to champion child rights and juvenile justice.

5.0 Conclusion

Abuse, torture and stigma of children to be perceived as criminals likely occur upon the initial contact by the law enforcement and the manner of which such operation has been interpreted and executed. The abuse, torture and stigma is further perpetuated when children are arbitrarily detained under conditions similar to detaining adults.

The Convention on the Right of the Child (CRC) demands from state parties to respect, promote, protect and fulfill child rights. CRC is anchored to the Universal Declaration of Human Rights (UDHR) principle— “all human beings are born free and equal in dignity and rights.” Children are human beings, with equal worth, dignity and freedoms. CRC understands the separate needs these children have from adults in order to grow and develop into their full potential. It recognizes the rights of children in contact with the justice system and believes in children’s rehabilitation and reintegration to the community. Under the guise of either ‘rescue’ operations, supposed intervention or lack thereof in non-functional child-caring units claiming to be *Bahay Pag-asa*, CAR and CICL in the Philippines continue to suffer, their rights compromised.

It had been apparent that there has been gap in the law and its enforcement, but what has been mostly overlooked is the weak implementation of the law and the lack of adherence to what the law mandates, which then allows the persistence of abuse and maltreatment of CAR and CICL. What has been less looked at by legislators and critics of the amended JJWA is that despite a law that is supposed to create a separate juvenile justice system and should protect, rehabilitate and not deprived children of their liberty, a decade after the JJWA has been enacted, children are still arrested like adults and detained in living conditions not shy away from prison, if they are not already placed in prison.

Abusive, atrocious conditions and child rights violations children undergo are telling enough for concrete measures, awareness and promotion of the law to key actors and government agencies involved, appropriation of funds, coordination with national and local government units so as law is realized fully. Full implementation should highly be accounted first.

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