

THE ENHANCEMENT OF APPROPRIATE MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE PHILIPPINE CRIMINAL JUSTICE SYSTEM

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I. INTRODUCTION

In every society, relationships are manifested through interactions among individuals which may eventually lead to social coherence or division. If a society is divided, social problems may arise. A social problem may pertain to human relationships, and to the normative contexts since it represents interruption in the expected or desired scheme of things; violations of the right or the proper way as society defines these qualities; dislocation in the patterns and relationship that society cherishes.

The present Philippine Criminal Justice System (CJS) was a product of various foreign influences and the country's experiences in achieving its aspiration to protect the State and its people against the destructive effects of crime and delinquency. As a State mechanism, the CJS was established as an instrument of social control to coerce people to conform and respect individual spaces, and at the same time teaches them to abide with by the laws and rules established for the common good. Today, all over the world, all states, regardless of the form of governance, utilize mechanisms like group pressure or institutions (like the police, prosecution, courts, correction services) to enforce conformity and adherence to norms, and to control deviance in its members.

Crime and delinquency are potent threats to society's existence. In confronting these social ills, the Philippine CJS is continuously being assessed and evaluated to check its usefulness to meet to the needs of the Filipino people. According to the Production Process model, the CJS is similar to a production process where "raw materials" are screened and refined. In the said process, the raw material is the criminal suspect. The production specialists of this system actively processing the raw materials are the police, prosecution, courts, and corrections services, whether institutional-based or community-based. As the raw material moves along the production line, it changes its character. A suspect becomes an accused, an accused becomes a defendant, a defendant becomes a convicted offender, and a convicted offender becomes a probationer, prisoner or parolee/pardonee. Finally, in almost every case, an inmate becomes an ex-convict with an indelible stigma of criminal conviction. We could conclude that the justice system is offender-based, focusing on past behaviour as basis of establishing guilt, and meting out punishment. Its authority is anchored on the "police power" of the State to define crime, treat its nature, and provide punishment for any social nuisance that affects public welfare, public interest, public health, and the common good. It focuses on three commonly raised issues: Who is the culprit? What law or rules were violated? And what is the appropriate sanction or penalty? The CJS is a punitive-retributive dispensation of justice. It always treats crime as a transgression of state authority, and therefore the full force of the law should be bent forcefully to suppress the danger to the state, protect society and its people, treat and correct violators, deter others, and to vindicate absolute right and moral wrong. The system abandoned the real fact that the crime or wrongful act inflicted harm to the victim and the community, and therefore it violates people and right relationships. It's a kind of winner/loser conflict, which rules and intent outweigh outcome, and the persons with a stake in the offence/crime are in the peripheral position heavily relying on the competence of legal professionals in pursuing "cause of action". In the very words of the late Justice Melecio-Herrera, the idea of retributive justice rests on dubious, interesting and intriguing assumptions: Firstly, justice can be done by making the offender worse off (through imprisonment or execution); secondly, there is a reasonable manner of determining the desserts of criminal conduct in terms of prison sentences; and thirdly is that the issue of justice is addressed by focusing on an event in the past - the crime committed. And now the society realizes that the existing system of justice is flawed, and the need for a new way of exploring alternatives is evolving with the introduction of Restorative Justice.

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II. RESTORATIVE JUSTICE (RJ)

Paradigm shifts are beginning to occur, and governments, all over the world, have realized that balancing the administration of justice, through a community justice, where the stakeholders directly affected by the impact of crime are active participants in deciding what is better for them, is an alternative to the present justice system. Restorative justice is a pattern of thinking that state's responsibility in protecting its institutions and people should not just be the responsibility of the justice mechanism, and neither should crime be the sole or even the primary business of the state, if real differences are sought in the well-being of individuals, families, and communities. In the conclusion of Justice Melecio Herrera, the idea of restorative justice is a different way of responding to crime. Its conceptual framework seeks to render justice to victim and offender alike instead of tilting the balance in favour of only one stakeholder to the disadvantage of other. When a crime or wrongdoing is committed in a community, the assumption is that people and relationships are affected, such as: relationship between victim and the offender; relationship between offender and the community; and sometimes relationship between the victim and the community.

A. Basic Elements of RJ

Unlike in the traditional justice system, a restorative effort is a holistic response to crime or conflict which needs to be attended to in all these relationships to be able to strengthen community fabric. Let me emphasize, repairing relationships of stakeholders does not mean creating a friendly and positive attitude between them. It means restoring appropriate "balance of power" among stakeholders. RJ as a private justice cited in the Source Book "Working for Justice that Heals", Catholic Bishop Conference of the Philippines, EPPC (2006), is anchored on the following:

- Encounter: Create opportunities for victims, offenders and the community members who want to meet and discuss the crime and its aftermath;
- Amends: Expect offenders to take steps to repair harm they have caused to their victims;
- Reintegration: Seek to restore victims and offenders as a whole and help them become contributing members of society; and
- Inclusion: Provide opportunities for parties with a stake in a specific crime to participate in the resolution.

B. Goals of RJ

The goal of Restorative Justice is to repair the harm; the criminal justice professional applying the philosophy needs to understand the impact of crime on the victims, and the latter's family and future. By helping the victim the system can:

- Exert efforts to appropriately respond to the victim's harm;
- Accordingly hold offenders accountable;
- Reduce the victimization of the victim again;
- Improve active involvement and co-operation of victim; and
- Protect and empower victims.

III. THE PHILIPPINE CRIMINAL JUSTICE SYSTEM

A. The Victim and the Criminal Justice System (CJS)

In the present CJS, the victim is subjected to another situation of victimization in the following pressing situations:

1. Victim presence in the courtroom with the Offender;
2. The bothering impact of crime while preparing to testify;
3. Facing the police, prosecutors, judges, advocates, and the public;
4. Lack of understanding of how the Justice System works;
5. Attitude of the community towards the victim; and
6. Personal protection and stability.

In the CJS, the victims are only in the sidelines awaiting any assistance which will alleviate their situation, and can not reveal the physical, psychological, emotional, financial and social impacts of crime on them. In effect they are hindered by the procedures from actively participating in deciding what is better for them in achieving satisfying justice and real healing. In the peripheral, the victim is seemingly placed in a production processing. The raw material is the victim. In the stages of processing the raw material, it moves from one production unit or line to another, and changes its character. A victim of crime becomes a presumptive complainant who has to prove his or her cause(s) of action; a complainant becomes a complaining witness, whose version of the circumstances surrounding the crime, and the evidence adduced to substantiate the accusation and narration, are seemingly add on chemical ingredients in perfecting the material (establishing "probable cause" in filing the criminal information); a complaining witness becomes a state witness to prove the guilt of the accused beyond reasonable doubt, and consequently impose the state's standard legal penalty; after the court proceeding, the state witness with the indelible stigma of victimization becomes a recipient of social help and praise (also social condemnation) for seeking truth and courageously championing the "cause of justice". In all probabilities, the state's standard remedy of attaining the "cause of justice" did not really satisfy the victim's struggle to overcome the impact of victimization, because the court's verdict is anchored on a ready made standard legal prescription that presumptively serves as a "panacea" to the physical, emotional, social, psychological, financial and moral sufferings of the victims and the other indirect victims.

In addition, while the criminal case is in progress, victims have several concerns which are also situations that subject them to further victimization: the bail system, which legally frees the offender to roam on the street; police indecisiveness in arresting offenders who fail to appear in court; a public defender, being paid by the government by the peoples' money, who vigorously works for the accused and through technicality and strategy interferes with the accused getting a deserved punishment; the court's environment, statutorily and procedurally, allows the victim to be placed in a witness stand, and narrate everything and be cross-examined to tell every detail including immaterial and insignificant matters that have no bearing on the case and may be destructive of reputation; and finally, the victim's expectation of how the community perceives them as a person after the commission of the case. These are real and actual concerns which place the victims back to the situation of being victimized again.

The justice system, which is symbolically represented by a blindfolded woman carrying a scale in one hand, and a sword in other, is itself the symbol of peoples' struggle as a civilized nation in the quest for satisfying justice. Behind the machinery are structures which operate in the prevention of crime through the enforcement of laws, the prosecution of offenders, the administration of justice, and ultimately the correction and rehabilitation of offenders caught in the web of the criminal justice system. Unfair criticisms against the enforcement of laws, administration of justice, and treatment of offenders describe the symbol with sarcasm. The blindfold made up of translucent material is falling, the scales are completely tipped and rusting, and the sword could no longer cut and is dropping from her grip. These criticisms convey the message that real and satisfying justice is very difficult to achieve or an "impossible dream". This is the institutional way of achieving justice, in which at the end, one social injury is replaced by another, and therefore, is a never-ending quest for justice.

B. Crime and Impact on the Victim

Victimology is the scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system - the police, prosecution, court, and corrections services - and the connections between victims and the other social groups and institutions. In Restorative Justice, no such classification of victimless crime is acceptable, because all crimes have direct or indirect victims, and even the offender is also in broad terms considered a victim.

In reality, the issue of victimization is an encompassing issue that involves not just the direct victims, but likewise the indirect victims who have suffered the effect of victimization. The traditional justice system does not recognize the suffering of these indirect victims like the members of the family of the complainant, and the community that are affected. In restorative justice, discussions on victimization include the effect of the wrongdoing on indirect victims, because it views crime through a different lens, and looks into the issue of the victim in the following ways:

1. What is the extent or degree of the harm? (Analysis/Assessment);

2. What should be done? (Treatment Plan);
3. Who is/are responsible? (Obligatory responsibilities).

Restorative efforts change the definition of a case from an offender-based focus to victims-focus, and likewise change the nature of the intervention to humanize and transform the means by which community safety, accountability, competency development, and healing of victims is achieved. The community, which is a side stream victim, facilitates the process through participative dialogue, and responds to present and future needs and obligations of stakeholders. In the case of the offender, restorative efforts are directed towards “righting the wrong” committed, and voluntarily acknowledging accountability such as: acknowledging causing harm; understanding harm from the other person’s point of view; recognizing the fact that he or she has choices; taking steps to make amends (like apology, repair of harm, etc.); and taking actions to make changes for the better so that it will not happen again. To a victim, the above are his or her possible expectations and will satisfy his or her craving for truth and justice thereby reducing the chronic and catastrophic stressors that traumatized the victim.

C. The Victim and Law Enforcers

Enforcing laws and rules in reality is not just running after criminals, restraining suspects to prevent them from committing acts of violence and disorder, and placing them in manacles. As the first line of social control, the law enforcers are mandated to enforce laws to the fullest. In our country, a host of law enforcement agencies, among others, include the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Bureau of Immigration and Deportation, the Armed Forces of the Philippines, the Philippine Coast Guard, the *Barangay* Units (Village government). They are in the forefront of preventing and controlling acts that disturb the social conditions of people and places.

In the Philippines, the first line of policing is primarily the responsibility of the more than 50,000 *barangay* units (village government) run by the local village councils and the volunteer *Barangay* Security and Development Officers (Village law enforcers). The *Punong Barangay* (Village Chief) is a person of authority. In this level, a *Katarungan Pambarangay* (Village Justice System) is established by virtue of Presidential Decree No. 1508, as amended by Republic Act No. 7160, otherwise known as the Local Government Act of 1991. These village officials, council members, and other responsible members of the village are tapped in the resolution of conflicts and differences among residents. The processes of mediation, conciliation or arbitration are utilized in the settlement of conflicts or differences. The victim’s complaint, either oral or written, is the basis of the dialogue. Its objectives are as follows: to promote speedy administration of justice, develop and preserve Filipino culture and strengthen the family as the basic social unit; to decongest court caseloads, which cause a deterioration in the quality of justice; and to enhance the quality of justice by formally organizing and institutionalizing a system of amicably settling disputes without resorting to the formal justice system. The jurisdictional coverage of the law, however, is limited with respect to criminal cases. In this level, the victims are protected by the village government through its officials and volunteer civilian enforcers. In Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004, passed to protect the family and its members, particularly women and children, against violence and threat to their personal safety and security, guaranteed a layer of protection for complaining victims. The *Punong Barangay* is given by law the authority to issue a *Barangay* Protection Order (BPO) to order the perpetrator to desist from committing acts of violence as defined in the said law. The *Barangay* Protection Order shall be only effective for 15 days. In case the perpetrator-respondent violates the order, a complaint for violation shall be initiated by the Village head, or *Kagawad* (Council member), who issued the Order in the absence of the Village head, and filed it with any Municipal Trial Court, Metropolitan Trial Court or Municipal Circuit Trial Court that has jurisdiction over the Village that issued the *Barangay* Protection Order. Violation of the said order is punishable by imprisonment of 30 days without prejudice to any other criminal or civil action that the victims may file for any of the acts committed. In excess of the 15 days, the victims can file a petition for the issuance of Temporary Protection Order (TPO) for 30 days or Permanent Protection Order (PPO), which already require a notice and hearing on the merits of issuing PPO within one day. Where the Court is unable to conduct hearing within one day, and the TPO issued is due to expire, the Court could extend or renew the TPO for a period of 30 days at each particular time until final judgment is issued. A PPO shall be effective until revoked by the Court upon application of the person in whose favour the Order is issued. The Court shall not deny the issuance of the protection order on the basis of lapse of time between the act of violence and the filing of the application. Regardless of the conviction or acquittal of the accused in a criminal prosecution under the said Act, the

Court shall determine whether or not the PPO shall become final. Even in the dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

Pursuant to the *Katarungan Pambarangay* Law, all amicable settlements shall be in writing, in a language or dialect known to the parties, signed by them and attested by the *Punong Barangay* or the Chairman of the Conciliation Panel as the case may be. When the parties to the dispute do not use the language or dialect, the settlement shall be written in a language/dialect known to them. No complaint, petition, action or proceeding involving any matter within the authority of the village justice system shall be instituted in court or in any other government office for adjudication unless it is submitted to mediation, conciliation or arbitration by the Village justice system. The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of 10 days from the date thereof unless repudiation of the settlement or petition for nullification of the award has been filed before appropriate court. In urban *barangays* (Village), the Ronda System through the active participation of organizations of community groups in crime prevention, was implemented by the *barangay* council. The *Barangay* Security and Development Officer (BSDO), better known as Village Police or Guard, or locally coined as *barangay tanod*, are significant civilian volunteers engaged in unarmed assistance that includes intelligence information gathering, neighbourhood watch; medical/traffic/emergency assistance; identification and implementation of community projects, and gathering of relevant information and data as inputs to peace and order research. Volunteerism plays a vital role, and the sustainability depends on the enhancing community support.

The Philippine National Police is a national government agency. In its efforts to reduce the incidence of street crimes, increased police visibility and patrolling vigilance activities in co-operation with the community continuously become its initiative. The police visibility on the streets was launched through its Community Oriented Policing System (COPS) in 1993, and specifically through its project *Police Patrol-Lingkod Bayan*. Proving its effectiveness, it was institutionalized in 1994 through a PNP Memorandum making it one of the key result areas of its National Strategic Action Plan. The passage of Republic Act No. 8551, the PNP Reform and Organization Act of 1998 stabilized more the COPS as it specifically requires the PNP as a community service-oriented agency.

The PNP strictly adheres to promoting the welfare of the marginalized sectors of the Philippine society by establishing the "Women and Children" Protection desk in all police precincts all over the country. This programme is in coordination with the National Commission on the Role of Filipino Women (NCRFW), the National Police Commission, the Department of Social Welfare and Development, and with the support of pertinent non-government organizations like the Soroptimist International and Rotary Clubs. In 2004, 1,700 Women and Children Protection Desks were installed, and a massive training of policewomen and policemen assigned to handle cases of women and children as victims of violence were conducted, and being conducted up this time.

The PNP and other mandated law enforcement agencies have a strong partnership with the Department of Social Welfare and Development (DSWD) in handling cases of victims of crime. In the context of the justice system, the police and other law enforcement agencies are considered not merely law enforcers, but also peace officers duty bound to protect and respect lives, liberties and properties, maintain peace, order and decency, safeguard public interest and morals, and be an integral link in nation building.

D. The Victim and the Prosecution Arm

The National Prosecution Service of the Department of Justice, in co-ordination with various agencies in government, ensures community participation at this level of the justice system.

The Witness Protection, Security and Benefit Programme (WPSBP) under Republic Act No. 6981 provide witnesses of crime commission vital rights and benefits. These rights and benefits, however, may be given after satisfying the imposed eligibility requirements. In this, witnesses are given any or all of the following benefits: secured housing facilities for high-risk witnesses and their dependents, from 3,000 pesos to about 15,000 pesos in certain cases; travelling and subsistence allowance; medical and hospitalization assistance; housing or rental allowance in case of witnesses with manageable risks.

In its desire to expand its services, and the level of the chance of availing, the National Prosecution Service through the Department of Justice entered into various agreements and arrangements with different agencies in this dispensation like the Department of Foreign Affairs, The Philippine Overseas Employment, the Department of Social Welfare and Development, The Department of Labor and Employment for witnesses and victims. Similarly, Republic Act No. 7309, which created the Board of Claims under the Department of Justice, granted compensation for victims of unjust imprisonment or detention, and victims of violent crimes.

By virtue of Presidential Act 1275, the National Prosecution Service is vested with power to investigate and prosecute all cases involving violation of the revised Penal Code and other special penal laws in the Country. National Prosecution Service is composed of Prosecution staff in the Department of Justice, the national, regional state prosecutors, the city and provincial prosecutors and their respective assistants.

Likewise, by virtue of Executive Order No. 243, which took effect on July 24, 1987, and Republic Act No. 6770, the Ombudsman Act of 1989, the office of the Special Prosecutor as an organic component of the Office of the Ombudsman was created, and placed under the direct supervision and control of the Ombudsman for greater efficiency and effectiveness in undertaking investigation and prosecution functions. Aside from the above, the Judge Advocate General Office (JAGO) of the Armed forces of the Philippines performs the regular functions of prosecuting criminal cases within the jurisdiction of military tribunals.

E. The Victim and the Courts of Law

The Judiciary is the very core of the Administration of Justice. It is the centerpiece of the Justice System. The Fundamental Law of the Philippines vested judicial power in the Supreme Court, and in such lower Courts as may be established by law (Sec. 1, Article VIII of the 1987 Constitution).

The Philippine Constitution of 1987 defines judicial power as follows: “Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to Lack or excess of jurisdiction on the part of any branch or instrumentality of government.”

The Supreme Court is the highest court of the land, and under its supreme power are the lower courts such as the following: Court of Appeals; The Sandiganbayan, the Regional Trial Courts; the Municipal Trial Courts, Municipal Circuit Trial Courts, and Metropolitan Trial Courts; the *Shari'a* Courts for the Muslim Mindanao, and military courts.

One of the so many problems of the Judiciary is delay in the dispensation of pending controversies, which people turn wary, if not distrustful, of its effectiveness to vindicate rights and redress misdeed committed. In extreme cases, crime victims compromise with the underworld to obtain justice to get even with the perpetrators. In the paper of Professor Alfredo F. Tadiar, entitled “Unclogging the Courts Dockets Various Approaches to Solve the Problem”, he classified the causes of delay, namely, those sprouting from the human factor; those that could be attributed to the very nature of the judicial system; and the indiscriminate filing of cases in courts.

According to Professor Tadiar, the first class refers to the human failings and weaknesses of men and women administering the judicial system such as judges, lawyers-advocate, court personnel, prosecutors, sheriffs, defense counsel, process servers, and other important players in the administration of justice. He attributed the delay in resolving cases to plain inefficiency, incompetence, sloth or laziness, corruption or other evil motives of these significant duty-holders. The second class is attributed to constitutional requirements of due process, and the technicalities and adversarial nature of the judicial process; and the third class is the overcrowding of court dockets due to indiscriminate filing of cases. All these greatly affect the victims of these crimes as well as offenders.

The Philippine government in its desire to improve the rule of law introduced the following: Simplification of procedural rules; filling up of vacancies in the judiciary, the prosecution level and the public defender, and increased number of courts; and judicial specialization as a means of increasing efficiency. Hand in hand with these was the introduction of the application of mediation and arbitration to divert cases. The Alternative Dispute Resolution initiative of the Supreme Court resolved to create mediation center and continuously train interested and qualified persons to be appointed as court mediators. Likewise, as part of

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its developmental initiative, Small Claims Courts were established to expeditiously resolve cases filed with the lower courts.

In the case of children as victim and children as an offender, the DSWD, and the Local Social Welfare Development Officer Office (LSWDO) of the City and Provincial governments are in the frontline service providers.

Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection against child abuse, exploitation and discrimination, mandates the DSWD and the Department of Justice to come up with a comprehensive program to protect these children against evil of prostitution and other sexual attack, trafficking, obscene publication, and indecent shows or other acts of abuse, which place these children in a dangerous, predictable and vulnerable conditions. Likewise, the passage of Republic Act No. 9262, the Anti-Violence against Women and Children Act of 2004 seeks to prevent all forms of physical, sexual, psychological and economic violence and abuse against these weak and vulnerable sectors of society. In the Implementation of the foregoing laws and its implementing rules and regulations, the DSWD is in the forefront.

In the case of "children in conflict with the law" (CICL), the Philippines recognizes the vital role of youth in nation-building and promotes their moral, spiritual, intellectual, and social well being. A comprehensive law was passed, known as Republic Act No. 9344, an Act establishing a Comprehensive Juvenile Justice and Welfare System", which defines a CICL as a child who is alleged to, accused of, or adjudged as having committed an offence under Philippine law. This law specifically defines who are criminally exempt from liability, and as provided in Section 6 of the Act, the following shall be exempt: a child 15 years of age or under at the time of the commission of the offence; and a child above 15, but below 18 years of age who acted without discernment at the time of the commission of the offence. RA No. 9344 is anchored on the principle of Restorative Justice utilizing specific and appropriate intervention to redeem a CICL. The law, by its spirit, regarded a CICL as a perpetrator and at the same time a victim. On the same position is RA No. 9165, the Comprehensive Dangerous Drugs Act of 2002. In particular, its social welfare provisions, like Sections 54, 57, 61, 66, 68, 70 and 81, in relation to sections 11 and 15 of the said Acts, provide helping programmes for treatment and rehabilitation of drug dependents. In these sections, drug dependents are considered victims of a drug menace, and are therefore provided effective mechanisms or measures to reintegrate into society individuals who have fallen victims of illicit drugs and substances through a sustainable programme of treatment and rehabilitation. Section 54 pertains to voluntary submission of drug dependents to confinement, treatment and rehabilitation. Section 57 granted probation and community service under a voluntary submission programme for drug dependents discharged as rehabilitated by the Department of Health - Treatment and Rehabilitation Center. Section 61 provides compulsory confinement of a drug dependent who refuses to be rehabilitated. Section 66 and 68 granted privilege of suspended sentence to first-time minor drug offenders (FTMDO) who violated the provisions on illegal use or illegal possession of dangerous drugs. And Section 70 paves the way for FTMDO, who was found guilty for violation of the provisions of illegal use or illegal possession of prohibited drugs, to be sentenced to perform community service or probation regardless of the penalty imposed. In these various sections of RA No. 9165, the Parole and Probation Administration through its City and Provincial PPA-DOJ field offices play a significant role in the investigation and supervision of these victims of drug abuse.

Again as laid down in the paper of Tadiar, one of the pressing problems of the judicial department is delay in the disposition of pending controversies, which make people wary, if not distrustful, of its effectiveness in vindicating rights and redressing misdeeds committed. In extreme, some crime victims compromise with the underworld to obtain speedy justice to get even with the perpetrator. Many factors cause delay, and its impact always suffered by litigants (especially by crime victims), but is financially rewarding to legal professionals and practitioners. Unless a reversal of this trend is made such that judges are enabled to dispose of more case than are filed through a systematic and sustained judicial reform programme, the backlogs will continue to grow rather than decline.

Very recent is the Supreme Court's Rule on Juvenile in Conflict with the Law (CICL), which just took effect 1 December 2009. In that En Banc Resolution, the highest court of the land, through its Rule Making power, established the rule for criminal cases involving CICL, which is anchored on "Balanced and Restorative Justice Principles". This rule requires the process of resolving conflict with the participation

of the victim, the CICL, and the affected community. It seeks to obtain reparation for the victim; reconciliation of the victim and the CICL and the community; and the reassurance that the CICL can be reintegrated into the community. It also enhances public safety by involving the victim, the CICL and the community in prevention strategies. The new Rule is intended to procedurally explain the gray areas in the implementation and interpretation of RA No. 9344 and its Implementing Rules.

The courts are tasked to interpret and apply the laws and rules, and therefore very significant in the administration of justice.

F. The Victim and the Pillar of Philippine Corrections

In the Philippines, corrections has two sub-components, the institutional-based and the community-based correction, which are being operated by fragmented agencies in government. As to the institutional-based, the Bureau of Correction (BUCOR), which is under the Department of Justice (DOJ) is in charged of the insular or national prisoners whose sentences are more than three years’ imprisonment. The Bureau of Jail Management and Penology (BJMP), which is under the Department of Interior and Local Government, through its municipal, city and district jails, is tasked to take charge of committed prisoners who are sentenced to three years and less. The Provincial Jails are under the Governor of the province and sub-province. And the DSWD and LSWDO mandated to look into the welfare of CICL. Save the case of DSWD and LSWDO, in all these institutional programmes, the victims of crimes have no roles to be recognized and received appropriate treatment. The jails and prisons are created to confine persons committed or convicted by courts to prevent these persons from further commission of crime, and likewise rehabilitate them to change their pattern of anti-social behaviour. These prisoners, who were convicted and sentenced to imprisonment, are granted released either through parole or grant of executive clemency through the plenary power of the Chief Executive of the Country. The agencies primarily responsible are the Board of Pardons and Parole and the Parole and Probation Administration, which are both under the Department of Justice, and rightfully belonged to the non-institutional or community-based correction. On the other hand, the probation system is a court-directed process utilizing the Parole and Probation Administration as its arms. The grant of parole is within the power of the Board of Pardons and Parole performing quasi-judicial power pursuant to Act 4103, as amended, the Indeterminate Sentence Law. The Parole is granted to those who served the minimum of indeterminate sentence. As to Executive Clemency, the Board of Pardons and Parole is tasked to review case for Executive Clemency, and accordingly recommend the same to the Chief Executive. The Board shall cause the publication in a newspaper of national circulation, the names of persons who are being considered for executive clemency. Any interested party (victim and other stakeholders) may send to the Board a written objections/comments/information relevant to the cases of prisoners who is under consideration not later than 30 days from date of publication.

In the performance of the Board’s tasks, the Parole and Probation Administration, through its City and Provincial PPA-DOJ field offices, conducted the pre-parole/pre-executive clemency investigation and submit reports to Board for its judicious consideration. After the approval of those prisoners’ release, either through parole or pardon, the Parole and Probation Administration is now tasked to provide individualized, community-based treatment programme. In this stage, the Parole and Probation Administration, through its Restorative Justice programme, get in touch with the victims and the community affected by the crime committed.

G. The Victim and the PPA-DOJ

The Probation Administration was created by virtue of Presidential Decree No. 968, the Probation Law of 1976, to administer the Probation System. Under Executive Order No. 292, the Administrative Code of 1987, promulgated on 23 November 1989, the Probation Administration was renamed “Parole and Probation Administration”, and added function of supervising prisoners who, after serving part of their sentences in prison/jails are released on parole or granted pardon with parole conditions.

Moreover, the investigation and supervision of First-Time Minor Drug Offenders placed under suspended sentence (FTMDO) have become an added function of the Administration pursuant to Sec. 66, 68 and 81 of RA No. 9165, the Comprehensive Dangerous Drugs Act of 2002, and per Dangerous Drugs Board (DDB) Resolution No. 2, dated 19 July 2005, and DDB Regulation No. 3, series of 2007, which pertains to the Rules Governing voluntary confinement for Treatment and Rehabilitation of Drug Dependents. The Regional Directors, Assistant Regional Directors, and Chief Probation and Parole Officers are designated as DDB

Authorized Representative to assist drug addicts/abusers in their desire to be rehabilitated from the ill effects of prohibited drugs and substances.

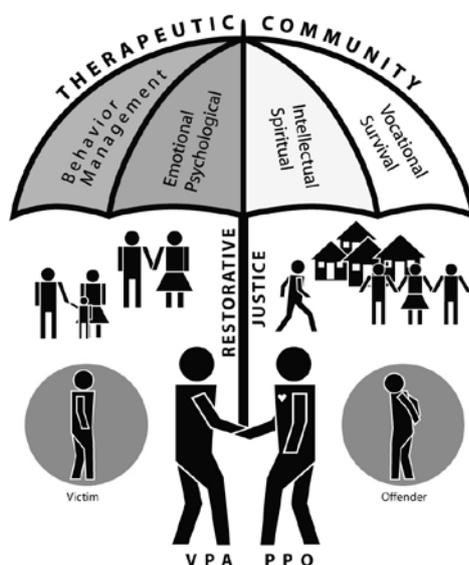
1. ICBT Components

The vision of PPA-DOJ is to transform PPA into a model component of the Philippine Correctional System that enhances the quality of life of its clients through multi-disciplinary programmes and resources, an efficient organizations, and a highly professional and committed workforce to promote social justice and development.

With the above vision, and anchored on the Agency core functions, an holistic treatment approach, known as the PPA Harmonized Rehabilitation Program for crime prevention and treatment of offenders was adopted through the implementation of the following components of individualized, community-based treatment (ICBT):

- (i) PPA Restorative Justice (RJ) is a victim-centered response to crime that provides opportunities for those directly or indirectly affected of its impact to meet together, and voluntarily and actively participate in the resolution of their differences. As a process, it may be provided through discussion and negotiation of matters resulting from the offense or conflict, with the help of a fair and impartial third party (mediator, conciliator or facilitator) to resolve their differences and agree to comply with whatever agreement obtained during such dialogue and negotiation. It shall apply to all cases referred to the PPA-DOJ Field Offices for supervised rehabilitation treatment by the courts, Board of Pardons and Parole, the Dangerous Drugs Board, the Chief Executive and other agencies.
- (ii) PPA Therapeutic Community (TC), a modality treatment for drug abusers and those with serious behavioral problems is anchored on four major thrusts: behaviour management and behavior shaping; intellectual and spiritual enrichment; emotional and psychological treatment; and vocational and survival skills. This is the treatment modality which helps the RJ initiative in reintegrating offenders to achieve reconciliation, empowerment and healing of the victims and other indirect victims.
- (iii) Volunteer Probation Aide (VPA), an Agency strategy to draw community involvement and enhance citizens' participation in the overall process of rehabilitation and reintegration of clients-offenders. Those volunteers likewise help in the RJ process as mediator, conciliator, facilitator or strength to achieve the ends and the restorative efforts.

**HARMONIZING PPA INDIVIDUALIZED,
COMMUNITY-BASED TREATMENT PROGRAMME**



At the helm of RJ implementation are the field probation and parole officers assisted by volunteer Probation Aides (VPAs), community leaders and other responsible and interested members of the community.

VPAs are appointed by the Administrator from among citizens of good repute and probity. The present VPA system is continuously being developed with the help of the JICA and UNAFEI.

The RJ Programme is envisioned to balance the administration of justice to achieve satisfactory justice and empowerment for all.

2. PPA RJ

PPA-DOJ BALANCE AND RESTORATIVE JUSTICE



Crime or conflict hurts people and relationships. The three stakeholders are disturbed by the impact of crime or conflict; therefore, their relationship is affected, and they deserve the end-goals of restorative justice. The client-offender should be accountable to correct his or her mistake, and retribute whatever damages were inflicted (accountability). The victim has to be compensated and be empowered again (competency development). The community and its inhabitants deserve an orderly and peaceful society (public safety).

The PPA-DOJ’s role, through its provincial and City Field Offices, is very vital in the implementation of the RJ programme with respect to its clientele who are in the process of supervised rehabilitation and reintegration. The RJ programme, which has implication to the total efforts in the rehabilitation and reintegration of offenders, has vital national consequence on the evolving issues of human rights and social justice. These offenders, if not properly managed, and if the appropriate treatment is not implemented, certainly have impact to national security.

3. PPA Objectives in RJ

The adoption of RJ in the PPA-DOJ through Memorandum Order No. 12, dated 16 July 2003, otherwise known as the Implementing Guidelines on Restorative Justice, leads clients-offenders to reconnect them to mainstream of society and reconstruct a meaningful relationship with victim and the community. PPA objectives in the adoption of restorative paradigm are as follows:

- (i) To reintegrate offenders to the social mainstream, and to encourage them to assume active responsibility for the injuries inflicted to victim and the affected community (accountability);
- (ii) To proactively involve the community to support and assist in the rehabilitation of victims and offenders (competency development);
- (iii) To attend to the needs of the victims, survivors and other person impacted by crime as vital

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participating stakeholders in the justice process, rather than a more object or passive recipients of services of intervention that may be unwanted, inappropriate or ineffective (competency development);

- (iv) To ultimately heal the effects of crime and wrongdoing (competency development);
- (v) To prevent further commission of crime or conflict in relationship (public safety).

4. Basis

(i) *Section 5 of PD No. 968 as amended, the Probation Law of 1976*

“Ends of Justice, the best interest of the public as well as that of the defendant will be served thereby”

(ii) *PPA Goal*

“The goal of the government is to establish a more enlightened and human correction system that will promote the reformation of offenders and thereby reduce the incidence of recidivism.”

(iii) *Basic Principles on the Restorative Justice Programmes in Criminal Matters*

The Philippines is a signatory-member country to the draft resolution recommending to Economic and Social Council of the UNO the adoption of the “Basic Principles on the Restorative Justice Programmes in Criminal Matters”. The said document was a formulation of UN Standards in the fields of Mediation and Restorative Justice.

5. PPA RJ Guidelines

RJ, as PPA strategy, came to birth by the aforesaid Memorandum, which is anchored on the following:

1. It promotes and encourages active involvement of stakeholders in a crime situation, who during court trial and by the court procedure are not authorized to have a chance for them to discuss and participate fully in formulating a solution which promotes repair, and reconcile the offender with the victim and the community;
2. It is a balanced approach, primarily motivated by its vision to heal the effects of crime or conflict, and develop a broader vision of an integrated justice system to include victim and the community; and
3. It incorporates into the Agency’s vision and mission the overall thrust of crime prevention through the process of community involvement and social welfare networks with stakeholders, assisted by duty bearers, actively identifying, discussing and solving problems to achieve workable restorative agreement geared to achieve accountability, competency development, and public safety.

(i) *M.O. No. 13 s. 2005*

To strengthen RJ implementation, the PPA-DOJ Administrator issued Memorandum Order No. 13, s. 2006 which expanded the used of RJ process (mediation, conciliation, conferencing, circle of support, etc.) in the following situation :

1. Disturbed relationship as a result of an offence committed by client :

- (a) Client relationship with victim
- (b) Client relationship with community.

2. Disturbed relationship as a result of client’s injurious or destructive acts or omission:

- (a) Client relationship with immediate family or other relatives whether affinity or consanguinity; and
- (b) Client relationship with his or her community; and

3. Disturbed relationship as a result of an injurious or destructive act or omission inflicted against the Agency client by other persons.

(ii) *M.O. No. 18 s. 2005*

Memo Order No. 18 s. 2005 established indicators of rehabilitation success, namely:

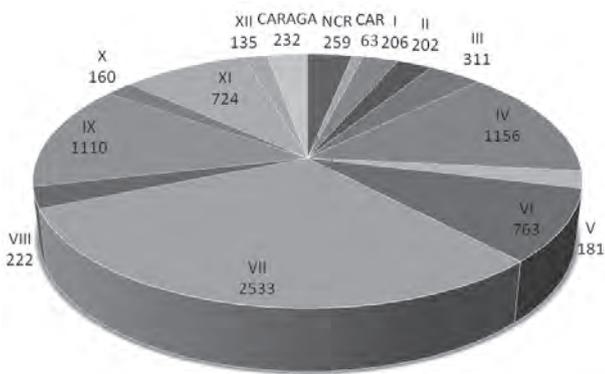
1. First level - minimum level of success (institutional requirements): the client has substantially complied with the condition of probation/parole/pardon; he or she is successfully released from the Agency control, and he/she is crime free.

2. Second level - medium level of success (self-fulfillment and reconciliation): the client gained higher quality of life; he or she is employed or self-employed; he or she has completed his or her education or earned vocational or technical skills, he or she has solved pressing problems in his life such as family problems, personal questions etc.; he or she has resolved conflict with or reconciled with victim; and

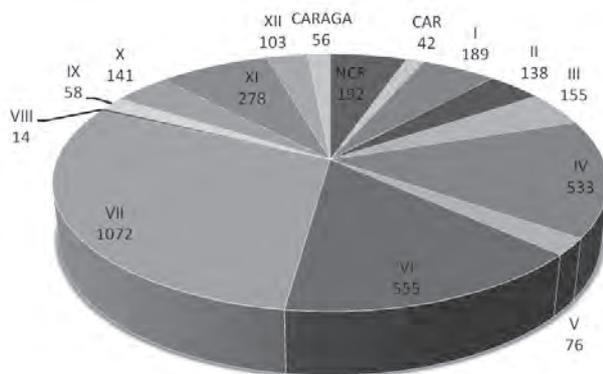
3. Third level - maximum level of success (full restoration to mainstream of the community): the client has gained a certain degree of leadership; he or she has attained a certain degree of recognition in the community; he or she has accomplished something of note for the community. He or she has reconciled with victim and the affected community.

The last two other situations which have significant effects on the overall goal of an individualized, community-based treatment programme as well as on the continuing effort of the community to achieve order and tranquility were included and expanded.

Total No. of Clients in RJ from 2007 to 3rd Qtr 2009



Total No. of Victimss in RJ from 2007-3rd Qtr 2009

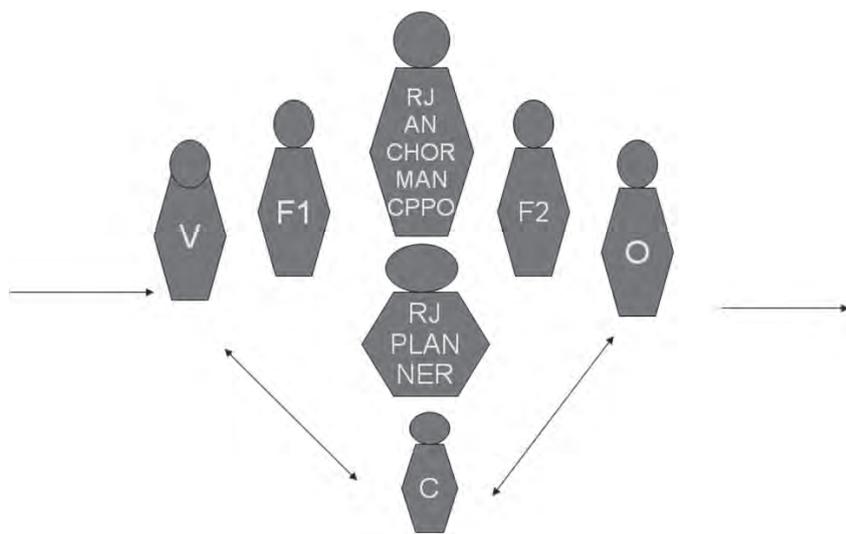


6. PPA-DOJ RJ Strategy

(i) Peacemaking Encounter

This means a community-based gathering that brings the victim, victimized community and the offender together to inform each other about the effect of crime and victimization; to learn about each other’s background, and to collectively reach a restorative outcome.

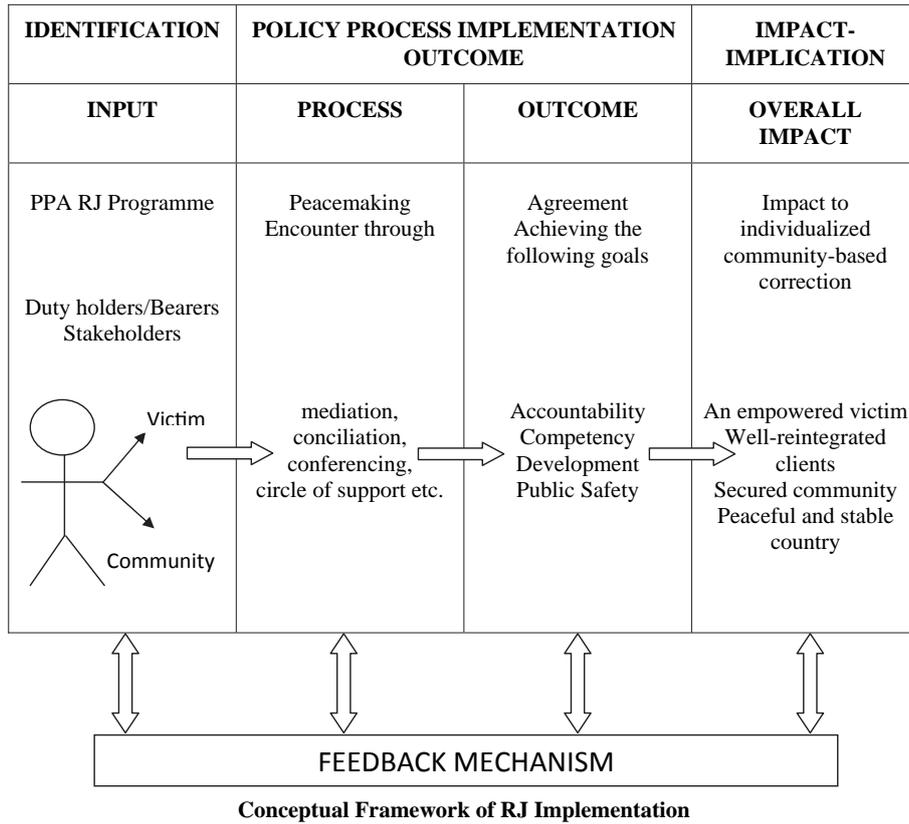
PEACEMAKING ENCOUNTER MODEL



Offender tells his or her story of offence and how it affects him or her.

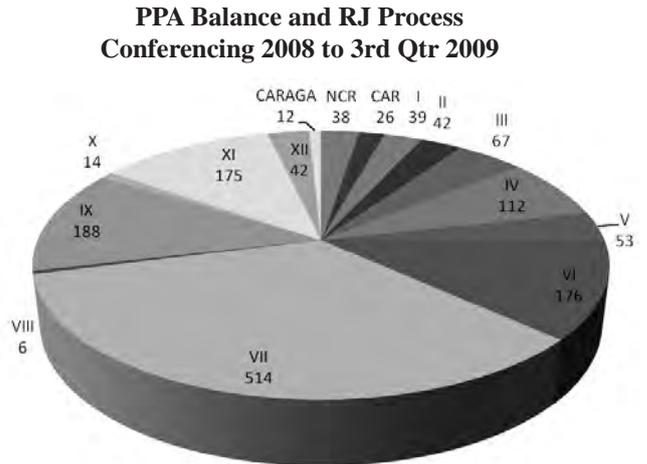
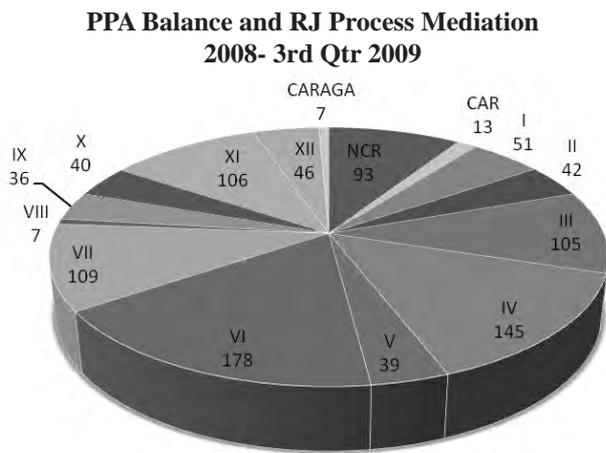
Victim and Community tell how the offence affected them.

Participants designs and agreement.

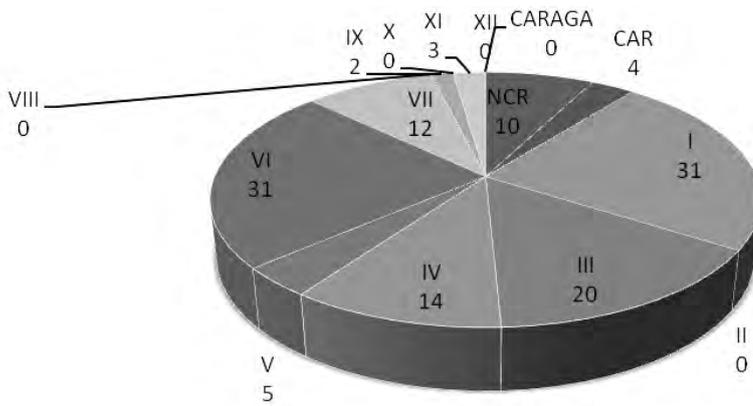


(ii) PPA-DOJ Peacemaking Encounter

RJ Processes – any process in which the victim offender and/or individual or community member affected by a crime actively participate together in the resolution of matter resulting from the crime often with the help of a fair and impartial third party. RJ processes, include, among others, mediation, conciliation, conferencing, circle of support.



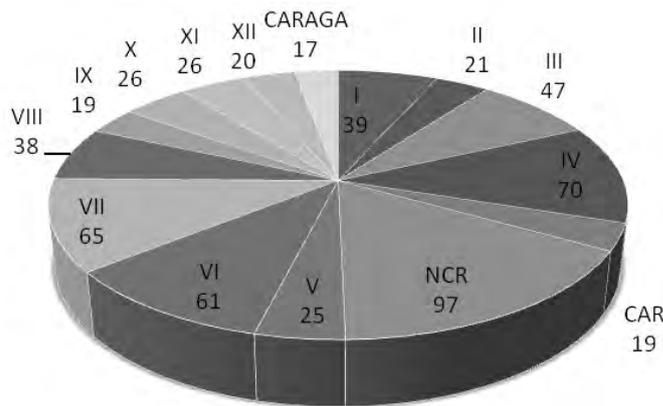
PPA Balance and RJ Process Circle of Support 2008 to 3rd Qtr 2009



7. RJ Procedural Safeguards' Application

- (i) Client admits the offence, and if possible is encouraged to take full responsibility;
- (ii) RJ Planner (Probation and Parole Officer) solicits interest and willingness of stakeholders (victim, community and offender) to participate in the process;
- (iii) Victim given preference for the time, date and place of the restorative meeting;
- (iv) RJ planner gets in touch with community strengths prior to actual meeting;
- (v) A pre-conference meeting with selected facilitators prior to actual the conduct of peacemaking encounter shall be set to discuss all the details of the dialogue negotiations;
- (vi) Likewise, a pre-conference meeting shall be arranged separately with individual stakeholders to explain the process and other related matters;
- (vii) RJ planners shall ensure everyone knows how to get to the location site;
- (viii) RJ planners/facilitators ensure conference conducted without interruption and secure the safety stakeholders;
- (ix) Stakeholders shall be consulted as to composition of the facilitator and strengths;
- (x) Indigenous systems of settling disputes or differences shall be recognized and encouraged.

Personnel Per Region Who Have Undergone Training on Restorative Justice and Juvenile Justice and Welfare Act as of December 2, 2009



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| Region | No. of Attendees | No. of Filled Positions | % |
|----------|------------------|-------------------------|-------|
| Luzon | | | |
| I | 39 | 39 | 100 |
| II | 21 | 24 | 87.50 |
| III | 47 | 56 | 83.92 |
| IV | 70 | 83 | 84.33 |
| V | 25 | 29 | 86.20 |
| CAR | 19 | 19 | 100 |
| NCR | 97 | 101 | 96.03 |
| Visayas | | | |
| VI | 61 | 62 | 98.38 |
| VII | 65 | 73 | 89.04 |
| VIII | 38 | 38 | 100 |
| Mindanao | | | |
| IX | 19 | 22 | 86.36 |
| X | 26 | 36 | 72.22 |
| XI | 26 | 31 | 83.87 |
| XII | 20 | 20 | 100 |
| CARAGA | 17 | 19 | 89.47 |
| | | | |
| TOTAL | 590 | 652 | |

8. Restorative Outcome

The Restorative Outcome is an agreement obtained as a product of a restorative process. Examples include restitution, community work service, personal work service, attendance at a therapeutic session, diversion. It is designed to accomplish reparation for victim, reconciliation, and reintegration of stakeholders.

| Probationers'/Parolees'/Pardonees' Indemnification of Civil Liability | | | | | | |
|---|-------------------------------|---------------------------|------------------|------------|------------------|------------|
| YEAR | Total Numbers of Probationers | Amount of Civil Liability | Amount Collected | Percentage | Balance (if any) | Percentage |
| 1978 | 234 | 1,005,608.63 | 194,152.85 | 19.31% | 660,460.41 | 65.68% |
| 1979 | 545 | 3,278,228.75 | 370,397.55 | 11.30% | 2,739,364.09 | 83.56% |
| 1980 | 708 | 5,198,285.67 | 390,372.18 | 7.51% | 4,134,023.71 | 79.53% |
| 1981 | 1,059 | 6,242,507.12 | 598,325.15 | 9.58% | 4,947,787.04 | 79.26% |
| 1982 | 1,367 | 9,989,572.35 | 457,723.73 | 4.58% | 8,759,027.47 | 87.68% |
| 1983 | 734 | 528,685.63 | 58,628.02 | 11.09% | 383,507.46 | 72.54% |
| 1984 | 313 | 1,412,787.70 | 388,644.24 | 27.51% | 986,822.16 | 69.85% |
| 1985 | 384 | 4,116,628.93 | 128,455.55 | 3.12% | 3,445,745.82 | 83.70% |
| 1986 | 351 | 1,748,984.42 | 87,973.91 | 5.03% | 1,661,010.51 | 94.97% |
| 1987 | 463 | 646,713.16 | 228,615.00 | 35.35% | 418,098.18 | 64.65% |
| 1988 | 524 | 421,285.71 | 190,277.63 | 45.17% | 231,008.08 | 54.83% |
| 1989 | 412 | 3,878,626.10 | 414,048.33 | 10.68% | 3,464,577.77 | 89.32% |
| 1990 | 382 | 12,810,838.93 | 235,144.47 | 1.84% | 12,575,694.46 | 98.16% |
| 1991* | 1,229 | 125,328,563.73 | 1,794,575.35 | 1.43% | 123,533,988.38 | 98.57% |
| 1992 | 1,352 | 134,538,783.58 | 2,388,789.97 | 1.78% | 132,149,993.61 | 98.22% |
| 1993 | 1,827 | 40,986,321.00 | 1,986,620.40 | 4.85% | 38,999,700.60 | 95.15% |
| 1994 | 9,635 | 261,144,714.05 | 3,886,570.10 | 1.49% | 257,258,143.95 | 98.51% |

RESOURCE MATERIAL SERIES No.81

| | | | | | | |
|-------|--------|------------------|----------------|--------|------------------|--------|
| 1995 | 1,020 | 485,776,166.00 | 2,302,332.00 | 0.47% | 483,473,834.00 | 99.53% |
| 1996 | 5,635 | 209,255,095.22 | 4,528,682.82 | 2.16% | 204,726,412.40 | 97.84% |
| 1997 | 5,296 | 213,473,415.00 | 33,464,543.00 | 15.68% | 180,008,872.00 | 84.32% |
| 1998 | 4,610 | 215,667,037.04 | 3,442,392.42 | 1.60% | 212,224,644.62 | 98.40% |
| 1999 | 3,482 | 100,640,445.22 | 5,309,653.60 | 5.28% | 95,330,791.62 | 94.72% |
| 2000 | 1,586 | 108,700,024.88 | 7,030,408.54 | 6.47% | 101,669,616.34 | 93.53% |
| 2001 | 3,468 | 269,103,965.00 | 5,964,719.00 | 2.22% | 263,139,246.00 | 97.78% |
| 2002 | 632 | 1,147,424,899.00 | 6,518,085.00 | 0.57% | 1,047,614,919.00 | 91.30% |
| 2003 | 955 | 717,436,603.00 | 19,636,761.00 | 2.74% | 624,364,943.00 | 87.03% |
| 2004 | 1,335 | 889,262,789.00 | 11,412,278.00 | 1.28% | 877,850,511.00 | 98.72% |
| 2005 | 1,353 | 657,050,862.00 | 12,771,110.00 | 1.94% | 644,279,752.00 | 98.06% |
| 2006 | 1,660 | 234,366,662.92 | 11,739,834.95 | 5.01% | 222,626,827.97 | 94.99% |
| 2007 | 1,543 | 125,291,933.96 | 19,119,994.63 | 15.26% | 106,171,939.23 | 84.74% |
| 2008 | 1,278 | 182,087,550.00 | 6,772,251.00 | 3.72% | 175,315,299.00 | 96.28% |
| TOTAL | 55,372 | 6,168,814,583.70 | 163,812,360.39 | 2.66% | 5,835,146,561.88 | 94.59% |

**Inclusion of Parolees/Pardonees in PPA's Mandate*

9. Result of Study of PPA RJ

In my study on the “Assessment of the Implementation of PPA’s Restorative Justice Programme in the Parole and Probation Offices of Bataan Province, Sta. Rosa City and Baguio City”, which I have submitted to the National Defense College of the Philippines (NDCP), there are vital areas in the implementation of RJ that needs to be pursued vigorously by the Agency, such as:

1. Continuous advocacy for rehabilitation funds from the National Government, and or resort to tapping of resources available inside and outside the country;
2. Improving capability, competence and commitment of the Agency’s human resources;
3. Extensive networking/partnership with the community, its people and the various institutions and organizations;
4. Review of pertinent rules and procedures to conform to RJ processes; and
5. Extensive information campaign to enhance public awareness and involvement.

The Parole and Probation Administration occupies a very sensitive role in the criminal justice system. Its primordial responsibility is to bring the “lost sheep” back to the folds of the law.

RJ as an intervention provides the framework to enhance the reintegration of clients’ offenders to the mainstream of the society. The inclusion of the victim and the affected community will complete the reengagement process and pave the way for the transformation of these offenders into productive, law-abiding and functioning individuals.

This is the desired goal of the PPA’s individualized, community-based treatment, and the Agency contribution to the total efforts of the government in preserving and sustaining peace and stability in the country, and ensuring national security.

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