



PAULINIAN LAW JOURNAL

The Official Student Publication
of Saint Paul School of Professional Studies
Faculty of Law

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Editor's Note

Four years ago, the Saint Paul School of Professional Studies (SPSPS) Faculty of Law published the first edition of the Paulinian Law Journal. For some reason, however, it failed to publish more editions after the first release. It took some time before the faculty reorganized the members of the publication. The challenges from previous years, especially the COVID-19 pandemic, made it difficult to gather writers and creative individuals who will continue the legacy that started years ago. Efforts to revive the Paulinian Law Journal began just last year, and the brave souls who took on the challenge now constitute the set of editors fueled by the desire to realize the goals and objectives of the law journal.

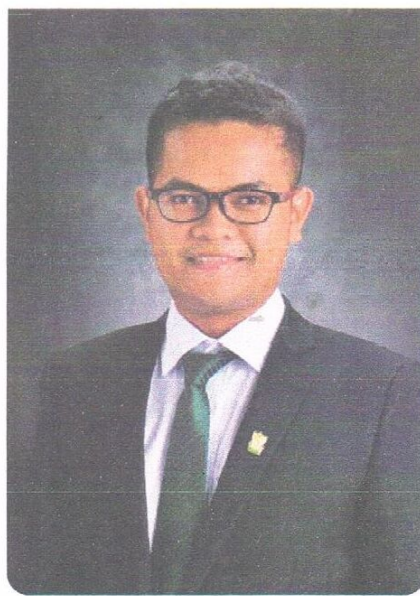
It took us more than eight months to produce this humble work. God knows what our group had to go through to develop this edition, from the evening meetings between our weekly hustles to convincing faculty members and students to contribute articles to pointing fingers at who will do the layout for this release. Nonetheless, the efforts were all worth it, for this work dignifies itself as proof that when talent and commitment meet halfway, nothing is impossible.

This edition of the Paulinian law Journal features articles and essays on diverse topics, such as human rights, social media privacy, alternative dispute resolution, and divorce. Law professors and students wrote these articles with the yearning to share with the Paulinian community their wisdom on issues that affect our lives. We are truly grateful to these great individuals. And we are also inviting you, our fellow law students, to contribute to the law journal by submitting your write-ups on law-related matters.

Admittedly, this law journal is far from perfect. Our editorial team recognizes that we can still improve our editorial policies and workflow to achieve the highest quality of publication in our law school. Therefore, we are committed to continuing to learn the trade of legal journalism while deepening our understanding of the law.

We hope that this law journal will be able to serve its purpose, namely:

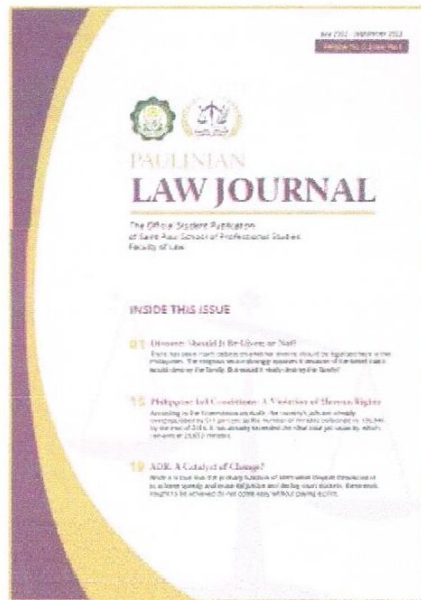
1. To showcase the writing skills of the Paulinian lawyers and



2. To inform the Paulinian community on pressing matters concerning the law; and
3. To contribute, in our simple way, to the development of legal journalism.

May you enjoy reading this work, and may this inspire you in your journey toward becoming a lawyer. On our end, we assure you that we will continue growing as advocates of the law and as writers and editors.


CARL ALJON M. LACABA
Editor-in-Chief



Do you want to submit an article?

For article submissions, you may send your outputs to: carl.lacaba@spsps.edu.ph. Authors are required to transfer copyright to the publisher.

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Foreword

It is truly a pleasure for me to acknowledge the publication of the second edition of the Saint Paul School of Professional Studies Faculty of Law Journal. This publication has been very much anticipated as a fitting follow-up to our first edition, but because of the COVID-19 pandemic, it got a bit delayed. The wait is finally over and once again, we will get to read what our new set of student writers have shared with our law school community.

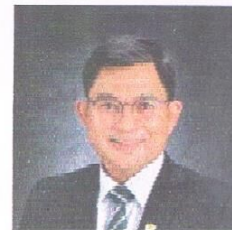
The Faculty of Law considers this student-published law journal as an integral and important part of academic learning, and I am convinced that this will play a valuable role in the education and professional development of our future SPSPS lawyers.

I commend our student writers for their articles in this edition of our law

journal. I am sure that this experience is worthwhile and totally different from the normal activities they encounter in their regular classes. I also hope that these articles will stimulate other students' interest in legal research and writing and will make them realize that this activity will provide them the necessary hands-on experience to develop these skills.

May I also take this opportunity to compliment the Faculty of Law for wholeheartedly supporting this endeavour and the faculty advisers, Attys. Robbin Docena, Don Joshua Margate and Sulpicio Lee Gernale III, for their guidance and encouragement to see this initiative through.

Enjoy the reading!



ATTY. RAYMUND S. GALLARDO, CPA
Dean, Faculty of Law



ATTY. FELMA FREDA L. LOPEZ
Vice Dean, Faculty of Law

To be at the forefront in offering a Juris Doctor program is never an easy task. It requires passion, dedication, and determination to comply with the requirements and standards set by the Legal Education Board (LEB), not to say the least, our own standards as a legal education institution.

As mandated, the Paulinian Law Journal is an outward manifestation of SPSPS Faculty of Law's desire not only to comply with the proscriptions of LEB, but significantly, showcase the writing skills of both students and professors on vital issues that beset the legal landscape. It is an expression

of critical thinking on matters that confront the legal environment.

It is therefore a pride and joy for our legal education institution to be afforded the privilege of being a part of an undertaking, which will mobilize law students, professors, lawyers and legal advocates on urgent and strategic issues confronting the legal profession today.

To the contributors, advisers and editorial staff behind this awesome and challenging task, my warmest felicitations for coming up with a law journal worthy of instilling that fire to get deeper into the knowledge and nuances of the law.

It is of great honor to be one of the law journal advisers. It has been a challenge to recruit talents for the enormous and tedious task of writing articles for the journal, as well as its eventual publication. After its first publication sometime in the year 2018, the task of recruiting individuals having the passion and dedication to writing was the first on the list. This was a huge road block to the publication of the next law journal as most students in the SPSPS Faculty of Law were part-timers. They have the talent for writing, but lack the time to dedicate themselves to the law journal organization.

Then came COVID-19. This was the most challenging phase of the organization as recruitment was next to impossible. The SPSPS Faculty of Law opted for a full online mode of classes. Students were not allowed to be on campus full-time, but only during major examinations. A few individuals were recruited to the team. It had several

attempts to publish the law journal but due to the pandemic, these attempts all resulted in naught.

In June 2022, when the government eased the restrictions imposed due to the pandemic, the SPSPS Faculty of Law reverted to a full face-to-face mode of learning. This time, Atty. Robbin Docena, another adviser of the law journal was able to recruit Carl Aljon Lacaba, our editor-in-chief, to join the law journal organization as well as several individuals who share the same passion to writing and have the time to dedicate to the law journal organization.

With the help of Atty. Leo S. Giron and other law professors, articles from student writers were gathered. The articles published are the best coming from these student writers.

On behalf of Atty. Robbin Docena and Atty. Sulpicio Lee Gernale III, I would like to express my profound gratitude to the SPSPS Administration



ATTY. DON JOSHUA MARGATE
Adviser, Paulinian Law Journal

through President Erwin Vincent G. Alcala, Dean Raymund S. Gallardo, Vice Dean Felma Freda L. Lopez, and all professors of the Faculty of Law, for their support in the publication of the second law journal.

Sincere thanks are also extended to Carl Aljon Lacaba and other members for their time extended to the law journal organization.

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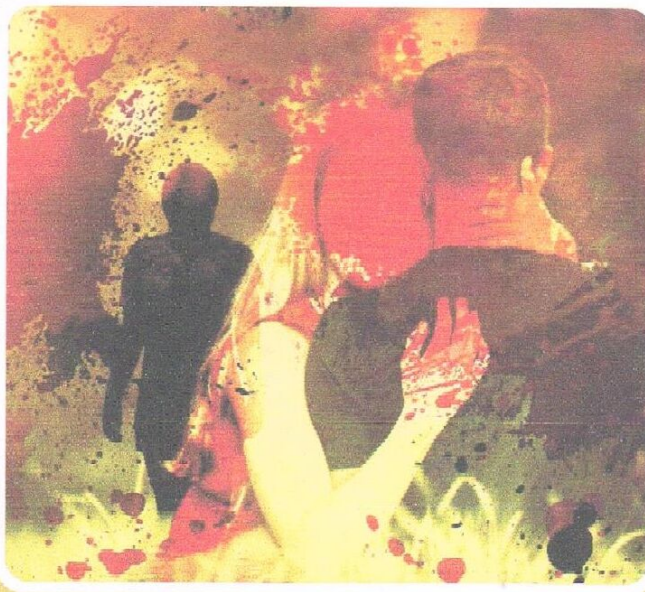
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by Hon. Minerva Viojan-Siosana

There has been much debate on whether divorce should be legalized here in the Philippines. The religious sector strongly opposes it because of the belief that it would destroy the family.

But what is divorce? Divorce is the legal dissolution of a marriage by a court or other competent body. Do we have it here in the Philippines? Yes, but it is only limited among Muslims as the Muslim Code governs their family and property relations. The Family Code governs non-Muslim marriages and those of Filipino citizens, wherein only annulment and declaration of nullity of marriage are recognized but not divorce.

What is the difference between divorce and annulment or declaration of nullity of marriage? They differ on the grounds and processes. Absolute divorce in other countries is much simpler. There are several kinds of absolute divorce, such as contested, at-fault, summary, no-fault, uncontested, collaborative, electronic, and mediated divorce. The good thing about divorce is that it is simpler, faster, and more economical. It also does not leave additional emotional pain and injury to both parties. In electronic divorce, the parties can simply file an electronic request for no-fault collaborative divorce in a non-judiciary administrative entity. If there are no issues (e.g., children, real property, and

alimony), the parties can complete the process within one hour.

To date, the divorce bill is still with the Senate for deliberation. This bill has caused much stir in the religious sector as the latter strongly oppose it on the belief that it will destroy the family, which is the basic foundation of society.

But will it really destroy the family? Let us have a glimpse of that divorce bill that Congress passed. Under the bill¹, the grounds for a judicial decree of absolute divorce are:

1. Legal separation under Article 55 of the Family Code;
2. Annulment of marriage under Article 45 of the Family Code;
3. Nullification of marriage based on psychological incapacity under the Family Code;
4. Separation in fact for at least five years at the time the petition for absolute divorce is filed;
5. When one of the spouses undergoes a gender reassignment surgery or transitions from one sex to another;
6. Irreconcilable marital differences as defined in the bill;
7. Other forms of domestic or marital abuse that the bill defined;
8. Valid foreign divorce secured by either the alien or Filipino spouse; and
9. A marriage that a recognized religious tribunal nullified.

The good thing about the bill is that it provides a summary judicial process or an expeditious manner of resolving the divorce petition but is

limited only on these grounds:

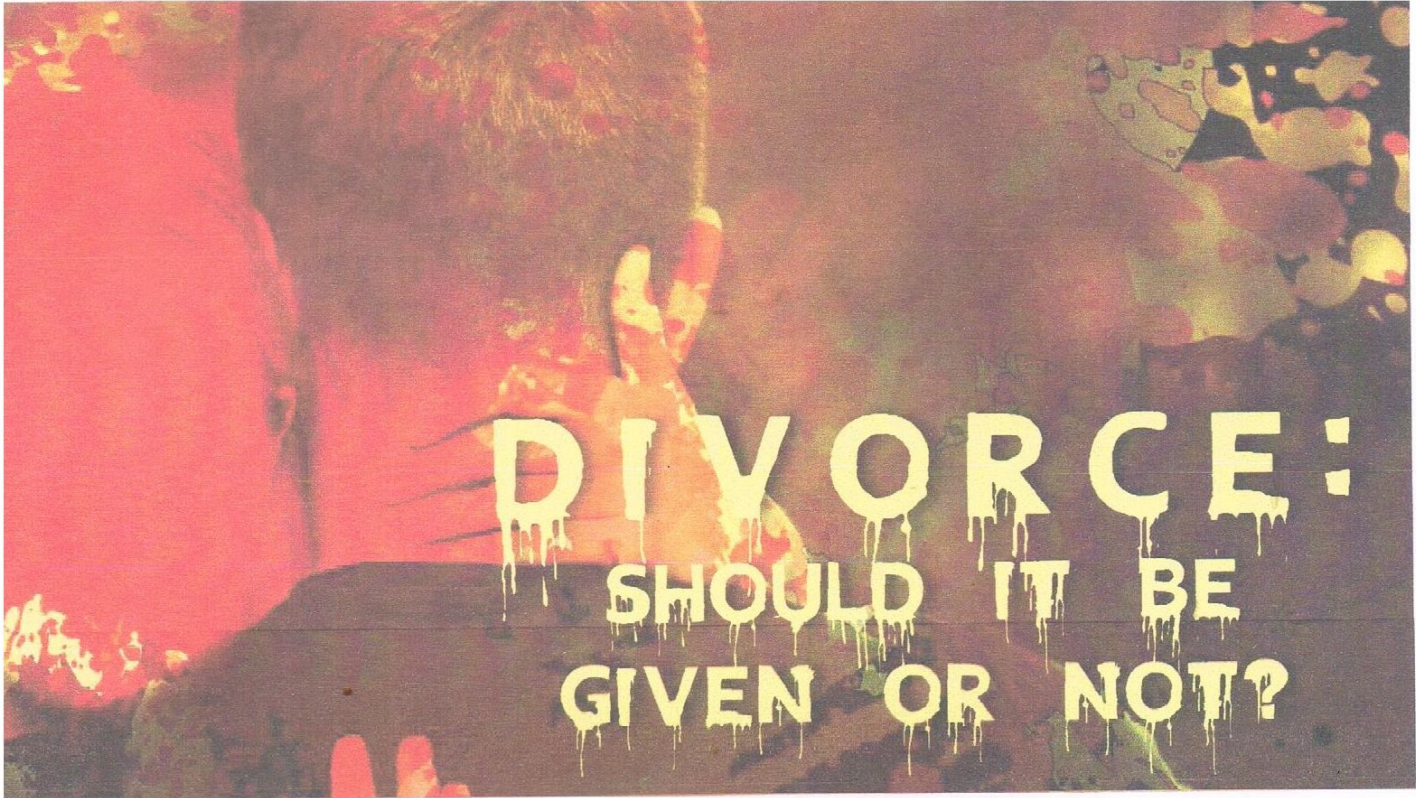
1. When the spouses have been separated for at least five years;
2. When one of the spouses has contracted a bigamous marriage;
3. When the spouses have been legally separated by judicial decree for two years or more;
4. When one of the spouses has been sentenced to imprisonment for six years, even if subsequently pardoned; and
5. When one of the spouses has undergone sex reassignment surgery.

This summary judicial proceeding can be finished in less than a year.

Now going back to that argument that divorce will destroy the family, the declaration of policy as stated in that bill reads:

"While the State continues to protect and preserve marriage as a social institution and as the foundation of the family, it gives the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree under limited grounds and well-defined judicial procedures to terminate the continuing dysfunction of a long broken marriage; save the children from pain, stress, and agony consequent to their parent's constant marital clashes; and grant the divorced spouses the right to marry again for another chance to achieve marital bliss."

Here, the lawmakers acknowledge the fact of a failed marriage and a long-broken marriage; hence divorce, in reality, will not destroy something that was already destroyed long ago. Let me



DIVORCE: SHOULD IT BE GIVEN OR NOT?

quote Justice Leonen as ponente in the latest case of *Tan-Andal vs. Andal*². He said:

"In dissolving, however, the marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life."

Further, as the 'basic autonomous social institution,' the family should be protected under the Constitution regardless of its structure. This means that a family can be founded, whether or not the parents choose to marry or subsequently choose to dissociate, and this arrangement should be equally entitled to State protection. The right to choose our intimate partners is part of our right to autonomy and liberty, an inherent part of human dignity. Ultimately, should the State interfere with these choices, it should do so only

when public interest is imperiled."

The Family Code on the severance of marriage is just difficult for both parties. The psychological incapacity most resorted to will always create more pain for both spouses as each would have to prove the bad character of each (eventually). Recalling and telling in court the abuses, infidelity, irresponsibility, and betrayal will only bring back the pain that has long been forgotten.

We have to recognize that not all are gifted with the bliss of marriage life; it is not for all. We have to accept that there are marriages that cannot be fixed anymore. Those who were not

"Parting is already a sorrow. It need not be more than what it already is."

lucky enough deserve a second chance in love.

They say that it would be the children who would suffer the most. That is not true at all. How many children grew up to be successful despite the fact that they came from a broken family? I came from a broken family, and this did not bother me at all. I am one of the living manifestations of that false belief. I grew up to be better than my family's expectations. My situation gave me strength and pushed me to do better in life. My mother was

a battered wife with her third husband, but she endured it all because she had no choice. She had nowhere to go and no one to turn to. More so, she was tied to the belief that it was a mortal sin to leave her husband, so she stayed and took it all in. I witnessed all the physical abuse, the almost daily marital squabbles, the flying chairs, the broken glasses and plates, the broken window with blood on it, and my siblings gone from the house only to find them in another's house all frightened, confused, and hungry. They say it is normal for married couples to go through that.

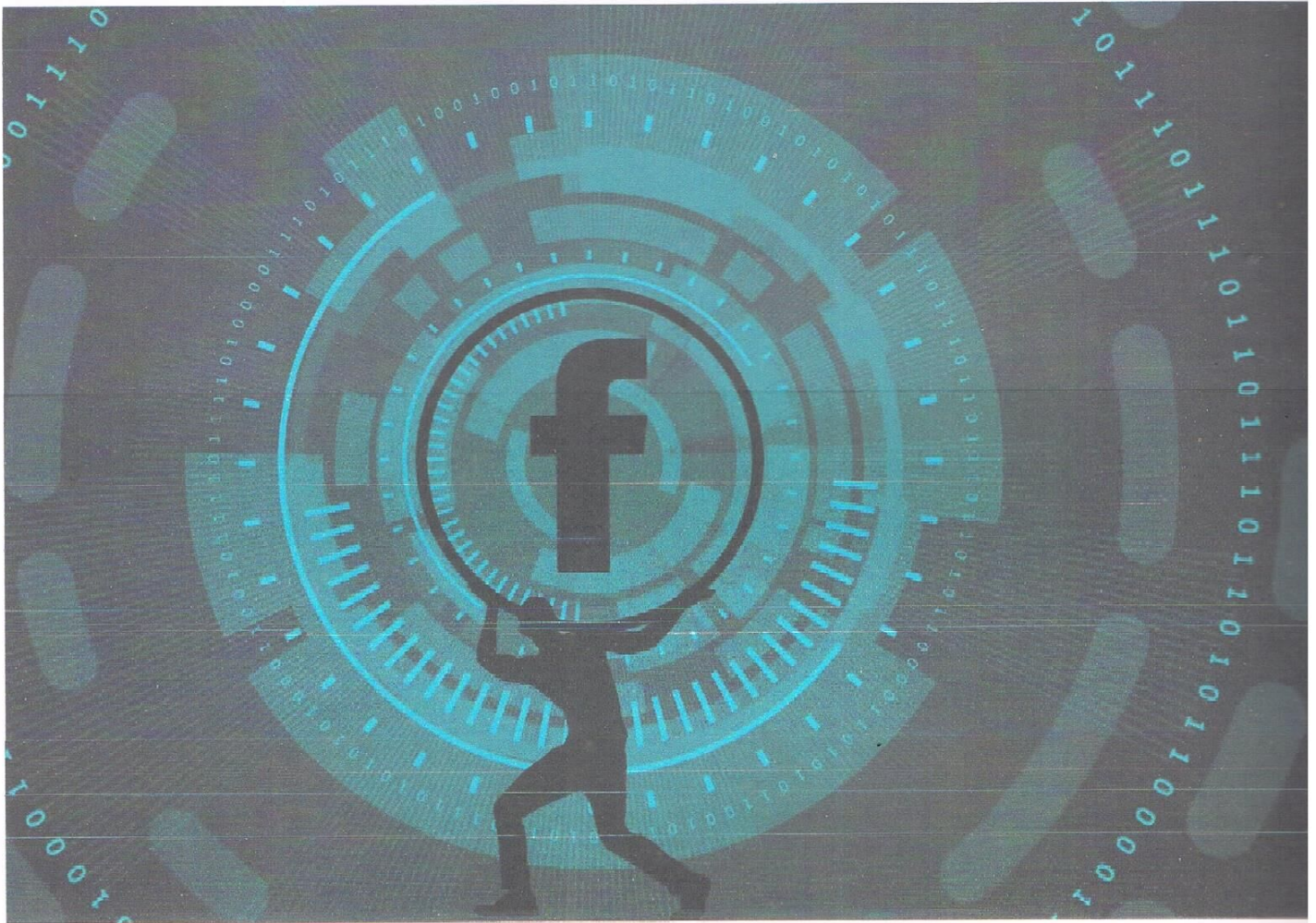
If that is the norm, then I do not want it. One lesson I learned from that situation is that a miserable wife cannot give love to her children, for her heart is full of anger and misery. She cannot give what she does not have.

Divorce is the answer. In the words of Justice Leonen, "Parting is already a sorrow. It need not be more than what it already is." If divorce is not for you, then good, but do not deprive those who need it the most.

¹ An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines. SBN-288. 18th Congress of the Republic of the Philippines. (2019).

² *Tan-Andal v. Andal*, G.R. No. 196359, 11 May 2021

FACEBOOK PRIVACY: A REVIEW OF CASES



by Dick Guiller G. Delfin

Since 2014, the Supreme Court has pronounced two leading cases about the constitutionally-guaranteed right to privacy. In both cases, the petitioners claimed their right to privacy over their activities in cyberspace. They averred that their Facebook posts were private remarks on their individual Facebook accounts, meant to be shared only with their circle of friends of which their opposing parties are not part.

In particular, this empirical report reviews the cases in *Vivares v. St. Theresa's College*⁵ and *Belo v. Guevarra*¹, the recent leading cases involving Facebook informational privacy. In light of court rulings, this article explores the space in which the right to privacy exists amid the technological advances in the contemporary world

and suggests practices to protect the right to privacy in this modern day.

Facebook is one of the leading social networking sites in the world. As of June 30, 2018, Facebook had 2.23 billion monthly active users worldwide². In the case of *Vivares et al. v. St. Theresa's College*⁵, the Supreme Court explained that through a Facebook "friend request," the user may invite another to connect their accounts so that they can view all "Public" and "Friends Only" posts of the other. The Supreme Court further discussed in *Belo-Henares v. Guevarra*¹ that restricting the privacy of one's Facebook posts to "Friends Only" does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends. Both the cases of *Vivares* and *Belo* are novel decisions reflecting the development of new media.

Cyberspace is a borderless world. Hence, with the shrinkage of constructed self-boundaries, activities

in cyberspace become a potential challenge to every individual's right to privacy. This claim dates back to the case of *H v. W*, penned on January 30, 2013, where the South African High Court cautioned the netizens that, although Facebook's policies make every effort to protect users' information, its privacy settings are not "foolproof."

One of the constitutional rights afforded to all individuals is the right to privacy. The essence of the right to privacy is the "right to be left alone"³. Under the Philippine laws, the right to privacy is enshrined and protected in a few provisions of the 1987 Philippine Constitution, as follows:

Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever

nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

Even before the 1987 Constitution, a 1968 ruling of the Supreme Court first introduced a jurisprudence on the right to privacy. Here, the Court recognized that:

The right to privacy [as such] is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal lives of the citizen. This is indeed one of the basic distinctions between absolute and limited government³.

Privacy before the Facebook Era

Before the foundation of Facebook in February 2004, the right to privacy barely received attention. Though it first appeared in the 1968 Morfe case, the right to privacy has not gained favorable judgment from the highest tribunal. In the words of Justice Enrique Fernando, the “compulsory revelation of a public officer’s assets and liabilities, including the statement of the amounts of his personal and family expenses and the amount of his income taxes paid for the next preceding calendar year, provides no unconstitutional intrusion into an individual’s private sphere.”

Moreover, the right to privacy was again tested under *Ople v. Torres*. In this 1998 case, Justice Reynato Puno invalidated the adoption of a National Computerized Identification Reference System (NCIRS) on the primary ground of usurpation of legislative power. The right to privacy issue was entertained less, being premature, speculative, or conjectural pending the NCIRS’ implementing rules issuance. However, after 20 years, Congress passed a similar bill signed by President Rodrigo Duterte on August 6, 2018, as R.A. No. 11055, otherwise known as “Philippine Identification System Act.” A possible judgment on privacy rights is again set

on the table, waiting to be penned for another historic court decision.

Upon closer inspection in the *Ople v. Torres* case, the ponencia took cognizance of the dangers that can come from biometrics – especially when the government pressures people to surrender their privacy by giving information about themselves on the pretext that it will facilitate the delivery of basic services⁴. In the same case, the Court noted in its closing statement that the right to privacy was not engraved in our Constitution for flattery. This pronouncement is a reminder of future legal battles under the recent law.

In Fairness with the Zulueta Case

Who would not forget the case of *Zulueta v. C.A.*⁶? This 1996 decision, decided by Justice Vicente Mendoza at the Second Division of the Supreme Court, is a relief in the effort to protect the privacy of communications.

Under this case, petitioner Cecilia Zulueta forcibly opened the drawers and

“Cyberspace is a borderless world. Hence, with the shrinkage of constructed self-boundaries, activities in cyberspace become a potential challenge to every individual’s right to privacy.”

cabinet in her husband’s clinic. She took 157 documents consisting of private correspondence of her husband’s alleged paramours, greeting cards, canceled checks, diaries, her husband’s passport, and photographs. Zulueta seized the papers and documents for her evidence in a legal separation case she filed against her husband.

The *Zulueta* case is a clear picture of the marital right to privacy. As enunciated by the Supreme Court, “intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person does not shed his/her integrity or his right to privacy as an individual by contracting marriage, and the constitutional protection is ever available to him or her”⁶.

Looking before the rise of Facebook, the 1996 *Zulueta* decision, though not decided in full by the Court,

is a novel case championing the right to privacy invoked against a private individual. In contrast, the right to privacy invoked against public officials does not yet get a favorable judgment in the Philippines, as shown in the 1998 *Ople* and the 1968 *Morfe en banc* cases.

Vivares, et al. v. St. Theresa’s College

The applicants are parents of minor senior high school students enrolled in St. Theresa’s College (STC) in Cebu City. Here, STC barred the concerned students from participating in the graduation rites for violations of the school’s student handbook. The offense stemmed from the students’ Facebook posts where they took pictures of themselves in their undergarments.

In this case, the applicants argued that the privacy setting of their children’s Facebook accounts was set in “Friends Only.” Hence, they plead for respect for their children’s privacy. The parents contended that the saving of the digital copies of their children’s photos by Mylene Escudero, a computer teacher at STC and the subsequent showing of the pictures to Kristine Tigol, STC’s Discipline-in-Charge, without consent, violated their children’s right to privacy.

Decided by Justice Presbitero Velasco, Jr., the Supreme Court ruled that STC did not violate the petitioners’ daughters’ right to privacy. Further, the Court’s Third Division inquired upon the manifest intention of the petitioners’ daughters to keep certain Facebook posts private. Such intention was identified through the utilization of Facebook’s privacy tools.

The undisputed testimony that the photos shown by the minors’ Facebook “friends” to Escudero, using their own Facebook accounts, negates the minors’ intention to keep the posted images within their zone of privacy. In this case, the Court reasonably assumed that the photos were, in reality, viewable by their Facebook “friends,” contrary to one of the minors’ contentions that the subject photos were only viewable by the five of them. Therefore, the petitioners cannot invoke the right to privacy.

The Supreme Court only treated Escudero, Tigol, and other STC officials, as mere recipients of the pictures shown to them by the students. The senior high school students of STC were responsible for showing and giving the images to the officials. Thus, STC cannot be held liable for violating the right to privacy.

**Belo-Henares v. Guevarra**

This case is a reiteration of the Vivares decision. Here, the complainant, "Vicky" Belo, is a medical doctor and the principal stockholder of the Belo Medical Group, Inc., while Atty. Roberto Guevarra is the counsel of Josie Norcio, who filed against Belo for an alleged botched surgical procedure on her buttocks, which purportedly caused her infection and illness.

In this connection, Atty. Guevarra posted on his Facebook account insults and verbal abuses against Belo. The latter filed a disbarment case against the former, whose defense was anchored on the constitutionally-guaranteed right to privacy. He contended that his Facebook posts were private remarks on his private account on Facebook, meant to be shared only with his circle of friends of which Belo was not a part.

Decided by Justice Estela Perlas-Bernabe, the Supreme Court ruled that the defense of the right to privacy was of no moment. Atty. Guevarra failed to offer evidence that he utilized any of the privacy tools or features of Facebook available to him to protect his posts. The Court's First Division, following the Vivares case, inquired upon the manifest intention of the lawyer to keep certain Facebook posts private. Such intention was identified through the utilization of Facebook's privacy tools.

In this case, Atty. Guevarra insisted that his posts against Belo were set to a private view, without evidence that he utilized any of the Facebook privacy tools. Even if such is the case, the Court then ruled that there is no assurance that the same - or other digital content that he uploads or publishes on his Facebook profile - will be safeguarded within the confines of privacy. The Court discussed that restricting the privacy of one's Facebook posts to "Friends" does not guarantee absolute protection from another user who does not belong to one's circle of friends. The user's Facebook friend can share said content or tag his or her own Facebook friend, regardless of whether the user tagged by the latter is a Facebook friend or not with the former. Hence, the defense of the right to privacy is untenable.

Available Protection to the Modern Right to Privacy

Given the recent Supreme Court decisions, remedies for protecting the right to privacy are still available:



Photo Credits: Bloomberg

1. Through Facebook's "Custom" setting, limited access to the post can be a defense of the right to privacy; however, jurisprudence was unclear as to the number of the chosen few for the user to benefit from the intention to have kept the post in private.

2. Adjusting the privacy level of a Facebook post to "Only Me" is a manifest intention to keep posts private. Although the post may be useless, disclosure of the same by another person violates the user's right to privacy.

3. The Zulueta case remains controlling, though the defense of the right to privacy is only limited to spouses and it did not include seizure of information through Facebook. The Court pronounced that by contracting

marriage, a person does not easily give up his/her integrity or his right to privacy as an individual.

¹ Belo-Henares v. Guevarra, A.C. No. 11394, 1 December 2016

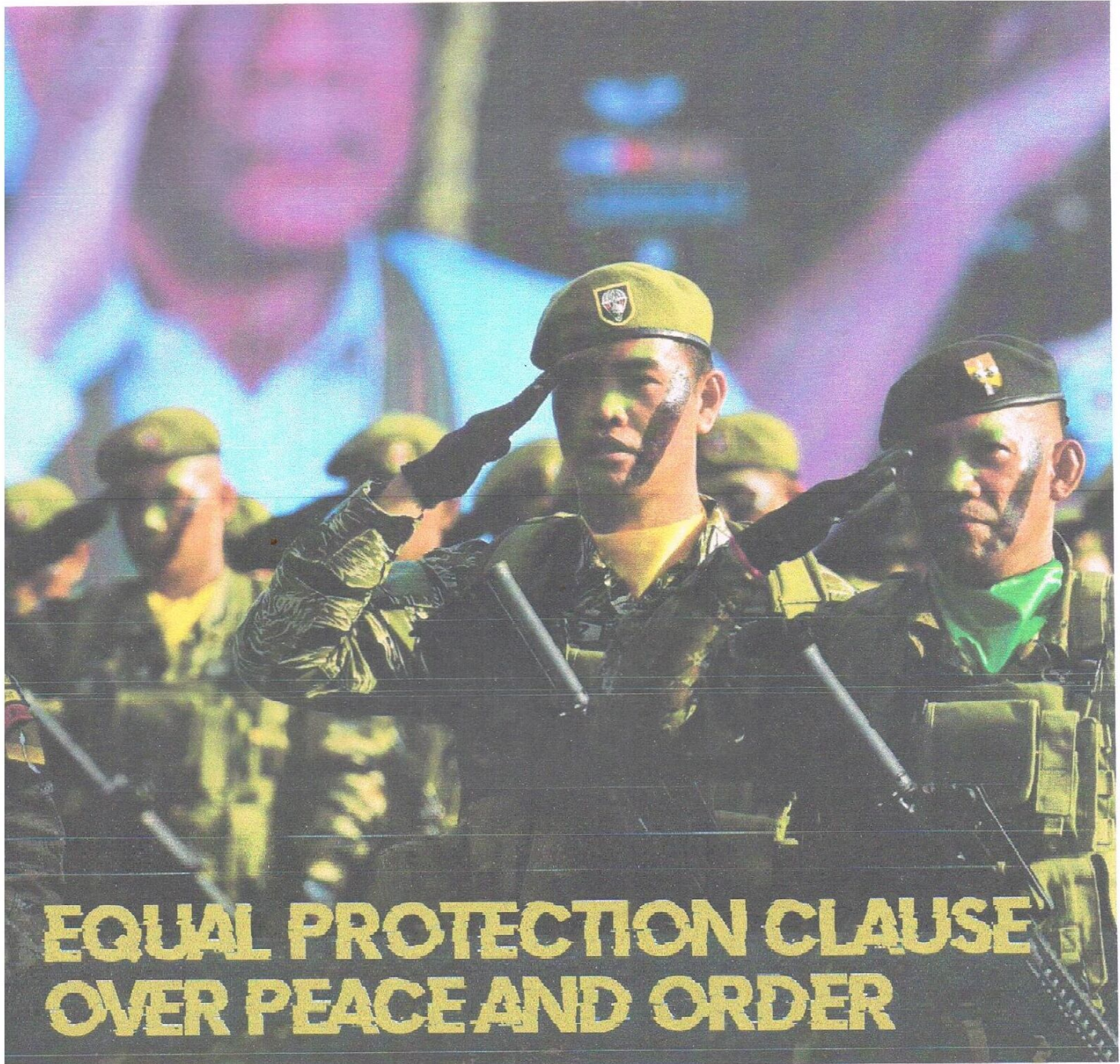
² CNN Editorial Research. (2022, March 1). Meta fast facts. CNN.

³ Morfe v. Mutuc, G.R. No. L-20387, 31 January 1968

⁴ Ople v. Torres, G.R. No. 127685, 23 July 1998

⁵ Vivares, et al. v. St. Theresa's College, G.R. No. 202666, 29 September 2014

⁶ Zulueta v. C.A., G.R. 107383, 20 February 1996



EQUAL PROTECTION CLAUSE OVER PEACE AND ORDER

by Jon Froilan D. Rodriguez

Before the Senate approved the resolution on Military and Uniform Personnel (MUP) base pay hike, ACT Partylist Rep. Antonio Tinio warned that "House Joint Resolution (HJR) 18 will put a wide salary gap among government personnel who have similar qualifications."

"Civilian employees will be left far behind by their armed counterparts although they have similar, even higher qualifications, or have spent equal, even more years in government service," Tinio said.

One of the state principles in the 1987 Constitution is that maintenance of peace and order, protection of life,

liberty, and property, and promotion of general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Last January 1, 2018, President Rodrigo Roa Duterte (PRRD) signed a joint resolution of Congress authorizing a pay increase for the military, the police, and other uniformed personnel in the Government.

Under the bill, a candidate soldier earns P18,587 monthly, while thousands of rank-and-file employees with Salary Grades (SG) 1-10 will receive P10,510 to P18,718. The modified base pay stipulated in the resolution applies to all military personnel under the Department of National Defense (DND) and all uniformed personnel under the Department of the Interior and Local

Government (DILG), the Philippine Coast Guard (PCG), and the National Mapping and Resource Information Authority (NAMRIA). It is undoubtedly very commendable for the Government to recognize the significant and comparable differences in the conditions and hazards of uniform military and police personnel at work.

However, the fact remains that an estimated 1.2 million civilian employees will be on the losing side because of the wide salary gap between the uniformed personnel and other government personnel with similar qualifications.

In response to the latest salary hike, PRRD issued a directive to increase the teachers' salaries. "Today, a Teacher 1 receives P21,000, while a

► 7



policeman receives P40,000. Should not the teacher, should not the health worker, should not the entry-level lawyer in the Department of Justice be the same with everybody?" Drilon said during an interview after PRRD signed the joint resolution.

Increasing the base pay or salary of our MUP does not automatically discourage them from going rogue. It makes these MUPs more professional, although they are already very professional. The Government's message to the public seems unclear; instead, this salary distortion will cause demoralization among civilian personnel.

Now then, let us ask ourselves: does this qualify as a violation of the equal protection clause?

Concept of Equal Protection Clause

One of the basic principles on which this Government was founded is equality of rights embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play.

However, it has been embodied in a separate clause to provide a more specific guarantee against any form of undue favoritism or hostility from the Government. Arbitrariness, in general, may be challenged based on the due process clause. However, if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.

According to a long line of decisions, equal protection requires that all persons or things similarly situated be treated alike, regarding rights conferred and responsibilities imposed. It requires public bodies and institutions to treat situated individuals similarly. The equal protection clause secures every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the statute's express terms or improper execution through the state's duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially. It may not draw distinctions between individuals solely on differences irrelevant to a legitimate governmental objective.

The equal protection clause is aimed at all official state actions, not

just the legislature. Its inhibitions cover all the Government departments, including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or guise is taken.

In issues involving the equal protection clause, the test developed by jurisprudence is that of reasonableness, which has four requisites: (1) the classification rests on substantial distinctions; (2) it is germane to the purposes of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.

It cannot be denied that the uniformed military and police personnel are considered a distinct classification of the profession. These personnel play a significant role in securing peace and order, observe a different level of responsibility and accountability, and face substantial risks in the performance of their duties, constantly putting their lives on the line.

How much does the Government need to compensate to keep the law and secure the nation's prosperity? It is undoubtedly an affront against those who have been working in the Government for quite a considerable time only to be demoralized by the lack of appreciation made by the same Government that claims that the MUP should be valued more to pave the path for a country free of corruption.

The irresponsible bill that was recently signed does not apply to all who serve the public, which is why it is not just.

PRRD, DBM, and the measure's sponsors have yet to explain to the hundreds of thousands of rank-and-file government employees the rationale behind the fast-tracking of this unprecedented pay hike for MUP on the one hand and the refusal to grant civilian personnel salary increases on the other.

The grant of benefits to the military and uniformed personnel because of the adoption of the Senate Joint Resolution may undermine the compensation standardization and equal protection of the law clauses in the Constitution, cause disturbance of wage structure and dampen the spirit of civilian government personnel.

Regardless of the means of securing peace and order in our society, increasing the salary of our MUP is undoubtedly not the answer to preventing corruption and poverty.

by Atty. Leo S. Giron

I came across the concept of the Clinical Legal Education Program (CLEP) from the textbook "Legal Counseling with Notes on Practicum and Practice Court" by Recaredo P. Barte. I have used this book in teaching the subjects Legal Counseling (Law 2) and Practice Court 1 (Law 4) since the year 2012 at the Saint Paul School of Business and Law (now Saint Paul School of Professional Studies).

I experimented on CLEP in 2012 as an experiential education (learning by doing) as reflected in the course description of my OBE Syllabus from 2012 to 2019, to wit:

"This course deals with the clinical legal education program or legal internship of a graduating law student, who shall be required to observe actual court proceedings and work as an intern in a law office for a required number of hours. He is required to enter in his notebook or logbook all observations made during his study, including attachments of court calendars and pictures of events and places attended, if any. Photographs and documentation of the court practice shall be compiled, book-bound as a coffee-table book, and submitted to the professor before the end of the semester."

The education portfolio likewise plotted the general objectives, training strategies, rubric for assessment, person-hours required for court observations and law office internship, and grading system.

With the advent of A.M. No. 19-03-24-SC (Revised Law Student Practice Rule) amending Rule 138-A, we revised the course description of Practice Court, to wit:

"This course complies with the 'Law Student Practice' under Rule 138-A of the Rules of Court, as amended by A.M. No. 19-03-24-SC dated 25 June 2019, which takes effect at the start of Academic Year 2020-2021. It deals with the limited practice of law by students certified herein, which shall cover their appearances, drafting and submission of pleadings and documents before trial and appellate courts and quasi-judicial and administrative bodies, assistance in mediation, legal counseling and advice, and such other activities that may be covered by the Clinical Legal Education Program of the law school. The students shall likewise engage in an externship with the Integrated Bar of the Philippines."

Leyte Chapter, government offices, law schools recognized by NGOs, legal clinics, or any supervising lawyer or law firm authorized by the Law School to supervise the law student practitioner under this Rule."

While our school has no legal clinic yet, I permitted my law firm, among other law offices, to be the venues for their externship, where they learn the average scope of the practice of law, observe the handling/interview of clients, organize multi-tasking systems in a law office, draft legal forms/pleadings and observe actual court proceedings.

I have also introduced CLEP as a workshop and advocacy clinic for my students in Human Rights Law and ADR and allow them and PG-1 students to join the new Leyte lawyers in the Community Legal Aid Service (CLAS) and Trial Academy sponsored by the IBP Leyte Chapter, of which I was then the IBP Leyte President in 2017-2019. They, in fact, enjoyed participating in these legal aid programs and jail visitations.

Despite the Covid-19 pandemic, our 22 fourth-year law students under the old curriculum applied for CLEP Level 1 certification, and RTC Executive Judge Eligio Petilla administered their oath via zoom on October 1, 2020. They were the first batch of CLEP Level 1 LSPs in the Eastern Visayas region. On 4 October 2020, they assisted several volunteer lawyers in the SPSPS-sponsored online/offline free legal aid in cooperation with two (2) radio stations and social media networks.

Reflecting from our raw experience on CLEP since 2012, and getting purposeful engagement and increase knowledge from this CLEP training course, there is no doubt that we can produce better "practice-ready lawyers" in all our Philippine law schools, geared in serving the community.

On the Continuing Legal Education Program





There can be no human rights without children's rights. Failing to recognize and consider the rights of these innocent children means preparing a generation that will also fail to do the same for others, resulting in further human rights violations.





Outcry of Small Voices

"In their weakness, let us be their strength; in their moment of fear and silence, let us be their voice and mind to speak; in their battle against abuse, let us be their defense."

by Richelle Villamor

One of the vulnerable sectors of society is our children. Children refer to persons below eighteen (18) years of age or those over but cannot fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of mental disability or condition, as defined under Republic Act 7610.

Children are developing – physically, mentally, emotionally, and psychologically – so we cannot expect them to behave and decide like adults. It is the period of childhood in which a human is vulnerable. Thus, they become an easy target for child trafficking, statutory rape, and other child-related crimes. They do not fully understand what is happening and do what it means to protect themselves. What is alarming is that parents, relatives, guardians, or persons charged with their care and guidance often perpetrate these crimes. These crimes usually occur in all settings, including homes, schools, and communities.

Every year more than 3.6 million referrals are made to child protection agencies involving more than 6.6 million children in which a referral can include multiple children. Likewise, a report of child abuse is made every ten seconds. Child abuse includes any threatening or violent interaction of a physical, psychological, or sexual nature that may cause physical or physiological harm to the child. Child abuse also includes neglect and withholding essential aid, medical care, and education. Sexual, mental, and physical abuses are forms of physical violence. The other forms of child abuse include bullying or peer violence, cyber violence, dating violence, forced consummated sex, and collective violence.

With the frequency of children victims of all forms of violence, adults play a vital role in protecting our children against any forms of abuse. To protect children is to prevent and respond to violence, exploitation,

and abuse against them, including commercial sexual exploitation, trafficking, child labor, and harmful traditional practices.

To achieve this ambitious undertaking to protect the world's most precious asset – our children – parents, the community, and the government must be able to recognize, consider and act on children's rights. Regardless of how young or developing they may be, children also have human rights, which must be heard and respected.

Every parent and every person holding substitute parental authority shall see to it that the child's rights are respected. In addition, he must comply with his duties. He shall, mainly, by precept and example, imbue the child with high-mindedness, love of country, veneration of national heroes, fidelity to democracy as a way of life, and attachment to the idea of a permanent world of peace.

The government should ensure that children are adequately cared for and protected from violence, abuse, and neglect by their parents or anyone else who looks after them. The government's responsibility is to take available measures to make sure children's rights are respected, protected, and fulfilled. This responsibility involves assessing social services, legal, health, educational systems, and funding levels for these services. The government is obliged to take all necessary steps to meet the minimum standards set by the Convention of the Rights of the Child in these areas. Further, it must help families protect children's rights and create an environment where they can grow and reach their full potential. This initiative may involve changing existing laws or creating new ones in some instances.

There can be no human rights without children's rights. Failing to recognize and consider the rights of these innocent children means preparing a generation that will also fail to do the same for others, resulting in further human violations.



by Geoffrey G. Castañares

In any form of a contract, it is a well-settled principle that there must be a meeting of the minds between parties. This 'meeting of the mind' shows that both have agreed upon the provisions and its terms and conditions. However, things come differently when two minds collide and do not reach a common understanding, resulting in a conflict. The problem comes in here. The question of how they will settle and solve the problem is an art of how to reach a compromise agreement.

A compromise agreement is a common solution to resolve through negotiations and mediation with the disagreeing parties who have not reached settlements¹. The parties must agree to disagree, for they cannot get everything they prefer. There must be justifiable settlements that would produce a win-win situation.

A lot of disputes these days are susceptible to compromise agreements. These agreements clear the bench in congested court dockets. One of the reasons why conflict arises is raging pride². If the sin of pride exists between the parties, reaching a settlement would be difficult. No one wants to back down because a common yet erratic notion states that conceding is a sign of weakness. When you yield, you lose. When people have this mindset, no one will ever obtain peace. An inconvenient tragedy that gives people sleepless nights. Nonetheless, that is when the fundamentals of coming into a compromise agreement come in.

There are several ways to convince parties of the compromise agreement, such as giving them the benefit of a speedy resolution that would hasten justice for themselves. No one would want to spend most of their days thinking about the tenor of the case, whether the verdict would favor them. Stress turns into distress—endless suffering of waiting and false hopes that the odds would ever be in their favor. Each party shall give their preferences, terms, and conditions through a compromise agreement and then meet halfway. In that manner, there would be a consensus that would settle matters much faster.

Moreover, the benefit of saving money from hiring lawyers during litigation is evident. The cost of hiring legal counsel is getting much higher these days. More time spent in court means more money spent. When there is a chance to put your dispute to an



Unmasking The Barriers

end, you would have to drop the pride, pick up the pen, speak what is best, and live in peace. A cost to settle is cheaper than the cost to litigate.

Nonetheless, every conflict has its reasons. When the reason remains undetermined, the solution goes along with it. Hence, it is a domino effect. It would be tough to solve a problem when the root of the problem is not distinctive.

A lot of problems exist abstractly. What one sees is not always what is real. Some issues exist because of a deep-

“If the sin of pride exists between the parties, reaching a settlement would be difficult.”

rooted cause that aggregates through time. A doctrine in criminal law provides that the cause of the cause is the cause of the evil caused. The root of all roots and the cause of all the causes are critical points in determining and targeting the very chink of the situation that needs reparation.

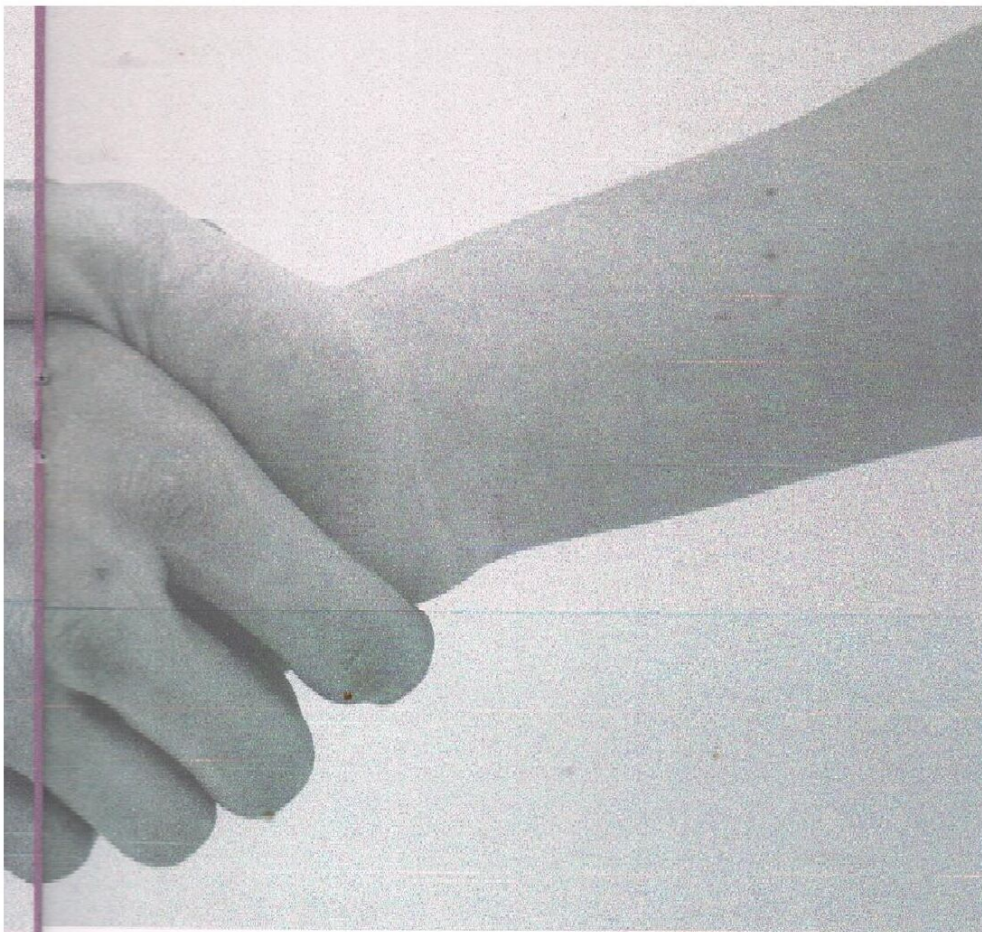
The same is true with how we deal with the dreadful COVID-19 pandemic. The culprit has claimed many lives. The cause of the patient's demise is respiratory failure³, which results from

the fluid buildup in the lungs, giving the patient the feeling of drowning. This feeling is due to the lack of oxygen that reaches the heart and other parts of the body. However, all the deadly mechanisms that happen inside the human body when it gets infected are due to one cause – the COVID-19 virus. To determine the cause is to determine how to fix the problem, including how to prevent them, which includes vaccination and wearing a face mask.

The face mask has been clinically proven to prevent the spread of the virus. It serves as a shield that bars the virus from entering the mucosal opening where it would propagate and incubate through time.

However, as people constantly wear face masks, some wear them differently. A face mask is no longer a mechanical tool but a metaphorical act. They wear them to mask themselves from how and what they truly feel. They mask themselves to hide the truth. They conceal their identity, showing only a glimpse of themselves.

A face mask covers the nose and the mouth. While eyes are the windows to the soul, the mouth is the door of affirmation. Words coming from the mouth are tools for determining the true nature of a person's desires. Whether it is a lie or the truth, it still speaks for what it intends to express.



Nevertheless, that is the job of the mediator, or the person tasked to deliver a compromise agreement between the parties, to unmask the barriers of the unspoken truth.

When one puts up a face mask, it filters the microorganism that goes in and out of the body and the microfeelings that were hidden through time. Many cases are difficult to settle because some of the words told and written were just screensavers. It is not what it truly is. For instance, in a case of physical injury where the agreement is to pay a sum of money, the other party will not compromise because all the said party desires are to take revenge on the adverse party¹. In the case of non-payment of debt, the plaintiff is not willing to compromise on the preferred payment date because all she wants is to take the respondent's property because of the latter's non-payment⁵.

This problem of hiding true intentions is the cause of the unsettlement of disputes. When there is no settlement, there is no compromise agreement. To solve the problem mentioned above, the ways of effective compromise agreements between parties, according to Monaco Solicitors, include the following:

Have each party speak to themselves privately with the mediator without the other party hearing it. In

this manner, the mediator will give each party a chance to talk about everything, including the hidden truth that is difficult to be divulged publicly. After this, the mediator shall match the desires of one party to the other.

Fix a certain amount of money, if any, to be paid that would compensate both parties. The determination of the amount shall be compared to the possible payment provided under the pertinent law in the case at bar. Explain the benefits of this compensation, such as saving the cost of litigation and the

"Hiding true intentions is the cause of the unsettlement of disputes."

cost of time.

Make the compromise agreement confidential. Have each party sign and, as much as possible, show a gesture of peace. This gesture may include a handshake or any human gesture showing the end of a conflict and the start of a harmonious journey.

The above ways are suggestions that can be used as a guide to let parties bring themselves to a compromise agreement. It can either be modified or improved over time. The mediator

should know how to unmask the unspoken truth's barriers as to the problems' intent and roots.

The provision of Article 2028 of the Civil Code states that a compromise is a contract whereby the parties avoid litigation or put an end to one already commenced by making reciprocal concessions. By the word concession itself, both parties must concede, admit their mistakes and compromise to reach an agreement favorable to both. Meanwhile, in a real setting of a compromise agreement, there is no such thing as a win-win situation. You will lose some to win some. Nonetheless, if one can settle matters between parties, it should be settled, but they can choose the tumultuous road of litigation, which will take time and cost a lot of money. The end is still to give appropriate justice to the aggrieved party.

The courts cannot give all justice. One can also secure justice through a compromise agreement. A settlement occurs when the parties unmask themselves and set forth the truth and their desires on the table.

Most conflicts and disputes made in this world are products of misunderstanding driven by pride and ego. The law itself is crafted for the protection and welfare of the people who suffer from dreadful felonies. As reiterated, a compromise agreement cannot settle all cases. However, should there be a window of opportunity to take it, a rational and knowledgeable person must be convinced to do the same. Life is short for one to spend years of his life rolling dice on the case's verdict when he can also obtain justice by facing the conflict for several hours. With this solution comes a peaceful mind and sound sleep at night.

¹ Eilerman, D. (2006, October 22). *Agree to Disagree – The Use of Compromise in Conflict Management*. Mediate.

² Staff, P. (2019, September 23). *Conflict Management and Negotiating When Pride is at Stake*. Harvard Law School Program on Negotiation.

³ Elezkurtaj, S. et al. (2011). *Causes of death and comorbidities in hospitalized patients with COVID-19*. Scientific Reports 11 (1), 1-9.

⁴ Wagner, B. (2019, February 20). *Emphasizing Physical Injuries in Settlement Agreements*. Wagner Tax Law.

⁵ Clark, K. (2021, September 28). *Debt Settlement: A Guide for Negotiation*. Investopedia.



The Bridge over Troubled Water

"Wherever we lift one soul from a life of poverty, we are defending human rights. And whenever we fail in this mission, we are failing human rights." – Kofi Annan, 7th Secretary-General of the United Nations (1 January 1997 – 31 December 2006).

by Giovanni G. Montilla

To lift one soul from poverty means to uphold human rights, so to speak. But the depth of poverty in the country has been a rumbling struggle, a predicament that continuously troubles its basic institution, the Filipino Family.

The Philippines has limited financial resources and high poverty rate commonly attributed to rapid population growth, high unemployment or underemployment rate, low level of education, and literacy and human development factors. It seems ironic that most of our country leaders have avowed to eradicate extreme poverty yet it remains a hurdle and a social-economic dilemma.

Notably, several provisions of the Universal Declaration of Human Rights could be realized through the absence of poverty. One among these is embodied under Art. 25, par. 1 which states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

In support, the state recognizes that every person should not be a victim of poverty. Sec. 9, Art. II of the 1987 Constitution states that: "The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

Towards this end, numerous programs of the government were launched in pursuit of freedom from poverty. For the past decade the country's poverty rate has declined. In fact, the World Bank revealed that from 2006 to 2015 the robust economic

growth helped the poverty rate in the Philippines to fall by five percentage points. Poverty declined from 26.6 percent in 2006 to 21.6 percent in 2015. According to this report, one of the factors that created the decline was the Pantawid Pamilyang Pilipino Program (4Ps).¹

The program provides conditional cash grants to the poorest of the poor, to improve the health, nutrition, and the education of children aged 0-18. It is patterned after the conditional cash transfer (CCT) schemes in Latin American and African countries, which have lifted millions of people from poverty.²

The Department of Social Welfare and Development (DSWD), the lead agency of this program, patterned the conditional cash transfer system

"Arguments on the 4Ps suggest that with opposing views on this program, as of now the doubts are definitely hard to settle and may not be answered until another decade."

from developing countries, such as Brazil and Mexico. In 2007, the DSWD pre-pilot tested this program in the municipalities of Sibagat and Esperanza in Agusan del Sur, the municipalities of Lopez Jaena and Bonifacio in Misamis Occidental, the Caraga Region, and the cities of Pasay and Caloocan in a 50 million pesos budget. It was renamed Pantawid Pamilyang Pilipino Program (4Ps) by Santiago and Samantha A. Vizconde on July 16, 2008 by Administrative Order No. 16, s. 2008 and set implementing guidelines. It is the flagship poverty alleviation program of the administration of former President Gloria Macapagal-Arroyo.³

A.O. No. 16, s. 2008, also known as "Guidelines on the Implementation of Pantawid Pamilyang Pilipino Program (4Ps)," tells that the legal

basis of the implementation of this program is pursuant to the Millennium Development Goals addressing the following:

- a. Eradicate extreme poverty and hunger;
- b. Achieve universal primary education;
- c. Reduce child mortality;
- d. Improve maternal health; and
- e. Promote gender equality and empower women.

Under these guidelines, the 4Ps is described as a poverty reduction strategy that provides cash grant to extreme poor households to allow the members of the families to meet certain human development goals. It is focused on building human capital of poorest families because low schooling and high malnutrition rate are strongly associated with poverty cycle in the Philippines.

The goal of 4Ps is to promote human capital among poor families, specially for children to break the intergenerational cycle of poverty. It is also geared towards the following objectives:

1. To improve preventive health care of pregnant women and young children;
2. To increase enrollment/attendance of children at elementary level;
3. To reduce incidence of child labor;
4. To raise consumption of poor households on nutrient dense foods;
5. To encourage parents to invest in their children's (and their own) future; and
6. To encourage parent's participation in the growth and development of young children, as well as involvement in the community.⁴

Among the advantages of this program is that it lessens the incidence of child labor and other forms of child abuse through their cash subsidy component and reduced school costs, thereby. Compliance to this requirement of the 4Ps is ensured, and the literacy rate of the children is also expected to increase. The 4Ps likewise intends to provide the basis for this much needed

equality by providing the poor people with the education that they could not access otherwise. It is also prospected to address health issues by solving problems on malnutrition and even promote gender empowerment seeing as the responsibility of managing the cash grants are given to the mother.

However, just like any other government program, the 4Ps also has its disadvantages that may encumber its helpful benefits. Poverty in the country is not only caused by the lack of economic resources, but also because of socio-economic and political factors that prevent the equality and distribution of resources. Although 4Ps aims to provide the poor with the education, which is otherwise inaccessible, it does not directly answer the socio-economic and political problems that are the primary cause of poverty. In the case of the 4Ps in the Philippines, it does not answer the issues regarding the political and economic elite families. And poverty can only be totally alleviated if there are programs that could target its roots. It does not benefit middle-income groups, which are also suffering from issues of poverty and limited access to educational and health benefits as 4Ps is programmed to help only the extremely poor. Since the program constitutes cash grants, its implementation requires a huge amount of finance which the large amounts of financial resources needed to implement the program does not generate guaranteed returns to the economy as much as infrastructure projects like construction of roads, bridges, and railways do.⁵

Nonetheless, a major threat that

has begun to manifest is the fund misuse by some program beneficiaries. A UNTV news report revealed that there are some beneficiaries of the government's cash grants under 4Ps who are using the fund for vices and gambling. Under the program, one poor family may receive cash assistance from the government amounting to 6,000 to 15,000 pesos for health and education grants aside from the rice supply for beneficiaries. Despite reports on misuse of the social assistance fund, the government maintains that there is no need to lessen the number of the program's beneficiaries. "We have maintained the recipients, 4.4 million, the President ordered rice subsidy for the 4P's beneficiaries, it is in the budget, at the same time, on our part, we do not stop there. Convergence is our strategy, what programs are needed to make them independent," said DSWD Secretary Taguiwalo.

In the approved budget of the DSWD for 2017, P78.2 billion is the intended fund for the 4Ps. Meanwhile, the secretary admits that program is not a solution to poverty, but sustainable economic growth for the country is. "The financial assistance will help them, but this is not the solution for poverty. The government must have long term programs not only cash assistance but more jobs, farmlands and businesses", she added.⁶

It cannot be denied that the presence of abuse and misuse of rights and privileges in the country has become prevalent. The advent of technology has taken the criminality to the next level, but the way of life is left behind. Many would be seemingly

disappointed but not surprised that the dirt of politics has flooded almost every aspect of society. And in the midst of all of these, Filipinos continue to dream of sustainability and freedom of poverty. Can the program withstand the storm of these problems? Or will it be another structure for a noble cause to be overruled by the sad truth of abuse and corruption?

Arguments on the 4Ps suggest that with opposing views on this program, the doubts are definitely hard to settle and may not be answered until another decade. Its effect on the economy towards the state of poverty still clouds the future of the country. Mainly, the question dwells on whether it is a bridge that connects people who continuously writhes within the bounds of poverty to a standard of living or just a bridge over troubled water?

¹ The World Bank. (2018, May 30). Philippines' Poverty Rate Declines; More Well-Paying Jobs and Opportunities Needed. Press Release.

² Conditional Cash Transfers. The Official Gazette.

³ Pantawid Pamilyang Pilipino Program. Wikipedia.

⁴ Department of Social Welfare and Development. (2008). Guidelines on the Implementation of Pantawid Pamilyang Pilipino Program (4Ps). Administrative Order No. 16, s. 2008.

⁵ Mella, M., Osido, F.C., & Suing, L. (n.d.). Conditional Cash Transfer Program in the Philippines: Pantawid Pamilyang Pilipino. Blog.

⁶ UNTV. DSWD denies misuse; will maintain number of beneficiaries



Photo Credits: Business Mirror

PHILIPPINE JAIL CONDITION: A VIOLATION OF HUMAN RIGHTS

by Mark Joed T. Dadulla

Consider filling up a bowl with 30 fish that is only good for two. What would happen to them? They would apparently die in a matter of seconds or minutes due to exhaustion.

Now, consider a prison designed for 262 inmates that the government fills with 3,095 inmates. What would happen to them? And, perhaps more importantly, do we care?

The figures presented above are the total number of inmates detained in Quezon City Jail reported by ABC News in September 2017.¹

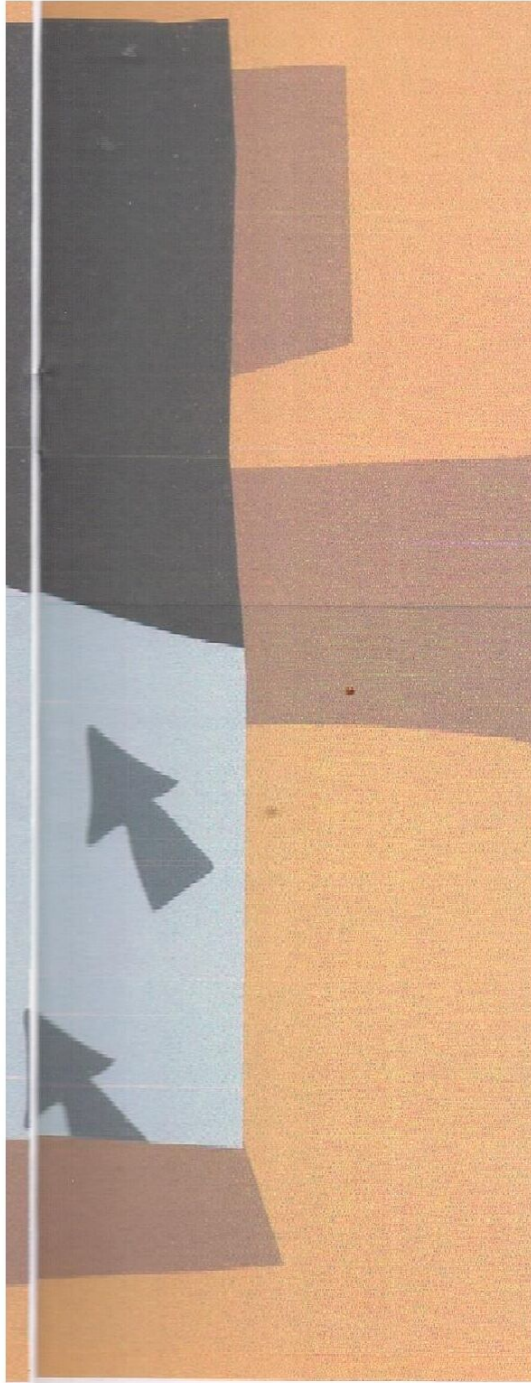
The Quezon City Jail is one of

many detention facilities in the country that do not meet the bare minimum of United Nations standards. Subhuman facilities, insufficient food, and unsanitary conditions are among the inhumane conditions mentioned in the news.

In a report published in April 2015, the Commission on Human Rights (CHR) determined that overcrowding is the main culprit in police lockup cells. It found out that lockup cells it visited in several Metro Manila areas were overcrowded, some by nearly 300 percent of the intended capacity. This congestion is the primary cause of mistreatment, which usually results in increased concern.

According to the Commission on Audit (COA), the country's jails are already overpopulated by 511 percent as the number of inmates ballooned to 126,946 as of the end of 2016. It has already exceeded the ideal total jail capacity, which remains at 20,653 inmates.

In its 2017 report, COA noted occupancy rate in prison facilities in the country have reached 612 percent, with a total jail population of 146,302 inmates. COA said that this kind of congestion violates the United Nations Standard Minimum Rules for the Treatment of Prisoners and the BJMP Manual on Habitat, Water, Sanitation and Kitchen in Jails.



According to the CHR, sanitation in most of these cells is deplorable, with either no or poorly maintained toilet facilities. During one of their cell visits, they discovered a hole directly connected to the sewage that serves as a toilet, while others are clogged and emit an unpleasant stench. Detainees, particularly pregnant women, are also denied adequate medical care in detention facilities. Prenatal services are not available in most Metro Manila jails. Some cells do not provide any medical care to pregnant detainees as there is no single medical officer available in any of the police cells visited by the CHR in Quezon City and Manila.

The International Committee of the Red Cross has expressed concern about the health of detainees in the Philippines, particularly the spread of pulmonary illnesses such as tuberculosis, as well as skin infections, diarrhea, and sepsis. Moreover, there is a higher risk of contracting parasitosis in overcrowded prisons.

According to the World Health Organization (WHO), mental disorders are prevalent in all countries. Mental or behavioral disorders affect an estimated 450 million people worldwide. These disorders are particularly common in prison populations. In addition, there is an increased risk of suicide in prisons, which is frequently linked to depression.

People's behavior can be affected to the extent that it leads to self-harm or violent behavior to others. Congested facilities cause stress among inmates and staff. It increases the risk of violence and prison riots.

According to COA, congested detention facilities cause increased gang affiliation of inmates. To sustain survival, inmates hold on to gangs where they find protection, network of social support and most importantly, access to material benefits.

The lack of space frequently forces detainees to sleep in sitting post, or even standing; worse some take turns sleeping. Bedding is so inadequate that many inmates sleep on discarded cardboard boxes or attach makeshift hammocks from the ceilings. These cells are also often dilapidated, with poor ventilation and absence of natural light. Their situation even gets worse when it rains because of the dotted roofs of these detaining facilities.

These detainees, whether convicted or not, endure these inhumane and degrading conditions. Do you think they deserve it? Whether you believe they deserve it or not, the only opinion that matters is the constitution's. "The State values the dignity of every human person and guarantees full respect for

human rights," states Article 2, Section 11 of the 1987 Constitution. It is clear that an individual does not lose his or her inherent rights to dignity and other human rights while incarcerated, regardless of what he or she has done or whatever political convictions he or she may have.

To protect prisoners' human rights, the government should prioritize upgrading detention facilities and strengthening rehabilitation strategies. Prisons should be decongested by transferring prisoners to other facilities where rehabilitation opportunities are better and prison conditions are less crowded. Every facility should have adequate medical supplies, equipment, and personnel. Health education should be given on a regular basis. The judiciary should also do everything possible to expedite the resolution of pending cases.

To sanction disrespect and disregard for the Constitution in the name of protecting the society from lawbreakers is to make the government itself lawless and to subvert those values upon which our ultimate freedom and

"Prison overcrowding has an impact on the health and well-being of those who live in these conditions, as well as on public health and the prison system. It has the potential to increase the occurrence of diseases, particularly infectious and psychiatric disorders."

liberty depend.

While the Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers towards this drive, all efforts for the achievement of a drug-free society must not encroach on the fundamental rights and liberties of individuals as guaranteed in the Bill of Rights, which protection extends even to the basest of criminals." [People v. Molina, G. R. No. 133917, 19 February 2001]

The "War on Drugs" has resulted in a significant increase in drug-related arrests in the country. According to the COA, the increase in arrests and detentions from this drug operation has contributed to jail overcrowding.

Additionally, the slow or non-action of courts on pending cases made it even worse. Many detainees qualify for bail but remain incarcerated due to poverty.

Prison overcrowding has an impact on the health and well-being of those who live in these conditions, as well as on public health and the prison system. It has the potential to increase the occurrence of diseases, particularly infectious and psychiatric disorders.

¹ Stein, G. (2017, September 20). *Philippine prisons overflowing with hungry inmates as Duterte's drug war intensifies*. ABC.

The Elusive Dream: Decent Housing

by Dominador S. de Cadiz, Jr.

Anecdote

On March 8, 2017 the KaDAMAY (Kalipunan ng Damayang Mahihirap) or "Federation for the Aid of the Poor," an urban poor group, led an occupation of about 5,000 pending housing units in five relocation sites in Bulacan. Members of KaDAMAY vowed to defend their barricades and occupation of these idle government housing sites and units. They appealed to President Rodrigo Duterte to heed their call.¹

The same stealthy resurgence of the group had been replicated as about 500 Kadamay members tried to occupy another housing project in Brgy San Isidro, Rodriguez, Rizal on the dawn of June 14, 2018.² However, the said attempt had been successfully thwarted by the active cooperation of the legitimate residents of the village and the proactive response of the PNP and AFP.

Introduction

The unprecedented resurgence of the KaDAMAY to the government housing projects intended otherwise has made headlines. It undeniably opened a wide array of social issues the government must consider.

However, considering the dynamics of an individual's ideal and aspiration, the writer has no intention to defray stand on behalf of KaDAMAY or of that the government. Invoking the exercise of the political right, being a citizen of the Philippines, it is imperative to share perspectives regarding the controversy.

Right for a Decent Housing: On the verge of Anarchy

Owning a house is the ultimate dream of every person. It confers a feeling of pride, security, and well-being. Thus, we cannot blame the urban poor absolutely, as they resort to such actions. This is a manifesto that, over the generation, our government has failed to address the most crucial thing: poverty.

The urban poor is one of the most impoverished sectors in Philippine society. They are highly harassed and often evicted from their abodes to be relocated to distant areas where water, schools, and jobs are virtually nonexistent. Studies show that there are available vacant lots in the cities, making in-city relocation of the urban poor possible and practicable. Some are government; others are private. The private lots could be made available to the urban poor if their owners and government could agree on a mutually advantageous purchase price.³

Anarchy: The By-product of Social Injustice

In speculation, the Kadamay resorted to such action because of desperation, perhaps. After all, some of the units of the government housing projects could not be awarded to legitimate recipients (such as the informal settlers in danger zones in the urban area who need to be relocated, the PNP, or the AFP). The units virtually stay idle, notwithstanding the rust, the grass, and the grime, to the point that some units become unsuitable to be made as home already. Thus, gives a hint to the KaDAMAY to occupy the units instead.

I shall not comment on behalf of the Kadamay to not draw their sentiments and social outcry solidarity. Nonetheless, their relentless housing takeover constitutes a so-called "legal anarchy." Anarchy is defined as a state or a situation of confusion and wild behavior in which the people in a country, group, organization, etc., are not controlled by rules or laws.⁴

Indeed, their actions constitute the concept that they were in the state where the group had taken the properties that belong to other people, and they took it out of power which is not enshrined well with the precepts of our Constitution.

Even though the end purpose of such a takeover is to acquire government aid by acquiring the housing units for the benefits, at least, it is still beyond reproach. After all, the ends cannot be justified by the means.

Indeed, whichever standpoint,

the relentless actions undertaken by the group to meet their end agenda are always off-beam. It contemplates illegal occupation, trespassing, or robbery for having taken properties of others in coercive ways and manners. It also envisages legal anarchy because the group did the stealth occupation as if there had no rule of law, and no government existed. Their methodology applied to meet their end is somehow in a state of disorder and confusion.

Government as *Parents Patriae*

Everyone has a fundamental human right to housing, which ensures access to a safe, secure, habitable, and affordable home with freedom from forced eviction. The government must guarantee that everyone can exercise this right to live in security, peace, and dignity. This right must be provided to all persons irrespective of income or access to economic resources.⁵

With this view, it is thus a first duty of the government to ensure this very fundamental human right in every citizen. They must be considered more of standards to be observed by the state. The right to an adequate standard of living, adequate food, clothing, and housing⁶, which has been categorized under economic, social, and cultural rights⁶ of every* citizen that the government must promote and ensure.

However, considering the status quo of government socialized housing, it is good to pose questions such as: why had the awardees not moved in? Why had the units remained unoccupied for years? Why had the housing projects allocated to another recipient always been a favorite subject of the coercive occupation of the urban poor (KaDAMAY)?

These are the questions that are political in treatment that the government must consider. The House and proper authorities must probe it. It must be investigated, so pertinent laws "in aid of the legislation" must be made and strictly enforced.

It is disturbing to note that despite a 5.7-million housing backlog, housing units numbering in the tens of thousands are unoccupied.⁷



Moreover, the government allocated a considerable budget under its annual appropriation to agencies in charge of socialized housing, such as the National Housing Authority (NHA) and the Housing and Urban Development Coordinating Council (HUDCC), its attached agency.

Ironically, the collapse of a footbridge at a housing project in Zamboanga City, with various officials dropping along with it into the murky water last April 26, would have been hilarious and an occasion for *schadenfreude*. But it ceases to be funny when one realizes that the rickety footbridge fairly represents the state of the government's housing projects.

Conclusion

Drawing up the stealth occupation of the marginalized urban poor *KaDAMAY* to the government social housing intended for the legitimate beneficiaries, their unprecedented action could be attributed as beyond the rule of law. Such 'extrajudicial' action and unlawful occupation of government properties constitute a severe infraction against the law. Hence, the precursors and leaders of such illegal occupations in government houses must be held accountable for their acts. The wrong deed is always wrong and should not be consented to by the authorities. It can't always defeat the doctrine of *dura sed lex* as enshrined by the Constitution. It is a moral necessity in nature. Otherwise, the same illegal occupation shall always be invoked.

On the other hand, it is inherent

that the government shall always consider the common good of its citizen. This is of paramount consideration. That is the essence of the existence of the government. A sufficient amount in its annual budget must be allocated for socialized housing. It must also ensure that the funds are actively, exclusively, and comprehensively for the legitimate beneficiaries. Moreover, it shall lambast, deride, and hold responsible those agencies and government officials who had maliciously maligned, misused, and misappropriated housing funds which is rampant and covert in any government projects such as socialized housing.

After all, the doctrine of *parens patriae* can always be invoked. The government shall act as the 'good father,' which provides the necessity of its subjects. Moreover, the situation of the citizen's standard of living always reflects a kind of government that the people do have.

However, the writer prays to emphasize that the doctrine must be carefully restrained by the government because it is subjective-wise. After all, the principle tends to be corruptible. It can always be invoked by the subject recipients, whether legitimate or not, that each citizen needs a decent home. The government must ensure that only those genuinely needy, the poorest of the poor, must be benefited. After all, the government had other projects that shall be prioritized otherwise, the limited funding of the government could be compromised. The conditional cash transfer (CCTs) of the government can be best attributed to the such

hullabaloo. After all, the Philippines were not such a progressive country and had limited resources to meet citizens' need.

Recommendation

The writer wishes to recommend in-depth reading for a thorough shed of ideas on the concept of Philippine socialized housing, particularly the Urban Development and Housing Act (for the updated jurisprudence and laws about urban and social housing), National Housing Authority Charter (as for the legal beneficiaries of the housing projects of the government), the various cases decided for housing programs in toto, and some current events and commentaries/ opinions about the *KaDAMAY* occupations on the government social housing which are available on-line.

¹ "House inquiry into gov't housing takeover sought". Manila Bulletin.

² "Anarkiya: Aksyon Ngayon". Al G Pedroche, Opinion, Ngayon, June 14, 2018.

³ Philippine Daily Inquirer, 12:12 A.M. April 12, 2017

⁴ Merriam-Webster Dictionary, cellphone application

⁵ R.A 1161; R.A. 8282; No. 9 Section XIII: Social Justice and Human Right, 1987 Philippine Constitution

⁶ Human Rights Principles, Defensor-Santiago, M., Quezon City, 2013 p. 14

⁷ Kreeger Bonagua, @inquirerdotnet, Philippine Daily Inquirer, 12:10 A.M May 13, 21017



ADR: A Catalyst of Change?

by Ruben B. Mila, Jr.

Conflict and Society

Life is nasty, brutish, and short, according to Thomas Hobbes¹. Men, according to him, are basically "selfish, driven by fear of death and the hope of personal gain"². Thus, by the nature of human design, we seek power to overpower others for survival and self-preservation. In his book entitled, *Leviathan*, he pointed out that men should be governed by a sovereign and a parliament, whereby men will enter into a social contract to surrender some of their rights to the government for the sake and safety of all. Without a governing body, society would be chaotic in the pursuit of power. Thus, conflicting interests will arise and divide the people in factions which, if not treated in accordance with law and order laid down by the government, would tear the very foundation of the society.

In the Philippines today, the theory of social contract is no longer transcendental. It is a reality in the perspective of our political system whereby some of men's rights are surrendered and subject to the least limitable police power of the state. In return, the state protects its people as *parens patriae*, that is, "the father of his country and the ultimate guardian of all people"³.

In reality, it is impossible to live in a society harmoniously and without conflict. Conflicting interests will surely arise sooner or later, between and among men. Whatever the causes may be, the end sought to be achieved is to reach an agreement where everyone is given an opportunity to speak and be heard based on terms agreeable with one another, in the name of justice and equity.

Theory and Purpose

"The primary mechanism of the government to settle conflicts is the Judiciary. One of the organs of the state, which has the duty to settle actual controversies involving rights which are legally demandable and enforceable"⁴. However, due to high number of cases lodged in our Courts, delays are imminent. The legal maxim that 'justice delayed; justice denied'

becomes more apparent. It also results in expensive litigation preying on a poor man's pocket.

To address this issue, the Congress, passed a law entitled, 'Alternative Dispute Resolution Act of 2004' ("ADR"). This law, without prejudice to the adoption of the Supreme Court of any ADR system, such as mediation, conciliation, or arbitration, is purposely to, in furtherance of State policy, "actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes"⁵. "The State shall encourage and actively promote the use of Alternative Dispute Resolution as an important means to achieve speedy and impartial justice and declog court dockets"⁶.

Appreciation In Judicial Reform

The Alternative Dispute Resolution is recognized as part of our judicial reform because it greatly helps in the administration of justice in the country. Sec 2 of R.A. 9285 provides that, "the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases." The State greatly recognized the passage of this law for it is timely, speedy, cost-effective, and affords the parties the right set their own terms and conditions to agree upon. Unlike in court litigation, where parties are bound to adhere to the judgement of the court.

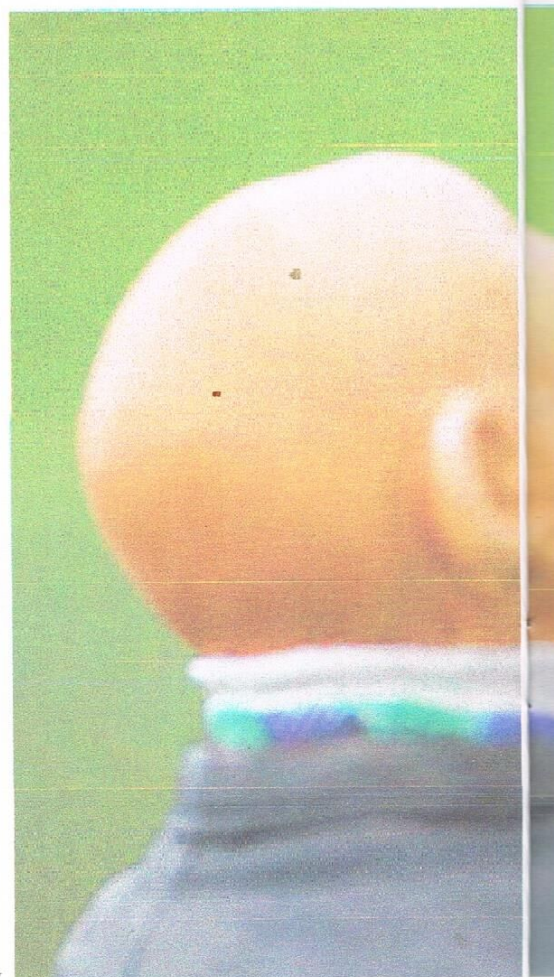
In applying and interpreting the law, Section 8 of R.A. 9285 provides that, consideration must be given to the need to promote candor or parties and mediators through confidentiality of the mediation process, the policy of fostering prompt, economical, "and amicable resolution of disputes in accordance with the principles of integrity of determination by the parties, and the policy that the decision-making authority in the mediation process rests with the parties"⁷. This provision means that, the parties are given a wide latitude of discretion as to the terms and conditions, within the bounds of law, with the help of the mediator in providing the most reasonable and equitable resolution, to arrive at an agreement.

Thus, conflicts, whether legal standing is present or not or whether

a right legally demandable and enforceable is in attendance or not, wantonly filed to harass, intimidate, influence, or forcefully subdue the opponent without legal basis, is prevented from ripening into becoming a court docket. It gives the parties speedy resolution of their conflicting interests because it is not obliged to follow strict formalities and procedures and keeps the parties away from costly adversarial litigation.

The Innovation

The ADR has made innovations and open new methods of dispute resolution. It is true that court litigation bounds the parties as to the determination and resolution of their disputes. On the positive, ADR expounds these boundaries and drastically reforms the judicial system, to say at least, to settle conflicts in court-annexed mediation or outside the bench, through third-party mediators and helps the system



into a judicial innovation.

By these, ADR is recognized not only as an alternative but as a primary option because parties, without prejudice to their right to file necessary actions, and as a policy of the State, is encouraged settle their issues at this level thereby recognizing the ADR as tool in reforming the judicial system of the country.

ADR: A Catalyst of Change

In line with the foregoing discussions, it is apparent that ADR is a catalyst of change in our judicial system, or is it? To the writer's mind, the adaptation of ADR is noble and just. While it is true that the primary function of ADR is to achieve speedy and impartial justice and declog court dockets,⁸ these ends sought to be achieved do not come easy without paying a price⁹. Hence, some questions need to be answered.

Rights of the Parties

Does it trample the rights of the parties? The answer is in the affirmative. ADR can be used as a stalling tactic¹⁰, that is, something that someone does intentionally in order to delay taking action or prevent someone

from doing something for a period of time¹¹ and can be weaponized to delay, hamper, or prevent the speedy and impartial disposition of cases within and outside the bench. Thus, the rights of the parties may not be protected by alternative dispute resolution.¹² It resolves only issues of money or civil disputes. Alternative dispute resolution proceedings will not lead to injunctive orders. They cannot result in an order requiring one of the parties to do or cease doing a particular affirmative act.¹³ In reality, to achieve its goal of declogging court dockets, and for the mediator to have a high mediation rating, it forces the parties to settle their conflict based on their terms even without regard to the legal tenet thereby violating some, if not all, of the rights of the parties.

Deprivation of Substantial Justice

Is providing a speedy and impartial justice violate substantial justice itself in ADR? The answer is in the affirmative. On the first hand, one of the goals of R.A. 9285 and court-annexed mediation, is to achieve speedy and impartial justice.¹⁴ That is, the expedient disposition of cases or prevent or avoid delays in the administration of justice.

On the second hand, however, these goals, "speedy" and "impartial justice", are but legal fictions, an idealistic goal. Common logic would dictate that, things done speedily would not always result in absolute perfection and absolute perfection would not always result from things done speedily. Thus, speedy trial does not always result to providing impartial justice nor shall impartial justice be always the result of speedy trial. Thus, the existence of one derogates the effectivity of the other. There must be a careful treating of facts and application of law. A keen eye that considers all the circumstances necessary so as not to deprive the parties of substantial justice.

The consideration of facts in ADR is limited to the civil aspect of the issue.¹⁵ Generally, it does not apply to criminal cases for the offended party in crimes is the State and it does not bargain. In ADR, parties may have limited bargaining power. Parties do not have much of a say.¹⁶ While it is true that they are given the right set-up their own terms and conditions, this right is not absolute. It must be within the legal limits. The mediator has always

► 21





the final say and recommendation. Thus, when a Mediator forcibly resolves the issue by providing resolutions not amenable to the parties or that any of them would be directly or indirectly be injured, grounded on his wide latitude of discretion, they are deprived with substantial justice.

Declogging Court Dockets or Inability to Expand and Increase Courts?

Declogging court dockets may not be, in essence, the primary purpose of ADR. Rather, it is an incidental effect to the speedy and impartial administration of justice outside the bench or even in court-annexed mediation, conciliation, or arbitration, or disposition of cases in court. Thus, the more issues settled without repining into actual court cases, the lesser the number of cases filed in court thereby declogging the court dockets. It may be true, that this is just

“Common logic would dictate that, things done speedily would not always result in absolute perfection and absolute perfection would not always result from things done speedily.”

an incidental effect, but it is truer that this is a manifestation of the inability of the judicial branch of the government to expand and increase courts, a problem that needs to be addressed by the government itself. This goal is mechanical in nature. To lessen the burden of judges due to high number of cases being lodged. Thus, it is a diversion from our judicial system's weakness to address conflicts by resorting to an alternative dispute tool, which reliance of the people is not always attracted to for it does not guarantee resolution nor provide any legal precedent, and differs as to procedures or methods applied in

a case-to-case basis. Thus, its dynamism is susceptible to many negative factors that may result in an impasse or unresolved conflicts.

Power Imbalance

In resolving conflicts in ADR, one of the methods is the “take it or leave it” principle.¹⁷ This principle leaves the parties no choice but to accept the resolve offered or deprives the parties to set their own agreement by providing resolution not amenable to the parties, or would leave them analogous to what their situation were. In the perspective of power and influence, it is always the weak who will suffer from the judgement. It will always work in favor of the richer and more influential party. Thus, the laws of nature shall apply, the apex predator will always stay on top of the food chain and the prey will always stay at the bottom. In other words, the weak shall die, the strong shall live.

Note: A Tiger is an Apex Predator! So, it shall live.

Lack of Transparency

The hearings in ADR are generally held in private, rather than being held in a public and open courtroom. Thus, the facts presented by the parties, the procedures taken, and the judgement, cannot be accessed by the public. By this fact, it is susceptible to bias and partiality. Section 9, paragraph (a) of R.A. 9285 provides that, information obtained through mediation shall be privileged and confidential.¹⁸ By this fact of confidentiality, judgement rendered therein is kept away from scrutiny by public opinion or even away from frequent review by courts. Since the mediation solely relies on the agreement by the parties, even if those agreements are unreasonable, they may be obligated to agree. Hence, unreasonable judgement may be rendered, wanton and deliberate in character, and tainted with abuse of power and judgment.

In Summary

The purpose of ADR is sacred and noble. It keeps peace and serves justice. Although achieving these goals pose danger and repercussions, which if left unchecked, would in the future bear

more chaos than peace.

The foregoing discussions, in reality, is only a part and parcel of the negative impact of ADR in the administration of justice. The writer cannot deny the fact that it relieves would-be-litigants from anxiety and unreasonable expenses in achieving impartial justice. But the process of achieving such greatly affects the rights of the parties and substantial justice due to power imbalance and lack of transparency, to mention a few. However true this may seem, the question remains, is ADR really a catalyst of change?

1 Yale Books. (APRIL 5, 2013). THOMAS HOBBS: ‘SOLITARY, POOR, NASTY, BRUTISH, AND SHORT’.

2. Ibid

3 The People's Law Dictionary. (January 1, 2002).

4 Bernas, S.J., (2009). 1987 Constitution of the Republic of the Philippines: A Commentary. 2009 Edition p.946

5 R.A. 9285

6 Festin, G.L. (2021). Alternative Dispute Resolution and the Arbitration Law. 2021 Edition p.1.

7 Kumar A. (September 09, 2021). Alternative Dispute Resolution System: Global and National Perspective

8 Twelfth Congress. (April 02, 2004). Republic Act No. 9285 AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES.

9. Ibid

10 Lawyers & Jurists. (2017). EXPLAIN THE ADVANTAGES AND DISADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION. 11 Cambridge Dictionary. (2022) Stalling tactic.

12 Ibid.

13 Ibid.

12 Ibid.

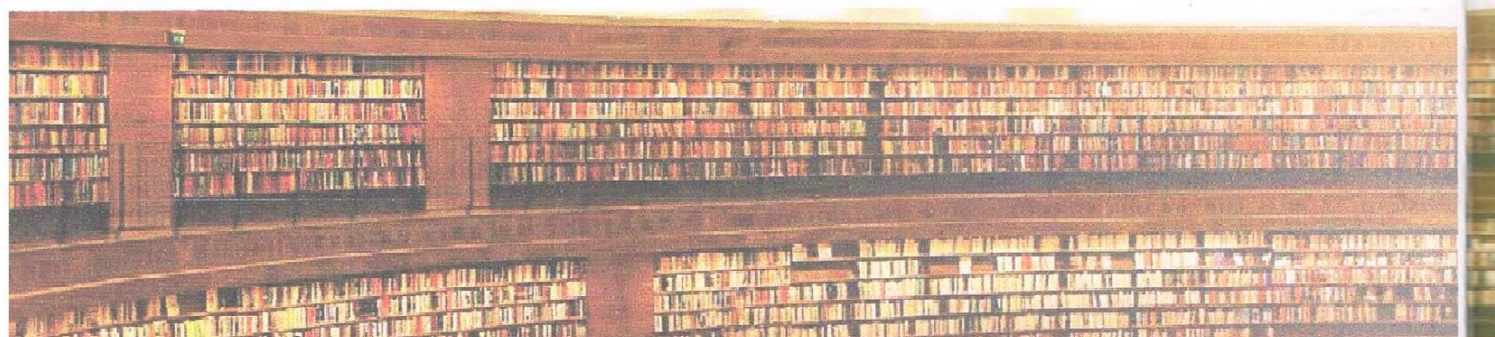
13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid.

17 Miller, B. (July 31, 2016). 6 Pros and Cons of Alternative Dispute Resolution.



KNOWLEDGE IS POWER

by Robercito C. Villoriente

Youth plays a vital role in national development. They are the hope and the future of our country. Education propels the youth in the right, proper and straight direction.

Fundamental human right of the youth is the right to education. Every individual is entitled to this right, irrespective of race, gender, nationality, ethnic or social origin, religion or political preference, age or disability.

In relation to this, the Congress passed a bill, which was approved by then President Rodrigo Duterte on August 3, 2017. This refers to Republic Act No. 10931, also known as Universal Access to Quality Tertiary Education Act, granting a free tuition and other school fees in the tertiary education. Such law covered state universities and colleges, local universities and colleges and state-run technical-vocational institution to strengthen the unified student financial assistance system for the tertiary education. The said law is apparently a clear manifestation that the State recognizes the right to education of all Filipinos.

A better educated population contributes essentially to the vision of the future, for investing in human capital is infinitely more urgent than investing in physical infrastructure. Moreover, education has been regarded in all societies and throughout human history both as an end in itself and as a means for the individual and society to grow. Its recognition as a human rights is derived from indispensability of education to the preservation and enhancement of the inherent dignity of the human person.

It is important to remember that education is not a privilege, but it is a human right. The State shall have the obligation to protect, respect and fulfill the right to education. There are ways to hold states accountable for violations or deprivation of the right to education.

With this mind, many societies have traditional view that education is for genuine public good that adults and educators provide for children until such time that they outgrow their childhood vulnerabilities and inexperience to become contributing members of society themselves.

Based on study, many countries have been part of international and regional political drives to ensure that all children have access and

complete education. Note, however, that education will benefit both the children and the society. Education can break generational cycles of poverty by enabling children to gain the life skills and knowledge needed to cope with today's challenges. Also, education empowers children to be full and active participants in the society, able to exercise their rights and engage in civil and political life.

The United Nations agrees that education is a right to which all human beings are entitled. If this is so, then there is an important need to question the role that the government plays to support the institutional reforms necessary to achieve basic primary education for all.

Human rights advocates claim that every child has a right to education. This claim is based primarily on two premises. First, rights advocates

"Every individual is entitled to the right to education, irrespective of race, gender, nationality, ethnic or social origin, religion or political preference, age or disability."

endorse the right to education because they believe that if children receive basic primary education, they will likely be literate and numerate and will have the basic social and skill life necessary to secure a job, to be an active member of a peaceful community, and to have a fulfilling life. Secondly, rights advocates recognize that, despite this recognition of education as a right by the Universal Declaration of Human Rights (UDHR), many children fail to benefit from even basic primary education. This gap between the positive recognition of the right to education and the negative reality facing many children has led rights advocates to conclude that education must be considered a human rights issue on par with the right to food or the right to freedom.

Today, education remains an inaccessible right for millions of children around the world. According to research, about more than 72 million children of primary education age are not in schools and 759 million adults

"An investment in knowledge pays the best interest."

- Benjamin Franklin

are illiterate and do not have awareness necessary to improve both their living conditions and those of their children.

In developing and developed countries, children do not have access to basic education because of inequalities that originate in sex, health and culture identity (ethnic origin, language, religion). These children find themselves on the margins of the education system and do not benefit from learning that is vital to their intellectual and social development.

Primary education is a major issue and a sizeable problem for many states. Many emerging countries do not appropriate the financial resources necessary to create schools, provide schooling materials, not recruit and train teachers. Funds pledged by the international community are generally not sufficient enough to allow countries to establish an education system for all children.

Quality education is viewed as any country's pillar of success. It is the best that the country can offer, a call that leads to quality employment for a better quality of life. Hence, lawmakers should still be in the lookout for potential advancement in the current status of our education system.

Towards this end, the claim that a right to education is a human right is an important claim. It is an important claim because there is a responsibility to enable children to develop an acquired set of capabilities to lead their own lives in a meaningful and fulfilling way.

Education plays a large role in achieving just societies because education can develop a child's sense of self, sense of community, and sense of citizenship. While it is true that the provision of education is costly and multifaceted, a public institution of education needs to be in place to manage the kinds of educational opportunities that are available and to secure the kinds of resources that are necessary.

So, while it is important to secure and protect a right to education, it is equally important to be able to convert this right into a meaningful action. Having rights is only effective in influencing an individual's standard of living if that individual can do something with that action, both within the immediate society to which the child belongs and within the global society in which the child will interact.



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