

## **Good law – poor implementation**

*Children in Conflict with the Law in the Philippines.*

*Researched on location in February and March 2008 by Marion and Les Derbyshire.*

At the time of writing, in the early part of 2008 the Republic of the Philippines is in a state of transition as far as its treatment of children in conflict with the law is concerned. A new law, the **Juvenile Justice and Welfare Act, 2006**, had been passed in March 2006 but did not come into effect until November of that year. Implementation of the Act has been fragmented and inconsistent and was still far from complete in March 2008.

The 2006 Act is a progressive law embodying the spirit and the provisions of the **Convention on the Rights of the Child**. The Act sets out the structures and procedures for the application of criminal responsibility, treatment of the child on apprehension and the limitations of initial and subsequent detention. It lays down the framework for prosecution and court proceedings. Further sections set out the requirements of diversion, both as an alternative to legal proceedings and as disposal available to the courts. The Act also deals with the principles of rehabilitation and reintegration. Finally there are transitory provisions to control the period of implementation.

The law is a good one and is well drafted. If it were fully implemented it would place the Philippines among the most progressive nations in the world for its attitude to and treatment of children in conflict with the law. As it stands in March 2008 there are still children behind bars and in conditions that vary greatly from one region to another. For the most part children are no longer detained with adults although in some cases this merely means not actually sharing the same cells. Where completely separate facilities have been introduced they are often still run by the Bureau of Jail Management and Penology (BJMP) and staffed by uniformed prison guards. Children apprehended by the police can be held for up to 8 hours, by which time they must be transferred into the custody of either parents or other responsible adult or into the care of the Department of Social Welfare and Development (DSWD) or an approved NGO. Unfortunately this means that they are often held in police detention cells for several hours. These can be overcrowded and with inadequate access to toilet facilities. Often the only means of separating children is by placing them in a cell meant for women prisoners whether it is already occupied or not. The experience of researchers is that children are sometimes moved from police detention to a further secure holding facility and that conditions there can be very unsatisfactory indeed. They discovered one instance of a young person who had been detained in this way for eleven years and was still awaiting trial.

In Metro-Manila the centre for juveniles is a large, stark concrete structure behind a high security wall. The children are accommodated in groups in large cells with little furniture other than the plain wooden bunks covered with a thin sleeping mat. The whole outer wall of each cell consists of iron bars and the cell looks out onto a narrow walkway which is also bounded by a wall of bars. The guards wear the grey uniform

of the Bureau of Jail Management and Penology (BJMP). When they visited, the researchers were told that there was a programme of activities but there was no sign of any in progress and most of the children were locked in their cells. They later learned from boys who had previously been in the centre that the first thing they experienced there was a "welcome party". This was in fact a severe beating by the other inmates, enforced by the guards.

In another town, in Mindanao, young people were being kept in the provincial jail. Although they were in a separate cell, it was not possible to entirely segregate them from the adult prisoners in the same compound. To avoid close contact the young prisoners were kept locked up for 23½ hours per day, only being allowed out to play basketball for half-an-hour in the early morning. The researchers were permitted to interview the boys through an interpreter who was not part of the prison establishment. It was evident that, other than the confinement they suffered, their treatment was not harsh but totally lacking in any form of stimulus. Most noticeable was the feeling of hopelessness and depression that surrounded the boys. Not surprisingly they could not even contemplate anything beyond their immediate position. Management of the young prisoners had been delegated to the women's guard. In interview she expressed the desire to make more appropriate provision for the young people, to introduce a programme of activities and to create accommodation that would be separate from the main compound. The researchers heard the now familiar complaint that there simply were not enough resources available to bring this about. They felt that she at least showed a more caring attitude and that her desire – her dream, she said – to bring about change was genuinely held.

On a more positive note, there are now hopeful signs of change. These are seen in the provision of facilities by both government departments and by approved NGOs. The emphasis from government provision is initially concentrating on children whose court case has been concluded and who have received suspended sentences. These children can be moved into a diversion programme if one exists in their locality or they can be sent to a rehabilitation centre if that is deemed appropriate. The 'Regional Rehabilitation Centres for Youth' have now adopted a unified policy and practice aimed at bringing about a real change in the attitudes and behaviour of children. The researchers were encouraged by evidence of a caring and genuinely concerned ethos at work in these centres. At present there is only one such facility for each of the regions and these cannot possibly cope with the number of young people that would benefit from what they provide.

NGOs are also providing an alternative to custody for children who have been through a trial. Additionally they are providing facilities for the great number of children who would otherwise be locked up while they wait for their case to come to court. Cooperation between the NGOs and the authorities has led to children being placed in the care of a voluntary body during the sometimes very lengthy process of coming to court. In many cases the NGO also works on behalf of the child to ensure that he or she is legally represented. Very often they are able to have the case dismissed because the child is, or was at the time of the alleged offence, under the age of criminal responsibility. In the case of the Philippines this is now 15 years.

Before the passing of the 2006 Act rescuing the children from jail was more difficult. The NGOs had to carry out jail visits to determine whether there were any minors detained and often had to be forceful and insistent in the face of opposition. With the change in the law NGOs still find that they have to identify where there are minors in jail and be pro-active in having them released. They do this by looking at the court lists for the day, identifying those under 18 years and noting where they are being held. It is then necessary to produce papers to show that this is in fact a minor who should not be locked up and to obtain the agreement of the court to having the minor released to the care of the NGO.

It is at least partly due to the action of the NGOs that any change has come about in the situation of children in conflict with the law. They were an influential part of the pressure groups that pushed for a change in the law and were largely instrumental in the passing of the 2006 Act. Their advocacy continues to press for implementation of the law and education of the various agencies that are charged with carrying out its provisions. It is clear that there is still a long way to go before children are fairly and justly treated when they come into conflict with the law. In a country like the Philippines where communication between agencies is so fragmented there continues to be great divergence in both policy and practice. It will take a major exercise in training the police, the courts and local authority departments if the excellent provisions of modern legislation are to be seen in practice throughout the country.