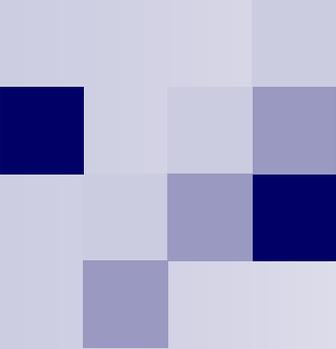


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MESSAGE

President of Asian Law Students' Association

Dear fellow ALSA members,

It is my great pleasure to congratulate everyone who has contributed to the success of the second annual ALSA Law Review. The theme for this year is "Child Abuse." The success for this project truly reflects our goal to become one of the leading legal organizations in the world.

ALSA Law Review is a collection of law reviews from various ALSA members. Its goal is to demonstrate the importance of law and its advancement among various member countries. Since the legal system is fundamentally intertwined with today's rapidly changing world, a periodic examination of its development is crucial for our profession.

I trust that we will continue the tradition of excellence by producing quality work for many years to come.

I sincerely thank and congratulate the Editorial Board headed by Melvin Balisith the IB AAC and all students who have put their best effort to make this Law Review another great success.

Sincerely,
Nat Boonjunwetvat
President of ALSA International Board 2007-2008



MESSAGE

Arisa Sukontasap
AAC Representative of Thailand

Dear fellow ALSA members and readers,

As an Academic-Activities Coordinator (AAC) of Thailand's National Chapter, I feel really honored to be a part of this magazine. I would like to congratulate ALSA on its second issue of the Law Review Magazine. Also on behalf of Bangkok Forum's Organizing Committee I highly appreciate the efforts of AACs from each national chapter for the excellent work they have done with their law review. I sincerely hope that the exchange of opinions in the magazine will contribute to the improvement of our region's understanding on human rights law, notably child abuse issue. As knowledge is a fundamental resource for any organization to accomplish its goal, I am certain that this Law Review Magazine would play a big part for ALSA to become one of the leading students' associations.

Finally, I would like to congratulate Melvin Balisi, the AAC of the International Board of ALSA and the editorial committee for the remarkable work which they have done.

Arisa Sukontasap (Waan)
Head of Academic Activities,
Organizing Committee

Child Abuse in Thailand

I. Introduction

Children worldwide may face many different forms and problems. Child abuse and exploitation occur in various forms and usually relates to cultural background, economic and socio-cultural environment. It is common among girls as well as boys. Similar to many countries, physical or emotional ill-treatment and sexual abuse are the most common types of abuse found in Thailand. Among them there is also commercial exploitation which happens in the form of child labour. Consequently, child abuse can be found most easily in a child's home or an organization involving children. Though, Thai law does not have a specific definition of child abuse, but there is a meaning of child maltreatment appear in the Child Protection Act by using the term "Unlawful Care" and it states as follows :

"Unlawful Care" means failure to care for, nurture or develop a child in accordance with the minimum standards as stipulated in ministerial regulations, to such an extent that it appears likely to be harmful to the child's physical and mental wellbeing.¹

Sexual abuse on children is governed by the Prevention and Suppression of Prostitution Act 1996 which punishes those caught engaging in sex with a minor (age under 18)².

History//Background :

Thailand is party to many international legal instruments that concern the right of child. To prevent commercial exploitation on children, Thailand ratified two conventions regarding child labour. First, the International Labour Organization's Convention No.138 regarding minimum age of labour, second, the International Labour Organization's Convention No. 182 regarding the worst form of Child Labour. Moreover, Thailand is also a party to the Optional protocol on the Sale of Children, Child Prostitution and Child Pornography to the Convention on the Rights of the Child. Most importantly, in 1992, Thailand ratified the UN Convention on the Rights of the Child, the comprehensive international legal instrument regarding child's right. Since then, the government has made strides in reforming domestic laws accordingly. The

¹ Article 4, the Child Protection Act 2003

² Article 8, the Prevention and Suppression of Prostitution Act 1996

revised Constitution, adopted in 2007, guarantees the promotion and protection of children's rights as recognized by the Convention, including the right to be protected from violence and unfair treatment. It also guarantees the children's right to receive care and education from the State³In addition, after years of the country's CRC ratification, Thailand adopted the Child Protection Act, which went into effect in 2004. Among other things, this statute provides that children have the right to protection from physical or sexual abuse, and that their best interests are paramount in child protective proceedings.

II. Current Situation of the Issue

Judicial Action

In accordance with the Convention of the Right of Child, Thai government enacted the Child Protection Act which reflects the four main principles of the CRC : Non-Discrimination, Best interest of the child, Right to live, survival and development and Child's participation. The Act provides that children have the right to protection from physical or sexual abuse, and that their best interests are paramount in child protective proceedings. It also made a significant development on the protection of domestic child abuse by imposing duty for those who witness the abuse to notify government official. The law also prescribes special authority and duties for the official, such as, power to enter into residence of a child's guardian where it is suspected with child abuse, power to issue a written order to a child's guardian, employer or business operator, owner of a place where the child works or used to work, live or used to live, to submit documents or evidence regarding the child's living conditions, education, employment or behaviour⁴. In addition, the Child Protection Act established a new system of nursery and children's rehabilitation by setting up, for example, a "Remand home" to temporarily shelter a child while tracing and observe the child or his/her family in order to develop guidelines and protection to each individual child. There is also the Child Protection Fund, under the Act.

For sexual abuse and commercially exploitation, Thailand, bound by its international commitment under ILO Conventions, set up a minimum age for labor in accordance with the ILO Convention No.138 and restricts the types of work that children can engage in by respecting the ILO Convention No.183 regarding the worst forms of child labour. Moreover, in dealing with child prostitution, the Prevention and Suppression of Prostitution Act 1996

³ Constitution of the Kingdom of Thailand, 2007

⁴ Article 30, the Child Protection Act 2003

increased the penalties for those caught engaging in sex with a minor⁵. The law targets customers, procurers, pimps, and owners and operators of brothels as well as parents who sell their children to profiteers. Thai law also provides for prison terms up to ten years and heavy fines for anyone convicted of being involved in international commercial sex trade. The Act also eased restrictions on the police, making it easier for them to enter and search suspected brothels and make arrests.

Executive Action

Typically, the initial stage of child protective process in Thailand is administrative, rather than judicial. As mentioned above, under the Child Protection Act, nurses, psychologists, public health officials, teachers, and similar parties must report any instances of suspected child abuse and neglect. Administrative officials, including social workers, investigate such allegations. Upon a finding of moderate neglect, the officials must institute welfare assistance, such as parenting classes. In instances of more serious neglect or abuse, including torture, officials must take appropriate safety protection measures, such as removing the child from an abusive environment. While the investigative officials are required to question a child when investigating alleged abuse and neglect, they are not formally required to heed the child's expressed interests when deciding whether or not to provide welfare assistance or initiate safety protection measures.

Judicial Action

Courts also play a role in child protection. A parent or guardian can petition the Family and Juvenile Court to contest the initiation of welfare assistance or safety protection procedures. Under the Civil Code, extended relatives or other parties may petition the court for guardianship of a child who is alleged abused and/or neglected. Children are not permitted to participate directly in such proceedings. The Civil and Commercial Code provides that a guardian be appointed to represent the child's best interests. The child is not provided with an attorney in such proceedings. In sum, the Child Protection Act (chapter 2, article 22) provides that the child's best interest is paramount throughout the child protective process, but the child's expressed interests appear to play a tangential role.

III. Conclusion

⁵ Ibid.

During the past decades, Thailand has tried its best to develop the child protection system to fit the situation in the country. We are also committed with international community to guarantee child's right by ratifying a number of international legal instruments concerning child's right. As consequence, there have been significant improvements in legislation and policies affecting children over the past few years. This includes the Child Protection Act which demonstrates that the guaranteed child's rights are protected and respected under Thai law.

Like other forms of problems faced by children throughout the country, child abuse is one of the priorities that need to be dealt with. It is not incorrect to say that what the law provides for child protection is already sufficient, but to decide whether it is effective or not, it depends mainly on practice of the officials and society as a whole. The new policy such as duty to notify an official is an excellent example to promote public awareness of the problem. Moreover, different types of institutes established under the new law to shelter children in trouble or suspected to be in trouble also work as an important mechanism to overcome child abuse. Not only children that need to be treated in the child abuse problems, but also adults need to be guided and treated too. Since one of the main causes of child abuse is cultural backgrounds, if there is no improvements in changing adults' point of view towards child's right, it would be impossible to defeat child abuse. The newly enacted Child Protection Law is considered as Thailand's great leap to the perfect protection children from child abuse, but nonetheless, a perfectly-written law governing the problem cannot be as perfect as a great function of enforcement of the law, either by official authorities or each individual.

CHILD ABUSE IN MALAYSIA

Introduction

Looking at the precious little thing, only kind thoughts fills your mind, you think of her as a beautiful angel, innocent and pure, who would ever hurt a child?

Being a fact of life, society cannot close its eyes and hope that it will go away. In the recognition of the special place children have in society, the Child Protection Act 1991 and its successor Child Act 2001 (hereinafter the CA) was enacted. This work will discuss child abuse as a whole generally and a few important points of law in relation to the Child Act 2001 and other relevant statutes and law.

Meaning of Child

A child is defined as being a person less than eighteen years of age⁶. The term 'person' here refers to a human being who has been born and not a fetus or unborn child. Reference may be made to *C v S*⁷ where it was held that a fetus had no legal right until it is subsequently born alive. The Supreme Court of Canada in *Daigle v Tembray*⁸ meanwhile opined that a fetus does not fall under the term 'human being' under the Quebec Charter of Human Rights and Freedoms and hence enjoyed no right to live. It shall be noted too that in the CA there is no criminal liability if hurt is caused to an unborn child.

However, criminal liability will still arise under the Penal Code where causing a miscarriage to a pregnant woman will attract a penalty of a term of imprisonment up to three years or up to seven years if the woman is quick with the child, and shall be liable to whipping⁹. Where the miscarriage is caused without the woman's consent, it will attract liability of imprisonment for a term up to twenty years and fine¹⁰.

Types of Child Abuse and the Law

⁶ Child Act 2001, Section 2

⁷ [1987] 1 All ER 1230

⁸ [1990] 16 CLB 443

⁹ Penal Code, Section 312

¹⁰ Ibid, Section 313

While there are numerous interpretations as to the classification of child abuse, there are generally four types of abuse namely physical abuse, sexual abuse, neglected and emotional abuse¹¹. Official statistics by the *Jabatan Kebajikan Masyarakat* (Welfare Department) meanwhile divides child abuse into six categories namely abandonment, neglected, physical abuse, sexual abuse, emotional abuse and other abuses.

These abuses were quite widely covered by Section 31 of the CA which reads as follows;

31. (1) Any person who, being a person having the care of a child—

(a) abuses, neglects, abandons or exposes the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, neglected, abandoned or exposed; or

(b) sexually abuses the child or causes or permits him to be so abused,

commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

The phrase 'any person' who has 'the care of the child' suggests that any person who has only temporal care over the child, however short it may be, if he/she abuses the child, shall be liable under the CA. This includes day-care centres, kindergartens and schools. Where the person having control over the child permits him to be abused, he is also liable. This provision covers negligence as well as willful actions.

Besides these abuses, the CA further prohibits the use of a child for begging, whether under the pretext of actual begging, receiving alms, singing, playing, or offering anything for sales¹². It further prohibits the child being used to carry out illegal hawking, illegal lottery,

¹¹ Kasmini Kashim, *Penderaan Emosi Kanak-kanak, Trauma Terselindung*, 1998, Penerbitan Universiti Kebangsaan Malaysia

¹² Child Act, Section 32(a)

gambling and other illegal activities that will be detrimental to the child's health¹³, under which he will be liable for a fine up to five thousand ringgit or imprisonment up to two years or both.

Neglect was further provided under Section 33 of the CA. Section 33 which reads;

33. Any person who, being a parent or a guardian or a person for the time being having the care of a child, leaves that child—

(a) without making reasonable provision for the supervision and care of the child;

(b) for a period which is unreasonable having regard to all the circumstances;

or

(c) under conditions which are unreasonable having regard to all the circumstances,

commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

This section seems to overlap with Section 31 CA on the provision of neglect. It may be argued that in Section 33, the neglect does result in any hurt to the child while Section 31 does, hence the higher penalty. This however does not hold as the Court may on its discretion impose any penalty reasonable as there is no mandatory penalty.

Another explanation is where the neglect is not within the ambit of Section 33, it will be caught by Section 31 to ensure any type of neglect will not go unpunished.

Other than these provisions in CA, an abuser might be caught under the Penal Code. Such offences include hurt¹⁴, grievous hurt¹⁵, rape¹⁶, incest¹⁷, outrage of modesty¹⁸, and inciting a child to an act of gross indecency¹⁹.

¹³ Ibid, Section 32(b)

¹⁴ Penal Code, Section 319

¹⁵ Ibid, Section 320

¹⁶ Ibid, Section 375

¹⁷ Ibid, Section 376A

¹⁸ Ibid, Section 377D

¹⁹ Ibid, Section 377E

Trend of Child Abuse

In Malaysia, statistics of child abuse is compiled by the Welfare Department and the Royal Malaysian Police. However, statistics may produce different figures as reported cases to the Police may not be reported to the Welfare Department²⁰. While this might be a hindrance when it comes to exact figure, the trend of the statistics is actually very much the same.

TYPE OF ABUSE	1997		1998		1999		2000		2001	
	M	F	M	F	M	F	M	F	M	F
ABANDONED	57	28	55	28	68	38	50	21	19	18
NEGLECTED	132	120	131	121	129	121	99	84	72	64
PHYSICAL	262	214	244	245	213	200	175	187	62	76
SEXUAL	6	213	17	263	13	278	24	234	20	119
EMOTIONAL	19	36	6	30	3	14	3	21	7	13
OTHERS	26	36	8	13	19	11	12	24	40	31
TOTAL	502	647	461	700	445	662	363	571	220	321

Table 1 : Number of Child Abuse by Types²¹

While there seems to be more cases of child abuse due to wider coverage by the mass media, looking at the statistic above, we can see that generally, instances of child abuse is on the fall. This might be due to the increase of awareness amongst the public and plans to combat child abuse are working. The outburst by the public every time an instance of child abuse is published, though short-lived, seems to translate into an increase in actions and a decrease in abuses.

Although on the decline, efforts should nonetheless be intensified to further decrease the numbers as abuse towards anyone is unacceptable, be it to children, adults or animals.

Motives involved in child abuse meanwhile were identified as school indiscipline, disobedience, persistent crying, abuser being drunk, emotional stress, the child was unloved by

²⁰ The Hansard, 6 August 2007, in the Senate

²¹ Source : Society Welfare Department

the abuser, sexual reasons, negligence, child being lazy, child for sales and unknown motives²². This so called motives seems inconclusive and perhaps gathered through interviews rather than by psychological experts. It is very much regretted that psychological statistics is not available as it would be more effective in combating child abuse.

Efforts in Combating Child Abuse

There are a few efforts taken to combat child abuse. Other than enacting the law as in the CA, other notable steps including the establishment of Children Protection Team and Children Activity Centre which offers services such as children activities, counseling for children and parents, parenting courses and child care with the intention of providing psychological and motivational support²³.

Other than that, the Child Sexual Abuse and Neglect (SCAN) team was established in hospitals of which members will collect evidence of alleged child abuse. Up to 2005, 14 SCAN teams had been established in state hospitals²⁴, which is an infant step.

The long standing telephone reporting line – TELEDERA, which specialises in child abuse reporting also, plays an important role. However, its long number 1-800-88-3040 might be cumbersome compared to the standard emergency line of 999. The latest call number introduced which specialises in domestic violence – the Nur line – at 39995, is much easier to remember. Both lines would be the mainstay in reporting of child abuse by anonymous dialers so as enhance the protection of children.

There are also some non-governmental organizations (NGOs) such as Shelter and Malaysian Association for the Protection of Children which extend other support services to the victim and family members as well as disseminating information.

However, what is glaringly missing in the whole effort is the education of the public with regards to child abuse. The public is assumed to believe child abuse is wrong and will report them and this assumption may prove fatal. Some Asian cultures which dictate that the family

²² Supra n15

²³ *Achievement of 2001-2005*, Topic 15, Ninth Malaysian Plan

²⁴ Ibid

has the right to discipline a child may be the cause of reluctance in reporting child abuse. Even if some were to believe that it is wrong if the 'discipline' is "too much", the demarcation line may not be readily evident. Most of the time, an abuse is only reported when a child is seriously injured. Emotional abuse will always go unnoticed. This might be true to the child abuser themselves, who has no intention to abuse but merely to discipline! Hence, more education must be imparted to the public.

Child Abuse in The Court : The Law of Evidence

Often, the most difficult part in child abuse cases would be prosecution.

Children as Witnesses

There is no age limit as to the competency to testify. Section 118 of the Evidence Act 1950 provides that all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Hence, the sole test as to the competency to testify would be the ability to understand the questions posed and answering them rationally.

Section 6 of the Oaths and Affirmation Act 1949 meanwhile requires the witness to give evidence on oath. However, owing to immaturity of age, a person who ought not to be affirmed by the oath or unable to take an oath can give evidence after being cautioned by the court to speak the truth and nothing but the truth²⁵.

Confrontational Principle

Being competent, the child is treated like an adult while testifying. He is expected to relive the day and retell the story to the court. He is also subjected to cross-examination and confrontation by the accused in court.

In the American case of *Herbert v Superior Court*²⁶ a judge said:

²⁵ Section 8 Oaths and Affirmation Act 1949
²⁶ (1981) 117 Cal App 3d 850

'By allowing the child to testify against the defendant without having to look at him or be looked at by him, the trial court not only denied the defendant the right of confrontation but also foreclosed an effective method for determining veracity.'²⁷

In *Coy v Iowa*²⁸ meanwhile, the rationale behind this principle was explained:

'It is always more difficult to tell a lie about a person 'to his face' than 'behind his back'. In the former context, even if the lie is told, it will often be told less convincingly...The face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protection have cost.'

The same can be said as the principle in Malaysia²⁹.

However, it seems that this principle is not really as beneficial as it seems to be. In relation to this, a research done by JR Spencer and Dr Danya Glaser found:

(a) Like the examination-in-chief, a trial would have taken place at a time long after the incident, when the memory for details of peripheral significance to the child has begun to fade.

(b) Trial is likely to use language that the child does not understand or know. Hence, when the child does not fully understand the question he might give a misleading answer.

(c) Trial normally consists of leading questions which tend to produce inaccurate information.

(d) Trial will contain questions that cause emotional stress to the child. Many are not really questions in real sense, but usually assertions that the child is a liar. It will then reduce most children to tears rapidly making them unable to remember accurately and think clearly.

(e) Trial will also contain questions that press for further details, not hope to provide the court with further information, but in the hope of making the child contradict what he said earlier, so as to undermine his credibility in the eyes of the court³⁰.

They further furnish an unreported Scottish case of *Maine and McRobb*³¹ where a little girl aged two was abducted and tortured by two sexual sadists. An unsuccessful attempt to

²⁷ Ibid, at 853

²⁸ (1988) 108 S Ct 2798.

²⁹ Statement by the President of the Bar Council in *New Strait Times*, 3rd April 1993

³⁰ JR Spencer and Dr Danya Glaser, 'Sentencing, Children's Evidence and Children's Trauma' (1990) Crim LR 371.

make her a witness in the trial months later culminated in the father telling the court “Last night I spent six hours with my daughter. She went through the whole thing again last night. We were at the stage of calling a doctor”.

Corroboration Principle

Sharma J in the case of *Attan bin Abdul Ghani v PP*³² summarized corroboration rules as follows:

- (1) There must be some additional evidence rendering the story of the complainant probably true and reasonably safe to act upon it;
- (2) The evidence must be from independent sources; and
- (3) It must implicate the accused in the material particular, confirming that the accused committed the crime.

The proviso of Section 133A of the Evidence Act 1950 requires that the accused not be made liable on the evidence by a witness of tender age not on oath unless it is corroborated by some other material evidence implicating him thereof. While this may be done to protect the rights of the accused in the face of the evidence being unsworn, there is a general distrust over evidence given by children as illustrated in a numerous cases.

In *Chao Chong v PP*³³ Thomson opined that it is common knowledge that children, after a lapse of time, find it hard to distinguished between the result of observation and the result of imagination. In *Loo Chuan Huat v PP*³⁴, the conviction of the accused based on the unsworn evidence by a boy of eleven or twelve of age was set aside because the jury was not invited to consider their own experience with children and the their capability of confusing the reality and the fantasy.

In *Tham Kai Yau & Ors v PP*³⁵, the Federal Court when considering the sufficiency of the warning to the jury regarding the evidence of children said:

³¹ Ibid, at 374
³² [1970] 2 MLJ 143
³³ [1960] MLJ 238
³⁴ [1971] 2 MLJ 167
³⁵ [1977] 1 MLJ 174

'It is sufficient if the judge adopts the prudent course of advising the jury to pay particular attention to or to scrutinize with special care, the evidence of young children and explains the tendencies of children to invent and distort.'

It shall be noted that trial by jury had been abolished in Malaysian courts.

Hence, there must be corroboration of other witnesses or evidence when it comes to evidence given by a child. However, problems arise when it comes to independent sources as the abuse will, in most circumstances, be done in private. Secondly, if the corroborative evidence confirms that the accused committed the crime, there is not much need for the child to be a witness except to strengthen the case, which will only put undue pressure and add unnecessary suffering to the child.

The insistence of corroboration due to the fear of children infusing fantasy into reality and vice versa is unfounded. Graham Davies, Yvonne Stevenson Robb and Rhona Flin believe that children are not uniquely incompetent as witnesses³⁶. Kevin Browne meanwhile opined that children have been undermined and wrongly deemed unreliable witnesses³⁷. A child of barely over three years was also found to be able to give utterly convincing evidence including identification evidence - the unreliability of children's evidence has merely been exaggerated by lawyers³⁸.

Hence, the general distrust by the Court needs to be discarded. If the child has passed the test enunciated in Section 118 of the Evidence Act 1950 and has been cautioned pursuant to Section 6 of the Oaths and Affirmation Act 1949, there is no reason for the Court to place different standards of trust towards the child witness. In fact, owing to the emotional scarring, the court should do more to protect the child witness from being unduly pressured and intimidated by lawyers and the accused, whether in the form of videotaped evidence or disallowing certain statements or questions.

³⁶ Graham Davies, Yvonne Stevenson Robb and Rhona Flin, 'The Reliability of Children Testimony' (1986) *International Legal Practitioner* 95.

³⁷ Kevin Browne, 'When is it Safe for the Abused Child to Return Home'. The paper was presented at the Second National Conference on **Child Abuse** and Neglect, 13-14 July 1991, Kuala Lumpur.

³⁸ Glanville William 'More about Videotaping Evidence' [1987] 137 NLJ 351.

Conclusion

Child abuse, being a persistent problem, has more or less fallen from the people's rank of priority. It is high time society revisits certain issues regarding child abuse. While the law may be comprehensive, the deterrence and education stage is surprisingly lacking. Victim protection and welfare, be it before, during or after an abuse, seems to be insufficiently covered especially when it comes to trial. Hence, it is vital for society to bring up the issues again to be reconsidered and reworked.

SAVE THE CHILDREN
Joan Carla V. Guevarra
San Sebastian College- Recoletos
Philippines



I. Introduction

“A person’s a person, no matter how small.” - Dr. Seuss

Violence against children and the battle against child abuse is a war waged worldwide. According to the State of the World’s Children Report in 2007, as many as 275 million children worldwide are caught in the crossfire of domestic violence and suffer the full consequences of a turbulent home life. Violence against children involves physical and psychological abuse and injury, neglect or negligent treatment, exploitation and sexual abuse. The perpetrators may include parents and other close family members.

The consequences of domestic violence can span generations. The behavioral and psychological consequences of growing up in a violent home can be just as devastating for children who are not directly abused themselves. Children who grow up in a violent home are more likely to suffer abuse compared to children who have a peaceful home life. The effects of violent behavior tend to stay with children long after they leave the childhood home. Boys who are exposed to their parents’ domestic violence are twice as likely to become abusive men as are the sons of non-violent parents. Furthermore, girls who witness their mothers being abused are more likely to accept violence in a marriage than girls who come from non-violent homes.

Child abuse is presently, an unfortunate and growing reality in the Philippines. Rizal’s words have never been more true today when he said, “Our children are our hope for the future.” Because indeed, the Philippine population is overwhelmingly young and our nation’s progress rests heavily on their shoulders. Sadly, however, not every Filipino child can lay claim to having an actual

childhood, and thus the opportunity to grow into becoming the future of the world and the hope of the nation is thwarted. We now find ourselves at the precarious situation of safeguarding the rights and innocence of so many of our children against predators, exploiters and often—from their own family.

In the Inter-Agency Council on Violence Against Women and Children Strategic Plan 2005-2010, the most common type of reported VAWC cases in the Philippines are battery and rape. It was also revealed on the study that a child is being sexually abused every 2 hours and 40 minutes while another is beaten almost every 3 hours. Cases of neglect also rise up every 3 hours and 25 minutes and there are cases of abandonment every 8 hours. According to the CWR survey, majority of the victims confide in their friends and relatives instead of reporting the crime to the authorities but a large number are unaware of laws that give assistance and protection to the victims.

The United Nations Convention on the Rights of the Child, or CRC, to which the Philippines is a signatory, couldn't have put it in better terms when it stated in Article 4 that governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. Article 19 further ensures that State parties shall take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.



A lot of children and even young people do not know their rights. But what's even more tragic is that many adults are also unaware that children and young people have inalienable, integral and indivisible human rights that must be protected at all costs.

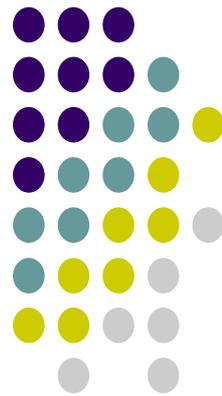
III. Legislative, Executive and Judicial Actions

"The litmus test for any country is how it treats its children."

To show its commitment to the Filipino children, several laws guided by the principles of CRC were passed in the Philippines. The cause of protecting our children from abuse and violence drives us to pursue the enactment of laws that would help eliminate serious children's issues such as child abuse, street children, child prostitution, child trafficking, pedophilia, child labor, children in armed conflict and children in conflict with the law.

Examples of such "child-friendly" laws are R.A. 7610 and R.A. 7658, both of which comprise The Special Protection of Filipino Children, R.A. 8043 or Inter-Country Adoption Code, and R.A. 8369 or Family Courts Law. Furthermore, we have several laws strongly enforcing the protection of children's rights, like R.A. 9231, which provides for the elimination of the worst forms of child labor and the enforcement of a stronger protection for the working child.

Children's needs should be top priority. Their psychosocial growth should be fully addressed. Innocent or otherwise, children should be protected at all costs. In our country, however, juvenile delinquents or children in conflict with the law at the age of 9 years can be arrested and detained like adults in prisons, a deplorable situation that explains why the Philippines is far from passing any measure of progress. In line with the protection of the rights of children in conflict with the law, the Juvenile Justice and Welfare Act or Republic Act 9344 for minor offenders is a trailblazing law



enacted last 2006 whose effect is making its way through the three branches of government. With this law, we hope to make a difference in the lives of these wayward youth by not treating them as criminals and instead give them opportunities to better their lives. RA 9344 or JJWA raises the age of criminal responsibility to 15 years, prohibits the detention of children with adults and requires the development and implementation of diversion or community service programs.

The Philippine government has also put in place several programs for children, which are handled by the Council for the Welfare of Children, or CWC. CWC is attached agency of the Department of Social Welfare and Development and is the Philippine government's central coordinating agency for children's welfare protection and development. It is also responsible for coordinating and monitoring the implementation of all laws and programs for children. One of its projects is the Comprehensive Program on Child Protection, or CPCP, which covers the period from 2006 to 2010 and which is a companion document to the National Plan of Action for Children. Just this March, in coordination with the launch of the United Nation's 2008 State of the World's Children Report, the National Strategic Framework of Violence Against Children was also launched. This reflects our vision and mission to ensure that all Filipino children are allowed to grow and develop in a safe, healthy and loving environment. The primary aim of this framework is to: protect all children, ensure recovery and reintegration of victim-survivors and facilitate rehabilitation of perpetrators of violence; increase level of awareness on international and national laws and instruments on the effect of violence against children; develop/sustain programs and interventions for said children; ensure children's meaningful participation in promotion of their rights; enhance capacities of service providers and care-givers and lastly, mobilize and forge partnerships among agencies and individuals concerned with the protection of children's rights.



Right now, with JJWA being implemented, a lot of work still needs to be done. While the Supreme Court has issued a memorandum to all lower courts, not much progress have been made. A lot of minors are still languishing behind bars and police authorities would still arrest children used a fronts by syndicates. There is still much that needs to be done to properly address the protection of children's rights—innocent or innocence lost.

IV. Conclusion and Proposition

"Safety and security don't just happen, they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear." - Nelson Mandela

The Philippine government places utmost value on the conservation of the rights of our Filipino children. All these programs and services will continue to improve and ensure that every child is free from hunger and want, from neglect and abuse, and to develop their full potential. However, while the government is tasked to ensure that the laws protect the rights of Filipino children, it is truly up to each one of us to fulfill our roles in the care of our children and the protection of our children's rights. I feel that our way forward as a nation is where everyone is a vanguard of the rights of our Filipino children.

Further, government-led efforts to create protective policies for victims of domestic violence similarly require a parallel effort to change social attitudes that condone such violence. The most essential way for a family to cope with violence at their home is to shatter the silence that surrounds domestic violence. To paraphrase the first guiding principle from The Report of the Independent Expert for the United Nations Study on Violence against Children: no violence against children is justifiable. There



is a thin line between child discipline and child abuse and spanking and beating children in order to instill discipline leaves physical and emotional scars. Right now, there is possible passage of the law banning corporal punishment in all forms. We all must support that and advocate for a change in how we treat our children. Abuses perpetrated against children will only cease if violence is seen as unacceptable and inexcusable and if victims would speak out. Violence can be prevented and it starts with the acceptance of the fact that women and children have inalienable, integral and indivisible human rights which must be protected at all costs.



CHILD ABUSE IN INDONESIA

Introduction

Child Abuse: Definition

Child abuse is the physical, sexual, or emotional maltreatment or neglect of children by parents, guardians, or others, which physically or emotionally impacts the child.

Accordingly to the United Nation Convention on the Rights of the Child, the term *child* applies to every human being below the age of eighteen years³⁹. If we consider the term *child abuse*, generally it has many different interpretations and definitions in different parts of the world. However, there appears to be consensus in recognizing child abuse as an act of wrongdoing or failure to act which results in physical or emotional harm towards children.

Current Situation

Child abuse has become a major cause of concern to Indonesian society.

Conventionally, abusive parents in Indonesia tend to abuse their children physically, emotionally or sexually, or by neglecting them financially. These forms of abuse towards children are caused by several reasons, such as financial problems, poverty, mental distress, mental illness, influence of alcohol, and sexual disorientation.

Nowadays, physical, mental, and sexual abuse are not the only problem that Indonesia is facing. Child trafficking has emerged as a modern form of abuse towards children. Children have been trafficked illegally for purposes such as prostitution, pornographic exploitation, cheap labor, illegal adoption and as narcotics couriers. According to the ILO's annual report for the year 2007, as many as 1.2 million children are victims of trafficking every year. The major locations for child trafficking are in North Sumatera, Riau, Batam, Bengkulu, Banten, Jakarta, Indramayu, East Java, West Kalimantan, North Sulawesi, Central Sulawesi, and West Papua.

³⁹ Article 1 UN Convention on the Rights of the Child

Current Cases

There are many cases concerning child abuse in Indonesia. From time to time, the amount of abuse and violation towards children increases. These are several cases that occurred in the past year:

1. Millions of children ranging from 15-18 years of age trafficked
2. Hundreds of babies trafficked in West Java (November 2007)
3. Thousands of rape cases involving underage children
4. Thousands of babies neglected by their parents
5. More than 8 million Indonesian children exploited as underage labor (ILO, 2007)
6. Murder by parents, because of poverty, in disadvantaged areas

Currents Facts

According to research done by the Child Protection Commission, in 2007, there were 736 cases of physical abuse (actions of beating (assault), punching, kicking, biting, burning, shaking, choking, poisoning, or any other harmful actions that potentially cause physical damage), 233 cases of sexual abuse (exposing a child to pornographic material, fondling a child's genitals, intercourse, incest, rape, sodomy, exhibitionism, and commercial exploitation through prostitution or the production of pornographic materials) and 176 cases of psychological abuse (inadequate attention, for example not showing love, care and affection towards a child, and rejection) towards underage children in Indonesia.

Legislative

Indonesia ratified the Convention on the Rights of the Child (CRC) through its Presidential Decree 36 of the year 1990 (Keppres 36/1990), effectively giving the Convention domestic legal authority equivalent to a Presidential Decree. In Indonesia's legal hierarchy Presidential Decrees are superior to Regional Regulations and inferior to the Constitution, the People's Consultative Assembly Resolution, Laws, Government Regulations Substituting a Law, and Government Regulations. Following the ratification of the CRC, Indonesia passed several laws related to the Convention's provisions, most notably the 1997 Law on Juvenile Courts and Act No.23 / 2002 on Child Protection.

The Law on Child Protection replaced the 1979 Child Welfare Law and government adoption, guardianship, and economic and sexual exploitation as well as child protection. Indonesia's child protection system is a formal one, in which Child Protection Agencies and the Department of Social Welfare are responsible for protecting children, often utilizing the help of NGOs in carrying out their duties. Proceedings take place in the courts and are governed by procedural rules under the Law on Child Protection.

Executive

In order to give protection to a child, the government has taken various measures that also have been provisioned in several Acts. Act No.23 / 2002 contains a provision regarding the government's responsibility in the protection of a child such as to respect and guarantee a child's fundamental rights and to support facilities in order for child protection. In this act, there was also formed a special body that specializes in the protection of a child, which is The National Committee for Child Protection (Article 74 – 76). The purpose of this committee is to increase the effectiveness of establishing child protection. Its main duty, as stated in Article 76, is to socialize all regulations concerning child protection, to collect data and information, to receive public complaints, to do research, to observe, evaluate and supervise the establishment of child protection. The National Committee for Child Protection itself is governed specifically by Presidential Decree No. 73 / 2003.

The government has a separate program to fight against child abuse, which is called RAN (Rencana Aksi Nasional) or National Action Plan. Until today, there are three RANs concerning child abuse, which is RAN concerning the Elimination of Child and Woman Trafficking (regulated in Presidential Decree No.88 / 2002), RAN concerning the Elimination of Child Commercial Sexual Exploitation (regulated in Presidential Decree No.87 / 2002) and RAN concerning the Elimination of Severe Forms of Child Labor (Presidential Decree No. 59 / 2002).

Jurisdiction

The Case of William Stuart Brown

William Stuart Brown (1952 - May 12, 2004) was an Australian diplomat and convicted child molester.

Brown initially worked for the Australian Department of Foreign Affairs and Trade as a diplomat in Jakarta until 1984. He was accused of molesting a child in 1984 in Jakarta, and, after his return to Canberra, was found to be living with a boy.

He then worked in Indonesia as a schoolteacher, teaching English. He was arrested on January 5, 2004 in Indonesia, on charges of sexually abusing two boys aged 13 and 15. In court Brown admitted to attempting to sodomize the children, but claims he stopped when they resisted. He also admitted taking about 20 young boys to a beach and kissing and touching them. Brown admitted to knowing convicted child sex offender Robert 'Dolly' Dunn, and to having organized hikes with him.

On May 12, 2004, the day after he was found guilty and sentenced to 13 years in jail, Brown hanged himself in his cell at police headquarters in Karangasem, Bali. This was the first case to use the 2002 Law on Child Protection.

CONCLUSION

Summary

Child abuse is an act of wrongdoing or failure to act which results in physical and emotional harm towards children. The matter of child abuse has existed from the earliest history of civilization until now. There are four different types of child abuse that are recognized internationally: physical abuse, emotional abuse, sexual abuse and child neglect. Among all forms of child abuse, child trafficking has drawn the most attention in Indonesia, since it is considered a transnational crime.

To prevent instances of child abuse, the Indonesian government has enacted several regulations, such as :

1. Act of Republic of Indonesia Number 23 / 2002 concerning Child Protection
2. Act of Republic of Indonesia Number 4 / 1979 concerning Child Prosperity,
3. Act of Republic of Indonesia Number 21 / 2007 concerning The Criminal Act of Human Trafficking
4. Act of Republic of Indonesia Number 3 / 1997 concerning Child Court

The Government has also ratified several conventions relating to the child protection, such as:

1. The United Nations Convention on the Rights of the Child
2. ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of Severe Forms of Child Labor
3. ILO Convention No. 138 concerning Minimum Age for Admission to Employment
4. ILO Convention No. 105 concerning the Abolition of Forced Labor.

RECOMMENDATION

Contribution from the government, law enforcement agencies and society, by all means, is essential to help establish the protection of the rights of the child. According to such views, here are some efforts that we could possibly make to prevent abuses towards children, to decrease the number of cases and to help protect basic rights of the child:

1. Government

Providing proper education

It involves providing children with knowledge about their rights, and teaching them the skills to identify abuse, ask for help, and avoid being re-victimized. Further, parents and caregivers need information and support to help them care for children in a positive and nurturing manner. The Government can support public legal education programs across their countries that educate the public about family violence, including the prevention, identification and reporting of child abuse.

Professional development and resources

Many different groups of practitioners may have contact with children who are abused. Enhancing the awareness and skills of judges, state prosecutors, defense lawyers, police, health care workers, social workers, psychologists, and teachers about child abuse enables effective intervention. The government can work with its partners to support specialized training for justice systems and law enforcement personnel in order to build a coordinated multi-sector, multi-disciplinary response with other systems.

Research, data collection and information sharing

The Government should be involved in a number of national-level research and data collection activities related to child abuse that will help to:

1. Increase knowledge about child abuse and its impacts throughout different stages of life
2. Improve information exchange between government agencies
3. Increase the effectiveness of responses to child abuse
4. Enhance services and supports for children.
5. The Government and the Authorities have to increase the effectiveness of their functions in the prevention and elimination of child protection, including the supervision and monitoring of activities in society
6. The Government and the Authorities can cooperate with other states' government and authorities in order to work together in the prevention and elimination of child abuse, especially child trafficking
7. The Government can facilitate the prevention and elimination of child abuse, such as through announcements in the media:
 - To collect cash payment, in order to establish social security for children
 - To legalize Acts concerning child pornography
 - To restrict television programs containing violence and sexual material
 - To limit the amount of child labor

2. Society

- Reporting cases of abuses that they know are happening
- Participating in any forms of movement regarding child protection

3. Non-Governmental Organizations (NGOs)

- Urging the government to set up commissions as actors in child rights protection, to implement the Indonesian Child Declaration
- To help increase society's awareness to oppose any forms of physical, mental or sexual abuse, or exploitation, violence, and discrimination towards children

CHILD ABUSE IN KOREA

I. The legal definition of child abuse

The article 2 of The Child Welfare Law provides that child abuse is physical, mental, sexual violence that their health and welfare are hurt or by adult who include a protector or harsh action or abandonment and noninterference is taken by their protectors. This article contains not only violence of activity meaning but also noninterference of passive meaning in the definition of child abuse.

In this article, cruel treatment means that physical, mental, sexual violence which their health and welfare are hurt or the normal growth is interfered. Therefore, this extends that more wide range action which child's welfare or potential growth of child are threaten. And an inclusive occasion prescribes not only physical treatment, mental treatment or abandonment but also the protection of children's right.

The history of Child Abuse

1. changes on the concept

The concept on child abuse was explained in a limited range as physical abuse against babies in the 1960's as the "Battered-child syndrome". However, as child abuse started to embrace not only physical abuse but also mental, sexual abuse as well as negligence, the range of abuse began to broaden.

In 2000, with the amendment of the Act on Child Welfare, the definition on child abuse is becoming clearer. Article 2 of the Act on Child Welfare reads, "Child abuse is a physical, mental, sexual violence or brutal behavior caused by an adult including the child's patron that may damage the child's health, welfare or normal development or abandonment and negligence caused by the child's guardian."

It is impossible to define child abuse into one because it is defined variously according to different researchers, and criteria and extents are respectively applied regarding time and cultural backgrounds.

2. The Legislation History

1) The first declaration on children's rights in Korea

The first legislation for child welfare in Korea began with the Declaration on Child Rights by Bang Jung Hwan. Bang Jung Hwan, who created the Children's Day in Korea, established Chapter 3 of Commitments on Child Rights in 1923. This was the first declaration on child rights in Korea, and it was one year ahead of the Geneva Declaration of the Rights of the Child.

2) Legislation of a direct provision

A provision directly associated with children's welfare is the Act on Child Welfare stipulated in 1961. Later, this provision was amended in 1981 and 2000.

(1) The 1961 Act on Child Welfare

-Purpose: The purpose of this Act is to guarantee a child to be fostered healthy in case s/he is lost, neglected or separated from his/her patrons, or his/her patrons are inapt to foster the child or cannot ensure the child's wholesome birth.

-Features and significance: There was an attempt to guarantee child welfare under the responsibility of the government.

(2) The 1981 Act on Child Welfare

-Purpose: The purpose of this Act is to guarantee a child to be born healthy and be fostered happy and healthy.

-Features and significance: The significance of this Act lies in the developments made from passive measures before, which was concentrated on orphans or children in need whose patrons are unable, to all children to be guaranteed of their healthy birth and growth. With this its main principle, the Act developed into the Act on Social Welfare Service.

(3) The 2000 Act on Child Welfare

-Purpose: The purpose of this Act is to guarantee a child to be born healthy and be fostered happy and healthy.

-Features and significance: General aspects such as child rights and safety were intensified, and provisions on child abuse was organized systematically.

III. Current Situation of the issue

1. Legislative action

The law which contained lots about Child abuse is "Law of Child welfare" totally revised in 2000. This law has problem in organization but, there's detailed management process about child abuse. Like Korean law of child welfare doesn't contain all about child's human rights, this law doesn't contain all about child abuse and legislated in another laws. But "law of Child welfare" contained lots about child abuse, so we'll put emphasize on "Law of Child Welfare" in this research.

1) Law of Child welfare

Child abuse in Law of Child welfare legislated its foundation principle in article 3 and its responsibility in article 4. For management process about child abuse is legislated from article 23 to article 28. And prohibited activity related to child abuse is legislated in article 29.

(1) Foundation principle and purpose (article 3, article 1)

Children have rights as human beings and also need special care and protection without parents' sex, age, religion, social statue, property and so on. And children's profits are most considered in activities related to children, themselves. Through Korea's foundation principle, we can aware that this principle is totally followed by UN "Convention on the Rights of the Child(CRC)"s. Korea's principle is based on CRC's article 1 to 3(Non distinction but equality, development of personality in household, consider children's profits). And purpose of this law is to guarantee children's welfare(from children's birth to their growth).

(2) Responsibility (article 4)

There's responsibility of nation, their protector, and all citizen about all kinds of children's rights and interests, safety, health, nursing in article 4. We can expect children's rights through this article. However, it's really hard to expect rights through responsibility, because of its abstractive and declarational nuance.

3) Prohibited activity related to child abuse(article 29)

Prohibited activities are physical abuse, sexual abuse, mental abuse, trading children, intermediation of lewd conduct, compel begging and so on. These are prohibited activities that infringement of children's civil liberty. And in case of protecting children, protector must use legal money.

In this article, child abuse is the physical, emotional or sexual abuse or neglect of children by parents, guardians, or others. While most child abuse happens in the child's home, large numbers of cases of child abuse have been identified within some organizations involving children, such as churches, schools, child care businesses, and residential schools. It also can occur almost anywhere.(article 2, clause 4) But words like 'hamper development', 'severity' are too abstract to guarantee children's rights and harmer's human rights. We need to legislate its essential factors more precisely if child abuse is continued to remain as illegal activity.

2) Organization of regulations

(1) Organization and work force

To protect children from child abuse and guarantee children's rights, "Law of child welfare" prepared its organization like emergency contacting system(article 23), child protecting official charity(article 24). They are not enough to protect children. Through revised article of this law, process of managing child abuse is 'emergency contacting system ?field research-emergency management-aftercare'

3) Controversial point and Reforming direction

(1) Lean upon Child abuse

"Law of child welfare" reinforced about child abuse through revision in 2000. But there's no regulations about North Korean children, refugee child, child from divorced family, child under disaster and so on can be connected to child abuse. This situation is just tiny point of CRC's.

(2) Organizational Problem

We have to set up more systematic and linked system or organization about child abuse. So it's better to legislate about child abuse independently(also because of huge contents about child abuse).If not, we have to revise articles about process of protecting child from child abuse or management system in explicit. Lastly, we have to change voluntary law into enforcing law.

IV. Backgrounds

1. Cases of child abuse

1) Physical abuse by their own parents

A child : Kim, 00 (female, age 6) / Parents : Kim 00, 00 (parents, 40,28 years)

At the time of hospitalization, Kim, 00 was unconscious and just before death by starvation. External injuries to her body like face, back and legs, severe pneumonia and liver trauma have been identified. Although her parents denied the fact, explanations of her state and trauma were unreasonable and not consistent. Her brother(7 years old) said that she was very painful not enough to swallow the water and their parents beat her. In the process of investigation, her father was placed under the arrest and her mother was booked without detention.

2) The present conditions of child abuse

(1) The reported present conditions of child abuse

According to unofficial data of child consultation centers and private organizations, child abuse cases were reported 807 in 1997, 1238 in 1998, and 2155 in 1999. And according to Center for child prevention, child abuse cases were reported 1678 in 2000(Oct. - Dec.), 4133 in 2001, 4111 in 2002, and 4983 in 2003. It is estimated that the total number of reported cases is less than 10 percent of all because many Koreans regard corporal punishment on children as instruction or home problems.

(2) The present conditions of harmers

According to statistics of Center for child prevention in 2003, most harmers were parents as 83.3%. Parents were made of 77.3% of children's real parents, 5.5% of stepparents, and 0.5% of children's foster parents. The rest of percent was made of 3.1 percent of children's grandparents, 3.2 percent of children's relatives, 2.2 percent of neighborhood, and so on. Most serious child abuse occurring by parents show reality that many parents are lack of knowledge of the rearing of children.

(3) The present condition of management

According to statistics of Center for child prevention in 2003, backing home made up 53.6 percent as final measure for child victims, followed by 13.4 percent of long term care, 10.2 percent of short term care, and so on. It means that many child victims still were left under a dangerous situation and we need the continuous management of child abuse through the qualitative measures.

CHILD ABUSE IN JAPAN

*Mikako Iwata
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1. Introduction

1) Definition of “the Right of the Child”

Children have fundamental human right independently, not being given the right passively. In the Constitution, the right of the child is composed of the right to receive an equal education and civil rights. Parents, school, community and the government are restricted for the benefit of the child.

2) Definition of “Child Abuse”

“Child abuse” is “Jidou Gyakutai” in Japanese. This word means the invasion of children’s rights in a broad sense of the word. The subject who abuses children is not only parents or curators but also inmate, relatives, teacher and the outsider. In a narrow sense, “Child Abuse” is defined as the action abusing children by parents or curators who take their place. The Child Abuse Prevention Law says that the actions are as follows.

- ① Physical Abuse
- ② Sexual Abuse
- ③ Neglecting
- ④ Psychological Abuse

2. History of law about Child Abuse

(*duration 1)

1933 Child Abuse Prevention Law was established

(* details of the act 1)

1947 Child Welfare Law was established

(*duration 2)

1989 Child Right Law was established by UN

1994 Child Right Law was confirmed by Japan

(*duration 3)

1999 Prohibition of Child Prostitution Law was established

2002 New Child Abuse Prevention Law was established

(*duration 1) before Child Abuse Prevention Law

1930, two cases of child abuse occurred in Tokyo and it received people's attention. At that time, however, the regulation which prevent child abuse and save children lay in only a few descriptions in civil law, so Japanese government decided to revise the law about child abuse and started investigation about condition of the issue in all provinces in 1931.

(*details of the act 1) Child Abuse Prevention Law

The act was for children under 14 years old. Under the law, the chief of the village has an authority to punish parents or order them to put their child into child guidance center if the parents violate or have a risk of violating the law. And also, the law banned that people force children in selling stuffs and as an attraction of circus. The purpose of the act was not only to save children who were forced violence by their parents. It was also aimed at the preventing of accidents like enforcement of working, no feeding or selling their children caused in poverty. At that time, these cases were not rare, because Japan was still on the process of industrializing.

(*duration 2) during and after the WW

Under the WW disorder of Japanese society made situation of poor children worse and worse. Child Welfare Act, established in 1947, was a comprehensive law about child welfare in order to protect war orphans. The law includes the contents of Child Protection Law (1922) and Child Abuse Prevention Law (1933). Over the time after the WW the number of cases of selling child, exhibiting them or these kind of behavior for asking money decreased, because of development and industrialize of Japanese society. However, it didn't mean that child abuse issue was solved, because physical violence from parents to their real child became the main part of child abuse

(*duration 3) after Japan confirmed Child Right Act

After Child Right Act was established by UN and confirmed by Japan in 1994, official comment about respecting children's opinion was proposed by Ministry of Health, Labor and Welfare in 1993 and amended the law which allow physical punishment. In the past, children were considered as their parents' belonging. However, through these actions by government, the recognition that children have their own rights became common. Therefore Child Right Act made the child abuse issue come to the surface. The number of the cases was increasing: it was 1,611 in 1994 and 37,323 in 2006.

3. Current Situation

1) Legislative Action

Child Welfare Law

This law is enacted in 1947. It protects the human rights of all children and aims at their healthy upbringing.

Child Abuse Prevention Law

This act was enacted in 2000. Since public concern against child abuse was increased in 1990s, it was made as a private member's bill to solve the problem. It aims to perform an obligation which is stipulated in Article 19 of Convention on the Rights of the Child and to protect children from child abuse to guarantee their rights⁴⁰.

-Definition

Article 2 defines 4 types of child abuse.

- a. Physical abuse resulting in bodily injury to a child, or violent acts deemed to result in such injury
- b. Coercion of any child by a parent or a caregiver to engage in, or assist another person to engage in, any sexually explicit conduct with a child
- c. Preventing the normal physical and mental development of a child through neglect by markedly reducing nutrition, abandonment for over long periods, failure to prevent acts by a person living with the child other than the parent as described in the previous item 2 or the following item, and seriously neglecting care as a guardian
- d. Strong verbal abuse or an attitude of rejection toward the child, or violence words and actions directed against a spouse living in the child's household (illegal physical aggression against the spouse ("spouse" also refers to people living in a marital relationship for all practical purposes, even though a marriage has not been registered) that is injurious to life or body, or corresponding words or actions that cause psychological damage) that cause severe psychological trauma in the child

2) Executive Action

Measures against child abuse which are stipulated in Child Welfare Law and Child Abuse Prevention Law are implemented by local governments or agencies established by them. The agency which plays an important part in resolving child abuse is child guidance center. Child guidance center is established in every prefecture and government-designated city under Child Welfare Law. Its services are providing consultation about problems on children, taking measures

⁴⁰ Article 1 of Child Abuse Prevention Law

Child abuse is a grievous infringement on the rights of children, which can have serious effects on their mental and physical growth and character formation. Given this and the concern for fostering future generations in Japan, this law aims to set forth the responsibilities of central and local government agencies for the prohibition, early discovery, and prevention of child abuse, as well as measures for the protection and support for independence of the children involved as a means to prevent such abuse.

to resolve such problems, providing necessary aid for no-parent children or children who lack of parental supervision, and so on

Hereinafter, measures by administration will be described.

- Notification regarding Child Abuse

Article 25 of Child Welfare Law and article 6 of Child Abuse Prevention Law⁴¹ oblige those who find the child abuse to tell the fact to municipal welfare office or child guidance center.

- Confirming Safe Conditions

Article 8 of Child Abuse Prevention Law lays it down that municipality, head of the welfare office or child guidance center must confirm safe condition of the child when they receive the notification. When they confirm safe condition, they check on physical and psychological condition of the child, life environment of them, parent and child relationship and so on.

- On-the-Spot Investigation

Article 9 of the Child Abuse Prevention Law stipulates that "When a possible case of child abuse is recognized, the governor of a metropolitan or other prefecture may order an appointed prefectural child welfare worker or staff member engaged in child welfare work to visit the home or actual place of residence of a child in order to conduct the requisite investigation or make inquiries." The number of the investigation was 238 in 2006.⁴²

In this investigation, they can intrude into home to check suspicious cases. However, the right to be secured in homes is guaranteed by article 35 of the Constitution of Japan⁴³, and it is limited only when a warrant is issued. Therefore, on-the-spot investigation which is stipulated by the Child Abuse Prevention Law has prospects of infringing the Constitution.

- Receive Guidance for Abusive Parents

Parents who abuse their children shall be obliged to guidance from the child guidance center. Since it is the most basal countermeasure for child abuse to stop parents to abuse their children and make good parent and child relationship, welfare caseworkers of child guidance center

⁴¹ Article 6 of Child Abuse Prevention Law

When a person discovers a child he or she thinks is being abused, he or she is obliged to report the case with all due haste, either directly or through a child committee, to a municipal or prefectural welfare agency or child guidance center.

⁴² The number of consulting Child Abuse [The Ministry of Health, Labor and Welfare HP](http://www.mhlw.go.jp/bunya/kodomo/dv16/index.html) 28 Sep. 2008 Internet Access 3 Mar 2008 <<http://www.mhlw.go.jp/bunya/kodomo/dv16/index.html>>

⁴³ Article 35 of the Constitution of Japan

1) The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

mainly teach them not to repeat child abuse.

However, many parents do not follow the guidance because most of them have a conflict with the child guidance center when they had on-the-spot investigation and temporary protection. Although third paragraph of article 11 of the Child Abuse Prevention Law stipulates that the governor of the prefecture may recommend that the party receive the legally stipulated guidance, this provision has not been administered effectively so far.

- Temporarily Protective Custody

Article 33 of Child Welfare Law and second paragraph of article 8 of Child Abuse Prevention Law stipulate that head of child guidance center or the governor of the prefecture can protect abused children temporarily when it is needed for the safety of them. Protected children are moved into child guidance center and live away from their parents. In 2006, there were 10,221 cases of temporarily Protective Custody⁴⁴.

However, temporarily protective custody has following problems: some children can't go to school because child guidance center is not always close to the school, not all of the children who have problems due to abuse are given enough care since there is not plenty of space and staff members.

-Placement in Child Welfare Facility

When it is needed, head of child guidance center or the governor of the prefecture can file a motion for placement of abused children in child welfare facility with the family court. In 2006, 3,874 children were moved into the facility⁴⁵. However, the environment of child welfare facility is bad because of the lack of space and staff members, especially specialists.

-Actions taken by the Police

When child abuse can be a criminal case, the police investigate the case. In 2006, 329 people were arrested because of child abuse⁴⁶.

Article 10 of the Child Abuse Prevention Law stipulates that head of child guidance center or the governor of the prefecture can request assistance, as appropriate and necessary, from the chief of police when they assure the safety of abused children and temporarily take them into protective custody, and the chief of police is required to use measures to assure the life and

⁴⁴ The number of consulting Child Abuse [The Ministry of Health, Labor and Welfare HP](http://www.mhlw.go.jp/bunya/kodomo/dv16/index.html) The Ministry of Health, Labor and Welfare 28 Sep. 2008

Access date: 3 Mar 2008 <<http://www.mhlw.go.jp/bunya/kodomo/dv16/index.html>>

⁴⁵ The number of consulting Child Abuse [The Ministry of Health, Labor and Welfare HP](http://www.mhlw.go.jp/bunya/kodomo/dv16/index.html) The Ministry of Health, Labor and Welfare 28 Sep. 2008

Access date: 3 Mar 2008 <<http://www.mhlw.go.jp/bunya/kodomo/dv16/index.html>>

⁴⁶ Nobuo Kikuta. "The Revision of Child Abuse Prevention Law and The Approach to Child Abuse" [Collection of Essays of the Police](#) No.10 Vol.60 2007

physical safety of children when it seen to be necessary for such assurance. In such case, when staffs of child guidance center visit homes where parents abuse their children, the police buck them up.

3) Judicial Action

Except criminal cases, the family courts judge the matters of child abuse. They have role to decide actions to protect abused children.

- Trust with Foster Parent and Placement in Facilities

When abused children are left in foster parent in trust or moved into child welfare facility to protect them from child abuse, and parents refuse them, judicial decision is needed.

- Loss of Parent's Right

Article 834 of Civil Code stipulates that "If a father or mother abuses parental authority or if there is gross misconduct, the family court may, on the application of any relative of the child or a public prosecutor, make a ruling that strips the father or mother of his/her parental authority." Although right to chastise own children is defined by first paragraph of article 822 of Civil Code⁴⁷, abusing children is regarded as a misuse of the right. Therefore, the family court can render a loss of parent's right of parents who abuse their children. In 2006, the head of child guidance center filed a motion for a loss of parent's right because of child abuse in 3 cases, and the family court approved 2 cases.

Article 12 of the Child Abuse Prevention Law stipulates that the head of child guidance center or child welfare facility may restrict contact or communications with the child by the parent or guardian who abused the child so as to prevent further abuse and duly protect the child when measures such as temporarily protective custody and placement of abused children in child welfare facility are taken. Though it is a restriction of parent's right, it's not decided by the family court. Thus, it has no legal basis why the head of child guidance center or child welfare facility can restrict parent's right.

4. Conclusion and Proposition

Nowadays, the recognition of Child Abuse has been spreading because of reporting the incidents of abusing and finally killing children. There are two laws on Child Abuse, Child Welfare Law and Child Abuse Prevention Law. The Ministry of Health, Labor and Welfare defined Child Welfare Facility not as the center guiding the whole problem on child care, but as the main Civil Service

⁴⁷ First paragraph of article 822 of Civil Code

A person who exercises parental power can, in so far as it is necessary, personally chastise his or her child, or can, with the permission of the Family Court, place it in a disciplinary institution

working on Child Abuse and juvenile delinquency in September 2003. However, there is still a conflict between parental authority and the intervention of the power of the state. To save children from abusing needs the legislative measures and the reasonable proceeding of them. The Child Welfare Facilities should also be improved for the best benefit of children.

- ✦Mikako Iwata
- ✦Shohei Inoue
- ✦Takako Sakuma

MESSAGE FROM THE DESK OF IB ACADEMIC ACTIVITIES COORDINATOR AND EDITOR IN CHIEF



The success of the publication of the two ALSA Law Review Magazines cannot be regarded as a sole effort of just one person. Being the proponent of this prestigious undertaking, I am very proud and honoured that this publication has become successful during my term as IB AAC. Indeed, ALSA took a great part on its goals to maintain cooperation among its Asian member countries through this endeavour. When I was elected as International Board during the AF 2007 in Seoul, South Korea, I thought of making a legacy which I want the member countries of ALSA to be united and integrated on making such. At first, I had a hard time thinking of what possible development which I can contribute in order to satisfy my “mission of making a legacy.” The legacy is now in front of you my fellow ALSAian, I would like this legacy to be forever for no matter how far we are with each other as long as this legacy is with us, it will remain this organization united in one dream.

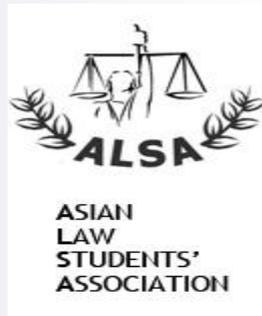
ONE DREAM, ONE ALSA! MABUHAY!

MELVIN M. BALISI

International Board Academic Activities Coordinator

Editor-in-Chief, Law Review Magazine

The Asian Law Students' Association (ALSA)



ALSA (Asian Law Students' Association), a non-political association, is a newly rising student organization with great developmental potentiality, and its influence in Asian law students is ever growing. Now, ALSA is composed of 10 membership countries and regions, including **China, Hong Kong, Indonesia, Japan, Korea, Philippines, Singapore, Taiwan, Thailand, Malaysia** and so forth.

With the rapid development of modern scientific technology and the accelerate progress of globalization, international cooperation in the area of law is taking place more frequently and the wishes to communicate between law students from different place countries are growing stronger and stronger as well. Hence, some of the outstanding law students gathered and established ALSA in order to provide an international platform for the law students, with various sense of value about politics, religion, morality and ethics all over Asia, to communicate their ideas about law and other fields of knowledge.

Our Purpose

ALSA will not limit its scope but aim at the total development of law and justice in the continent through promoting the communication of the young law students around Asia, so The ALSA has the following purposes/objectives:

To understand and appreciate the diversity and share the ideals of law in society through exchange and communication among Asian law students

- To motivate law students to develop a creative spirit through a network of joint-activities among Asian law students
- To encourage the enhancement of the capabilities of Asian Law students to become internationally minded, socially responsible, academically committed and legally skilled

