

Community-Based Diversion for Children in Conflict with the Law: The Cebu City Experience

Felisa U. Etemadi

Social Sciences Division

University of the Philippines, Cebu College

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Comment on This Article

Abstract

This paper describes a community-based diversion program for children in conflict with the law in Cebu City in the Philippines. The program, based on mediation and the principle of restorative justice, provides an alternative to the harsh, dehumanizing criminal justice system through which most child offenders in the Philippines have routinely been processed. Piloted by the NGO FREELAVA in 12 Cebu City barangays, this community-based program builds on local governance structures and involves collaboration among barangay officials, professionals and community volunteers, including past child offenders as peer educators. The paper describes the diversion process in detail, draws on the experiences of individual children, and outlines both the strengths of the program and the areas that need more attention.

Keywords: *restorative justice, criminal justice, child offenders, Cebu City, Philippines*

Introduction

Cebu City in the Philippines is the pilot site of a community-based program for children in conflict with the law, the first of its kind in the country. The goal of the program is to prevent the entry of these children into the formal justice system through diversion at the community level, based on the principle of restorative justice, and to provide an alternative to residential care. The program aims to put into practice two basic principles in the Convention on the Rights of the Child—namely, “the best interests of the child” and “detention or imprisonment...as a measure of last resort and for the shortest appropriate period of time.”

This paper describes the diversion of child offenders by Children Justice Committees (CJCs) at the community level in 12 pilot *barangays*¹ in Cebu City. It discusses these committees within the context of the Barangay Committee for the Protection of Children (BCPC) and the parameters of the *barangay* justice system. It explains the strategies, stages and processes of community-based diversion implemented by the NGO FREELAVA and partner *barangays*, and argues that the project has made a difference in the lives of most of the diverted children in the short run despite the constraints and limitations encountered in the pilot *barangays*. This is not a project evaluation but a process documentation of an ongoing program that aims to share some lessons learned from the Cebu City experience.

The second largest city in the Philippines, Cebu, is a showcase for a dynamic government-NGO collaboration in social services delivery. FREELAVA² (Free Rehabilitation, Economic, Education and Legal Assistance Volunteers' Association), an NGO with a track record in providing free legal aid and rehabilitation of prisoners, including post-release rehabilitation of children in conflict with the law, initially implemented the community-based diversion program in three urban *barangays* in Cebu City and then expanded into six other *barangays* between October 2001 and March 2002, with funding from Save the Children-Japan. Through additional funding from Save the Children-Sweden and the European Union, and with the assistance of Save the Children-UK (Philippines), since April 2002, the program has grown to cover 12 *barangays* in the city.

Methodology

This paper is a follow-up of an earlier work on children in conflict with the law in Cebu (Etemadi, Ye and Bermudez 2002). Data were gathered from a number of sources to update the earlier findings. Primary and secondary documents were drawn on, including official policies, guidelines and directives, fact sheets, program quarterly and annual reports, workshop reports, police records, jail records, manuals (particularly the UNICEF Multi-Sectoral Juvenile Justice Training Manual), articles in newspapers, and assessment reports. There were informal discussions with program implementers in ten pilot *barangays*, and interviews with three project staff from FREELAVA and two teachers who are members of a CJC. A focus group discussion was held with ten members of the CJCs from five pilot *barangays*, and another with six community volunteers and ten peer educators from two pilot *barangays*. Case studies of seven diverted children were conducted to supplement five case studies from an earlier report (Labrador 2004). Data from the police department covering 2002 to 2005 were processed for comparative purposes.

Background

Although the 1987 Philippine Constitution enshrines the promotion and protection of children's rights, national laws protecting the rights of children in conflict with the law (CICL) are limited. Presidential Decree 603 (the Child and Welfare Code and its Implementing Rules and Regulations, enacted in 1974) spells out special procedures in handling CICL cases. However, studies point to many gaps in actual implementation by the five pillars of the criminal justice system—the police, prosecutors, correction, courts and community (AKAP-AHRC 1998, 75-88). Although the Philippine government ratified the UN Convention on the Rights of the Child in 1990, five years later the Committee on the Rights of the Child observed a lack of compatibility between the country's juvenile justice system and the Convention and other international standards (UNICEF and OHCHR 2002, 78). CICL were still going through the Philippine criminal justice system, which is considered "harsh and dehumanizing" even for adults (Save the Children-UK 2004, 1).

Initially, child rights advocates focused their attention on incarceration and arrest because violations of child rights at these two stages can easily be observed. Their heaviest criticisms were directed at the unavailability of separate cells for minor offenders, the lack of facilities and services in unsanitary detention centers, the long waiting periods prior to arraignment, and the manhandling of children by the police. Individual and organizational crusades to improve conditions for these children gained momentum and evolved into a movement through the 1990s.

An estimated 58,000 children are jailed every year in the Philippines (PREDA 2005). In the four cities of rapidly growing Metro Cebu,³ 1,671 children were imprisoned from 1999 to 2001, of which 78 percent came from Cebu City (Etemadi, Ye and Bermudez 2002, 11). Esperanza Valenzona, then chairperson of FREELAVA based in Cebu City, along with other NGO advocates, had been lobbying for segregation of apprehended minors since the late 1980s. She decried the fact that these children were often placed in the same cells as hardened adult criminals, some of them convicted of heinous crimes (Valenzona 1988). For over three decades, Cebu City's jail, the Bagong Buhay Rehabilitation Center, accommodated both adult and minor offenders. It was perhaps the most overcrowded center in the entire country (Auditor 2000, 2). Originally built for 250 inmates in the 1970s, it housed about 1,800 prisoners.⁴

By the late 1990s, male child offenders were accommodated in a single, separate cell at night but interacted with adult inmates during the day. Aside from the rules set by the jail authorities, the children were governed by the "rules" imposed by fellow inmates, who had their own system of initiation and punishment, following the instructions of the *mayor*, the acknowledged leader of the inmates in a cell or *brigada*. With an area of only 72 square meters, the boys were squeezed like sardines in their cell. They slept shoulder to shoulder, while new entrants squatted to sleep. Some children complained of edema, as they slept on concrete floors with no bedding. Many boys suffered from untreated skin diseases because of dirty water supply. Some children slept in the adults' cell. Young children were sometimes "adopted" by adults as errand boys and/or sleeping partners. Sexual abuse of children by adult inmates was alluded to but not confirmed.

Girls, who were confined in the same cell with adult females on the other side of the compound, had no direct access to the infirmary which was located in the male ward. If they became ill, they were attended by a nurse or doctor only after the *mayor* called the attention of the jail guards. Medicines were reportedly in short supply. Children complained they were always hungry; food rations were limited by a budget of ₱30 (US\$0.55) per inmate per day. Since the jail did not provide utensils, those who did not have a *kasalo* or partner had to scrounge in the canteen for plastic or cellophane which they used as plates and bowls.⁵ Many joined gangs for protection and comradeship. About 10 percent of the boys, mostly those between 12 and 14 years old who were not visited by parents, practiced self-mutilation (*boreum*).

Treatment was no better prior to incarceration. Many boys recalled the maltreatment they experienced while in the custody of insensitive arresting officers. After being handcuffed upon arrest they often experienced physical abuse, most commonly *kulata/bokbok* (mauling) and *sumbag* (punching) followed by *latigo* (whipping), *hapak* (slapping using the logbook), and dunking of the head in water (Etemadi, Ye and Bermudez 2002, 33). Investigations proceeded without the presence of parents or a lawyer. Children were detained in cramped and unsanitary police precinct cells together with adult criminals. Those who were arrested on a weekend or holiday stayed for three days, far beyond the 12-36 hour limit to file a case specified by law. Since the police station had no funds for food, bedding or utensils, their basic needs were not met.

Formal education of child offenders who were enrolled in school at the time of arrest was disrupted, though primary education sessions were conducted by an NGO three times a week inside the jail. Except for the very few who were visited by private lawyers, children did not know the status of their cases. They relied on adult inmates for information and advice, but also learned such vices as smoking, gambling, drinking and substance abuse from them. Because the basketball court had been converted into an extension of the adult ward dotted by makeshift tents, sports activities came to a standstill. Although most of the children had committed only property offenses such as shoplifting and theft, or substance abuse, they languished in jail because of time-consuming court proceedings. Some waited 40 days before arraignment. Court trials could take anywhere from a month to three years (Etemadi, Ye and Bermudez 2002, 53-54).

Guided by Article 40 of the Convention on the Rights of the Child and Article 9 of the Riyadh Guidelines, FREELAVA sought to establish a workable mechanism to deal with child offenders at the community level without resorting to judicial processes and subsequent jail confinement (Auditor 2000, 4). Restorative justice is the principle behind FREELAVA's project proposal—a very different framework for understanding and responding to crime as compared to the retributive nature of most criminal justice systems. In contrast to retributive justice, which views crime as an act against the state that must be punished, the restorative approach holds that crime is a violation of people and relationships and creates obligations to make things right (Zehr 1990, cited in UNICEF and OHCHR 2002, 134). The movement

for restorative justice has grown out of increasing skepticism about the supposed preventive and deterrent effects of the existing criminal system and a general sense of frustration with the detachment of the retributive paradigm from the real problems of victims, offenders and communities (Brazemore and Umbreit 1998). Since the 1990s, the new concept has gained ground, especially in developed countries. It emphasizes restoration—of the offender's self-respect, of the relationship between offender and victims, and of both offender and victim within the community (Haley 1996, cited in UNICEF and OHCHR 2002, 134). Thus, restorative justice identifies three clients: victims, victimized communities and offenders (Umbreit 1996, cited in UNICEF and OHCHR 2002, 135). Each key stakeholder has a role in finding solutions to the conflict so that the balance of rights and responsibilities in the community is maintained (Skelton 2000).

The ultimate aim is one of healing.

Through receiving appropriate reparation, the harm done to the victim can be redressed; by making good the damage caused, the offender can be reconciled with the victim and reintegrated back into his/her social and familial networks; and through such reconciliation and reintegration, community harmony can be restored.

Wundersitz and Hetzel 1996, cited in UNICEF and OHCHR 2002, 134

Diversion, which refers to the various processes by which child offenders are prevented from entering the formal criminal justice system, is a typical component of a restorative justice approach (SC-UK 2004, xiv). Intervention can be introduced at the community level, by the police or in the court.

Institutional Frameworks

The 1991 Local Government Code, which mandates that parties to a dispute be subjected to conciliation, mediation and arbitration before the filing of the case in court, provided the mechanisms and procedures of conciliation and mediation at the *barangay* level. Each *barangay*, as part of its *Katarungang Pambarangay* (*barangay* justice system) has to organize a *Lupong Tagapamayapa* (Peace Committee) which acts as a reconciliatory board and is composed of the *barangay* captain and 10 to 20 members. In practice, the *Katarungang Pambarangay* applies primarily to settling disputes among adults, particularly domestic matters (Etemadi, Ye and Bermudez 2002, 57). FREELAVA, with the encouragement of Save the Children-UK, was bent on exploring the potential of expanding the *barangay* justice system to include mediation and diversion in cases involving children.

Philippine law (Article 87 of PD 603) stipulates that every *barangay* council shall encourage the organization of a local council for the protection of children. This mandate was strengthened by the Department of Interior and Local Government Memorandum in 1990 enjoining all *barangay* captains to establish these local councils within the structure of their respective Barangay Development Council. By early 2000, many Cebu City *barangays* had formed a Barangay Council for the Protection of Children (BCPC), albeit at different stages of functionality.⁶ The demands placed on the BCPC are extensive. It is expected to take charge of early

child care and development services, health and nutrition needs of children, and protection of children in difficult circumstances (i.e., abandoned, maltreated, abused, or working children, as well as children in conflict with the law). Given the limited resources and lack of training, most *barangays* channel their BCPC efforts towards setting up and maintaining day care centers, and addressing the health and nutritional concerns of children through the *barangay* health centers.

Having a functional BCPC was one of the criteria used by FREELAVA in selecting the 12 pilot *barangays* in the city. They also looked for poor and depressed *barangays* with a high proportion of children in the population; a high incidence of crime involving juvenile offenders as reflected in the police records; and willingness to participate on the part of local government officials, based on staff assessment after initial contact and project presentation. The pilot areas selected were Carreta, Duljo-Fatima, Ermita, Lorega, Pahina Central, Pasil, Sambag 2, San Roque, Suba, Tejero, T. Padilla, and Tinago.

Laying the Groundwork

With its track record in community development work, FREELAVA has used community organizing as the over-arching strategy in implementing the diversion program, and mobilizes the support and participation of the communities. This involves the formation and capacity building of the Children Justice Committees, community volunteers and peer educators, as well as community outreach and education. Policy advocacy and networking hasten program institutionalization in the *barangays*.

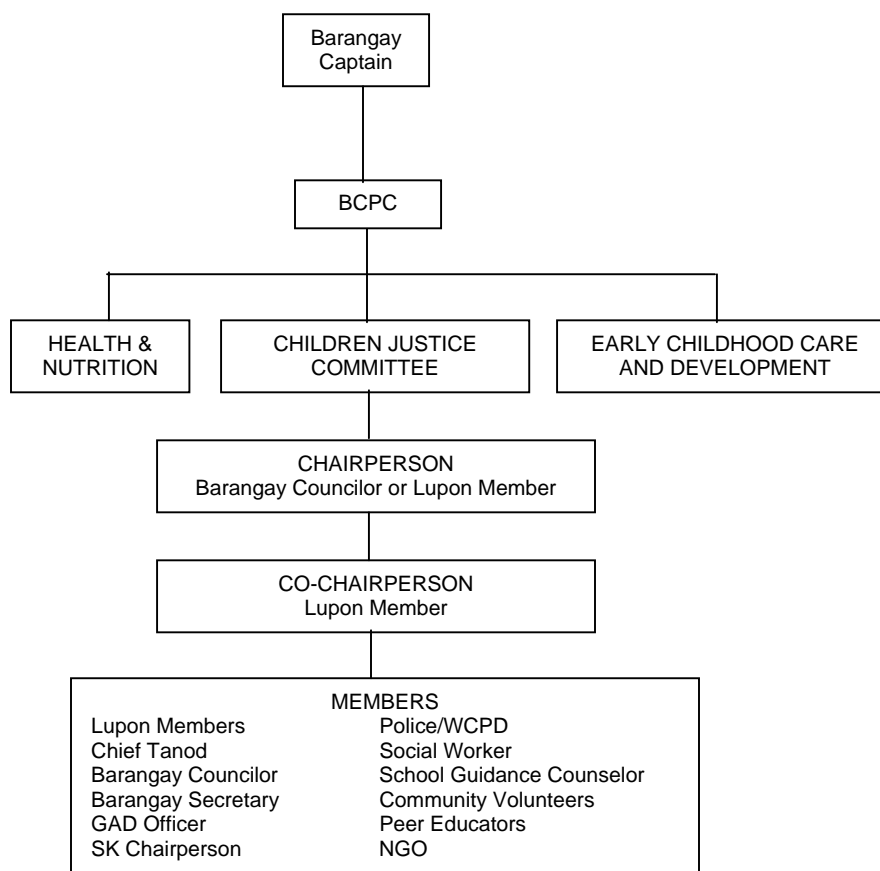
Under the current Philippine criminal justice system, the community has a two-fold role: community members report crime incidents and help in the arrest of the accused; they also participate in the promotion of peace and order through crime prevention and the rehabilitation and reintegration of convicts in society (UNICEF and OHCHR 2003, 56-57). Within the restorative justice framework, the community is an important stakeholder, responsible for working with offenders on understanding the consequences of their actions, discouraging them from reoffending, and providing them with an atmosphere of reconciliation and social acceptance as they reintegrate into the community.

The Children Justice Committee (CJC), Community Volunteers and Peer Educators

The primary function of the CJC, a committee within the BCPC, is to work for the settlement, reconciliation and mediation of reported cases involving child offenders and recommend appropriate psychosocial interventions and other necessary assistance to diverted children. The CJC is also expected to report regularly to the BCPC chair concerning the performance of the diversion program. The CJC is composed of 12 members, all with quite specific roles (see Figure 1). It is chaired and co-chaired by two *lupon* members (i.e., members of the *Lupon Tagapamayapa*) appointed by the head of the BCPC; given their skills and experience in community mediation and conciliation, they are designated as the prime mediators. A *barangay* councilor who heads the committee on social services or on women and children facilitates communication and feedback to the local

legislative body. The *barangay* secretary records the minutes of meetings and keeps the records of diverted CICL as well as other CJC documents. The chief *barangay tanod*, who is in charge of peace and order in the community, is concerned with the proper handling of CICL by other *tanods* during apprehensions. A police officer from the Women and Children Protection Desk is also included to facilitate coordination between the police and local authorities. Involving the police hastens the turnover of apprehended children to the community mediation process and does away with the filing of charges against the children in court or their detention in precinct cells. A social worker is in charge of the case management which involves counseling, psychosocial intervention, monitoring and facilitating other after-care interventions. The school guidance counselor from the nearby public school assists the CJC during counseling sessions and explains the program to fellow teachers so that they do not discriminate against CICL under diversion.

Figure 1. The Children Justice Committee Structure



The head of the local youth group assists the CJC in preparing youth development programs, drawing on the funding the CJC is allocated by the *barangay*. A community volunteer and peer educator serve as frontliners in monitoring post-mediation rehabilitation and reintegration of diverted children in the community. Also part of the group is the Gender and Development (GAD) local point person, who is readily available during mediation since the GAD office is located in the *barangay* hall. All these CJC members attend a seminar on diversion and restorative justice and a refresher seminar on the *barangay* justice system. CJC members follow a code of ethics formulated by the *barangays* with the assistance of FREELAVA.

Each pilot *barangay* also has a pool of ten community volunteers who become child rights advocates in their respective localities. These are mostly housewives, *barangay* workers or other concerned citizens who meet certain basic requirements—they are expected to be respectable residents with some report-writing skills who are willing to undergo training and to commit to the project. Although FREELAVA initially eased the selection criteria so as to maximize community volunteerism, they soon realized that some level of educational attainment was important since the mediation process requires knowledge and understanding of legal processes. The community volunteers undergo training on the basics on paralegal work and community organizing, diversion and restorative justice, gender and child sensitivity, the psychodynamics of children in conflict with the law, mediation and reconciliation, psychosocial interventions and counseling. As the monitoring arm of the program, the community volunteers provide updates and feedback on the diverted children to the CJC during regular monthly meetings and to FREELAVA during their monthly consultation. They also assist the FREELAVA program staff in the selection, identification and organization of peer educators.

From their ten years of experience in implementing the AIDS Education and Surveillance Project with PATH-USAID, FREELAVA has come to realize the effectiveness of peer education and counseling. In the diversion program, peer educators are diverted or released child offenders who express their willingness to undergo training and to assist the community volunteers and program staff in reaching out to other children. Their preparation includes leadership training, facilitating skills training, anger management, basic counseling and team building. They are expected to behave properly in order to serve as “role models” to fellow child offenders or children at risk of offending. When the situation requires, they are expected to reach out to other child offenders, sometimes providing peer counseling. There are 65 peer educators, 15-18 years of age, in the 12 pilot *barangays*. FREELAVA has no difficulty locating former child offenders as they have been operating a halfway house for children on suspended sentence or those released on recognizance⁷ since 1997.

Community Mobilization through the *Pulong Pulong*

To mobilize parents, residents and local leaders, and to raise awareness of the plight of child offenders, FREELAVA conducts a process known as *pulong pulong*. Community volunteers make house-to-house visits to inform residents a week before this informal discussion event, and *barangays* usually provide snacks to

attract busy residents. Usually about 10-15 community members attend the *pulong pulong*, which provides an opportunity for FREELAVA to disseminate information on child rights, restorative justice, children's development and responsible parenting. Speakers may include FREELAVA staff, *barangay* officials, the GAD officers or CJC members. Community residents appreciate these discussions because of the heightened awareness they create among parents, and their effectiveness in decreasing the number of child abuse cases in the *barangay*. According to the peer educators, the children who attend *pulong pulong* are also informed of their rights, and their responsibility toward their parents and the community. In the course of project implementation, community volunteers use these occasions to monitor the status of diverted child offenders.

Policy Advocacy

Having organized the CJs, FREELAVA lobbied among *barangay* officials for the passage of a resolution that would establish a CJC as a permanent committee of each BCPC—a step towards the institutionalization of diversion work. The program will become sustainable when it transcends the leadership and administration changes brought about by local elections which take place every three years.

Successful program implementation in the pilot *barangays* has enhanced FREELAVA's ongoing advocacy on three policy agenda items: 1) formal inclusion of the CJs in the BCPCs in all pilot *barangays* through their respective *barangay* ordinances; 2) passage of a city ordinance to institutionalize the CJs' abilities to appropriate funds for community-based diversion and other CJC activities; 3) integration of CJs as a part of the formal system of administering child justice by working in coordination with the Department of Interior and Local Government and the Department of Justice (Labrador 2004, 40).

Linkages and Networking

Through its trailblazing programs for children's rights and justice since 1983, FREELAVA has acquired a varied and wide network. It taps the expertise of a pool of trainers from the Family, Juvenile, Gender and Development Division of the Regional Philippine National Police Office, the Department of Social Welfare and Development, the Department of Interior and Local Government, the Commission on Human Rights, the Regional Trial Courts, and the City Prosecutors Office. As an official participating agency of the Cebu City Commission for the Welfare and Protection of Children, it has accessed the city's financial resources to support its post-release and reintegration program for former CICL in Balay Pasilungan, a child rights advocacy program for street families in two urban *barangays* in the city, and a paralegal aid program for CICL presently detained in Operation Second Chance (CCCWPC 2004).

Foreign funding agencies, including Save the Children-UK, Save the Children-Sweden and the European Union have supported the FREELAVA's novel diversion program. UNICEF provides capacity-building through information sharing and exposure to international conferences on the situation of children in conflict with the law and other countries' experiences in diversion efforts. Through FREELAVA's assistance, the CJs intend to organize themselves into an umbrella group that

would prepare and submit budget proposals to the city government to enable them to continue their initiatives in their respective *barangays* beyond the project timeline.

Community-Based Diversion of CICL: Stages and Processes

Intervention upon Apprehension

The main function of the CJC is to mediate cases of children who commit offenses in the community or those who are apprehended by the police but are turned over to the *barangay* for diversion purposes. All cases involving children pass through the CJC in the pilot *barangays* except those that involve homicide, robbery and the use of *shabu* (methamphetamine hydrochloride). To qualify for diversion, the offender must be below 18 years of age and involved in a case with an imposable penalty of less than six months imprisonment and fine of less than ₱5,000.00 (US\$92.60). First-time offenders are given priority, and recalcitrant recidivists are no longer accepted.

There are three ways in which child offenders can come in contact with the CJC (see Figure 2).

- They may be apprehended by either a *barangay tanod* or a police officer, or through citizen's arrest, which is allowed by law when a child is about to commit a crime or is caught in the act. A child apprehended by a police officer is usually led to the Women and Children's Protection Desks, the staff of which in turn take the child to the CJC of the *barangay* where he or she resides. A child offender apprehended by a *barangay tanod* during the day is turned over to the CJC for mediation at the soonest possible time. If a child is apprehended at night and the CJC is on 24-hour duty call in that *barangay*, he or she stays in a vacant office while waiting for the committee to convene. In *barangays* where the CJC members are off duty at night, the child is released to the custody of the parents and is scheduled for mediation the following day. If the parents cannot be reached, the child is accompanied by a *tanod* or community volunteer to the Community Scouts and Youth Guidance Center for temporary shelter or to the Department of Social Welfare and Development if the offender is a girl. The following morning, a community volunteer takes the child back to the *barangay* for settlement of the case. In all instances, the community volunteers explain the procedure to the complainant.
- The CJC, acting on the complaint of a victim, invites the child respondent through a *barangay tanod* or community volunteer, as in the case of a summons which applies to offenses or disputes involving adults. There is a growing awareness among CJC members and *barangay tanods* of the advantages of using an invitation in lieu of apprehension of the child in cases involving a complainant-victim.
- A child is caught shoplifting and the business establishment calls up the *barangay* directly, or the Community Scouts Center calls up the *barangay* to pick up a child who is brought to the Center following his/her apprehension by police operatives or in-house security agents. Since the mid-1990s, the Child and Youth Relation Section of the Philippine National Police has been

monitoring the Center. The Center facilitated an agreement between the city government and business establishments, requiring the latter to refer children caught by in-house security agents for shoplifting to them. By 2003 there were 43 participating businesses. The Community Scouts contact the child's *barangay* in order to locate the parents, and the child is released once the parent or guardian settles with the store management. The child is then turned over to the CJC for follow-up counseling and monitoring. When the business establishment contacts the *barangay* authorities directly, the CJC contacts parents and a CJC member goes with the parents to "rescue" the child from the business establishment.

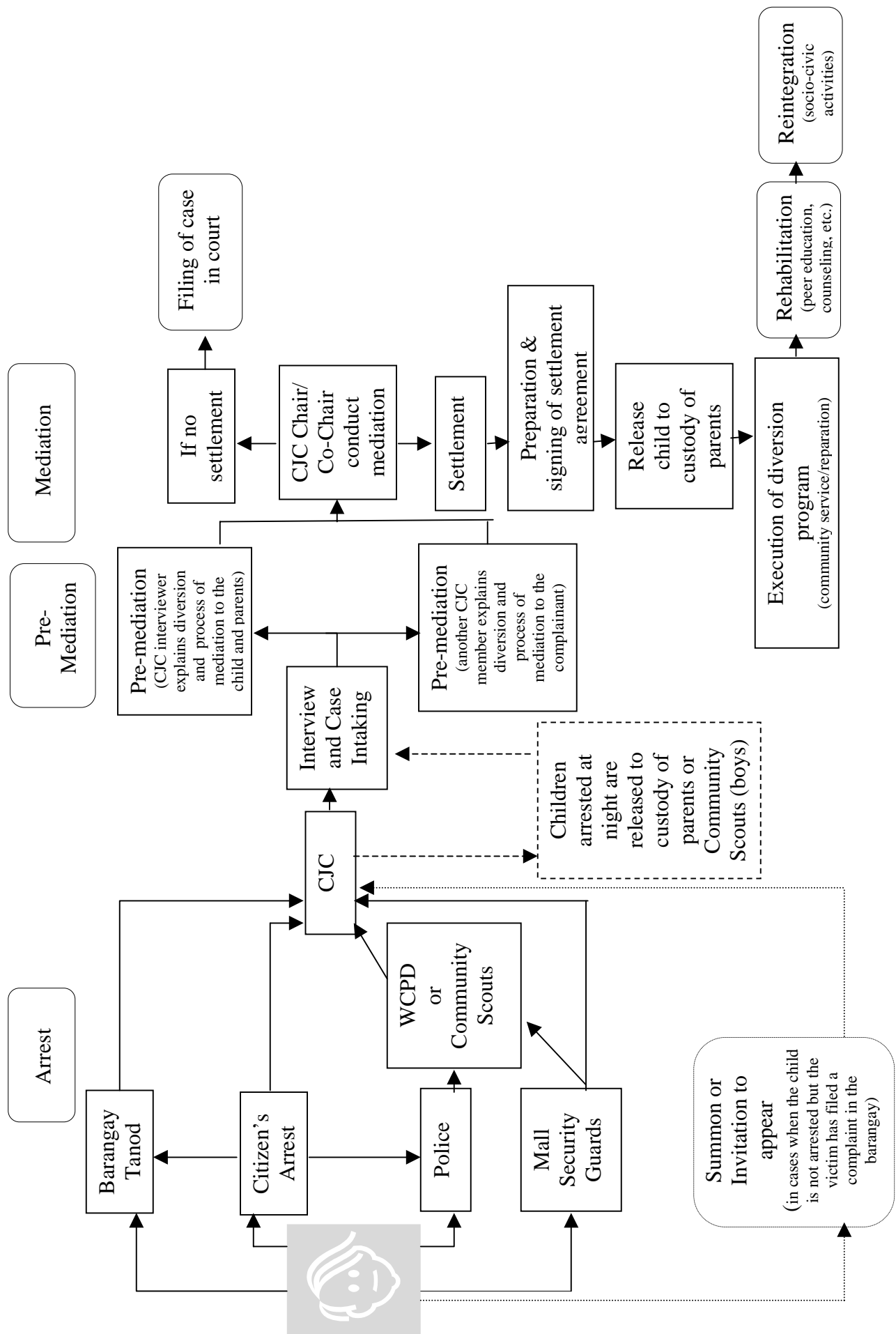
Community volunteers attest that most, if not all, of the *tanods* in the pilot *barangays* observe the proper handling of child offenders because they have undergone training. Usually calm and soft-spoken, they accompany the child to the *barangay* hall, inform the child of his or her rights and contact the parents immediately. A few police officers do not follow the protocol, however. There have been instances when an arresting officer has sent the child offender to the Community Scouts or filed charges against the child offender in court. Keeping a separate blotter for child offenders in the *barangay* to ensure confidentiality is not always observed by the arresting officer. "There is a fast turnover of policemen. New recruits may not have undergone training. Sometimes, policemen are reassigned," explains a CJC member.

Interview and Case Intake

A child offender brought to the custody of the *barangay* captain may stay in a designated "CJC room" or any vacant office while waiting for their parents, or for the CJC to convene—a significant departure from the past practice of holding these children in the *barangay* hall which is open to the public, or detaining them in the cramped *barangay* cell.

The CJC convenes in a designated CJC room. Information is gathered about the child's personal and family background and the circumstances surrounding the offense. In most pilot *barangays*, the child is interviewed only once by a designated main interviewer—the *barangay* secretary, the GAD focal point person or a community volunteer. It is understood that these interviews are merely inquiries, and are not to be considered preliminary investigations as in court. All the *barangays* use a uniform intake sheet developed by FREELAVA to systematize data gathering. Once the interview is over, the form is handed to the CJC mediator. All CIKL cases are filed together rather than being individually labeled, and case records do not contain information relative to the rehabilitation or reintegration of the child after diversion. This does not mean, however, that there is no follow-up. Community volunteers make written reports on the activities and behavior of diverted child offenders. Project management realizes there is a need to improve record management.

Figure 2. The Diversion Process



Mediation Proper

The objective of mediation is to settle the harm done by the child offender to the victim and the community. A minimum of two CJC members, the offender and/or his or her parents, the complainant-victim or victim's family member, the arresting officer and a community volunteer convene during mediation. Mediation takes place in a separate space—either the CJC room, the *lupon* chamber, the GAD office or office of the *barangay* captain—to protect confidentiality and to shield the child from the inquisitive public. Still, confidentiality is not totally assured because of the physical limitations inside most the *barangay* halls. GAD corners and *lupon* chambers are relatively open and accessible to the prying public.

The CJC explains to the parties involved, in separate sessions, the process, dynamics and benefits of mediation and diversion. If the parties are amenable, mediation proceeds. Theoretically, the CJC mediates on cases within the bounds of its authority. But in practice, the CJC is very flexible as to the type of cases they handle. “The guiding principle is the willingness of both parties to settle the case through CJC mediation,” CJC members clarified.

During mediation, the chair, co-chair, or another CJC member designated by the chair ensures that children understand the consequences of their actions and what must be done to repair the damage. The mediator usually encourages the children to consider the prospect of life in prison as compared to a productive life in society. In most cases, the children gradually open up and narrate their life stories—the circumstances, problems, fears, anger, hopes and dreams. Counseling by CJC members facilitates a reflective process during which the children eventually feel remorseful, admit the offense and agree to undertake reparative actions. When this happens, the mediator speaks to the complainant about the benefits of forgiveness and diversion and explains that the CJC will monitor the child through various diversion and reparative activities.

In cases where there are no complainants (such as sniffing rugby, a volatile substance inhaled to induce intoxication), first-time child offenders are released after counseling and upon signing a promissory note that they will not do it again. Second and third-timers and their parents are interviewed separately to determine the cause or problem. In some instances, this allows the child to ventilate anger or frustration over parents. The child is then asked to render community service such as cleaning the *barangay* hall, and to report weekly to the community volunteers, who provide counseling. Fourth-time offenders are categorized as recidivists and are often sent to the formal justice system.

Settlement of Agreement and Implementation of Diversion Program

Mediation is considered successful when the child signifies remorse, the parents apologize to the victims or CJC members, and the victim forgives the child, drops the charges and agrees to the proposed diversion. Only about 10 percent of the child offenders who underwent mediation were unrepentant, most of them rugby cases.

Diversion may take the form of written apology, the rendering of community service, restoration of damaged property or reparation of property. The child offender promises in a settlement agreement not to commit the offense again or to perform particular actions as reparative measures specified and agreed upon by the complainant during the negotiation. CJC members encourage complainants to settle for the benefit of the child. Children participate in the formulation of the agreement. The parents also participate by agreeing that they will attend to the needs of the erring child—an important factor, as child offending is often theorized as a product of parental neglect (Labrador 2004, 45). The diverted child is then asked to report regularly to the *barangay* for monitoring and compliance with the terms of agreement.

Rehabilitation and Reintegration

The last stage of the community-based diversion program, rehabilitation and reintegration, is the beginning of a much bigger and broader process of restoring the self-worth of an offending child and putting their life back together. Such measures as peer education and counseling, values formation through religious education and attending worship services, and the FREELAVA's Back-to-School or formal educational assistance are undertaken to encourage the child to act in accordance with community norms and standards

CJC members and community volunteers promote such activities as *barangay* cleanliness and sportsfests to hasten the reintegration process and facilitate the acceptance of the child by the community without stigma and labeling (Labrador 2004, 46). Sports are an effective vehicle in promoting camaraderie and acceptance. A *lupon* related: "When a community volunteer informs a child in the post-diversion stage that he or she is invited by the *barangay* authorities, the child is often lukewarm. But when he is invited for basketball, he presents himself without being cajoled." "Being a member of a team makes the diverted child feel accepted," said a CJC member.

Of the total of 543 children diverted within the three year period (April 2002 – March 2005), 50 have been referred to Balay Pasilungan, the post-release program. About 90 percent of these children have been reintegrated to their respective communities in the sense that they have returned to their family and have not re-offended. Community attitudes towards them tend to be positive. The remainder are either attending school or still completing their stay, though they may return to family earlier than scheduled provided the family is ready to accept the child and the victim consents.

Some former child offenders (65) have gone on to become peer educators, 15 percent of them young people who have undergone the CJC mediation process. These peer educators have learned to show respect toward family elders and community members; keeping themselves from re-offending, they not only participate in community service but also develop a sense of responsibility towards other children.

Despite the positive outcomes, there are still problems. Lack of funding limits access to such resources as social workers, psychologists and psychiatrists. The CJC has yet to develop an efficient monitoring system to follow up on the diverted child and the parents' compliance. The temptation to engage in mischief and vice out of idleness and boredom is very real. In depressed areas, wholesome recreational facilities are very limited. The incidence of recidivism is about 10 to 20 percent of all the cases mediated by the CJC, most of which involve rugby users. Community volunteers have cited the lack of parental care and guidance, family problems and poverty as the main reasons.

Rehabilitation and reintegration are intricate and complex processes. The readiness of the family and the openness of the community are critical. "Generating comprehensive reintegration support from the community is a great challenge since it entails changing mindset and attitudes, aside from funding," said the FREELAVA program officer. Amidst the rampant drug trade which the *barangay* authorities cannot seem to curb, providing a social environment that nurtures decent and wholesome lifestyles among the children and youth requires far more than goodwill and volunteerism. SC-UK consultant Chantrill shared his evaluation at a Cebu City forum in April, 2005:

Crime prevention, diversion and rehabilitation are intermittent issues that require a broad range of program support apart from mediation and counseling. Social programs such as health, education and livelihood are necessary.

Making a Difference

The community-based diversion of child offenders piloted in the 12 *barangays* in Cebu City has led to several positive changes.

- The *pulong pulong* has raised the awareness of community members on the rights of the child as parents reflect on their roles and responsibilities. A number of parents have, in fact, become community volunteers.
- A decline in the number of child arrests and decreasing incarceration rates suggest that community education and diversion are working. Police records in the 12 pilot *barangays* show a decrease of 33 percent—from 1381 arrests in 1999-2001 to 926 in 2002-2004 during project implementation. Total reported child arrests in the other *barangays* decreased by only five cases in the same period. (In the absence of a centralized database, authorities cannot ascertain, however, whether a child might have committed an offense in other *barangays*.) There was an average of 350 to 565 children detained in the Bagong Buhay Rehabilitation Center from 1999 to 2001. In contrast, those confined in the new youth detention center (Operation Second Chance) dropped to 137 and 111 in 2003 and 2004 respectively.
- All the pilot *barangays* have now abandoned their detention cells for children. Trained in the correct handling of children, officers have dispensed with handcuffs and the use of foul language with children. The practice of posting the picture of wanted CICL on the bulletin board or wall of police precincts has likewise been discontinued.

- Part of what makes the program so distinctive is the active community participation. The *lupon* members and *barangay* officials and workers devote their time and personal resources beyond the call of duty. The volunteerism of private citizens, community volunteers and peer educators showcases what the community can really do to promote the rights of children in conflict with the law, while at the same time restoring social harmony. FREELAVA is confident that when the CJs strengthen their case management and monitoring, they can sustain diversion work on their own.

The testimony of children themselves, along with their parents and others involved, adds a dimension to understanding the changes that have occurred for many of these children.

- **There is a deepening understanding of the importance of mediation as an alternative to prosecution, litigation and eventual incarceration.** “Had it not been for Ate Perlita [the mediator], I would have been imprisoned,” Jomari confided.
- **Counseling by CJC members facilitates a reflective process on the part of child offenders.** Edward’s case was finally subjected to CJC mediation, although the manager of the National Power Corporation initially wanted to file charges against the boy for stealing power cables. “It was my fault for I was the one who urged my cousins to come with me. Though I was frightened about the prospect of being sent to Operation Second Chance for the first time, I did not mind it so much because I am an old thief. But I am now concerned about the welfare of my cousins,” said the boy who had eluded arrest before. Always high on drugs when he committed his past offenses, he never had any feeling toward the victim except the fear that the latter might file a case against him. But he was moved by the gesture of the complainant who agreed to the settlement. “Despite what I have done, I was still given a chance to reform.” After apologizing and asking for forgiveness, Edward took the victim to the place where he kept the stolen items.
- **Mediation and amicable settlement enable children to repair the damage done to the victim or the community and start the healing process.** “I am very happy (Ian and I) were reconciled. I wanted to take revenge. But I think it is better to make peace after all,” revealed Garry. His neighbor Ian pushed and kicked Garry for stealing Ian’s gas tanks, but Garry was not able to hit back so he threw bottles at Ian and his friends in their hangout. With a knife in his hand, Garry had challenged Ian to fight with him.
- **Conflict resolution improves children’s relations with parents and relatives.** “When the parents are subpoenaed by the *barangay*, they are reminded of their responsibility toward their children and they promise to fulfill their parental obligations,” said Paz, the grandmother of Mimi who was caught opening Paz’ cabinet with a screwdriver. Similarly, after mediation, Garry declared: “I am now able to get over with my frustrations with my father. I have drawn closer to him.” Earlier, he had threatened to kill his father who asked him to leave the house when the latter heard that his son was accused of stealing. Paul attributed his waywardness to the fact that his parents did not buy the things he asked for. After the mediation, he said: “I

now understand why my parents could not give me all the things I demanded. My father's salary is just enough to meet our daily needs. Besides, he still has to pay for the tuition of my sister in college. I take pity on my father."

- **Diverted children who undergo rehabilitation are encouraged to change their behavior.** Kyle reports that he avoids his old friends because they were the ones who led him astray. "I am now happy with my new friends who behave properly." Further, a peer educator takes pride in saying that some parents urge their children to associate with him because of his good behavior. "When the *barkada*⁸ notices that I have reformed, they also try to change their behavior," said Roger who explains why peer educators serve as role models to other children, particularly the children-at-risk.
- **In some instances, the diverted child can relate freely with other members in the community rather than being evasive and fearful of punishment.** Mimi said: "I can freely play around the compound now. They (complainant and family) would not harm me. Sometimes they ask me to do some errands." However, Kyle's apprehension about returning to the community is also a familiar story. Before mediation, he was ashamed to face his neighbors. After mediation, he was still apprehensive that the community would look at him differently once they knew what he had done (stolen scrap iron from a junkshop along with his friends.)
- **CICL who are diverted generally have a more positive outlook than those released from prison.** Some children who had been confined in the Bagong Buhay Rehabilitation Center claimed that custody had not encouraged them to change their lives—and a few even admitted that they were hardened by imprisonment (Etemadi, Ye and Bermudez 2002, 51). One jail warden observed that: "Some children were like puppies when they first entered the jail; a few days later, they become rough." (Etemadi, Ye and Bermudez 2002, 71). On the other hand, most of the diverted children hope to continue their studies through the FREELAVA Back-to-School program or through benefactors. Others look forward to work. A few have taken summer jobs offered by the city government. Bryan, for example, became a peer educator. "I have learned a lot from the trainings they conducted," maintains the newspaper boy who was involved in a mauling with other newspaper boys.
- **Children who undergo diversion readily express their willingness to help out in the community**—cleaning the *barangay* hall, or assisting in the preparation for social events such as the fiesta. Others want to help their siblings to reform. Back in school, Edward discusses what he has learned from the peer educator training and encourages his younger brother to change. "I told him that it is better if he hangs out with me than with his friends and that he could always hang out with me."
- **Fewer children under rehabilitation have reported discrimination in school.** As a result of FREELAVA's continuing advocacy, teachers no longer consider former CICL a threat to other students. FREELAVA staff and community volunteers visit the schools and talk to their teachers. Without divulging the details of the case, they explain the child's situation to the teachers and request that they monitor the child. There are instances when

the teachers, on learning the child's background, offer extra attention. The teachers have also become vigilant in ensuring these children do not become victims of hassling by classmates.

- **Diverted CICL are enlightened by their realizations.** Larry seldom goes out with the peers now. Aware of the effects of rugby, he no longer sniffs it although he admitted that he is much tempted to do so. Admitting that he was into *shabu*, Jomari stated: "Indulging in drugs could lead to stealing...Reflection is important before doing an act. It is important to reform. Regret if one does not change." Paul, moreover, felt sorry during the mediation and settlement session for having inflicted injuries on the victim he had mauled earlier. He realized that the victim is a person just like him who feels pain. "Hurting others is like hurting yourself. I do not want others to do to me what I did to the victim," Paul confided. He said that he joined the peer educators because he wanted to learn how to become a good role model for other children. "Anyone could change for the better if he really wants to. I want to share what I have learned with my friends." Further, Bryan said, "Counseling is not merely giving advice but it is also about listening and guiding somebody how to solve his problems." His approach is to listen to his friends' stories and guide them to reflect on their situations so they will realize the consequences of their actions—an approach he himself finds rewarding and now applies to others.

While diversion works positively for many children, particularly first-time offenders, it appears to have little effect for those who have had several encounters with the law. Sofronio, Bimbom and Gilbert have been arrested four, five and six times respectively. Bimbom admitted: "I am usually high on drugs when I commit an offense... I know what I have done was wrong, but I needed the money to support my gambling and drug addiction." Gilbert and Sofronio, both 13, belong to a *barkada* of older boys. "It is difficult to give up rugby because the pressure from our *barkada* is too strong to resist," explained Gilbert. "They threaten bodily harm if we do not join them," added Sofronio. Unable to narrate their experience under mediation, they could only vaguely recall having signed a promissory note. The accounts of these three CICL point to the fact that diversion does not work well with out-of-school recidivists living in an environment where the drug trade flourishes.

Lessons Learned

A number of factors have contributed to the sustained success of this project over several years.

- A history of NGO-local government unit (LGU) collaboration in service delivery sets the stage in Cebu City. The community-based diversion benefits from FREELAVA's experience in both community organizing and juvenile rehabilitation.
- The fact that the project taps into existing local structures predisposes local officials to support it, and its sustainability is enhanced by a *barangay* resolution that gives the project an official imprimatur.
- Networking with national government agencies and civil society groups results in effective synergies.

- Community mobilization through legal education on the rights of children and monthly informal discussions at the village level raises people's awareness and fosters volunteerism among community members.
- Community volunteers play an important role in monitoring diverted children, particularly in following up on both child and parent compliance with the terms of agreement reached during mediation. Employing peer educators is an effective way of reaching out to other CICL.
- Training, capacity building and well-defined roles enable all program actors to contribute successfully.

However, there are ongoing challenges.

- Coordination with the police, whose support is critical, must be further strengthened. Rotation of duties among police officers necessitates periodic trainings and updating.
- Capacity building must be an ongoing process since newly elected *barangay* officials, newly appointed *lupon* members and new *tanods* also need orientation.
- It would be prudent for the anchor NGO to stay neutral during elections since partisanship among community partners may generate conflict which could affect program implementation.
- The needs of the community volunteers and peer educators must be attended to in order to sustain volunteerism beyond the pilot project's duration.
- Effective rehabilitation and reintegration are needed to translate short-term gains into more lasting changes among diverted CICL. Without an after-care program, the reintegration of these children is superficial. Diverted children who have returned to unsupportive family or unsafe environments require even more attention.
- Proper documentation is essential, not only for monitoring, but as the basis for lobbying for more government support.
- Public acceptance of the paradigm shift in juvenile justice does not necessarily mean the application of the principles of restorative justice in actual cases. Advocacy must be intensified to convince the public that CICL diversion and reintegration are worthy governance issues so that funds will be automatically allocated by the authorities to support worthy programs.

Felisa U. Etemadi is a political science professor in the Social Sciences Division of the University of the Philippines Cebu College. She has published papers and monographs on various aspects of urban governance and is involved in local, national and international research. Professor Etemadi has written about working children, NGO programs and services for children, and children in conflict with the law in Cebu. Children in Conflict with the Law in Cebu: Profile and Experience with the Juvenile Justice Process by Etemadi, Ye and Bermudez is now available as part of the CD-ROM entitled Breaking Rules: Children in Conflict with the Law and the Juvenile Justice Process, the Experience in the Philippines published by Save the Children UK. Her rapid assessment of the UNICEF Country Program for Children (CPC V) in Cebu City forms part of the work on Making Philippine Cities Friendly: Voices of Children in Poor Communities by Mary Racelis, Angela Desiree M. Aguirre

et al. (2005). As part of her extension service, she provides technical assistance to NGOs, people's organizations, and government organizations and offices such as the Cebu City Task Force on Streetchildren and the Cebu City Council for the Protection and Welfare of Children.

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Endnotes

1. The *barangay* is the smallest unit of government in the Philippines. Several *sitios* comprise a *barangay*. A *barangay* is further subdivided into *puroks* intended to mobilize the people for political and socio-cultural activities at the community level.
2. FREELAVA is a non-stock, non-profit, non-government organization founded in Cebu City in 1983. It is an umbrella for community-based organizations working together to fulfill the common mission of helping the oppressed and underprivileged. Its present program focuses on free legal aid, rehabilitation of offenders and crime prevention.
3. The Cebu metropolitan area is composed of four rapidly urbanizing and industrializing cities—Cebu City, Mandaue City, Lapulapu City, Talisay City— and six municipalities, namely, Compostela, Consolacion, Cordova, Liloan, Minglanilla, and Naga. As the urban core, Cebu City plays the leading role in Metro Cebu.
4. This included a monthly average of 160 minors until August 2002 when the children were transferred to Operation Second Chance, a facility built by the city government exclusively for child offenders (Etemadi, Ye and Bermudez 2002, 41).
5. One child queues up for rice while the other waits for meat. Otherwise, a child may not have his share of food if he is at the end of the line. Usually newcomers have to look for a food container.
6. A BCPC is considered functional when: 1) BCPC officers are familiar with or trained on child-friendly programs and services; 2) an annual action plan for the *barangay's* children with budget allocation has been developed with community participation; 3) a master list of the *barangay's* children showing their unique needs and circumstances is updated; 4) enforcement of laws and ordinances concerning children are closely monitored in the *barangay*; and 5) BCPC meetings are held regularly and properly documented.
7. Suspended sentence refers to the suspension of all further proceedings if, upon hearing the evidence in the proper proceedings and finding the minor guilty of the act(s) charged against him, the court commits the minor to the custody or care of the Department of Social Welfare (DSWD) or any accredited institution until the minor reaches 21 years of age or for a shorter period as the court deems proper on recommendation by the DSWD or the institution into whose care the minor was committed. (Art. 192, Chapter 3, Title VIII of PD 603). Released on recognizance (ROR) refers to the release of the minor to the custody of parents, relatives or any responsible person in the community while the trial is pending.
8. 6. A *barkada* is a peer group or gang.

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Andales, Sesenio, Barangay Captain Pahina Central
Baliguat, Perlita, GAD Project Administrator
Cabrera, Emma, CJC Chairperson Sambag II
Fernandez, Edith, Barangay Councilor Tinago
Galas, Ray T., Lupon and BCPC member Pahina Central
Sayson, Perlita, CJC Member Tinago
Tariman, Juanito, CJC Chairperson Tejero
Tesimaluna, Eliseo, BCPC Chairperson Pahina Central
Torredes, Ramon C., GAD Officer Lorega
Yap, Jose, CJC Member

Focus Group Discussion with CJC members, Tejero Central Barangay Hall, April 23, 2005

Abadilla, Rosalinda, Community Volunteer Duljo-Fatima
Almoguera, Winston, Peer Educator Suba
Castillo, Restcil, Peer Educator Tejero
Darde, Bernardita, Community Volunteer Tejero
George, Perforia, Community Volunteer Pahina Central
Rivera, Fe V., Community Volunteer Tejero
Sumampong, Victor B. Peer Educator San Roque
Tan, Annie A. Community Volunteer Tinago

Focus Group Discussion with Peer Educators, Lorega Barangay Hall, April 23, 2005

Cabague, Pablo, Peer Educator Lorega
Gamboa, Eugene, Peer Educator Lorega
Rivera, Bryan, Peer Educator Tejero
Singson, Keenie Hope, Peer Educator Tejero

Focus Group Discussion with CIICL, Ermita Barangay Hall, July 14, 2005

Barbecho, Sofronio
Matas, Bimbom
Obisa, Gilbert