



Save the Children
UK

BREAKING RULES:

**Children in Conflict with the Law
and the Juvenile Justice Process**

THE EXPERIENCE IN THE PHILIPPINES



Save the Children UK is a member of the International Save the Children Alliance, the world's leading independent children's rights organisation, with members in 27 countries and operational programmes in more than 100 countries.

Save the Children works with children and their communities to provide practical assistance and, by influencing policy and public opinion, bring about positive change for children.

BREAKING RULES: Children in Conflict with the Law and the Juvenile Justice Process
The Experience in the Philippines

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LIST OF ACRONYMS AND ABBREVIATIONS

AKAP-AHRC	Adhikain para sa Karapatang Pambata – Ateneo Human Rights Center
BBRC	Bagong Buhay Rehabilitation Center
BCPC	Barangay Council for the Protection of Children
BCYW	Bureau of Children, Youth and Women
BJMP	Bureau of Jail Management and Penology
Brgy.	Barangay
CCCWPC	Cebu City Council for the Welfare and Protection of Children
CCSW	City Council Social Worker
CEDC	Children in Extremely Difficult Circumstances
CICL	Children in Conflict with the Law
CJC	Children's Justice Committee
CJP	Children's Justice Program
CNN	Cebu NGO Network
CSU	Civil Security Unit
CSW	Court Social Worker
CVO	Civilian Volunteers Organisation
CWC	Council for the Welfare of Children
CYRO	Children and Youth Relations Officer
CYRS	Children and Youth Relations Section
DILG	Department of Interior and Local Government
DSWD	Department of Social Welfare and Development
FGC	Family Group Conference
FGD	Focus Group Discussion
IRR	Implementing Rules and Regulations
JJG	Juvenile Justice Group
JWU	Juvenile Welfare Unit
LGC	Local Government Code (1992)
LGU	Local Government Unit
NAPOLCOM	National Police Commission
NCSD	National Council for Social Development
NGO	Non-Government Organisation
PAO	Public Attorney's Office
PAYO	Philippines Action for Young Offenders
PD	Presidential Decree
RA	Republic Act
RCDD	Regional Center for Drug Dependents
RRCY	Regional Rehabilitation Center for Children and Youth
ROR	Release on Recognisance
RTC	Regional Trial Court
SCUK	Save the Children UK
SPAG	Special Police Auxiliary Group
UN CRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
WCD	Women and Children's Desk

GLOSSARY

amin	plead guilty; admit offence
arbor	compelling someone to give a personal belonging to him/her (e.g. getting children to take off their clothes in exchange for old and worn ones)
areglo	arrange or settle
bagansiya	vagrancy
barangay	the basic political unit of the country and is considered the "primary planning and implementing unit of government policies, plans, programs, projects and activities in the community" (Local Government Code, Sec. 384)
barangay tanod	village or community police; presently known as the Barangay Security and Development Officer (BSDO)
barkada	peer group or gang
bartolina	a room without windows, often referring to a prison cell for solitary confinement; any room that is poorly ventilated or very small.
boreum	self-mutilation
buntog	colloquial term for prostitute; literally means quail; used figuratively, it implies the act of hopping from one partner to another
delihensiya	petty extortion
katarungang pambarangay	village justice
lupon tagapamayapa	peace-and-order or peace-keeping committee
mayor	senior adult inmate
mingaw	loneliness
takal	being beaten with a 2" x 2" piece of wood

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the children, whose life stories, thoughts and dreams are mirrored in every page of this book and inspire the continuing work to promote and advocate for the rights of children who come into conflict with the law.

Foreword

BREAKING RULES presents the summary and consolidated findings of three research studies commissioned by Save the Children-UK in three key cities in the Philippines—Metro Manila in Luzon, Cebu City in the Visayas and Davao City in Mindanao. These studies aim to examine the trends in the statistics and the nature of problems and issues confronting children in conflict with the law (CICL) as they go through the formal justice system.

These studies intend to inform the current work of Save the Children-UK and its partners on Children's Justice, which aims to introduce changes in the administration of justice for CICL at the local level using the principles of children's rights and restorative justice. The project emphasises the diversion of CICL at the *barangay* (community) and police levels, knowing very well that children experience abuses as they go through the criminal justice system. This is done through the piloting of a diversion and prevention of offending programme for CICL in Cebu City at the barangay level, and through capacity-building and awareness-raising activities of the five pillars of the justice system, namely, law enforcement, the court, the prosecution, the penal system and the community.

At the community level, our partner non-government organisations (NGOs) and government entities among the pillars of justice are developing support systems for children that will facilitate the reintegration of former CICL and prevention of offending or re-offending. This comes in the form of peer support groups—former CICL trained to become peer facilitators who can reach out to other children at risk of offending in the communities. Adult volunteers from the different communities provide the children with another level of support—monitoring of the progress of former CICL who have been reintegrated into their families and communities, and awareness-raising activities among parents and other significant adults on child rights and children's justice issues. Children's justice committees composed of barangay officials, members of the *lupong tagapamayapa* (village justice committee), community volunteers and other stakeholders conduct mediation sessions and diversion.

While the methods and approaches need further refinement, gains from such a process are already evident. Most notable are the high incidence of children being diverted from the formal justice system and the behaviour change among them. It can

also be noted that duty bearers and stakeholders are participating and are involved in the process of mediation, diversion and prevention of offending/re-offending.

Although several studies have been done on children's justice, most of these had very little quantitative data. Statistics usually focused on children who are in prisons, while other studies used secondary data. Some studies attempted to present the national situation, but fall short of providing an analysis of the different local contexts. Moreover, the perspectives of the children were seldom highlighted. While the direction of the recommendations arising from the studies seems clear in terms of national policies, concrete recommendations that can be carried out at the local context were not clearly articulated. Given these, we decided to embark on the three studies precisely to inform the work that our partners are doing at the local level, where impact on the lives of the children is more evident.

Addressing issues of children in conflict with the law requires a holistic and integrated approach. More and more, CICL are viewed with suspicion and as a threat, and delinquent children and youth are seen primarily as offenders who should be punished

and not as children and youth who present clear needs and concerns. We need to correct this perspective and approach the issue with a clear rights perspective.

With this piece of work on Children's Justice, we hope to reflect on prevailing thinking and paradigms, value systems and practises in addressing issues of children in conflict with the law. May this work remind us that:

- CICL have rights just like other children
- CICL have needs, issues and concerns that must be addressed in a holistic and integrated way.
- CICL are not just passive objects of disdain, concern or sympathy. They are members of society who can actively take part in their own development, and shape their own environment only if they are provided venues to do so.
- We must look at issues of CICL in the broader context of family, community and society. Addressing issues of CICL means looking at underlying factors and causes that brought about this situation, and adopting complementary strategies at the community, local and national levels.

- Programmes, policies and systems for intervention should be grounded on the concepts and principles of prevention, protection and upholding the children's best interests as embodied in the United Nations Convention on the Rights of the Child (UN CRC).

As we pursue our work on Children's Justice, it is important to challenge old thinking and traditions, and explore new

and creative solutions to reframe existing policies, programmes and practices; and restructure systems and organisations. In doing so, we will be able to move toward a more responsive, relevant and rights-based approach in addressing issues of children in conflict with the law.

Rowena D. Cordero
Programme Director

Executive Summary

This report presents the consolidated findings of three researches commissioned by the Save the Children-UK (SC-UK) Philippines Programme that looked into the profile of children in conflict with the law (CICL), and their situation and experiences in the justice administration process in the three main urban centres in the Philippines—Metro Manila, Cebu City and Davao City.

This consolidation research summarises the major findings and recommendations of the three studies. It also articulates its own conclusions and recommendations based on the findings of the three studies. The study also discusses the concept of “restorative justice” and the more specific process called “diversion” as an alternative approach to handling cases of CICL.

Restorative justice is a system of justice wherein the offender and the victim are brought together to undergo a process of mediation in the community with the goal of restoring balance and harmony in the community and with the offender making some form of reparation and/or apology to the victim to repair the harm done. Diversion, which refers to the various processes by which CICL are prevented from entering the formal criminal justice system, is one example of how restorative justice is

applied. With the abuses experienced by CICL as soon as they are caught committing an offence and brought to the authorities, with the violation of their rights as they enter and go through the justice process, and with the poor condition in custodial facilities, restorative justice becomes imperative.

Based on the three researches, the consolidated study found that poverty is a major factor that puts children at risk of offending—pushing children and young people outside their homes into the streets among their peer group. The children also tend to offend in the process of going about their livelihood activities such as peddling and begging, which are actually violations of laws or ordinances in many localities. The consolidated study also reports that there are more boys than girls among the CICL. The average age was pegged at 14.4, with the proportion of older children in custody increasing with age. The majority of the CICL covered by the studies reached only Grade 6.

Family violence—and not the influence of gangs as is commonly viewed—was identified as a major factor for children becoming at risk of offending. Three types of common offences were identified: offences against property, usually involving



cellphone snatching and shoplifting; substance abuse; and violation of local ordinances like curfew and vagrancy. Offences were found to be most commonly committed in shopping malls and in very congested areas, and on the streets. A significant number of first-time offenders among CICL who are arrested are taken to court and taken into custody. The arresting officer was usually the police, followed by the *barangay tanod* (village police; or also

known as the Barangay Security and Development Officer, or BSDO).

One of the major findings about the profile of CICL was that almost all of the CICL involved in the studies were first-time offenders. The majority in various custodial centres (particularly in Cebu) were found to be there for the first time and the majority of them were also first-time offenders.

The researches also revealed the various ways by which the rights of CICL are violated and/or ignored in the process of justice administration. The following were highlighted:

- Abuses from law enforcers—verbal, physical and psychological—were common occurrence and the rights of children were often denied or violated, such as their right to bail, privacy and information; there is pressure for children to plea for guilt and representation by public lawyers tend to be superficial and last-minute.
- Conditions in both police cells and jails were very poor, with basic facilities and supplies essentially lacking.
- Penalties set by outdated laws tend to be quite stiff in proportion to the

offences usually committed by children.

- Practices and procedures in most of family courts remain hostile or prejudicial to CICL.
- International minimum standards were often not upheld.
- Non-custodial sentences were seldom used and suspended sentences are usually spent in detention in rehabilitation centres.

On a positive note, the study cites some successful experiences in diversion, particularly highlighting the work of the Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, (FREELAVA), Inc., a non-government organisation (NGO) that has been successfully diverting CICL in twelve barangays in Cebu City. It also mentions the case of shopping mall owners signing a memorandum of agreement with the Community Scouts Rehabilitation and Youth Guidance Center to turn over to the barangay children caught shoplifting within their premises. (The Community Scouts is a rehabilitation facility established by the Cebu City Metropolitan District Police as a venue for processing cases involving CICL.) However, while these successful experiences are worth noting, the practice of diversion

and mechanisms for this remain in most part non-functional or non-existent.

Finally, the report proposes several action points that the different pillars of justice (law enforcement, the courts, prosecution, correction and the community) can take to prevent the entry of CICL into the criminal justice system, improve the situation and protect the rights of CICL who are already in the justice system, and improve their own practices:

1. For all pillars of justice to adopt diversion in the community particularly for all first-time offenders, unless their offences are very serious, and in all stages of justice administration.
2. For local government units (LGUs) to pass ordinances that will mandate the setting up of and provision of support to existing structures at the community level (e.g. Children's Justice Committee [CJC] of the Barangay Council for the Protection of Children [BCPC], *lupong tagapamayapa* [peace-keeping committee]) as mechanisms for justice administration for children at the community level.
3. For LGUs to integrate CICL matters, especially those concerning diversion,

into the city children's welfare codes, and to ensure that local ordinances do not make offences for children that are not offences for adults, such as curfew, and that local ordinances emphasise non-penal child-friendly sanctions or penalties.

4. For all pillars to conduct training among barangay officials, barangay tanods, influential local people, and government social workers and other personnel, and the police in the handling of children, also incorporating child-sensitive practices, and practices that promote diversion in all guidelines, manuals and handbooks.
5. For the Police to adopt structural changes within its organisation that will ensure more effective and efficient handling of cases of children, such as creating a special Directorate for Women and Children, which brings together the Investigation and Community Relations units.
6. For the court and the police to ensure that the rights of CICL are recognised, such as right to bail, privacy and expression.
7. For the courts to speed up trial and avoid keeping children in custody, such as by ensuring that pre-trial cus-

tody is limited, children (especially first-time offenders) are released on recognisance (ROR) and non-custodial sentences are prioritised.

8. For the correctional to upgrade the status of jails, rehabilitation centres and other detention facilities to more humane conditions, doing away with facilities or practices that impede the development of and subject children in detention to abuse (e.g. use of observation rooms to isolate children upon arrival, shared cells or compounds with adult detainees) and adopting a semi-open programme for CICL.
9. Drawing children's participation in CICL issues through the following.
 - Informing children in the criminal justice system of their rights.
 - Ensuring that the voices of children are sought and heard in the community, in court, in institutions and in co-ordination bodies; and that they are able to claim their rights.
 - Interested young people, especially former CICL, after appropriate training and selection, are encouraged to assist current CICL in their re-integration into the community, such as

through recreational activities, positive peer example and counselling.

- Involving street children and street gangs in responding to and preventing offending.
10. For the five pillars at the national and local levels to co-ordinate through joint review and/or formulation of strategies for CICL, with the Council for the Welfare of Children (CWC) taking a stronger lead at the national level; well-coordinated decisions and implementation of good practices; joint monitoring of the implementation of diversion, with local government officials taking the lead; and joint advocacy on behalf of children at all levels.
 11. For the five pillars and civil society to work towards raising awareness on child rights and preventing offending by the pillars and civil society through training/discussions on the best interest of CICL and prevention of offending and re-offending, and also incorporating the relevant parts of the UN Convention on the Rights

of the Child (UN CRC), other international instruments, the proposed juvenile justice bill and national laws;

12. For the five pillars and civil society to undertake advocacy involving the media and the private sector in supporting diversion and restorative justice, and pushing government units at all levels to participate in improving the quality of children's lives by analysing and addressing the concerns of children (gained from their participation) through a local plan of action.
13. For NGOs working in the area of care and protection to also link up with NGOs active in children's justice and with the five pillars

The study also puts forward the following recommendation that will help further develop models of restorative justice in the Philippines:

- further research that will examine the most appropriate models of restorative justice, specifically the practice of indigenous communities that may constitute restorative justice

- development of guidelines on the principles and good practice of diversion—drawing from the experiences of FREELAVA—that can be disseminated to the pillars of justice
- replication of successful experiences of diversion in other areas

Several lessons were also derived from these experiences in diversion and mediation, as follows:

- Local initiatives and/or NGO-barangay partnerships are essential in establishing BCPCs.
- Local ordinances, the political will (of mayors, barangay captains, and other local officials), advocacy in fostering BCPCs, and Municipal and City

Councils for the Protection of Children (CPCs) have a very important role in instituting diversion.

- Appointment of members of the lupon or the CJC must not be limited to barangay officials who tend to be replaced as members once they lose in the local elections.
- A variety of models are needed to enable community diversion to take place effectively.
- By bringing in the parents, social worker and lawyer at the investigation stage, the police can pave the way for a better understanding between the offender and his/her parents and for the consideration of diversion measures and ROR.

“The vision of justice isn’t about saving money or averting prison construction—and it’s certainly not about being soft on crime. It’s about making things right instead of lamenting what’s wrong, cultivating strength rather than perpetuating failure.”

– Minneapolis Star Tribune editorial, 11 July 1993

MICHAEL AMENDOLIA/NETWORK (2003)



1 INTRODUCTION

The criminal justice system in the Philippines – characterised by very poor and inadequate facilities, inhumane conditions, inefficient handling and resolution of cases, among others – has often failed for adult offenders and more so for children who have come into conflict with the law (CICL). These children, who are likely to have experienced abuse and neglect in their own homes and in their immediate environments, are now forced into harsh and dehumanising situations within the adult criminal justice system that expose them to further abuse and tarnish any hope for them to be reintegrated into their families and communities and become responsible and productive citizens.

This is most evident in the fact that many children caught for various offences are being held in detention. The appalling conditions in most detention centres have compelled the Supreme Court of the Philippines to issue a directive to judges on the “Special Treatment of Minor Detainees and Jail Decongestion.” Issues regarding human rights become apparent in the way the current process of justice administration for children is carried out. There is no excuse for violations of children’s rights because the protection of children is the direct re-

sponsibility of the State, which in the case of the Philippines, has ratified the United Nations Convention on the Rights of the Child (UN CRC) in 1990 and has enshrined the promotion and protection of children’s rights in its 1987 Constitution.

Wherever possible, children’s difficulties should be resolved in their respective communities, with the resolution depending on the seriousness of the offence or whether it is a further offence. This may range from a warning given by the police to mediation with a written agreement. This is the essence of what is called *diversion*. Diversion is the generic term given to describe the various processes that may be used to ensure that CICL are prevented from entering the formal justice system.

Restorative justice, as opposed to retributive justice (or justice attained by punishing or sanctioning the offender, which is the spirit of the existing justice system in the Philippines), is increasingly seen as an effective way by which diversion can be done. Restorative justice involves bringing together the offender and the victim in mediation in a community setting, using respected community members as mediators. These elements were common to most

traditional community justice systems and had, as they do today, the goal of restoring balance and harmony in the community by the offender making some form of reparation and/or apology to the victim to repair the harm done. The offender experiences justice in a very real way by facing his/her victim, confronting the offence and hopefully working out a solution that is acceptable and mutually beneficial to all parties concerned. Although most common at the community level, restorative justice can take place while a child is in pre-trial detention or even after finding guilt and being sentenced by a court. Its use in contemporary times, however, requires that the offender admits to the offence, that certain justice safeguards are met and that the child's rights are not infringed.

Restorative justice in its strictest sense as described above may not always be appropriate or possible, as when the case is very minor and only requires a police warning, in cases like drug taking where there is no victim (except the offender), or where the victim is unwilling to attend. However, diversion can still take place through the police and in a variety of conditions. Through a diversion process, and upholding the principles of restorative justice in the community, a child in conflict with the law stays under the care of his/her parents or guardian in their community and is not

removed from their home with all its negative consequences until such time the victim and the CICL arrive at an agreement.

Diversion at the level of law enforcement, on the other hand, encourages the police to maximise their discretion to use diversion upon their initial contact with children. Moreover, in restorative justice, the role of the community is given due recognition in resolving cases involving children through its own mediation so that reconciliation between offenders and victims can take place.

The use of diversion had been found to have a positive impact on the rates of offending among children in a number of countries. In the case of New Zealand, although the number of apprehensions has risen among those under 17 years of age, the proportion of children among the number of apprehended offenders remained relatively stable at 21% to 23%. The positive impact of the approach was also indicated by the findings of a study on the effects of the conduct of family group conferences (FGCs) on offenders six years after the conduct of the FGCs. It revealed that of the 108 offenders sampled, half felt that things had gone well for them because of the FGC while one-fourth felt that it had gone very well; only 10% felt it had gone badly. By the end of the six years, more than

two-fifths were not reconvicted or were convicted only once, while only one-fourth were classified as being persistently reconvicted. The study also found that the strategies geared at facilitating their social inclusion were those that most helped offenders to feel good about themselves and become reintegrated into the community (Maxwell and Morris 1999).

The positive experiences in restorative justice in these countries, as well as the numerous instances where children's rights are violated as they go through the justice process in the Philippines, underscore the need to adopt restorative justice principles in the existing justice system in the Philippines or in the formulation of a juvenile justice system in order to ensure that the rights of CICL are fulfilled and protected. Any recommendations, however, need to be based on in-depth research that would take into account the data available and the views of stakeholders, including CICL, to unearth the details in the profile of these children and the process they go through and setting these against the expected minimum international standards.

It is for this reason that in 2001, the Save the Children-UK (SC-UK) Philippines Programme embarked on researches that looked into the profile of CICL, and their situation and experiences in the justice administration process in the three main population centres in the country—Metro Manila, Cebu and Davao, representing Luzon, Visayas and Mindanao—the three main island groupings (see figure on page 5).

These studies show how much the country is in need of an organised system of diversion, including a community-based restorative justice model of mediation. The conclusions and recommendations of this consolidated research study focus mainly on the need to ensure that all first offenders, many second offenders and even some third-time offenders (unless charged with murder, rape or an act of extreme violence) should be diverted from the court process through a graduated range of community-based options—from warning to mediation (with its varied options for agreement), depending on the seriousness of the offence. This is essential if society and the members of the five pillars of the justice system¹ are

1 The “five pillars of the criminal justice system” refers to the agencies, institutions and groups involved in the entire justice process. These are the law enforcers (the police), the courts, the prosecutors (including the public attorneys), correction (jails and rehabilitation centres) and the community (including elected village officials, informal leaders, adults and parents). In the children's justice perspective, each pillar is viewed as a “duty-bearer” who is duty-bound to protect the human rights of children and promote their “best interest” (defined in Footnote No. 2 in the next page).

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serious about the “best interest of the child.”² It should be emphasised that facing an angry victim and their family in mediation is often more difficult for an offender than simply serving his/her detention without facing the person he/she had hurt.

The consolidation of the three research studies aims to make the findings and recommendations of the three studies more accessible. These researches are some of the most comprehensive studies on CICL, both geographically in that no such study has been done before in Cebu and Davao, and in terms of quantitative data and the breadth of process investigated.

While some of the conclusions and recommendations in this consolidation were not specifically mentioned in the three reports, these were based on data generated by the studies. In particular, the data highlight certain approaches that need to be adopted if the “best interest of the child” in relation to the administration of justice is to be met

as set out in the UN CRC and other relevant international instruments. It is from this standpoint that the conclusions and recommendations are made.

OBJECTIVES OF THE RESEARCH

The three studies had the same objectives, namely:

1. To generate and analyse quantitative and qualitative data on the situation of children in conflict with the law;
2. To describe the processes in administering children’s justice at the community, police and prosecutor level and to identify gaps and problems;³
3. To establish the various stages CICL are in within the justice system;
4. To understand better the impact of the criminal justice system by seeking the views of children who have been directly affected by it;

2 According to the UN CRC, the “best interest of the child” must always be the primary consideration in all actions undertaken by any public or private institution/agency or individual concerning the child. It defines “best interest” as the “protection and care as is necessary for [a child’s] well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures” (Article 3.2).

3 The Metro Manila study added “court and correction” to Objective No. 2, which was also what was actually done by the other two research teams.



The Research Sites

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5. To establish trends in offences committed by CICL at least two years back (demographic profile, areas of high incidence of crime, kinds of violations, among others); and
6. To recommend ways by which SC-UK can most strategically assist in sustainably diverting children from the criminal justice system.

Aside from the above objectives, on the one hand, the Cebu study also aimed to identify the factors or circumstances that influence children to commit offences. The Davao study, on the other hand, also added the following as its objectives:

- To establish differentiated situations of children in conflict with the law, at various stages in the justice system, arising from the children's gender differences; and
- To facilitate stakeholder discourse towards collection of practical and strategic recommendations on the issue of diversion.

METHODOLOGY

RESEARCH SITES

The three researches were all conducted in urban areas, with the exception of the Davao study, which also sampled a rural community within the province. The cities and/or municipalities covered were as follows:

- **Metro Manila:** Manila, Quezon City, Pasay City, Parañaque City and Kalookan City;
- **Cebu:** Cebu City, Mandaue City, Talisay City, Lapu-lapu City and the municipality of Consolacion; and

Davao: Davao City, Tagum City (in Davao del Norte Province), the municipality of Nabunturan (the capital town of Compostela Valley Province) and the municipality of Braulio Dujali.⁴

4 The municipality of Braulio Dujali was included in the Davao study to present the experiences of reintegration of children charged with theft by guards of a plantation company located in the area.

SOURCES OF DATA

The three research studies used a generally similar approach in generating the needed data. The approach included the following:

- **Interviews with stakeholders in the five pillars of the justice system.** A total of 496 interviews (349 in Metro Manila, 71 in Cebu and 76 in Davao) were carried out with representatives from the five pillars (see Table 1).
- **Interviews with children.** The three studies interviewed 194 children (5 from each of the 7 detention centres in Metro Manila, or a total of 35 children; 93 from 7 detention centres in Cebu; and 66 children in Davao). In addition, 104 children attended a one-day visual arts workshop and two drama forums in Davao.
- **Children's case studies.** Twenty-one (21) case studies (9 in Metro Manila, 9 in Cebu and 3 in Davao) were written. In addition, the Davao study generated numerous small cameo sketches.
- **Review of documents.** CICL files were studied and analysed at different stages.

Arrest stage. In Cebu, the police recorded 5,951 arrests in the entire research area in 1999-2001. In

Davao City, 2,306 arrests in 2000-2001 were recorded.

At the Family Courts. The three studies analysed 1,246 children's cases in the family courts. The Metro Manila study analysed the files of 706 children involved in 416 cases in the 22 family courts in 2001-2002; the Cebu study, 447 cases in 3 family courts in 2001; and in Davao, 79 cases in the Tagum Family Court in 1999-2001 and 14 cases in Nabunturan in 2000-2002.

In detention centres. The Cebu research looked at 1,821 CICL detained in 6 detention centres in 1999-2001; 93 of these were studied intensively. The Davao research recorded 67 CICL at the Davao City Jail and 31 at the Tagum City Jail. Some of the information were taken directly from the relevant ledgers, while the rest were given by the authorities.

There were also records obtained from the community, such as those on CICL in the urban barangays (villages) of Ermita and San Roque in 2001 and a study of 28 children at the Community Scouts Rehabilitation Center in Cebu in May 2002 (only 6 of the 28 were CICL).

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It is important to point out that certain cities within each study dominated the cases of CICL that were studied. This is expected, as these cities are more populated. Thus, in the Metro Manila study, 80% of the CICL cases examined came from Manila and Quezon City. In the Cebu study, 77% of the police intake cases came from Cebu City. Davao City also accounted for the great majority of cases in the Davao study.

Each study interviewed children, met with stakeholders and obtained information from the centres where CICL are deprived of their liberty – whether officially called jails, detention centres or rehabilitation centres (see Table 2). The jails are run by the Bureau of Jail Management and Penol-

ogy (BJMP) of the Department of Interior and Local Government (DILG), while the Regional Rehabilitation Center for the Youth (RRCY) and the Regional Rehabilitation Center for Drug Dependents (RCDD) are managed by the Department of Social Welfare and Development (DSWD).

DATA COLLECTION METHODS USED

All the studies used documentary research (including comparisons with similar previous related research), review of files and documents, individual interviews, focus group discussions (FGDs) and general validation sessions. The Davao study also used creative approaches to draw out the per-

Table 1. Sources of data by research site and data collection method

	Metro Manila	Cebu	Davao	Total
Interviews with the five pillars	349	71	76	496
Interviews with children	35	93	66	194
Drama forum with children	0	0	104	104
Case studies	9	9	3	21
Records review				
• Arrests	No data	5,951	2,306	8,257
• Family Courts (no. of cases)	706	447	93	1,246
• Detention centres	No data	1,821	67	1,888

ceptions of children, such as the conduct of a visual art shop with 71 children in the Davao City Jail, a poster discussion in the Tagum City Jail and two drama forums, which brought together CICL and stakeholders.

SIGNIFICANCE OF THE STUDY

In the case of Cebu and Davao, this research is the first systematic and in-depth study of CICL in the areas involved. As Prof. Etemadi pointed out in the Cebu research:

- It contributes to the emerging literature on child offenders by taking a closer look into the following aspects:
 - The profile and experience of CICL through the eyes of children;
 - The institutions and processes of the Five Pillars as defined by law on the one hand, and the juvenile justice process in actual practice by stages on the other;
 - A multi-stakeholder analysis taking into consideration the roles and perspectives of the duty bearers in

Table 2. List of centres involved in the research studies per research site

Manila	Cebu	Davao
<ul style="list-style-type: none"> • Kalookan City Jail • Paranaque City Jail • National Training School for Boys • Pasay City Youth Home • Manila Youth Reception Center • Marillac Hills • Molave Youth Reception Center 	<ul style="list-style-type: none"> • Mandaue City Jail • Lapu-lapu City Jail • Talisay City Jail • Consolacion Municipal Jail • The Bagong Buhay Rehabilitation Center of the Cebu City Jail • Cebu Provincial Detention and Rehabilitation Center (under the Office of the Governor) • Regional Rehabilitation Center for Youth 	<ul style="list-style-type: none"> • Juvenile Welfare Unit of the Davao City Jail • Tagum City Jail • Regional Rehabilitation Center for Youth • Regional Rehabilitation Center for Drug Dependents

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different institutions and at various levels (CYROs [Children and Youth Relations Officers], barangay officials, *tanods*, local social workers, DSWD social workers, RTC [regional trial court] social workers, probation officers, prosecutors, jail wardens and administrators, and judges) as well as the observations of community members to balance the children's views. Inputs from NGO development workers also enriched the analysis.

- Diversion at the barangay and police levels;
 - Rehabilitation and reintegration of CICL; and
 - Impact of the CICL experience as perceived by the minors themselves.
- The baseline data generated by this research could be used as a benchmark by the concerned institutions.
 - Implications drawn from the study serve as basis for SC-UK programmes thrust and intervention.
 - Findings of the study are useful for advocacy purposes by the NGOs and minor offenders as well as the duty bearers.”

ORGANISATION AND HIGHLIGHTS

All studies had sections on the following:

- Introduction and methodology;
- Related studies in the Philippines;
- International and national law concerning CICL;
- Profile of CICL;
- Attitudes of the duty-bearers within the five pillars of the justice system;
- Case studies; and
- Quantitative tables.



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There are, however, certain differences in the content of the studies. The Metro Manila study has a chapter on diversion. Cebu and Davao have a chapter and section, respectively, on the experience of CICL in the justice system based on interviews with the children; that of the Metro Manila study is contained within its case studies. Both the Cebu and Davao studies have a useful flowchart diagramming how children may go through the juvenile justice process. All studies have a section/chapter on the overall analysis or conclusion, including gaps and recommendations.

Some of the highlights of the different studies also jointly add a greater richness to the combined study. The unique contributions of each study are presented below.

METRO MANILA

- A list of penal and non-penal city ordinances, the actions required or prohibited and the penalties, where relevant
- A chapter tabulating the views of members of the five pillars of justice concerning CICL issues, plus the composition of these groups by sex

CEBU

- A chapter on the views of CICL about their experience of the juvenile justice process based on interviews with them
- A 122-page tabulation of the results of interviews and the research
- A comparison between
 - The experiences of CICL and the Implementing Rules and Regulations (IRR) of Presidential Decree (PD) 603 or The Child And Youth Welfare Code of 1974
 - The IRR of PD 603 and the Supreme Court Rule on Juveniles in Conflict with the Law
 - The experience of CICL in Juvenile Justice and the UN CRC

DAVAO

- The issue of human rights violations in Davao in the form of summary executions of suspected offenders. Between 1999 and September 2003, 18 of 177 killed (or about 1 in every 10 victims) were children aged 14 to 17. This was despite Davao City being named the “most child-friendly city in the Philippines” by the National Council for the Welfare of Children (CWC) and having a quite enlightened Davao City Children’s Code

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- An emphasis on how the economic situation is affecting children's lives both as a result of globalisation and locally through big businesses

RELATED STUDIES

Many national and local studies or reports have already been completed on the subject of children in conflict with the law. The researchers for this report have very much acknowledged their deep debt to the work already done and on which this report has built and we hope taken forward.

A major contribution was the study, *Situational Analysis on Children In Conflict with the Law and the Juvenile Justice System*, conducted by the AKAP-AHRC (1998), which contextualised the situation of CICL within the criminal justice system. It reviewed the data and the findings of six studies (1993-1996) on CICL and their treatment during arrest, detention, adjudication and post adjudication. The studies are as follows:

1. The National Police Commission (NAPOLCOM) Technical Committee on Crime Prevention and Criminal Justice (1996), *Survey of Non-Institutional Offenders at the National Capital Region*,

2. The Philippine Action for Youthful Offenders (PAYO, 1996), *Youth in Detention: Issues and Challenge*; 232 CICL were interviewed in 18 key cities and it concluded that children are trapped in institutions that are very punitive in character;

3. The National Council for Social Development (NCSO) Foundation of the Philippines (1994), *Children and Youth in Conflict with the Law: A Situational Analysis in Metro Manila, Cebu City, Olongapo City and Baguio City*; this looked particularly at the legal protection of street children and CICL

4. The BCYW (Bureau of Children, Youth and Women)-DSWD and NAPOLCOM Crime and Coordination Service (1993), *Survey on Youth Offenders at Camp Sampaguita and Correctional Institute for Women*. The survey concluded that poverty is one of the causes of juvenile delinquency. With respect to the criminal justice system, it concluded that:

- Law enforcers had no training in dealing with CICL during apprehension;
- The facilities in custody do not comply with international standards; and
- There is no rehabilitation programme for children while in confinement.

The 1998 AKAP-AHRC study confirmed that most CICL are usually male, between the ages of 14 and 17, have low educational attainment, are from low-income families and are middle or in-between children with about four to six siblings. It had the following recommendations:

1. Law enforcement officers, prosecutors, judges, court social welfare officers, public attorneys and legal aid groups should be given orientation seminars on international human rights instruments and child-related laws with emphasis on juvenile justice.
2. Government agencies and institutions engaged in defending youthful offenders should coordinate their efforts in providing protection to these children by establishing a common monitoring system covering the various stages of the juvenile justice process.
3. Specialised juvenile and domestic relations courts should be created.
4. Support programmes for street children and other similarly vulnerable children should be increased as preventive measures.
5. More facilities exclusively for children who are detained and sentenced should be constructed to prevent mingling with adult offenders.
6. Community awareness of and involvement in non-institutional rehabilitation programmes and services should be enhanced.
7. Non-governmental organisations engaged in multi-disciplinary outreach programmes with children in conflict with the law should form a network to maximise extension of assistance to these children.
8. A comprehensive review of existing laws and procedures on juvenile justice in light of the CRC and other international standard-setting instruments affecting children in conflict with the law (CICL) should be undertaken for purposes of law reform.

Various studies have established that many arrested children are either children on the streets or of the streets when they were apprehended. A study by Dr. Exaltacion Lamberte (1996), *Today's Metro Manila Street Children*, aimed to provide benchmark information about the life situations of street children in Metro Manila, specifically, Manila, Pasay City, Quezon City and Mandaluyong City. The study conducted face-to-face structured interviews with 700 sample street children. According to the study, the main deviant behaviours street children engaged in are gambling, use of

prohibited drugs, sexual behaviours and commission of illegal acts. The data also showed that 52% had been previously arrested by the police, 70% in connection with *bagansiya* (vagrancy⁵) or police raids.

The study also revealed that upon arrest, 30% of the children were punished by *takal* (being beaten with a 2" x 2" piece of wood); 26% were asked to clean the precinct; 5% were asked to give a massage to the police; and 2% were asked to give money to the police.

A participatory action research conducted by the Tambayan Center for the Care of Abused Children, Inc. (2000) with street adolescents (113 children – 79 girls and 34 boys/young men) underscored the vulnerability of street adolescents to police arrest. The majority (82%) of the adolescent respondents claimed to stay in the streets day and night. In the evenings, the adolescents would go to community discos and other outings, or engage in drug use, petty theft and prostitution. The main risk associated with staying in the streets was that of being arrested by abusive law enforcers, which was the response of 44% of the re-

spondents. Among the violations they acknowledged were sniffing rugby, vagrancy, petty theft and going against the 10 p.m. curfew imposed by the city.

Second to peers (48%), law enforcers (38%) were usually tagged as the perpetrators of abuse in the streets, owing to their rough treatment of and violence especially towards male juveniles. In terms of meeting daily needs, a third of the respondents mentioned petty crimes (such as picking pockets), prostitution and *delihensiya* (petty extortion) as a source. The high prevalence of substance abuse was also noted (69%) and that it is often used as a coping mechanism by children against hunger and boredom (Tambayan 2000).

Ortiz (2000) conducted a study on the discernment of out-of school children in Metro Manila and found that the 300 respondents' level of discernment is very low. He used Kohlberg's six stages of moral development as a framework.

According to the study, "Adherence to the existing laws, regulations and policies are not the values or norms followed by the

5 Vagrancy is a minor offence committed in violation of a law that prohibits moving about or wandering idly without lawful or visible means of support, without a permanent home, and relying on begging.

respondents. They do not clearly know what is right and what is wrong.” The discernment study found that even at the age of 18, out-of-school children determined the rightness or wrongness of their actions on the satisfaction of their needs and that of others. This has several implications on

children’s accountability to crimes committed.

Other studies and the outcomes of workshops very much resonate the above findings and those of the three studies being summarised in this consolidated report.

*“Rights?
Maybe we do not have that because we are still young...”*

– Child detained at the Tagum City Jail in Davao del Norte Province

MICHAEL AMENDOLIAN NETWORK (2003)



2 SUMMARY OF RELEVANT INTERNATIONAL INSTRUMENTS AND PHILIPPINE LEGISLATION

INTERNATIONAL LAWS

Various international instruments set down standards and procedures by which CICL should be treated from the time of arrest through all the steps in the process. These include the International Covenant on Civil and Political Rights (1966); the UN CRC (1989), which is the first international instrument that adopted a comprehensive specific child rights approach; and other international instruments concerning juvenile justice. Although international minimum standards for most aspects of children's justice exist as a guide for all States, the specific legal national regulation is left to the ratifying States.

In addition to the UN CRC, the UN has set out various rules and guidelines to assist states in drawing up national laws for children's justice. These include the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985); the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines 1990); the UN Standard Minimum Rules for Non-Custodial Sentences (Tokyo Rules 1990); the UN Rules for the

Protection of Juveniles Deprived of their Liberty (JDL Rules 1990) and the Vienna Guidelines (1997), which describes how the UN CRC, Rules and Guidelines can be put together in practice.

PHILIPPINE LEGISLATION⁶

The **Philippine Constitution of 1987** addresses the protection of children. In addition, the Philippine Congress and the Supreme Court have provided a specific set of laws and rules for dealing with CICL. These rules include the following:

- **Republic Act (RA) 8369** (1997), or the **Family Courts Act**. RA 8369 established family courts all over the country and their jurisdiction.
- **Rule on Juveniles in Conflict with the Law**. Issued by the Supreme Court in February 2002, this rule now implements Presidential Decree (PD) 603 and other laws. It supersedes the Rules and Regulation on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (1995) and the Revised Rules on Criminal Procedure for CICL (1932; though still applicable for

6 For other national legislation relevant to the barangay, please see the subsection on local ordinances.

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adult offenders) but both these laws are supplementary on those areas not covered by the Rule on Juveniles in Conflict with the Law (such as the procedure for preliminary investigation and bail).

- **Supreme Court Administrative Circular No. 14-93.** This instructs that all disputes should be subject to barangay conciliation before filing a case in court unless the maximum penalty is over one year or the maximum fine is Php 5,000 (around US\$89 in July 2004⁷).
- **Rule on the Commitment of Children.** This ruling took effect in April 2002 (Administrative Memorandum [AM] No. 02-1-19-SC). It is the procedure applied in court when a child is legally entrusted to the care of the Department of Social Welfare and Development (DSWD) or any duly licensed child-placement or child-care agency or individual (parent/guardian or any interested party). This Rule applies to: (1) a dependent child, without parent/guardian, or whose parents/guardian for good reason wish to be relieved of care and custody and so is dependent upon public support; (2) an

abandoned child; and (3) a physically or emotionally neglected child. If the CICL is found to be one of these children, the DSWD or any licensed child-placement or child-care agency may file a petition for the commitment of the child.

- **R.A. 7610 (1991), or Special Protection of Children against Child Abuse, Exploitation and Discrimination**
- **Rule on Examination of a Child Witness,** issued by the Supreme Court and effective beginning December 2000.

BARANGAY LEGISLATION

Barangay⁸ legislation is very important in undertaking diversion from the formal justice system. It is based on two major legislations, PD 603 and the Katarungang Pambarangay (Barangay Justice System).

PD 603 (1974) mandates the establishment of the barangay council for the protection of children (BCPC), which is a multi-sectoral body tasked with formulating policies and programs to promote and protect children's rights at the barangay level.

7 US\$ 1 = Php 55.93 in July 2004.

8 The barangay is the basic political unit of the country and is considered the "primary planning and implementing unit of government policies, plans, programs, projects and activities in the community" (Local Government Code, Sec. 384).

The **Katarungang Pambarangay** was set in place with the promulgation of PD 1508 in 1978. It was strengthened by provisions in the Local Government Code of 1991 and emphasised by the Supreme Court in its Administrative Circular No. 14-93 issued in July 1993. Under the Katarungang Pambarangay, conciliation can be performed by a *Lupong Tagapamayapa* (peace-and-order committee) for all disputes where the parties involved are from the same barangay. The law prescribes a maximum penalty of one-year imprisonment or a fine of Php 5,000 (US\$ 89) and recourse to the barangay, with certain exceptions, as a precondition before filing a case in court or any government office.

LOCAL ORDINANCES

The Local Government Code gives the city, the municipality and the barangay the power to enact laws at their respective levels of governance. Local authorities have produced both penal and non-penal ordinances. In the three study areas, there are local penal ordinances that apply only to children such as violation of curfew, substance abuse, anti-peddling, smoking and use of tobacco, loitering and playing video games. In Cebu City, the major ordinance violated is City Ordinance (CO) 1361, which rules against littering. With the enforcement of this ordinance, children are

arrested while seeking food, plastic articles and bottles from the rubbish, a graphic example of “survival offending.” The ultimate punishment of custody is sometimes imposed, ranging from one day to one year. Although graduated fines are often the most likely sentences, failure to pay could still lead ultimately to custody. The Metro Manila report presents examples of these local ordinances in the cities studied.

In Davao, the Davao City Children’s Welfare Code became an ordinance in 1994 with the UN CRC as its framework. Despite this, it did not address issues concerning CICL. It has a curfew provision for children less than 15 but stipulates that law enforcers should escort these children home. It also emphasises parents’ responsibility to keep their children at home which, if ignored by their children, could result in the parents being punished by doing community service. Unfortunately, the law enforcers still follow the city laws on curfew circa 1957, which regarded curfew breakers as law offenders. As a result, children are locked up in congested police stations overnight. This is strictly against the new Code and is an example of how these local ordinances are interpreted in a way that suits the convenience of the enforcers and ignores the rights of the child.

“I have always been a hard-headed child. Do you know why children are hard-headed? Because some parents lack love and caring. How come children do not obey their parents? Because they see what their parents do. That must be why children go to jail.”

– Joy, 16

MICHAEL AMENDOLIA/NETWORK (2003)



3 PROFILE OF CHILDREN IN CONFLICT WITH THE LAW

POVERTY BACKGROUND

Poverty is a major factor in relation to CICL and is at the root of survival offending. Survival offending involves committing a violation or offence while in the process of carrying out one's livelihood or in the act of survival. Violation of laws against peddling or selling goods on the street, or against littering, as well as petty thieving are examples of survival offending. So are being and working on the streets, both often categorised as "loitering" or being a "vagrant." Unlike the better-off, poverty means not being able to "settle" with the police or pay the money required for bail.

The case studies show that poverty is one of the factors invariably linked to children's vulnerability and one of the tipping factors in producing domestic violence. All these put together contribute significantly to putting children "at risk" and to pushing them to live outside their homes and among their *barkada* (gang or peer group) or to running away from home altogether. These situations seem to dramatically increase the chance of offending.

Research quoted in the three studies states that a third of the Philippines' 84.5 million population in 2002 live below the

government's set poverty line of Php 38 per person per day (68 US cents). Other independent studies (IBON Foundation) using government data estimate that 77% of the people are not earning enough to maintain a decent standard of living and that it is even worse in rural areas where almost all (92%) rural families are poor. Figures from the National Statistics Office's Family Income and Expenditure Survey (2000) presents a more distinct picture of poverty and the dismal state of Filipino children: 27% of homes have no electricity; 20% have no access to safe drinking water; about 33% of family heads are unemployed or under-employed (as of January 2002, 10% of the total workforce, or 3.4 million, were unemployed); 15% of families have working children; and 16% and 42% of those with children aged 6-12 and 13-16, respectively, are not able to send their children to school.

GENERAL CHARACTERISTICS OF CHILDREN IN CONFLICT WITH THE LAW

Sex. Findings from all the studies show that more boys than girls come into conflict with the law. In the Cebu study, police records in 1999-2001 revealed that the majority of

children arrested were boys (79%). In Davao City, of the 497 arrested by the police (January-June 2002), the majority (83%) were also boys. These findings were corroborated by the Metro Manila study, which found that the majority (89%) of the 706 CICL handled by the Family Courts in 2001-2002 were boys. Boys also dominated the prisons, with 95% in Cebu in 1999-2001 and 91% in Davao as of November 2002.

Age. The average age of children arrested in Cebu City over the study period was 14.4 years. Very few children below the age of 14 years were held in custody and the proportion of older children in custody increases with age. In Davao, children as young as 5 or 6 could be rounded up but were then handed over to the DSWD.

Education. Majority of the children in the studies have reached Grade 6. In the case of Metro Manila and Davao, 38% and 36%, respectively, have been in high school. In Cebu, 8 out of 10 were out of school at the time of the offence while in Metro Manila, majority have dropped out by the age of 14. Few children had no formal education at all (5% and 1% in Davao and Metro Manila, respectively). According to the Cebu study, children stopped schooling because of the lack of financial support or because of peer influence.

Families. CICL in Metro Manila usually come from families with an average of seven members. About half (47%) of CICL covered by the study lived with parents, 30% with the mother alone and only 5% with non-relatives. The Metro Manila study also revealed that 20% of the CICL sampled had fathers who were unemployed and the average monthly income per family was Php 5,530 (US\$ 98). In Cebu, majority of the CICL covered by the study had parents who were alive and were living together. However, 60% of the children were not living with their parents when arrested.

Family Violence. Of the CICL presented in the case studies, nine discussed mostly about their family background, six of whom clearly came from violent, neglectful or uncaring homes. This appeared to have been a major factor to these children becoming at risk and to three of them running away from home. Of the six, four highlighted the significant role of their parents either by blaming them for what happened (2 cases) or by realising the need to change because of their parents being more loving (1 case) or more concerned, that is, guiding and monitoring them (1 case). More than half (54%) of the 28 CICL held at the Community Scouts Center in Cebu said that they have been abused by family members. The extent of domestic abuse can

be gleaned from figures presented in the Cebu study, which showed that of the 82 CICL in custody who were asked about domestic violence, only 30% (21 boys and 3 girls) admitted to having been abused (see Table 3).

Social Environment. In Davao, the adult FGD participants particularly linked offending to poverty, lack of parenting skills, early marriage and the breakdown of the family system, while both children and adults saw pornography and peer influence,

Table 3. History of domestic abuse, Cebu, 2002

Response regarding experience of domestic abuse	Male		Female		TOTAL	
	No.	%	No.	%	No.	%
Whether minor has been abused						
Abused	21	28.4	3	37.5	24	29.3
Not abused	53	71.6	5	62.5	58	70.7
Total	74	100.0	8	100.0	82	100.0
Type of abuses*						
" <i>Kulata</i> " (mauling/ beating)	16	61.5	1	33.3	17	58.6
" <i>Bunalan</i> " (whipping)	7	26.9	2	66.7	9	31.0
Beaten by cable wire	1	3.8	0	0.0	1	3.4
Sexual abuse	1	3.8	0	0.0	1	3.4
Hang upside down	1	3.8	0	0.0	1	3.4
Total	26	100.0	3	100.0	29	100.0
Person inflicting abuse						
Father	14	66.7	3	100.0	17	70.8
Uncle	2	9.5	0	0.0	2	8.3
Brother/cousins/grandpa	3	14.3	0	0.0	3	12.5
Not specified	2	9.5	0	0.0	2	8.3
Total	21	100.0	3	100.0	24	100.0

* Multiple response: N = 24

Source: Etemadi, Ye and Bermudez (2002).

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and the lack of education and recreational facilities as contributory factors. In the Metro Manila study, 121 out of the 706 CICL, or 17%, were working before they were arrested (of which, 58% were street vendors). Only a few said they were members of gangs (2% to 4%). In Cebu, 80% said they were members of a barkada. It is estimated that about 23% are members of gangs. Of the nine boys in the Cebu case studies, all but one was highly influenced by the barkada or close friends to perform deviant behaviour.

TRENDS IN OFFENDING

Three types of offences were observed to be quite common in the three research areas – offences against property, drug-related offences and sexual offences. Several trends were also noted in these types of offences.

Offences against property. Offences against property are the most common offences for all the study areas. In Metro Manila, cellular or mobile phones were the most common targets. In Cebu, offences against property usually take the form of shoplifting.

Drug-related offences. Offences linked to drug abuse have increased over the recent years. In a 1981 study, the University of the Philippines Law Center reported 323 cases in Metro Manila, while a national study in 1996 did not record drug-related offences. At the time of the three studies, however, this type of offence constituted 13% of the reported offences committed by children in Metro Manila and had become the second most common offence in Cebu (20%) and Davao (26%). Drug-related offences were also the second most common offence for girls in both Metro Manila and Cebu.



MICHAEL AMENDOLIA/NETWORK (2003)

Compared with first offences, there is an increase in drug-related offending in second-time offences. In Cebu for instance, drug-related offending rose from 14% to 37% of all offences (Drug offences are now the most common cause of offending among CICL in Thailand and Lao People's Democratic Republic.). This has significant implications for the Philippines with respect to providing accurate information to young people on the effects of drugs but also in terms of addressing the issue in a non-alarmist way, that is, seeing it as pri-

marily an issue of children's self-esteem and self-worth and how children can be assisted to achieve this. Individuals experiencing difficult or unbearable situations take drugs to withstand hunger and try to forget misfortunes and frustrations.

Sex offences among children. Sex offences between children were likewise up in Metro Manila (AKAP communication). In Cebu, if a sex offender was a child, the victim was usually also a child.

*“I know that it’s bad but we
had to do it so we can eat.”*

– child detained in the Davao City Jail



4 CHILDREN IN CONFLICT WITH THE LAW AT DIFFERENT STAGES WITHIN THE JUSTICE SYSTEM

The succeeding sections discuss the status and experiences of CICL as they go through each stage in the justice system, and how stakeholders and duty-bearers handled them as they undergo the process (see flow-chart of the juvenile justice process in the annex on Pages 86 and 87).

OFFENDING

Most common types of offences. In all three study areas, offences against property were the most common. According to police records, 5,976 children were arrested in Cebu, majority of which (71%) were alleged to have committed offences against property. The proportion of this type of offences was much smaller in the other two research areas – 37% of 2,306 children arrested in Davao and 38% of 706 court cases studied in Metro Manila. Within Cebu, however, figures for offences against property also varied among the different courts. These figures accounted for 80% of CICL cases in Cebu City but only 31% of those in Mandaue City.

In both Cebu and Davao, the second most common offence was substance abuse, which constituted 20% of offences by CICL in Cebu and 26% of offences in

Davao. In Metro Manila, however, substance abuse accounted for only 13% of CICL offences, and came fourth after offences against the person (15%) and violations of local ordinances (14%). Again, marked variations among the different courts in Cebu were observed – in Mandaue City, almost half of all the cases (47%) involved substance abuse while in Cebu City, it was only 15%.

Offences against local ordinances (especially those on curfew and vagrancy) were the third most common offence in both the Metro Manila (14%) and Davao (23%) studies. In contrast, offences against ordinances and vagrancy were very few (less than 5% of recorded offences) in Cebu.

Most common types of offences among girls. Both the Cebu and the Metro Manila studies had specific data concerning offences charged against girls. The most common offences were those against property, which constituted majority (70%) of all offences charged against girls in the Cebu study and almost half (42%) of recorded offences among girls in the Metro Manila study. The second most common offence among girls was substance abuse, which accounted for 24% of offences attributed to girls in the

Cebu study and 34% in the Metro Manila study. In Metro Manila, 15% of the offences committed by girls were against local ordinances.

Most common places of offending. The majority of all offences (77%) in the Cebu study took place in Cebu City with its large commercial areas. In the city itself, over 50% of these offences took place around Colon St., which is at the heart of downtown Cebu City, and near two giant shopping malls – SM Cebu and the Ayala Center.

The Metro Manila study also identified highly populous and congested areas where offences most commonly take place – Tondo and Sta. Cruz in the City of Manila, and Cubao and Novaliches in Quezon City. Each of these areas in Manila and Quezon City surpassed or nearly equalled in number the total of CICL for the three other cities covered by the study. Most of the offences (59%) in the Metro Manila study took place on the street. It is clear that if action is planned, these specific centres would have to be prioritised for intervention.

Offending with accomplices. According to the Cebu study, 80% of the CICL studied offended with an accomplice, usually another child. This was less an occurrence in Metro Manila, where 41% of the CICL had

an accomplice and for almost all (92%) of them, the accomplices were children. In Davao, if the offence was substance abuse, it was usually a group offence.

Record of offending. One of the most important findings from the researches was the significant number of first-time offenders among CICL being arrested, taken to court and taken into custody.

It can be observed that in all three areas, almost all of the CICL cases covered by the studies were charged or arrested for the first time — 94% of 5,233 children arrested by the police in 1999-2001 in the Cebu study; 91% of 452 CICL arrested based on the city police records for January-June 2002 in the Davao study; and 99% of 706 children's cases examined at the 22 Family Courts in 2001-2002 in the Metro Manila study.

This trend was likewise observed in the five custodial centres in Cebu where 86% (1,224) of the 1,421 children in custody were held in detention for the first time. While the study could not arrive at the exact number of first offenders because of the difficulty of cross-referencing police and BJMP databases, Prof. Etemadi thinks it is likely that the majority were first offenders.

That these first offenders had not been diverted from arrest, court and custody is

both a major failing of the system and a challenge to all duty-bearers involved in children's justice and working for the best interests of children. There were no available figures concerning custody of first offenders in Metro Manila and Davao but it is likely that the numbers would be close to the Cebu figures given the high number of first offenders going to court.

While it can be noted that many children in Cebu and Davao were being diverted by the police (see the subsection, "Police action in relation to case filing and diversion" below), there is still much to be done in the area of diversion.

UPON ARREST

Arresting officer. Findings in all three studies showed that the arresting officer was usually the police, followed by the barangay tanod. The proportion was especially high in the Metro Manila study (64% of arrests) and in the Davao study (25 out of 42 cases, more than half of the cases), than in the Cebu study (31%). Barangay tanods accounted for only 18% of arrests in the Cebu study and 19% in Metro Manila, but appeared to have made more arrests as reflected in the Davao study (33%).

In Davao, there were ancillary forces attached to the police such as the Davao City Police Auxiliary Group, which was a group of volunteers; the Station Police Auxiliary

Groups (SPAGs) at the barangay level; the Civilian Volunteer Organisations (CVO); and the Civil Security Units (CSU). In the case of Cebu, arrests were also made by complainants and by security guards in shopping malls (12% and 10%, respectively).

The usual practice was for the tanods and probably the SPAGs to take the arrested children to the police station/precinct rather than using the barangay system to resolve the problem. There were only a few examples in Cebu City of child offenders being brought to the attention of the barangay captain (elected head of the barangay). Barangay (Brgy.) Ermita, which had the most number of child offenders reported among all the barangays in Cebu City, only had an average of six child offenders per month.

Police action in relation to case filing and diversion. In the Cebu study, the police took several actions concerning cases of CICL appearing in their records after arrest in the period 1999-2001. Of the 4,624 CICL, more than half (3,120, or 68%) had cases that were closed, settled and diverted by the police; 15% (696) had their cases filed; 6% (270) were detained awaiting filing; 4% (193) were released as the regulatory period had elapsed before filing; and 3% (155) were referred to the DSWD, the barangay or an NGO. As mentioned

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in the Davao study, about half of all children coming to the attention of the police were referred to the DSWD and the City Social Services (46% in 2000 and 55% in 2001).

Police responsibility at the time of arrest.

Upon arrest, a child should be informed of the reason for his/her arrest and his/her rights, including the right to contact one's parents or a social worker and a lawyer. In Cebu, only 33 out of 85 (39%) of children involved in the study were informed of their rights. While the majority (18 out of 23) of CICL respondents at the BBRC were asked about the name and address of their parents, only two said that the police contacted their parents by phone. Nonetheless, the children had discovered other ways of informing their parents so that the majority (about 73%) of families knew where their children were. In the case of BBRC, half (10 out of 20) of the children in custody were visited. Apart from using the phone, the police made no other effort to contact the parents.

All police stations in cities should have a Women's and Children's Desk (WCD) officer, previously called the Child and Youth Relations Section (CYRS) or, if outside a

city, a Child and Youth Relations Officer (CYRO). The WCD/CYRS should operate as a separate functional unit within the police station and treat children in a protective way. All CICL must, if possible, be seen by the WCD. In reality, however, WCD officers are present only from 8 a.m. until 5p.m., except in Davao where they are on duty 24 hours a day. As most arrests are made at night, this means they are dealt with by officers who do not specialise or are not trained in handling CICL. Moreover, the names of children arrested are usually included in the general police blotter⁹ – rather than in the children's blotter – which are open to media inspection.

BEFORE ARRAIGNMENT OR TRIAL

Time held in custody before filing a case.

By law, the filing of a case should be done within 12 to 36 hours depending on its seriousness. Within this time, the parents should have been informed, a medical and mental health examination has been completed and any statement is already taken from the child. The statement should be made in the presence of the child's parents/guardians, social worker or lawyer. The Cebu study showed that children had been spending more time than required in po-

⁹ The police blotter is a daily written record or logbook of events and important facts about the event (including complaints and arrests) in a police station.

lice stations. In the case of CICL respondents in BBRC, half of them had spent 2 to 3 days in police cells before they were moved to BBRC, while one-fifth spent 4 to 5 days and even longer during holidays.

Moreover, since most police stations had only one or two cells, if both males and females are held, CICL are kept in the cells together with adults of the same sex. Aside from this, there were no police funds for food, beddings, utensils and clothes so that without the gifts coming from relations, friends and/or fellow inmates and sometimes the city social worker (CSW), the children would go hungry. In addition, most cells are very cramped and unsanitary.

In Cebu's three family courts in 2001, 79% of those awaiting arraignment/trial were detained, 11% were bonded¹⁰ and 5% were released on own recognisance (ROR).¹¹

Posting bail. In the Cebu study, 91% of CICL in custody were detained pending arraignment or trial, while only 8% had been sentenced. The issue of bail¹² seemed often to be first raised during the filing of the case with the prosecutor. However, children were often not informed of their right to bail. Of the 40 BBRC respondents, about 15% said they were made more aware of their rights, 50% thought their cases wereailable, and 30% said they were never told of their right to bail. In the Davao study, it was estimated that 80% of cases wereailable. The cost of bail was variable according to the offence and could be set from Php 500 (US\$ 8.90) to Php 120,000 (around US\$ 2,145). Most poor families could not easily afford these amounts. Instances of ROR were few before going to the family court (for instance, 22% were released on ROR by family courts in Metro Manila).

10 That is, an insurance company has agreed to pay the amount of bail (defined in Footnote No. 10) set and to whom the recipient pays 10% for each year spent out on bail.

11 To "release on one's own recognisance" means to release from custody without requiring the person to post bail.

12 Bail refers to the money that a person charged of a crime or offence pays as a guarantee that he or she will show up in court at a later date.

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ARRAIGNMENT

According to the Cebu study, arraignment¹³ usually took two months. The Metro Manila study, however, indicated a longer period (around 2 to 3 months) with 10% of the CICL whose cases were examined spending less than a month; 28%, a month; 37%, 2 to 3 months and 19%, 4-20 months.

In terms of the child's plea, 75% of the Cebu CICL said they were guilty but they also said they were persuaded both by the police and the Public Attorney's Office (PAO) lawyer to plead guilty (*amin*) as otherwise they would spend a lot of time in custody (which unfortunately seems often to be true). However, in Metro Manila, most CICL pleaded "not guilty." Cases in "not guilty" pleas were often delayed because of the failure of the complainant to come or the lawyer concerned to attend. There was automatically a delay of 15 days for a social background report.

SENTENCING BY THE FAMILY COURT

After arraignment, CICL usually remained deprived of their liberty for two to three more months before going to court for sen-

tencing. The only way to avoid this was if the child's family had the money for a competent and active lawyer.

Family courts were only introduced in 1997. The AKAP-AHRC (1998) and the UNICEF have recommended their extension. However, these courts do not deal with CICL cases alone but also with cases involving children as victims and all civil cases where children and adults are involved together.

In Cebu, more than half (278 cases, or 62%) of the 447 cases brought at the three family courts in 2001 had been decided. However, almost all (255 cases, or 92%) of these cases resulted in children serving sentences in custody (232 in jail and 23 in RRCY and Balay). Non-custodial sentences (fines and reprimands) came to only 1%. Four percent of the resolved cases were dismissed while in 2% of the cases, the children had been serving beyond their sentences. Of the total cases filed at the family courts, 134 cases (30%) were still pending.

According to key informants from the courts, majority of the CICL cases in Davao were terminated by dismissal rather than

¹³ Arraignment refers to the initial appearance of an accused person before a judge in a criminal case. At an arraignment, the charges against the person accused of a crime are read, a lawyer is appointed if the person cannot afford one, and the person's plea is entered.

by sentencing. Most of these involved children who have over-served their sentences while being remanded in custody. In some cases, the complainants withdrew their charges or failed to turn up. Sentences were usually automatically suspended, and youth offenders given this sentence were sent to the RRCY and the RCDD and/or ordered to pay fines to the victims or their families.

In Davao, stakeholders seemed to see a closed institution as the appropriate place for those given a suspended sentence. The concept of a suspended sentence is very different in the Philippines than in the UK, where it would mean a non-custodial sen-

tence. However, according to key informants in the Davao study, there was a 60-40 division in favour of the court giving community sentences rather than suspended sentences to be served in rehabilitation centres. The perceptions of the stakeholders, however, seem to contradict what records indicate, which is an almost nil number of community-based sentences.

The Davao City Family Court appeared to be very slow and congested, as it handled cases other than those involving CICL. The number of cases disposed between 2000 and 2001 fell from 686 to 411, while the number pending at the end of the year had increased from 569 in 2000 to 763 in 2001.

The Supreme Court has ruled that for CICL cases disposed with a sentence of less than six months, diversion at the local level should be administered (AM No. 02-1-18-SC, or Rule on Juveniles in Conflict with the Law, Sec. 20). Despite this ruling, diversion was hardly being practised.

DETENTION

In the Cebu study, the average length of time a child is detained was five months but a number of the children (91) spent longer than 12 months in detention; the majority (1,295, or 71%) spent less than four months in custody.



FILE PHOTO: SAVE THE CHILDREN UK (PHILIPPINES PROGRAMME)

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The Metro Manila study was able to determine the time interval between arrest and arraignment for 178 CICL cases. It found that an average of about two months lapsed between arrest and arraignment. For the most number of cases (35%), children spent three to nine months; 21% spent two months; 28%, one month; and only 10% spent less than a month.

REHABILITATION

There were a number of rehabilitation centres in the study areas. The most detail was given on those in Cebu and Davao. Both areas had an RRCY, which were only for boys and usually only for those on suspended sentence (which can only be given on a first court sentence). Under a suspended sentence,¹⁴ the boys were allowed to leave the city jails upon the order of the judge, which was usually following a recommendation by the DSWD or the CSW. As of August 2003, three 11-year-olds were present among the 43 children residing at the RRCY in Argao, Cebu. One of them was there for allegedly stealing Php 40 (72 US cents) and another for rugby sniffing. Thirteen were there for rape. It was noted that the children in the four dormitories were not separated according to age.

The condition in the RRCY was observed to be much better compared with that in jails, as children there had their own beds, were cared for by the DSWD staff (referred to as foster parents) and had a daily routine or schedule of activities that kept them occupied. These activities included primary schooling, training on life skills, sports, counselling, vocational training on various areas such as farming, information on drug awareness and the understanding of values and spiritual development.

Despite these programs, the children were still deprived of their liberty and, in the case of children residing in the RRCY in Argao, lived quite far from Cebu City (two hours by bus). As a result, the children's parents and friends seldom visited them. Some of the children even tried to escape, while others wanted to go back to the jail because of the boredom they felt despite the routine. In addition, it was found in both Davao and Cebu studies that children who just arrived into the centres go through a period of from 3 to 14 days in an "observation/isolation room." This is the same room where children were also sent for punishment or "disciplining." It is not very clear what the purpose of this segregation was,

14 A suspended sentence is when the serving of the sentence imposed by the court upon a finding of guilt of the CICL is held in abeyance; meanwhile, the child undergoes rehabilitation

whether this was intended to check on the newcomer's health or behaviour. Their being mixed with children who were there to be punished further confuses the room's purpose.

In Cebu, there was also the Balay Pasilungan and the Community Scouts, which are run by FREELAVA (a local NGO) and the CYRS, respectively. Both centres



FILE PHOTO: SAVE THE CHILDREN UK (PHILIPPINES PROGRAMME)

provided children some degree of freedom – the children attended the local schools, including high school, and were allowed to visit their parents at home (once a month in the case of Balay Pasilungan). Moreover, the system was much less punitive (at the Balay Pasilungan, dishwashing was the punishment given for bad behaviour). Other than this, the overall system and management was similar to that of the RRCY.

Most of the 93 CICL (88%) in the Cebu study agreed that their stay at RRCY had prepared them to go back to their communities and they are optimistic about their behaviour change. They said they have learned to be responsible and respectful towards their elders. Mostly first offenders, these children expressed remorse, unlike the second- time offenders, who said that they had become incorrigible.

The Regional Center for Drug Dependents (RCDD) in Davao, like the RRCY in Cebu, had an observation room where newcomers were often placed for two weeks. This room was located in the basement of the building and was described by the children as being “dark, damp and foul-smelling.” Children who had escaped from the RCDD and were interviewed in the Tagum City jail felt they were better off in jail than in the centre. One child related, “We escaped from the RCDD because we did not like it

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there; the *bartolina*¹⁵ smelled foul, newcomers were mauled, then our clothes were confiscated.”

Another child shared, “*Walay istorya, diretso lang sa bartolina, baho unya ngitngit pa gyud* (There are no discussions, one is sent to the bartolina immediately, the smell there is so foul and it’s so dark!).” The RCDD also served as a “catch-all” detention home for children in difficult circumstances and boys caught in armed conflict charged with possession of firearms. Corporal punishment, inappropriate punishment and isolation were apparently also common to the rehabilitation centres in Davao.

The Metro Manila study covered five DSWD-run centres – the National Training School for Boys, the Pasay City Youth Home, the Manila Youth Reception Center, the Marillac Hills and the Molave Youth Reception Center – and one NGO-run centre, the Kanlungan sa Erma. Of the 486 children (out of 706) whose whereabouts had been noted down in court records, 36%

were staying in these centres, but there was no other information about them.

Children in all these centres remain under indeterminate sentences until they reach the age of 21. The children would be released earlier if the staff assessed that their behaviours have improved and if they recommend release to the sentencing judge. Their stay, therefore, could last between six months and five years. Balay Pasilungan in Cebu involved the child and his/her parents in planning for the child’s release, and monitored his/her reintegration into the community.

EARLY RELEASE AND AFTERCARE PROGRAMMES

Of all the jails covered by the studies, only the Mandaue City Jail had an early release scheme, which, according to the jail management, saved them some Php 200,000 (around US\$ 3,500) in 2001.

Supervision through aftercare¹⁶ programmes seemed largely absent. The

15 A Filipino word for a room without windows, often referring to a prison cell for solitary confinement. It is also often used to refer to any room that is poorly ventilated or very small.

16 Aftercare programmes provide services to children and youth who are released from residential or institutional placements. Ideally, aftercare programmes are concerned not only with supervising the children but also with providing opportunities for education and work and facilitating the children’s reintegration into the community.

Metro Manila study showed that only about 25% of the children who are released from the centres are followed up. Meanwhile, the Davao study noted the absence of aftercare services. It observed that evading the death squads¹⁷ appeared to be foremost in the

minds of the released children rather than reintegration. Moreover, family and community support in Davao was observed to be weak, given the high number of broken homes and high levels of poverty.

17 As mentioned earlier, at the time of the study, CICL in Davao City and neighbouring areas were being harassed or stalked by unidentified armed men; some were summarily executed on the streets by vigilante or paramilitary groups, to whom some people gave the name, "Davao Death Squad," among others.

“It would be very difficult to change because in the eyes of the people, we already have a bad record.”

- A child from the Regional Rehabilitation Center for the Youth, Cebu City



5 DIVERSION AT DIFFERENT STAGES

The research studies were able to identify some important features and approaches concerning diversion, discussed below.

EXPERIENCES OF DIVERSION IN CEBU

In Cebu City, an informal agreement forged by the CYRS with shop owners, which was formalised in 2000, had significantly reduced the number of court appearances of children involved in shoplifting. According to the agreement, any child who has shoplifted should either return the stolen goods or pay the shop owner the full value of the goods stolen but no more.

This is unlike in other places where storeowners often demand ten times the value of what was taken. If this is not done, the shop owner files a complaint at the police station. Most often than not, the parents/child could not pay the amount and the child is consequently placed in custody while she/he awaits a court hearing.

This agreement in Cebu City paved the way for more police diversion after arrest. Of the 3,267 CICL arrests by the police in Cebu City in 2000-2001, 89% (2,914) were settled and did not go to court. Many of these arrests would have been for shoplifting. If diversion did not take place, the

number of children held in custody during this period would have been almost four times greater. This is supported by the fact that in 1999-2001, only 1,297 CICL (or 28%) of the 4,594 CICL arrested were detained (and some of these children in detention could have been in custody prior to 1999). This indicates a diversion rate of 72% during that period (This number, however, must be taken only as an estimate as it is not altogether satisfactory to draw conclusions from across police and jail statistics that have slightly different criteria for calculating their figures). Outside Cebu City, the CCSW (City Council Social Worker) has referred many cases to the DSWD, the barangays and Balay Pasilungan.

In Brgy. Ermita and some other barangays, diversion is also taking place primarily as a result of FREELAVA's implementation of its "Community-based Diversion/Mediation Programme for CICL" and its setting up of Children's Justice Committees (CJCs).

According to 2001 statistics as cited in the Cebu study, almost half of known CICL cases in Brgy. Ermita (36 out of 74) had been diverted from the formal court process in various ways, primarily by releasing

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children with a stiff warning, while 14 more cases were also settled at this level. Thus, it appears that more than half (67%) of the cases were resolved in the community at the least.

Only 8 of the 74 cases were forwarded to other entities outside the barangay (3 were referred to the police and 5 were filed or for filing) to decide how the CICL should be dealt with.

The above figures point to the relative success of diversion efforts in Brgy. Ermita. Given that the figures presented above reflect the reality before FREELAVA's diversion program started in October 2001, the diversion of CICL in Brgy. Ermita and in the other five barangays where FREELAVA was also present can be expected to intensify. It had been agreed, through the CJsCs, that in these barangays, a case could not be filed against a CICL apprehended by the tanod or the police unless an attempt had been made to settle it at the barangay level. An exception to this would be CICL involved in grave offenses.

The diversion of CICL at both the barangay and the police level in Cebu City is dramatically different from those CICL who go to the family courts in Cebu where, of the 278 cases decided in 2001, almost all (91%) will face some form of deprivation

of liberty either in jail (232 cases), in the RRCY (11 cases) or in Balay Pasilungan (12 cases). Only 5 received a non-custodial sentence – 2 were fined and 3 were reprimanded.

EXPERIENCES OF DIVERSION IN METRO MANILA

Through interviews, the Metro Manila study drew out the stakeholders' and children's ideas and attitudes on diversion. The succeeding paragraphs present these perceptions

Stakeholders' practise of diversion. The Metro Manila study highlighted the attitude of members of the five pillars towards diversion. More than half of those in the community, the barangay tanods and the correctional staff thought that all CICL should be diverted from the criminal justice system. Those interviewed from among community members, the police, probation and the court social workers said that diversion should primarily be at the community level, while those interviewed from the courts, prosecution and correction said this should take place at all levels. Among the members of the pillars who were interviewed, the most number of those who said they practised diversion were the social workers (76%), the courts, and the prosecution (73%). More than half of those interviewed from among community mem-

bers (66%) and barangay tanods (60%) also said they undertake diversion at their level. The pillar that practised diversion the least was the police (46%). Based on interviews, the Metro Manila study was able to identify several forms of diversion being practised by the different pillars.

Community and Barangay Tanod

- Procedure specified in the Katarungang Pambarangay Law
- Informal talks with the child, giving him/her advice
- Children are given three chances, or otherwise turned over to the DSWD
- The child is asked to sign a letter, where he/she promises no longer to violate the law
- Ask the child to clean the streets or perform tasks to beautify the barangay
- Call the child's parents and ask them to sign an agreement
- Talk with both parties and urge them to settle the case amicably
- Lecture to parents and/or the child
- Ask the parents or the child to pay damages
- Give warning to first offenders
- Ask the children why they committed the crime

Police

- Talk with the complainants and if they agree to diversion, ask them to sign the police blotter
- Ask the parents of the child to sign the blotter if there is settlement
- Encourage parents of child to talk with the Complainant and for the latter to settle the case
- To reprimand the child, ask child to clean the office
- If first time offender, child is given a warning and a second chance
- Ask guidance counsellor of school to be a witness
- Refer the child to the barangay
- Lecture the child, especially the parents

Court and Prosecution

- Diversion under the Rule on Juveniles in Conflict with the Law
- Talk with the police officers and the complainant
- If the complainant does not appear during trial, dismiss the case
- Ask the Public Prosecutor if settlement is possible
- During pre-trial stage, ask the complainant to settle the case

Despite the above, many felt there was no “official” diversion programme, except through the court under the Supreme Court Rules on Children in Conflict with the Law. Only 42% of the 118 community members interviewed said there was a Barangay Council for the Protection for Children (BCPC) in their barangay. Only 11% said there is a committee in the BCPC for the protection of children, including resolving issues of CICL. The largest percentage of the stakeholders interviewed reported that they are able to divert less than 10 children in a year. They all agreed that the most important consideration in pursuing diversion were the nature of the offence and the age of the child.

CICL’s attitude towards diversion. In the nine CICL case studies prepared by the Metro Manila study, the children were asked what they thought about diversion and about how it should be done. Seven of the children favoured diversion. Five children wanted it to take place at the community level so they would not be sent to jail, they would not be separated from their families and they could avoid the police exacting money for bail. They also felt this was most appropriate for handling petty offences. One wanted diversion at the court level to ensure the compliance of different parties, while another wanted it to be applied for those under nine years old

and to take place at all levels, from the barangay to the courts. One child felt that prison helped children think about what they had done, while another’s position was not too clear.

EXPERIENCES OF DIVERSION IN DAVAO

The Davao study reported that the CYRS had also tried to arrange a deal with store owners wherein a child involved in theft of an item valued at less than Php 100 (almost US\$ 2) should do community service at the barangay level. However, storeowners still had little trust that the BCPC would ensure that the system works. Storeowners do little to stop children who have stolen something but they usually wait until they leave the shop to catch them. They also make out their complaint on the spot so they leave the police little room for discretion. In the past, malls put up photographs of children who had shoplifted but this violation of children’s rights has recently decreased.

Of the 180 barangays in Davao City, 104 have a BCPC but child rights advocates are doubtful as to whether they are functioning. It is not easy to determine how many children are dealt with at the barangay level as seldom is there a separate blotter for recording children’s names.

Some experiments in mediation are being practiced at the barangay level, as represented by the experience of Brgy. Los Amigos in Davao City, where the barangay captain had taken a special interest in children's justice. The process did not always directly involve the complainant. Investigation was undertaken with the child and his/her parents in a non-threatening way. If the child admits the offence, a decision was made depending on the number of times the child had committed an offence. For the first instance of offence, the child must apologise and promise not to commit the offence again. In the case of a second offence, the parents of the child were asked to pay for damages. For the third instance, the child rendered community service for five to seven days. A log is kept of what is done and a certificate is given to the child and the complainant upon completion of the service.

The barangay captain reported that there had been a sharp decline in cases/complainants concerning children from 400 to 500 cases in 1997 to only 37 cases in January-May 2002. No case has been forwarded to the police of late as all are dealt with at the barangay level. However, when the barangay captain lost in the 2003 election, this form of mediation appears to have been

discontinued, showing how fragile these innovations can be unless mandated in a local ordinance.

The experience of Brgy. Los Amigos is somewhat similar to the system that FREELAVA had set up in 12 barangays in Cebu City except that the latter used the CJC in the BCPC whose members underwent training and were supported in their decision-making about interventions with CICL by adult community volunteers. In addition, young adult peer educators directly assisted the diverted CICL to adopt a less troublesome lifestyle. These peer educators had been CICL themselves but have stayed away from trouble by being involved in this and other initiatives (such as continuing their education).

However, in Nabunturan, one of the research sites in the Davao study, the social worker perceived the barangay to be using untrained people and exposing CICL to unnecessary interrogation. In response, the DSWD now convenes a case conference attended by the child, his/her parents and barangay officials with the CYRS during which a decision is made and then followed up with the child to instil accountability and discipline.

“There is an interview before one is put inside the cell. When your offence is theft, you are beaten-up, but when it is only curfew violation, you are simply sent straight to the jail cell.”

– A child interviewed in Davao City



COURTESY OF ZONE ONE TONDO ORGANIZATION

6 CHILDREN'S PERCEPTIONS OF THEIR EXPERIENCES IN THE CRIMINAL JUSTICE SYSTEM

REASONS FOR COMMITTING OFFENCES

In Cebu, 60% of the CICL interviewed shared that they offended because of personal reasons, linking it mainly to their own misconduct and the temptations around them especially if they live on the street. Of the Cebu study's 93 key informants, 75% admitted they had committed the offence. However, in the Metro Manila study, almost all of the children (92.7 %) covered by the study pleaded not guilty. The CICL's circumstances when asked for this information were probably very different, hence the contradiction.

VIOLENCE IN THE HANDS OF THE AUTHORITIES

From the time of arrest, CICL were already exposed to violent treatment and intimidation. In Cebu, most of the 93 CICL interviewed said they received rough treatment from the police on arrest (being knocked on the head or collared), while 75% were handcuffed (although Section 5 of PD 603 allows handcuffing of children

only if absolutely necessary). More than half (61%) of the CICL interviewed said they experienced violence at the police station. The most common forms are mauling and punching, followed by whipping, slapping and dunking their heads in water. Of the nine girls interviewed, two said they experienced physical abuse.

While in Cebu it appeared that barangay tanods and security guards seldom inflicted harm on CICL, this seemed to be less the case in Davao where, according to informants, tanods and security guards were inconsistent on how they treated children. There were reports of members of civilian volunteer organisations beating up CICL after arrest and encouraging the public to do so as well. The police were also charged by CICL of encouraging adult prisoners to beat them up when placed with them in police cells. A range of abuses, from shouting and pointing guns at CICL to torture and sexual abuse, were reported. Informants reported that girls experienced strong verbal abuse, including being called *buntog*.¹⁸

18 Buntog is a word in the Cebuano language that is a colloquial term for prostitute. Literally, it means quail; used figuratively, it implies the act of hopping from one partner to another.

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

One of the worst examples of police brutality was cited in the Davao study where a group of five friends were given electric shocks to their anuses by the police for repeatedly breaking the curfew.¹⁹ The Davao report was also more explicit about the sexual abuse of both girls and boys. A comment from a CICL that “boys become girls inside police detention cells” is an area of abuse that may involve both the police and inmates and about which little is known because of the embarrassment and shame that goes with it.

BRIBERY/SETTLEMENT

The Cebu study cited examples of the police seeking bribes (*areglo*, literally meaning arrange or settle) before dropping the case. In Davao, there was a case of the police seeking to engage a CICL as an informant.

FAILURE TO PROTECT THE PRIVACY OF CICL

Apart from the WCD officers, other police officers as well as the courts seemed to exert very little effort to keep information and processes concerning CICL away from the attention of the media. The fact that the police often use the general blotter for recording information on CICL means it

is open to media inspection. In Davao, CICL reported that they had been filmed while being interviewed by the police without their permission. In the Metro Manila study, only 5 of the 50 court and prosecution personnel interviewed said that the media should not come into contact with CICL cases.

CICL AND LEGAL REPRESENTATION

Only 10% of CICL in Cebu were seen by a lawyer before coming to court. However, most CICL in all the studies had a lawyer from the PAO to represent them in court. The children met their lawyers and discussed their cases briefly beforehand. In Metro Manila, almost all (91%) of the 458 known cases were represented by PAO lawyers and only 8% by privately hired lawyers.

LOCATION OF THE CHILD

The Metro Manila study was able to obtain a breakdown of the location of 486 CICL whose whereabouts had been recorded by the court for the period 2001-2002 – 31% were in five DSWD centres and an NGO centre; 22% were in the custody of their parents; 13% were at-large (gone missing); 11% were in jail and 2.5% were with relatives and friends. These fig-

19 The Davao City government has issued an ordinance that imposes curfew on minors between 10 p.m. and 4 a.m.

ures point to a greater preference for DSWD centres over jails. However, almost half of the CICL (42%) were still deprived of their liberty, but 25% were legitimately in the community. This is quite different from the situation in Cebu that was described earlier in this study (see the section, “Diversion at Different Stages”).

In 2001, about half (53%) of 447 known cases in the three family courts were in some way deprived of their liberty. It was not known where the 134 children with ongoing cases were being held, although it seemed likely they were also in custody. If this was such, it would mean that a great majority (82%) were in some form of detention (Ninety-one percent were reported to be in custody awaiting arraignment or trial).

SITUATION IN JAILS

In Cebu, it was quite usual for CICL, on entering their cell in jail, to be subjected to *arbor* (being compelled to take off their clothes in exchange for old and worn ones). This takes place upon the instruction of a senior adult (the *mayor*) or fellow inmates. The clothes confiscated were then sold off by the senior inmates. In addition, new inmates were often told to contribute from Php 0.25 to Php 10 (18 US cents) to a sinking fund maintained for the purchase of medicines, among others.

Many CICL join jail gangs during their stay for protection and comradeship, as family visits are irregular. Only 65% of the Cebu CICL received visits. Self-mutilation (*boreum*) happens particularly among those aged 12-14 who were not visited and greatly missed their mothers.

Many of the Cebu jails had no beddings or utensils for inmates. These were either brought in by visitors, bought or inherited from other inmates. Most jails had a budget of Php 30 (57 US cents) per inmate per day for food. Hunger and petty theft were common features of life in custody. Most jails had some sort of medical facility, although the Mandaue City Jail did not. These facilities are open only during the day.

Young children were sometimes “adopted” by an adult as a sleeping partner and/or an errand boy. An outreach worker for BBRC alluded to sexual abuse of children by adult inmates. This underscores the importance of separating children from adults. This was not happening in the Mandaue and Lapu-lapu City Jails as well as in the Consolacion Municipal Jail in Cebu. At the BBRC and in the Lapu-lapu, Talisay and Mandaue jails, girls were mixed with female adults.

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

In the Parañaque City and Caloocan City Jails in Metro Manila, although children are kept in separate cells, they are in the same building or compound. Thus, it did not seem difficult for adults and children to come together outside their respective cells.

In Cebu City, Operation Second Chance, a separate detention facility for children awaiting trial, was established to segregate the children from the adult offenders and to reduce abuses. This is run by the city government and the BJMP. With this facility present, in principle, there should be no children kept at the Cebu City Jail. However, abuse among children especially from the older ones, is still possible as indicated by a recent allegation of rape of one child by three older children and a report of group stabbings as revenge for bullying, all taking place after children had been transferred to Operation Second Chance.

When it comes to activities in jail, children identified the main activities as listening to the radio, watching TV and Bible sharing/reading. Of all the jails in Cebu, only the BBRC had education sessions, which were given by an NGO three days a week. In Metro Manila, the jail staff said that the majority of the CICL (62%) could con-

tinue their education if they wanted to and that there were some vocational training and occasional seminars.

EFFECT OF JAIL EXPERIENCE ON CICL

According to the Cebu study, of the 93 CICL in jails who were interviewed, majority shared that their experience in jail had affected their lives negatively. The social workers and jail staff who were interviewed confirmed this. Most of the CICL were first offenders. Moreover, they were concerned about finding work, afraid they would be teased if they return to school or afraid simply of the general prejudice from society. About one-fourth (24%) said they were used to being in custody and that they could adjust to life in jail easily as they did not have to do anything. Some (15%) claimed that custody had not affected their life, adding that they have become hardened and were no longer afraid of jail and of committing further offence. One first time male offender said: “*Nagkadugay wala na makaapekto kay nisamot kaisog ug bugoy gihapon* (It has not affected me. The longer I stay here, the more I become unruly).” As one correctional staff member shared, “Some CICL were like puppies when they first entered the jail; a few days later, they become rough.”

CICL'S ATTITUDE TOWARDS THE REHABILITATION CENTRES

All the eight CICL interviewed by the Cebu study who were staying at the RRCY in Argao preferred the RRCY to the Cebu City Jail. According to them, this was because the RRCY had no grills, had better food, provided them with beds and beddings, had recreational activities and had attentive staff. Majority felt that being detained prepared them to go back to their communities and they were optimistic about their behaviour change. However, everyone complained of *mingaw* (loneliness) because most of them missed their families – half of them did not receive visits, in some cases because the centre was too far.

While the centre had an elementary school, none of those interviewed had been enrolled, maybe because it was after the school year had started. Nonetheless, no informal schooling had been arranged. However, skills training were offered for those who were not in school (e.g. block making, pig raising, cooking and farming). Some reported on their being placed in an isolation room (The observation or isolation room was more fully discussed in the subsection on rehabilitation centres under the section, “Children in Conflict with the Law at Different Stages within the Justice System”).

None of the respondents knew when they would be released or the process for it. They knew, however, that their release would in some way depend on their being of good behaviour while in the centre.

LACK OF AWARENESS AND UNDERSTANDING OF WHAT WAS HAPPENING

A frequent statement made by majority of CICL interviewed in the Cebu study was that they did not understand what was going on from the time of their arrest up to when they were released. They were frequently not informed of their rights and if so, little was done to ensure that these were protected. Often, they did not know what was going on when their cases went for filing, what was going to happen in court or what had happened there. The majority did not know how they came to be sent to a rehabilitation centre nor when they would be released and how that decision would be made.

IMPROVING THE TREATMENT AND REDUCING THE NUMBER OF CICL IN METRO MANILA

In the Metro Manila case studies, the nine CICL interviewed were asked their opinions concerning the gaps and problems in the administration of justice and their sug-

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

gestions for improvement. Their comments on diversion have already been described above.

Of the nine children, seven had been arrested for the first time (one for a second time and one for a third time). Only two mentioned violence by the police. In one case, a child claimed that a plastic bag was put over his head to force a confession. Four of the CICL described how the investigation process and the court hearing were opened to the media and/or the public. In two cases, the media filmed CICL being interviewed without the latter's permission; one was with the barangay captain and the other at the police station.

The children gave the following suggestions to help improve justice administration among children.

Age of criminal responsibility. When asked what the minimum age of criminal responsibility should be (which currently stands at nine years²⁰), three different answers came out: 20 (one response), 18 years (three responses) and 13 years (one response). It is interesting how this seems to fit the study on discernment conducted by PAYO (see the section, "Related Studies").

Role of parents. Seven of the CICL interviewed emphasised the importance of parents talking and explaining to children why they should behave in a certain way instead of beating them because, as one boy said, this only leads children to display aggressive behaviour.

Diversion. Seven supported the use of diversion when dealing with cases of CICL.



MICHAEL AMENDOLIA/NETWORK (2003)

20 This means that below the age of nine, children do not know the difference between right and wrong

Presence of female police. The children felt there should be more female police officers.

Procedure for arrest. Three children said the rights of the child and the reasons for arrest should be explained immediately upon apprehension.

Prevention at the barangay level. Two children believed that barangay officials and staff have a role in helping children and keeping them out of jail. It would help if there are more recreational facilities for children of all ages within the barangay. Children should not loiter on the streets; they are less likely to be on the streets if they are studying full time. Parallel to this, “round-ups” of children should not be allowed to take place.

Procedure in court. Two children suggested that the court ask the child for his/her side of the story on what happened, as well as her/his views. They also said that the public should be kept out of the court.

Custodial care. The need for more funding for custodial places for children especially for food was also recognised. These facilities should also provide opportunities for children to finish their studies and gain access to books, conduct open forums (two responses) and provide guidance. Custody for children was also seen as something that should not be pursued, although one said that this was all right if the child was really at fault.

Finally, the children see themselves as also being able to change.

“I heard someone was killed outside the disco. I went and found that it was my friend, the friend I took drugs with was killed. He was the one who told me to start a new life, that we can’t change anymore when we’re dead.”

– Nonoy, 17

MICHAEL AMENDOLIA/NETWORK (2003)



7 SUMMARY OF FINDINGS AND CONCLUSIONS

This section discusses the major findings of the three researches, identifying commonalities as well as significant deviations among the three studies.

FIRST OFFENDERS MONOPOLISE THE CHILDREN'S JUSTICE SYSTEM

The findings of the three studies revealed that almost all (more than 90%) of the CICL arrested (94% of 5,233 CICL in Cebu) or whose cases had been lodged with family courts (99% of 706 cases in Metro Manila and 91% of 452 cases in Davao) were first-time offenders. Moreover, a great majority (86%) of CICL in various custodial centres in Cebu were found to be there for the first time and the majority of them were also first-time offenders.

What is the implication of these findings on the children? The effect has not really been established but it is very likely that children would be labelled, both in their own minds and in the minds of those in their communities, as “criminals,” thereby increasing the tendency towards further offending. If the CICL had experienced being beaten up by the police, this would alienate the CICL from law enforcers and would turn them against the latter. If placed

with other offenders, the children tend to become more hardened into an anti-social thinking.

The entry of CICL into the criminal justice system has also been clogging up the courts and custodial centres. The personnel in these two institutions cannot do their job as well as they would wish and this costs the taxpayers dearly. This is a waste of scarce resources.

The experiences in diversion presented in the three studies also pointed to the availability and feasibility of community-based diversion alternatives. However, guidelines for implementing this in the most effective way are required. The issue of how diversion can be best institutionalised will also have to be addressed.

COMMUNITY-BASED DIVERSION

A look into the different experiences in undertaking diversion at various stages in the justice process indicated that the practice of diversion and mechanisms for this remain in most part non-functional or nonexistent. Below are some significant observations as regards diversion at the community:

• **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

- PD 603 “encourage[s]” but does not mandate the setting up of BCPCs. Few were active, and even fewer were involved in CICL
- The Lupong Tagapamayapa and the BCPC seldom divert CICL (with a few exceptions like Brgy. Los Amigos in Davao; and the few barangays in Cebu City where FREELAVA had succeeded in setting up CJs, which were known to have been diverting CICL).
- Although Brgy. Los Amigos had been able to practise mediation and diversion in handling offences, including those of children, the mediation system reportedly collapsed when the barangay captain lost the local elections. This raises the issue of how to retain BCPC staff who had been trained in and committed to mediation/diversion.
- It was found that tanods were unaware of or did not use diversion in resolving the cases of CICL. Instead, they took CICL to the police.
- The provision on the Katarungang Pambarangay Law in the Local Government Code of 1992 mentions children only once (Sec. 415). It states the role of the mayor in achieving effective implementation and administration of the Katarungang

Pambarangay (Sec. 421). Settlement takes place only if there is a private complainant (Section 408) and if there is a punishment of a maximum of one-year imprisonment or a penalty of Php 5,000 (US\$ 89). The provision on the Katarungang Pambarangay appears too limited. The role of the Lupon/BCPC should be expanded.

- Violation of local ordinances constituted the third most common offence for CICL in Manila and Davao. Many were offences only if committed by children, and this needs to be reviewed as this often leads to their being placed in custody.
- Stakeholders in the five pillars of justice were shown to support diversion at the community level but there appears to be a need for a special body for children’s justice in the BCPC. An executive order, along with guidelines, seems to be required.

Several lessons were also derived from these experiences in diversion and mediation. These are as follows:

- Local initiatives and/or NGO-barangay partnerships are essential in establishing BCPCs.
- Local ordinances, the political will (of mayors, barangay captains, and other

local officials), advocacy in fostering BCPCs, and Municipal and City CPCs have a very important role in instituting diversion.

- To ensure sustainability, the appointment of members of the lupon or the CJC must not be limited to barangay officials who tend to be replaced as members once they lose in the local elections.
- A variety of models are needed to enable community diversion to take place effectively.
- By bringing in the parents, social worker and lawyer at the investigation stage, the police can pave the way for a better understanding between the offender and his/her parents and for the consideration of diversion measures and ROR.

DIVERSION AT THE LEVEL OF THE POLICE

The findings also revealed that some form of diversion, quite few but with significant effect, was also taking place at the level of the police. These positive outcomes are evident in the figures presented in the Cebu and Davao studies, discussed below.

- The creativity of the WCD/CYRS in Cebu in forging an agreement with shop owners resulted in the diversion

of 89% of CICL in 2000-2001. This underscores the critical role of the WCD and the need for the Philippine National Police (PNP) to come out with a national policy on diversion.

- The Davao police also practiced some degree of diversion, referring 46% of CICL cases in 2000 and 55% in 2001 to the DSWD/CSW.
- The WCD and other key players need to prioritise those parts of cities where offending is most common.

VIOLENCE AGAINST CICL AND FAILURES IN DUE PROCESS BY LAW ENFORCERS

The studies also found that abuses from law enforcers – verbal, physical and psychological – were common occurrence and the rights of children were often denied or violated. These are evident in the following specific findings:

- There is a failure in respecting child rights as well as a failure to secure children's right to due process. At the time of this study, a discussion on the treatment and handling of CICL cannot be found in the main PNP Handbook (Interestingly, a joint PNP-UNICEF handbook on children in extremely difficult circumstances or CEDC has 14 pages on CICL but only one sentence on diversion).

• **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

- Once a CICL was arrested, many law enforcers started seeing that person as a criminal first, not a child, and therefore, as a “criminal” had forfeited his/her rights.
- Superiors need to be up-front in monitoring and in acting on violations.
- There appears to be a lack of understanding of children’s rights and relevant international instruments among law enforcers.

Given these violations, there is a need to give the WCD more status within the police organization and proper training for all police officers especially those in the frontline.

BAIL

CICLs access to their “right to bail” was also found to be very restricted, as reflected in the following observations:

- Bail, when given, was usually monetary. Thus, this practice tended to be discriminatory, favouring the better off. Family courts seldom recommend ROR for CICL.
- Those who had not been convicted were subjected to both pre-arraignment and pre-sentencing detention under very poor and subhuman conditions. Detention lasted for an

average of two to three months in appalling jail conditions.

- Social workers, prosecutors and the police seldom recommended ROR or affordable bail at court.
- Judges are the ones who decide on the granting of bail but this power was observed to have been largely under-utilised at arraignment, unless a lawyer represented a child.
- If bail was granted, the hearings were extremely delayed to a point where the child had already reached the age of 18 and therefore had become no longer eligible for sentences rendered to children (e.g., suspended sentence).

INCREASED BUDGET TO IMPROVE CONDITIONS IN CUSTODIAL CENTRES

It was found that conditions in both police cells and jails were quite appalling, with basic facilities and supplies essentially lacking.

In police cells, the following conditions were consistently noted in all three studies:

- Overcrowding, or the lack of reasonable space;
- Absence of beddings in police cells and some jails;
- No clothing was provided;

- No eating utensils; and
- No food provided.

The conditions are not any different in jails. Aside from the non-provision of beddings, food was also found to be insufficient. It was found that the average budget per day for each resident was only Php 30 (approximately 54 US cents), which in Metro Manila can buy only one meal of rice and fish or vegetable bought from a sidewalk food stall. Aside from these, the researches also noticed that there are no education sessions and few rehabilitative activities for CICL.

While diversion would help lessen the effects of these problems, still the police generally would still require a budget for maintaining the cells.

LACK OF ACCESS TO INFORMATION AND FAILURES IN DUE PROCESS

It was observed that CICL were often not given information that would help them understand what was going on as they went through the justice process, as well as press for their rights and protect themselves. Neither were their views and opinions solicited nor considered. The studies pointed to several instances:

- Most CICL do not understand what is going on at each stage of the justice process.
- CICL were not always told of their offence during arrest.
- The children were not informed of all their rights (e.g. their right to contact a parent or lawyer and a social worker, to remain silent, among others).
- In many instances, the police tried to contact the child's parents only by phone.
- In courts, the children were not asked for their views.

Due process for CICL was also pervasively weak in the courts, as shown in the following findings:

- There was no proactive action to arrange bail for CICL.
- Police officers and PAO lawyers tended to press for guilty pleas.
- Representation by the PAO was found to be superficial and last minute.
- Seldom was a court Case Study Report prepared by the social worker for the court.

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

VIOLATION OF CICL'S PRIVACY

It was observed that the CICL's privacy was not ensured particularly in the courts. The status of the CICL was often not kept private and was instead divulged to the media. Moreover, hearings in the family court were made open to the public and the media. Given this, guidelines for all court personnel involved in CICL procedures, as well

as for responding to CICL's queries must be required.

OUTDATED LAW WORKS AGAINST PROPORTIONALITY

Penalties specified for theft in the Revised Penal Code of 1932 (Title 10, "Crimes Against Property," Chapter 3) manifests how outdated the law has become with in-

Table 4. Penalty and term of imprisonment for theft by value of property stolen (1932 Revised Penal Code)

Value of property stolen	Penalty	Term of imprisonment/Detention
Excess of P 22,000	Prisión Mayor maximum + 1 year for each additional P 10,000, but total years imposed not to exceed 20 years	10 years and 1 day - 12 years + 10 yrs but not exceeding 20 yrs
> P12,000 ≤ P 22,000	Prisión Mayor minimum and medium period	6 years and 1 day - 10 years
> P6,000 ≤ P12,000	Prisión Correccional medium and maximum	2 years, 4 months - 6 years
> P200 ≤ P 6,000	Prisión Correccional minimum and medium and 2 months	6 months and 1 day - 4 years
> P 50 ≤ P 200	Arresto Mayor medium to Prisión Correccional minimum	2 months and 1 day - 2 years and 4 months
> P 5 ≤ P 50	Arresto Mayor full extent	1 month and 1 day - 6 months.
≤ P 5	Arresto Mayor minimum and medium	1 - 4 months
≤ P 5	Arresto Menor or a fine not exceeding P 200 pesos [1]	1 - 30 days
≤ P 5	Arresto Menor minimum or fine not exceeding P 50 [2]	1 - 10 days

flation and the need for the penalties in property offences to be reviewed. As most CICL offences are those against property, this law can be very harsh with children (see Table 4). It is essential that this code is superseded by a law on Juvenile Justice as far as children are concerned.

To illustrate, a 16-year-old caught stealing a very expensive cellular phone (worth around Php 22,000 or US\$ 393), under the existing Revised Penal Code, could receive a six-year sentence, child or no child. This is but a step away from the maximum penalty imposed on theft.

COURT PRACTICE AND NON-CUSTODIAL SENTENCES

With only 78 courts across the country designated by the Supreme Court as family courts, many cities and municipalities in the country would not have their own family courts. However, even in places where there are family courts, such as in the research sites, practices and procedures in most of these courts remain hostile or prejudicial to CICL. In the research sites, it was found that the courts did not keep separate records for children.

It was also observed that international minimum standards were often not upheld. For one, cases were certainly not “determined

without delay” (UN CRC, Article 40) both in the time taken before arraignment (two months and five months in Manila and Cebu, respectively) and for trial. According to the Davao figures, the court process may even be becoming slower. The delay is worsened by the fact that while awaiting trial, these CICL were most likely deprived of their liberty yet have not pleaded or have been found guilty. One good news in the Metro Manila study was the finding that 92% of the CICL covered by the study received legal assistance from a PAO lawyer at the time of the arraignment.

It was quite evident that a culture of community-based sentencing is yet to be developed among judges in the family courts. The following findings demonstrate this:

- Non-custodial sentences were seldom used (In Cebu, only 1% of 278 decided cases resulted in non-custodial sentences).
- Suspended sentences are usually spent in detention at rehabilitation centres unlike in the United Kingdom where CICL in suspended sentences are brought back to the community.

The Supreme Court Ruling on Juveniles in Conflict with the Law, Section 32 could

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

change this with the automatic suspension of sentence for CICL. The Supreme Court ruling, however, allows diversion only where the offence committed is punishable by a maximum penalty of six months detention. Thus, rugby sniffing, which involves a minimum penalty of six months plus one day detention, is not included among offences that can be diverted.

Despite this, there had been little action yet within the children's justice system and the society in general to press for and use a possible range of community-based sentences. With guidelines and training, more serious cases could be resolved at the community level through supervision, counselling on offending behaviour, community service and mediation, among others.

CONDITIONS IN JAILS AND REHABILITATION CENTRES

It was found that children in jails and rehabilitation centres were experiencing abuse from the hands of the staff and even older children. These and other findings detailing the dreadful conditions in places of custody point to either an absence of official guidelines for the staff as to how children should be treated in custody, a lack of awareness of the existence of such guidelines or conscious non-compliance with

such guidelines. The confinement of a newcomer in an "observation room" for 3 days to 14 days in isolation or with others for punishment is likely to cause unnecessary deprivation and regulations for this seemed nonexistent.

The lack or absence of a serious rehabilitation programme in custodial centres was also common. Children were found to experience boredom in jails, with the monotony of routine pushing them to escape. It was also observed that very few of the CICL are able to go out to attend school. Reintegration planning was also found to be minimal.

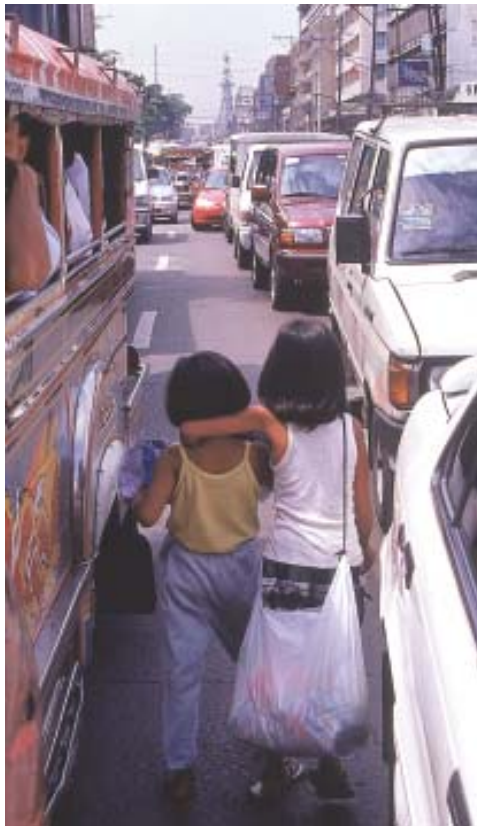
Children also said they prefer a centre with at least semi-open conditions like the Balay Pasilungan and the Community Scouts, where they could go out to school and visit their families.

There was also no proportionality in sentencing for CICL sent to rehabilitation centres, as CICL often received indeterminate sentences. Even if the child is a first time offender, the decision of when to release the child is primarily made by the centre staff. It was revealed that children were kept in custody anytime from six months to five years. There appears to be a need to review this practice.

Meanwhile, CICL who have been convicted a second time are not officially eligible to be placed in a rehabilitation centre. Thus, they are either sent to jail or made to apply for probation. However, only a few seemed to know how to go about applying for probation.

PREVENTION OF OFFENDING

Prevention of offending seemed largely ignored yet this is fundamental if offending is to be reduced. This is linked to the



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delivery of children's rights in the community. The studies found that the factors that push children towards offending include poverty, domestic and gender violence, dropping out of school, peer group pressure, public attitudes and overcrowding at home (that led children to go to the streets).

Violation of local ordinances (e.g. anti-peddling and status offences like curfew), which are usually penal and involve the possibility of custody, was found to be the third most common cause of arrest for CICL in Manila and Davao. Anti-peddling, for instance, compel children engaged in street vending to commit an offence when in fact they are merely involved in a livelihood activity, often a self or family survival mechanism.

The five pillars, in a coordinated way, could be a major force in locally advocating against such ordinances (such as with LGUs, shop owners, BCPCs). In addition, there is a need to support poor families by ensuring schooling, health care, a basic standard of living and opportunities for work and recreation.

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

CHILDREN'S PARTICIPATION IN CICL ISSUES

Aside from the work of FREELAVA in diverting CICL in Cebu, there was little/no involvement of children in the diversion and reintegration of CICL.

FREELAVA gives training to former CICL and selects those who are adopting pro-social behaviour to work with adult community volunteers in assisting CICL, such as through counselling or giving advice. This involvement of former CICL assists their reintegration and empowers them to help present CICL (as they speak from experience).

Former CICL have an important role as advocates for or as advisers/researchers on children's justice, particularly drawing from their experiences as formerly detained children – experiences in the criminal justice system and in mediation, among others. Imaginative schemes like this with young people, especially former CICL, can contribute significantly in reducing offending. Most of the CICL covered in the Metro Manila case studies have stressed the role of parents and that of diversion at the barangay level, as well as how the staff can help. Individual suggestions included banning “round-ups” and the need for more female police officers.

VIOLATIONS AND DENIALS OF CHILDREN'S “BEST INTEREST”

The studies revealed several instances where the “best interest” of children, as provided for in the UN CRC and other international instruments, are violated or denied as they go through the justice process. The following are but some of the specific provisions that were being violated or ignored.

- “No child shall be subjected to...cruel...or degrading treatment or punishment” and “every child deprived of their liberty shall be treated with humanity” (UN CRC, Art. 37).
- “To have his or her privacy fully respected at all stages of the proceedings,” (UN CRC Art. 40).
- Children's cases should be “determined without delay” (UN CRC, Art. 40).
- “The child shall in particular be provided the opportunity to be heard in any judicial...proceedings affecting the child...” (UN CRC, Art. 12).
- Provision of bedding, clothing, food, complaints and requests, medical care, etc., for those in custody (UN Standard Minimum Rules for the Treatment of Prisoners)
- “Deprivation of personal liberty shall not be imposed unless the child is adjudicated of a serious act involving violence against another person or of

persistence in committing other serious offences and unless... no other appropriate response” (Beijing Rules, Sec.17).

- “Arrest, detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest possible time” (UN CRC, Art. 3).

There were also provisions on diversion that were also being ignored:

- “...police, prosecution or other agencies dealing with juvenile cases shall

be empowered to dispose of such cases, at their discretion, without recourse to formal hearings...” (Beijing Rules, Sec. 11).

- “States Parties shall seek to promote... measures for dealing with such children without resorting to judicial proceedings...” (UN CRC, Art. 40).
- “Reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child” (UN CRC, Art. 39).

“We are trash in the eyes of society and because we are regarded as such, we are prone to do wrong.”

- Tata, 17

MICHAEL AMENDOLIA/NETWORK (2003)



8 GAPS AND ISSUES CONCERNING DUTY-BEARERS IN THE FIVE PILLARS OF THE JUSTICE SYSTEM

The following gaps and issues were raised in the three studies, categorised according to the five pillars of justice.

COMMUNITY

Parents/Guardians

- CICL in both the Cebu and the Manila case studies emphasise more than anything else the role parents can have both in pushing them away from the family because of their behaviour or helping them come through the difficult adolescent period by talking, explaining and guiding them in what they as parents see as being right.
- Parents should be aware of the harm that domestic violence between spouses has on children as also the beating of children.
- More needs to be done to enable parents to know the importance of their roles and to inform them of good parenting practice. Some parents actually want jail officers to take their child without court proceedings and some refuse to take them back after being in custody or while on ROR.
- The UN CRC stresses in its preamble the family's role in the growth and

well-being of children. However, in poor families, the amount of time and energy is often limited because both parents have to work and because of the heavy pressures of scrapping together a subsistence living. Government needs to look at ways of alleviating this situation with a minimum wage, good working practices for parents, pre-school facilities, education for all, among others.

Local government units, the barangay and its officials

- There is very little understanding of the potential role of BCPCs within barangays.
- The role of pro-actively protecting CICL at the barangay level through mediation is a vital part of diversion. The barangay captain's initiative in Barangay Los Amigos in Davao and Barangay Ermita in Cebu, as well as the joint efforts of barangay officials and FREELAVA in 12 BCPCs in Cebu City through a Children's Justice Committee, has had a positive effect on children's lives. Unfortunately, these are the exceptions. In Metro Manila, less than half of the

barangays have a BCPC and in barangays where BCPCs are present, apart from providing sports activities, few are otherwise functional and fewer are concerned with CICL.

- The importance of diversion is emphasised in Article 40 (3b) of the UN CRC, which says that: “States Parties shall seek to promote... whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings...”
- There is little understanding in the barangays of children’s rights and “best interest,” of prevention, diversion, restorative justice, rehabilitation and reintegration.
- To better protect children, LGUs should mandate the setting up of BCPCs and monitor their roles in advancing the best interest of children, including that of CICL through mediation. Much hinges on the support of the mayor and the barangay captain as they are usually more interested in infrastructural growth than child rights.
- The barangay captain and officials should find ways in conjunction with other players (such as NGOs, the media and the private sector) to advocate for the importance of the

BCPC and to involve members of the community in helping children who are victims, “at risk” or are in conflict with the law. Presently, there is low public awareness of why children should be kept in the community and not institutionalised.

- Some of those involved in mediation and the CJC should be appointed on merit by a body well-disposed to children (such as the Barangay Development Committee) and not solely by the barangay captain, and that they be appointed for four to five years to ensure continuity.
- The tanods should be encouraged to bring all CICL (90% of whom are likely to be first offenders) to the BCPC for resolution and not to take children straight to the police. The successful functioning of such a process would dramatically reduce the number of children being held in custody and going to court, thus saving considerable money, greatly reducing the criminalising of children and thereby allowing the authorities to use their services better for the most serious offenders. To succeed, this requires officials to have an understanding of the rights of the child and to be motivated to work in their “best interest.”

- Wherever possible, translated versions of the Riyadh Guidelines on the Prevention of Juvenile Delinquency should be made available to barangay officials so they would be aware of its contents.
- NGOs should be seen as possible partners by barangay captains and the barangay council in CICAL advocacy, monitoring and mediation implementation.
- Support to BCPCs from all pillars concerning CICAL mediation would help.
- There are very few programmes anyone is aware of for reintegrating CICAL back into the community.

Social workers (DSWD and CCSWs)

- CCSWs could greatly assist in the pre-court diversion process as they have the right to be involved immediately after apprehension, to refer cases back from the police to the barangay, to propose ROR for the appropriate person, including placement in NGO centres. However, they currently seldom visit a CICAL until just before arraignment, usually because of a referral. The studies showed that social workers usually only become involved during the detention period and during after-care.
- A better coordination process might help bring them in earlier to encourage diversion but it would require a decision by the DSWD and the LGU over the most effective use of their limited staff resources.

LAW ENFORCEMENT—THE POLICE AND THE TANODS

- Tanods appeared unclear of their role with CICAL.
- There is nothing in the main PNP Handbook on CICAL. While the procedure for dealing with children is laid down in the PNP-UNICEF Handbook on CEDC, as it is not in the main handbook, the frontline police appear to ignore it. The problem is more with the lack of knowledge and non-implementation of the rules concerning “due process” rather than the lack of such rules as these had been set out in PD 603 (e.g. the eight-hour rule for informing child of offence and rights; contacting parents and social worker/lawyer; 12 to 36-hour rule for medical checks, investigation and case filing).
- It is imperative that the abuse of CICAL by the police is stopped. It is common for CICAL to speak about the abuse they are subjected to on arrest by the police. International standards are very

clear: Article 40 of the UN CRC states that the child should be treated “in a manner consistent with the promotion of the child’s sense of dignity and worth.” Further, Article 37 states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” and “that every child deprived of their liberty shall be treated with humanity.” It is clear that the current standards fall well below that which the Government of the Philippines has undertaken to uphold.

- Frontline police are resistant to doing CICL work as they do not see this as their job but that of the DSWD. Moreover, they do not see themselves as having a “community relations” role, which is necessary when promoting diversion.
- There is a lack of clarity in the law as to what to do with children after filing a case – whether they should be placed with DSWD or with the BJMP.
- The role of the WCD of the PNP is split under the Directorates of Investigation and Community Relations, with Investigation having the operational authority. Under such an arrangement, it would seem that the community initiatives of the WCD are reduced and the community-relations aspect of its work deprioritised.
- The WCD is generally understaffed (As of this writing, the ratio of frontline police to the population in the Philippines is 1:701). Usually, there is only one WCD officer per police station. In some cities, there are two.
- Most WCD officers are only on duty during the day and not at night when most arrests take place. There are only a few cities with WCD officers 24 hours a day, such as Davao. If there were more all-day WCD officers in



FILE PHOTO: SAVE THE CHILDREN UK (PHILIPPINES PROGRAMME)

areas where there are high numbers of young offenders, then diversion is likely to increase.

- There is a need to know how the WCD is perceived within the PNP and how it is closely monitored.
- It is clear from the experience in Cebu City that the police have helped by forging their agreement with shop owners to divert most child shoplifters from custody. Because of this and other actions, 68% of cases (3,120) are closed and never went to court. What is the reason for Cebu CYRS being able to negotiate with shop-owners so well and why can this not be done elsewhere?
- Wherever possible, sending children back to the barangay for their case to be resolved would be the best solution as most children are first offenders.
- Apparently, the PNP has no funds for food, beddings, and other amenities for those held in cells.
- Most police stations have only two cells. If both adult sexes are present, then children and adults will be mixed.
- Ancillary police groups (e.g. SPAGs, CVO, DCPA and CSU) should be given proper, adequate and intensive training on how to properly handle CICL according to the UN CRC and other international instruments.
- Are there PNP guidelines concerning police use of discretion and diversion before and after arrest? How much discretion for diversion do the police have? How can the police become a force for diversion?
- Coordination between the police, the tanods, the barangay, the local DSWD, the LGUs and the courts is quite weak.
- Other international standards very relevant to the police are as follows.
 - Beijing Rules, Sec. 11 on diversion: “The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings...”
 - Section 10 on initial contact
 - Section 12 on specialization within the police
 - Section 13 on detention pending trial, which sets out good practice for the enforcement services and their staff

Article 27 of the Beijing Rules refers to the UN Standard Minimum Rules for the Treatment of Prisoners, which applies particularly to the Philippines with respect to the provision of beddings, clothing, food, complaints and requests, medical care, among others, for those in police or BJMP custody.

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

PROSECUTION

- Family court prosecutors could have a role in upholding the “best interest” of the child when his/her case is filed, such as to advocate for less serious CICL cases to be resolved by diversion.
- Is their role to work for the “best interest” of the child?
- Often, prosecutors do not inform CICL that the case isailable.
- The prosecutors’ role in pushing for ROR or otherwise a reasonable amount for bail seems weak.
- Prosecutors should not be a cause of delay in the filing and hearing of cases.
- There is a lack of coordination between the police, the court and the CSWs, prosecution, the PAO and the judges regarding community-based alternatives to deprivation of liberty of CICL.
- International standards state that the “prosecution ...dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings...” (Beijing Rules, Sec. 11). Also, Article 40 of the UN CRC states that the child’s case should be “determined without delay.” However, the current system is often very slow and more often than not, the child is held in cus-

tody so that at the time of sentencing, the offender has already been incarcerated for longer than the sentence that can be given. A group of three children in Davao, at age 13, were asked to help farmworkers move coconut shells and were later arrested for theft. These children had been awaiting trial for 6 years. At the time of the study, they had reached the age of 18 and dreading what might happen to them, being now considered as adults.

COURT

Judges

- In Metro Manila, judges visit the prisons one to three times a year and because of Supreme Court Administrative Circular No. 04-2002, this is now the expected duty of all designated judges. This may be a useful way for judges to become more aware of the awful conditions in the jails and the loneliness (*mingaw*) children even experience in the rehabilitation centres.
- Case study reports by the CSW on each CICL before sentencing are not automatically prepared.
- The public and press are often allowed, or not prevented from entering a CICL hearing in the family court (in Metro Manila, only 39% exclude the

public). This is in direct contravention of Article 40 (2bvii) of the UN CRC.

- The judge seldom seeks the child's views. Everything is left to his/her counsel. Article 12 of the UN CRC stresses the child's right to be heard. There does seem an obligation for the judge to check whether the child is being correctly represented and whether he/she has anything further to say.
- There seems to be little understanding by court officials of a child's "best interest."
- Judges can push for speedy trials. This was likely the case in Pasay City. From being the city with the second most number of CICL cases filed in Metro Manila in 1981, the Pasay City Family Court in 2001 had become the least busy of the five city courts looked at in the Metro Manila study. This was attributed to the attitude of the resident judge, who heard cases with as little delay as possible and avoided incarcerating children. This shows that judges can truly take initiatives.
- As so many CICL coming to court are first offenders who are not hardened to offending, bail should be a presumption and community disposals prioritised.
- Judges make too much use of detention and make little use of community-based sentencing, despite alternative ways of imposing a suspended sentence (Supreme Court Ruling on Juveniles in Conflict with the Law). The UN sets out in the Tokyo Rules information concerning non-custodial sentencing, which is important reading for judges in the family court.
- Article 37 of the UN CRC is not followed, namely, that detention should only be used "as a measure of last resort and for the shortest possible time."
- The family court judges have a role in advocating for diversion.
- The Supreme Court should consider increasing the seriousness of offences for community diversion to a maximum penalty of six years. It would be helpful if the Supreme Court reviewed the use of status offences, that is, when an offence is only such for children and not for adults (e.g., curfew ordinances).
- There should be a greater role for probation officers with CICL who have a second conviction.
- With regard to good practice in sentencing, Section 17 of the Beijing Rules states that "Deprivation of per-

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

sonal liberty shall not be imposed unless the child is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless...no other appropriate response.” Very few children currently in custody would fall under these criteria, so most if found guilty should be serving their sentences in the community.

Public Attorney’s Office (PAOs)

- There are not enough lawyers in the PAO. Thus, it is not possible for them to see every CICL upon arrest.
- PAO lawyers, although criticised for not contacting CICL before coming to the arraignment, seem to be under a heavy workload. In Davao, two PAO lawyers take eight to 10 cases per day, which would leave little time if they are to be presented properly for visiting CICL at the time of arrest.
- PAO lawyers do not appear active in seeking bail for CICL at arraignment nor in advocating for non-custodial sentences.
- Should it be the task of the PAO to check whether a CICL has overstayed in custody and to inform the judge?

- Because of the rushed nature of the proceedings and the lack of preparation, it is questionable whether the court process is explained satisfactorily to the CICL or the case is presented “in the best interest of the child.” The PAO lawyer often tries to persuade the CICL to plead guilty rather than to take the risk of getting a very long stay in custody.
- Training on children’s rights for PAO lawyers is required.
- To give fair justice to children, more PAO lawyers should be recruited. Government should also allocate more funds as representation, especially for a child in custody and facing a custodial sentence, is a child’s right under the UN CRC (Article 40).

Probation Officers

- There is one probation officer per city but they do not seem to be involved with CICL. No application was received by the probation officer in Manila or Pasay City from those who have already received a suspended sentence.
- Could these officers not be better used to assist repeat offenders?

CORRECTION

BJMP

- There are no separate rules for children in detention.
- CICL are not separated from adults in some jails (e.g. boys in Mandaue and Lapu-lapu City Jails, and the Consolacion Municipal Jail; girls in the Lapu-lapu, Talisay and Mandaue City Jails).



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- Abuses (i.e., exploitative and sexual) were prevalent; as one CICL commented, “There are more vices inside than outside.”
- There is little or no schooling in jails. Neither are there forums, vocational training nor other activities.
- UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL) would be expensive to implement, which can be another reason to implement diversion.
- Are UN Rules for JDL translated and read by all?
- Wardens also voiced their concern about what happens to a child in their care who approaches 18 years.

DSWD and foster parents in rehabilitation centres

- As regards indeterminate sentencing, rehabilitation centres make the executive decision as to when to stop deprivation of liberty. Is this not a breach of the UN CRC’s standard for custody at the “shortest appropriate period of time”?
- There is an issue about the use of the isolation/observation room for all new arrivals and mixing these newcomers with those sent to these rooms as punishment.

• **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

- There is an insufficient number of social workers for all CICL, including the latter's case management.
- More attention appears to be given to the offending behaviour. The issues of the CICL are seldom addressed.
- About 75% of CICL in Metro Manila and 100% in Davao who were released were not followed up.
- Article 27 of the UN CRC (“No child shall be subjected to...cruel...or degrading treatment or punishment”) is constantly being violated inside custodial centres.

It should be noted that NGOs seem to feel they are not given an active role in these processes, except at the community level. There may be more they could offer at other levels as well.

THE ROLES OF THE FIVE PILLARS AND POLICY MAKERS

The following are some of the significant roles that the members of the five pillars of justice and the policy makers can play in creating a justice system that will put as primary consideration the best interest of the CICL:



- Addressing all these gaps and constraints requires action by the policy makers within each pillar and regular meetings across pillars at the central, provincial, city, municipal and barangay levels.
- It requires their understanding of:
 - The interdependent roles of the five pillars;
 - Children's rights, the international standards on children's justice, especially diversion and restorative justice; and
 - The work of NGOs involved in the promotion of children's rights and children's justice.

- It requires support for the Juvenile Justice Bill and advocacy for policies to ensure its effectiveness.
- Asserting for resources

It should be clear from the above that the UN CRC and other international UN instruments provide a set of good practice principles for all those involved in the criminal justice system in working for the “best interest” of CICL. However, relevant key sections need to be selected and presented to each pillar rather than everything to enable useful debate on the critical issues. There is much work to be done if these minimum standards are to be met.

“My hope?...a happy family.”

– Tomas, Cebu City

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9 RECOMMENDATIONS FOR PROGRAMME WORK AND ADVOCACY

This consolidated study puts forward ways by which the five pillars of justice can work most effectively for the best interest of CICL.

WORKING FOR THE BEST INTEREST OF THE CICL IN THE COMMUNITY

First offenders and diversion at the community level

- All first-time offenders should be offered diversion in the community, unless their offences are very serious (e.g. murder, rape, extreme violence, among others).
- Graduated diversion (tariff) should be developed that will be based on the degree of seriousness of the offence. Below is an example:
 - Police/tanod warning at barangay or precinct
 - Police/tanod warning at home--parents present
 - Apology to the victim
 - Reparation/compensation
 - Community work and/or adult guidance
 - Mediation with the victim; agreement on reparation, apology and compensation
- Community work, adult guidance
- Mediation without the victim
- Guidelines on the principles and good practice in mediation processes and procedures involving CICL should be produced. Procedures for the following aspects should be included:
 - The mediation body not being a court but a means of reaching agreement between the child offender and his/her family and the victim and his/her family with the aid of mediators
 - The child admitting the offence
 - Privacy
 - The child making amends
 - Restoring harmony
 - Confidentiality, membership
 - Culturally appropriate approach within human rights guidelines
 - Training
 - Pro-child/wise mediators
 - Follow-up
- The court should refuse to hear a case of a first offender unless it knows that diversion has been tried and failed, the child did not admit offence or it is a matter of extreme violence.

• **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

- Police/tanod powers are clarified by the PNP and the barangay respectively regarding diversion and tariff.
- The above tariff allows for diversion in the community after second and third offences.
- Barangay should be allowed to deal with CICL where maximum penalty is six years. This may require a revision of the Revised Penal Code.
- There should be a presumption of bail on ROR for all first and most second and third non-serious offenders.
- LGUs should issue a local ordinance that would mandate the setting up and/or provide support to the BCPC and CJC.
- The CSWs and the DSWD should monitor the BCPCs.
- There is a need for more research on the most appropriate model of restorative justice. The practice of indigenous communities that may constitute restorative justice can be examined.

Setting up of and support to the BCPCs and the lupong tagapamayapa

- The national government and the LGUs should exercise their mandate to set up BCPCs and to provide the guidelines, training and funding for the equivalent of the Children's Justice Committee in either the BCPC or the Lupong Tagapamayapa.
- There should be a strong advocacy with mayors, city councillors, association of barangay councils, individual barangay captains and other influential players to set up councils for the protection of children at the city, municipal and barangay levels.
- Guidelines on principles and good practice should be developed, drawing from the experiences of FREELAVA in implementing community-based diversion through the CJC in BCPCs. This should also be distributed to the DILG, PNP, Department of Justice, the Supreme Court, DSWD, CWC and other relevant agencies and interested organisations/groups.
- The use of the FREELAVA model of CJC, community volunteers and peer educators at the BCPC or Lupon can be tried elsewhere.
- FREELAVA and other NGOs may attempt to pilot work directly with the Lupon on its setting up a CJC as this may be a simpler model.

- There should be funding for training and transportation for the barangay's CJC work.
- LGUs should desist from doing round-ups or "rescues" of street children.
- There should be training of and coordination among barangay officials, tanods, influential local people and city social workers, DSWD and the police in the handling of children.
- CICL matters, especially those concerning diversion, should be integrated into the city children's welfare codes, as in Davao.

Violation of local ordinances, status of offences and penalties

- Local ordinances should not make offences for children those that are not offences for adults, such as curfew.
- The penalties for violation of local ordinances by children should not include custody.
- Local ordinances should emphasise non-penal child-friendly issues, not penal ones as at present.

WORKING FOR THE BEST INTEREST OF THE CICL AT THE LEVEL OF THE POLICE

- The main PNP Handbook should be amended to include what is expected of police when in contact with CICL. It should direct all police to adopt a child rights approach in how they treat CICL and to promote diversion through a tariff system including mediation.
- The PNP should promote the success of and develop the WCD diversion efforts in Cebu (forging an agreement with shop owners) into a national initiative.
- Apprehending officers should use diversion methods.
- All PNP officers should receive training on what is expected of them when involved with CICL.
- A national seminar should be conducted with the PNP to study successful models of diversion in the Philippines and elsewhere, and to introduce a national diversion programme.

• **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

- The number of WCD officers should be increased in high offending urban areas so that these officers can be on duty 24 hours a day.
- The WCD should be made open to all child-sensitive police including males.
- The PNP hierarchy should recognise the advantage of a special Directorate for WCD, which brings together Investigations and Community Relations.
- The PNP should work in a coordinated way with the other pillars of justice.
- There should be a presumption of bail for all CICL on arrest without monetary payment, i.e., ROR. The only exceptions are cases of extreme violence and serious repeaters.
- Certified NGO homes should be allowed to take children on bail who do not wish to go home. This needs to be allowed and negotiated.
- The LGU, the police and relevant NGOs should work together with street children and street gangs to plan how offending can be reduced.

WORKING FOR THE BEST INTEREST OF THE CICL AT THE LEVEL OF THE COURT

- If ROR is not given at the filing of the case or at arraignment, the prosecutor or judge must give the reason and it may be appealed against.
- It should be the task of the police, the DSWD, the PAO lawyers and the prosecutor to ensure ROR is given to CICL, especially first offenders.
- There must be a limit to the length of time a CICL may be kept in pre-trial custody (e.g. three months).
- There should be a limit for bail (e.g. six months) after which the case is dismissed.
- When diversion is not possible, non-custodial sentences should be prioritised except for extreme violence or serious repeaters.
- Judges should use their influence to speed up trials and make ROR the norm.
- Judges should seek the views of CICL.
- Unless extreme violence or serious repeaters are involved, no first offender should be given a custodial sentence.

- Separate court records should be kept for children.
- If there is any reasonable doubt, non-discernment should be the ruling of the court.

WORKING FOR THE BEST INTEREST OF THE CICL DURING CORRECTION, REHABILITATION AND REINTEGRATION INTO THE COMMUNITY

- All places of detention should have guidelines regarding the treatment of CICL and should inform each CICL of his/her rights while detained.
- The JDL Rules should be applied.
- The giving of indeterminate sentences as currently operational in rehabilitation centres should be stopped.
- Rehabilitation centres should be open to CICL who have been convicted more than once.
- The use of observation rooms to isolate children on arrival at rehabilitation centres should be stopped.
- Semi-open institutions for CICL where custody is necessary should replace the current closed ones.

CHILDREN'S PARTICIPATION IN CICL ISSUES

- Children in the criminal justice system need to be informed of their rights.
- Adults should ensure that the voices of children, including CICL, are sought and heard in the community, in court, in institutions and in coordination bodies; and that they are able to claim their rights.
- Interested young people, especially former CICL, after appropriate training and selection, may be encouraged to assist current CICL in their reintegration into the community, such as through recreational activities, positive peer example and advice.

AWARENESS RAISING ON CHILD RIGHTS AND PREVENTION OF OFFENDING BY THE FIVE PILLARS AND CIVIL SOCIETY

- Central and local coordinating groups and relevant departments may arrange training discussions for stakeholders both focused by pillar and jointly, of how to meet the best interest of CICL and prevent offending and re-offending.

- **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

- It is important that facilitators/trainers prepare and implement modules that will incorporate the relevant parts of the UN CRC, international instruments, proposals for a juvenile justice law and national laws, and make sure that these are presented according to the specific roles and responsibilities of each pillar.
- Members of the five pillars should tell CICL about their rights.
- The five pillars should review how offending can be reduced at their level of operation, which is in the “best interest” of children.
- Each area (region, city, municipality and barangay) should participate in improving the quality of children’s lives by analysing and addressing areas of concern to children (gained from their participation) through a local plan of action.
- The five pillars should coordinate their decisions and advocate jointly on behalf of children at all levels.
- NGOs working in the field of care and protection should also link up with NGOs active in children’s justice and with the five pillars, with the perspective that CICL came from an environment (at home and/or in the

streets) where there is abuse and violation of their rights and, as CICL, continue to experience abuse as they go through the criminal justice process and thus need protection as well.

- The five pillars and NGOs should positively involve the media and the private sector in supporting diversion and restorative justice.
- The five pillars should advocate laws working for the “best interest of the child,” CICL and protection policies and the guidelines necessary for a rights-based, fair and responsible children’s justice system.

CO-ORDINATION AMONG THE FIVE PILLARS AT THE NATIONAL AND LOCAL LEVELS

- The national offices of concerned national agencies should meet together regularly to develop and review a joint strategy around a CICL “best interest” agenda.
- The CWC should take a stronger lead nationally.
- Trained CSWs should actively support community members in assisting in the reintegration of CICL.
- The mayors and barangay captains should bring together the five pillars

for monitoring on implementation of diversion. The agenda should include:

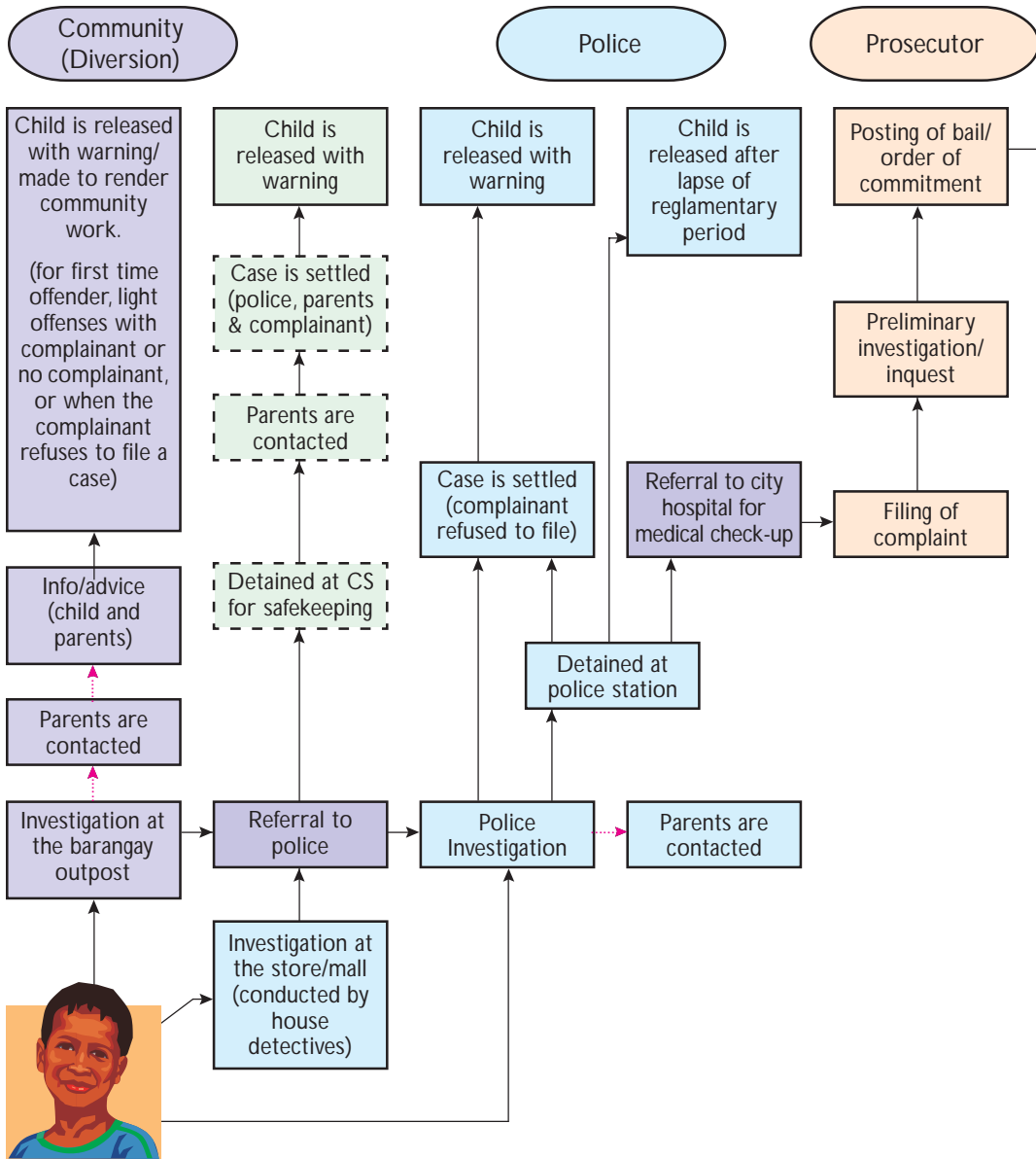
- Gauging the promotion and success of diversion especially for all first offenders;
- A review of data on community and police diversion, arrests and offences, ROR and bail and pre-trial detention, court cases, sentencing practice, especially the proportion of community-based as opposed to custodial sentences, and custody placements and reintegration practices;
- An analysis of the effects of diversion policy;
- An analysis of the trends in child offending;
- A review of the children's justice process and whether this has been reducing the number of serious CICL offenders;
- Taking stock of a prevention of offending strategy;
- How better to advocate principles around the "best interest" for CICL;
- A plan on how to improve diversion methods; and
- The involvement of children, especially CICL, in these processes.

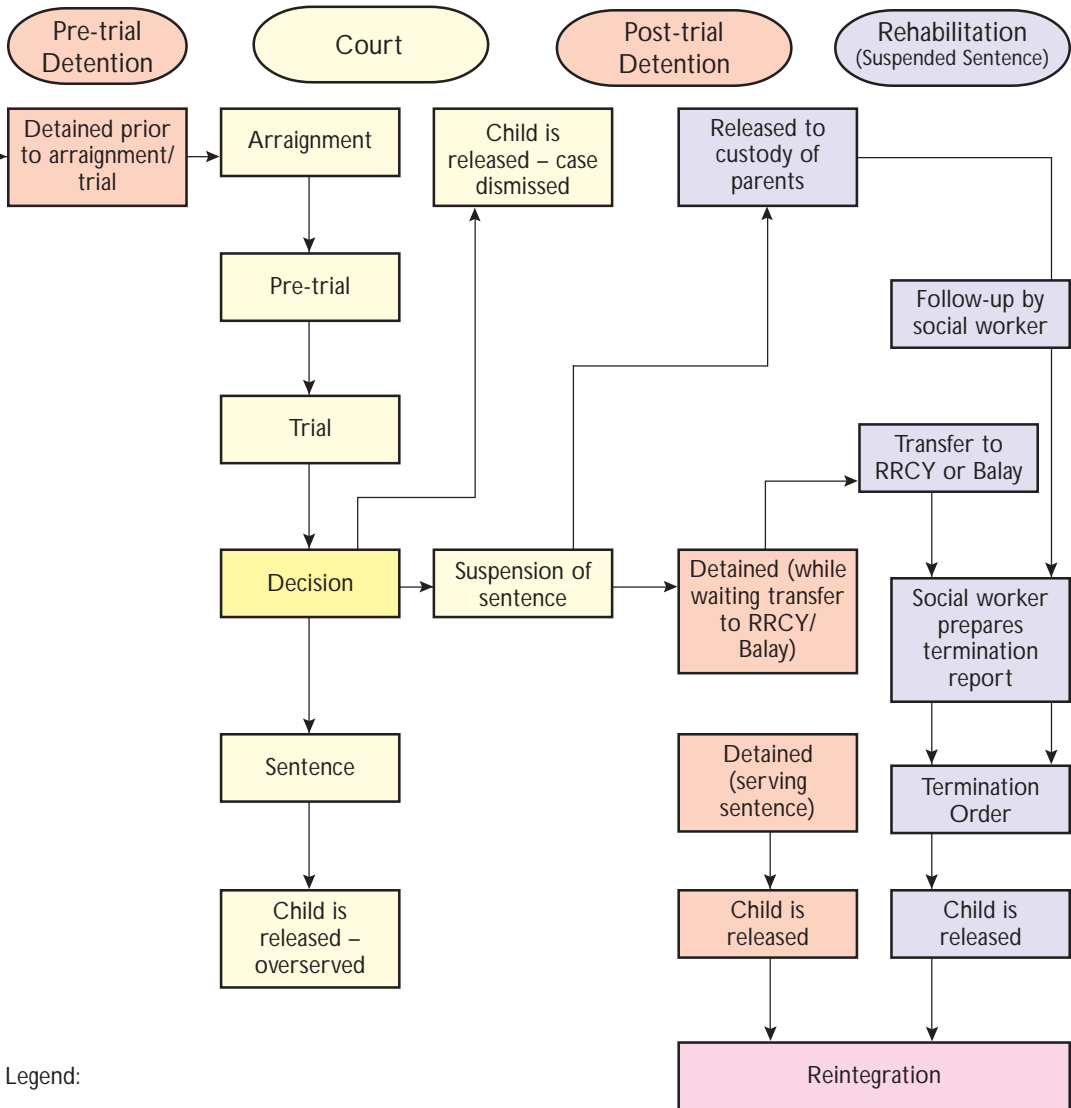
References Cited:

Maxwell G., and Morris A. *Understanding Reoffending*. Wellington: Victoria University, 1999.

• **BREAKING RULES:** Children in Conflict with the Law and the Juvenile Justice Process

ANNEX: FLOWCHART OF THE JUVENILE JUSTICE PROCESS





Legend:

CS Community Scouts

..... Seldom observed

[- - -] Refers to Cebu City only; diversion at the Community Scouts

Source: Etemadi, Ye and Bermudez (2002).