

# Rights of Alleged Victims in Penal Procedures in the Philippines

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## Abstract

This paper seeks to give the readers an overview of relevant laws in the Philippines concerning child abuse and child sexual exploitation, with the intention of providing the Church with resources in the development of its canonical procedure in dealing with clerical sexual exploitation of minors and vulnerable adults.

Keywords: victims' rights; Philippine child abuse legislation; reporting child abuse; child protection measures; multidisciplinary approach; child sexual abuse; penal procedures

## 1. Introduction

One of the more elementary principles pioneered by the 1987 Constitution of the Republic of the Philippines revolves around the inviolable separation of Church and State. Fortified by the similarly formidable “non-establishment clause”, i.e., the state is prohibited from passing any law favouring one, some or all religions, the aforementioned principle, found in Section 6 of Article II, straightforwardly states that “the separation of Church and State shall be inviolable”. To the uninitiated, this principle simply means that neither can interfere with the affairs of the other.

But the principle is not ironclad, or at least it should not be, so as to forbid any form of exception. Much like the freedom of speech, so must the principle of the separation of Church and State bow to a form of allowance because it cannot and should not be used as a shield for impunity.

Talk of such exceptions is made in light of the purpose of this paper. As the State is and endeavours to remain a government of laws and not of men, crimes in these parts, no matter the identity of the perpetrator, do not pay. Even the country's president is not above the law that defines the State and punishes crimes.

Members of the clergy should not be different. Their robes should not be a reason for classification to sift them from the common malefactor in order to warrant different treatment insofar as punishment is concerned. On

the contrary, they ought to be treated more strictly since their demeanour and character should be beyond reproach and they are looked upon with the highest respect.

In the same manner, a priest alleged to have committed a crime ought to be subjected to the same process and procedure undergone by a lay person. Their robes should not entitle them to treatment unique from the rest. This becomes especially true when the act is unspeakable, like abusing a child.

The Philippines is and remains a relatively child-friendly country, or at least its laws are. Being a signatory to, and having consequently ratified, the United Nations Convention on the Rights of the Child<sup>1</sup>, it has, under the international law principle of *pacta sunt servanda*, remained true to its commitment to protect the rights of every Filipino child.

Thus, even prior to its ratification of the Convention in 1990, the Philippines had already declared its role as a defender of the said rights when, under Article 15 of Section 3 of its 1987 Constitution, it expressed its pledge to defend “the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development”. This provision will become the bedrock – the foundation, if you will – of all laws subsequently passed and enacted by the country’s legislature concerning the protection of children and their rights.

With children’s rights at its fore, this paper is, thus, submitted in connection with the Pontifical Commission for the Protection of Minors’ Seminar by looking at the very important topic of alleged children victims’ rights in canonical penal procedures. It will discuss the laws and procedures the Philippines currently adopts in addressing the protection and redress of children’s and minors’ rights. It will further provide some suggestions to the commission as to what it may consider adopting in order to strengthen the protection of minors in canonical penal procedures as well as to develop working partnerships between Church authorities and private non-government organisations (NGOs) dedicated to helping minors.

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1 The Philippines ratified the Convention on 21.8.1990, being one of the first countries to ratify it.

## 2. Philippine Laws on Children

### A. 1987 Constitution

The 1987 Constitution of the Republic of the Philippines – the country’s most fundamental law to which all enacted laws must conform – contains Articles II and XV, both of which dwell on the protection of children and their rights.

Article II declares the country’s principles and state policies. With specific reference to young people, Section 13 thereof provides that “the State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being” and as well as “inculcate in the youth patriotism and nationalism and encourage their involvement in public and civic affairs”.

Article XV, on the other hand, involves discussion with the family, with its Section 3(2) declaring that the State shall *defend*, among others, “the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development”.

While obviously not self-executory<sup>2</sup> – i.e., laws must still be passed for them to have any effect – these provisions express a serious tone: protection of children is a serious obligation of the government.

### B. United Nations Convention on the Rights of the Child

The country’s commitment to advancing the rights of children is manifested through its government’s ratification of the United Nations Convention on the Rights of the Child on August 21, 1990. While its current constitution took effect earlier, its ratification of the said convention is a reflection of the country’s declaration in its fundamental law to be a vanguard and champion of children against all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development. It is the country’s adherence to the international law principle of *pacta sunt servanda* that paved the way to its legislature’s enactment and the subsequent passage of numerous laws geared towards the protection of children.

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2 “A provision which lays down a general principle [...] is usually not self-executing.” (Manila Prince Hotel v. Government Service Insurance System, G.R. No. 122156, [February 3, 1997], 335 PHIL 82–154).

### C. Republic Act No. 7610 and Similar Legislation

Immediately after the country's ratification of the UN Convention on the Rights of the Child, its legislature passed a law to provide comprehensive protection against abuse of children. Known by its long title as "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation, and Discrimination, Providing Penalties for its Violation, and For Other Purposes", Republic Act No. 7610|was enacted by the Philippine Congress to protect Filipino children from all forms of abuse, neglect and exploitation. Up until the present, the law remains the principal and most comprehensive legislation geared towards the protection of children against abuse and exploitation.

Through time, several other laws were passed which, in one way or another, also touch on the protection of children's rights. Some of these are Republic Act No. 9231, which is an "Act Providing for the Elimination of the Worst Forms of Child Labour", Republic Act No. 9208, which was later amended by Republic Act No. 10364, known by its short title as "The Anti-Trafficking in Persons Act of 2003" and Republic Act No. 9775 or "The Anti-Child Pornography Act of 2009". In March 2022, the President of the Republic of the Philippines signed into law Republic Act No. 11648. When it comes to the protection of children's rights in the Philippines, R.A. No. 11648 is seen to be a significant innovation in legislation, inasmuch as it raises the age of consent from twelve to sixteen. It also amended certain provisions of the earlier mentioned R.A. 7610, raising, for instance, the penalty for trafficking of children under sixteen, among others.

### D. Essential Definitions

Before we discuss the above-mentioned laws, it is necessary to first get acquainted with pertinent concepts and definitions and how Philippine law understands them. Of all the concepts taken up in this paper, the legal definition of the word 'child' is of paramount importance. Under R.A. No. 7610, a child is not just anyone below 18 years old. It defines a child as someone who: (1) is *below* 18 years of age; or (2) is 18 years of age or above *but* is unable to fully take care of himself or herself or protect himself or herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. In other words, even if an

abused victim may be far above the legal age, a case for child abuse can *still* be filed on his or her behalf provided he or she is unable to fully take care of himself or herself or protect himself or herself from abuse, as the law states.<sup>3</sup>

As for the definition of the term ‘child victims’, the law categorises them into three groups: (1) *abused* or those subjected to physical, sexual, emotional and psychological abuse; (2) *neglected* or those abandoned or deliberately unattended by their parents or guardians; and (3) *exploited* or those subjected to commercial sexual exploitation, economic exploitation and other exploitative situations.

Among these different categories of child abuse, one appears to be of pressing concern within the Church today – that of child sexual abuse. As such, it is necessary to be acquainted with this particular category of child abuse as Philippine law understands it. Under the law, child sexual abuse is defined as “the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation or prostitution of, or the commission of incestuous acts, on a child”.<sup>4</sup>

“Lascivious conduct” here means the:

intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object of the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.<sup>5</sup>

The acts described above automatically give rise to a reason for filing a case of child abuse. However, R.A. 7610 does not merely penalise overt acts. Under Sec. 10 (b) Article VI of the same law, it is stated that:

[a]ny person who shall keep or have in his company a minor, twelve (12) years or under or who is ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlour, beach and/or other tourist resort or

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3 Cf. Republic Act No. 7610, no. 5.

4 Implementing Rules and Regulations of Republic Act No. 7610 [1993].

5 Ibid. nt. 10.

similar places shall suffer the penalty of prison mayor in its maximum period and a fine of not less than fifty thousand pesos (PHP 50,000.00).<sup>6</sup>

Thus, any person caught together with a child 16 years old or younger, or one who is at least 10 years younger than him or her can already face a penalty under the law. It is not even necessary for him or her to engage in lascivious conduct, sexual intercourse and the like in order to be made liable under this law. If they are caught together in any public or private place, the perpetrator can be made liable for child abuse. Be that as it may, R.A. 7610 goes on to qualify that “this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition, or acts in the performance of a social, moral or legal duty”.

Republic Act No. 7610 and other associated laws will be further discussed below.

### *3. Government Efforts to Protect Children: An Overview*

#### *A. Committee for the Protection of Children*

As modern types of abuse against children were better understood, in 2011, the Philippines recognised that it would take a ‘whole of government’ approach in order to effectively reduce child abuse. Thus, the President of the Philippines established a committee of different government agencies to address the problem. By virtue of Executive Order No. 53, the President created what is now the Committee for the Protection of Children (hereinafter the Committee). Its lead agency is the Department of Justice (DOJ) in partnership with the Department of Social Welfare and Development (DSWD) and other government agencies.

#### *B. Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation*

At the onset of its creation, the Committee immediately realised that to effectively reduce, if not totally eliminate child abuse cases, a partnership had to be developed and supported that included the private sector, not

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<sup>6</sup> Republic Act No. 7610, no. 5.

just government agencies. Thus, the Committee issued a *Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation* for the guidance of all government agencies, non-government organisations and other stakeholders concerned. Currently, this protocol serves as the guide on the roles and responsibilities of government agencies and their partners. These roles range from the initial duty to report or refer a child abuse case to law enforcement agencies through the entire process of protection of the child to ensure that child victims are dealt with in the most child sensitive and appropriate manner.

#### *4. Stages of a Child Abuse Case: Frequently Asked Questions*

Child abuse cases are unique from other criminal cases in that they follow certain protocols and principles different from the rest. As such, various questions and inquiries may often arise. Some of these are:

##### *A. Who Can Report a Case of Child Abuse?*

Philippine laws make it clear that *anyone* can report an alleged case of child abuse, albeit the law goes further to specify certain categories of people who are categorically mandated to report situations to appropriate offices.<sup>7</sup>

The law first addresses government employees and enumerates the following government workers considered *duty bound* to report incidents of child abuse:<sup>8</sup>

- 1) Teachers and administrators in public schools;
- 2) Probation officers;
- 3) Government lawyers;
- 4) Law enforcement officers;
- 5) Barangay officials;
- 6) Correction officers and
- 7) Other government officials and employees whose work involves dealing with children.

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<sup>7</sup> Cf. Republic Act No. 7610 cf. no. 5.

<sup>8</sup> Cf. Implementing Rules and Regulations of Republic Act No. 7610, nt. 10.

The law also imposes a *mandatory obligation to report instances of child abuse on the private sector*. In section 4 of the implementing rules of Republic Act No. 7610, it is stated that:

[t]he head of any public or private hospital, medical clinic and similar institutions, as well as the attending physician and nurse, shall report, either orally or in writing, to the Department the examination and/or treatment of a child who appears to have suffered abuse within 48 hours from knowledge of the same.<sup>9</sup>

On that note, while it may be conceded that members of the clergy, who are not among those named by the law mandatorily bound to make a report, it is believed that they nonetheless are morally bound to do so, since the law is quite clear that *any person* may report such cases. In fact, it is the stance of the Committee for the Special Protection of Children that it is one's civic and moral duty to report a child abuse case (cf. Department of Justice, *Child Protection Program*). Since priests are among the most trusted members of the community, they are *expected* to report all cases of child abuse that come to their attention.

## B. Where to Report?

To clarify to whom a person must report child abuse, the law specifies a number of different agencies.<sup>10</sup>

These are:

1. Department of Social Welfare and Development (DSWD);
2. Commission on Human Rights (CHR);
3. Local Social Welfare and Development Office;
4. Philippine National Police (PNP);
5. National Bureau of Investigation (NBI);
6. Other law enforcement agencies;
7. Punong Barangay or tribal leader;
8. Barangay councillor;

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<sup>9</sup> Ibid.

<sup>10</sup> Cf. Committee for the Special Protection of Children, Protocol for Case Management, nt. 12, 14.



9. Any member of the Barangay Council for the protection of children and
10. Barangay Help desk officer.

When a report is received by any of the local agencies listed above, they will, in turn, report the case to the DSWD or to the Local Social Welfare and Development Office or to the PNP, particularly its Women and Children Protection Unit.

### C. What Happens After a Child Abuse Case is Reported?

A platinum standard guides all Philippine agencies, both public and private, concerning actions involving children:

The best interest of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities and legislative bodies, consistent with the principle of First Call for children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.<sup>11</sup>

When a report of child abuse is received, the agencies concerned shall undertake actions corresponding to their mandates and in cooperation with other agencies to effectively implement the provisions of R.A. No. 7610 and other child-related laws.

As provided for in the *Protocol of the Special Committee for the Protection of Children*, if the report is made at the barangay<sup>12</sup> level, the Local Social Welfare Development Officer concerned must be contacted for validation of complaint and assessment within 24 hours.

If the main request is assistance in filing a case, the child must be referred to the police for a proper police investigation to be conducted. The child is thereafter referred to the nearest women and children protection unit of the police station concerned or, if none exists, to the medico legal officer or to the city or municipal health officer. The referrals made to

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<sup>11</sup> RA 7610, no. 5.

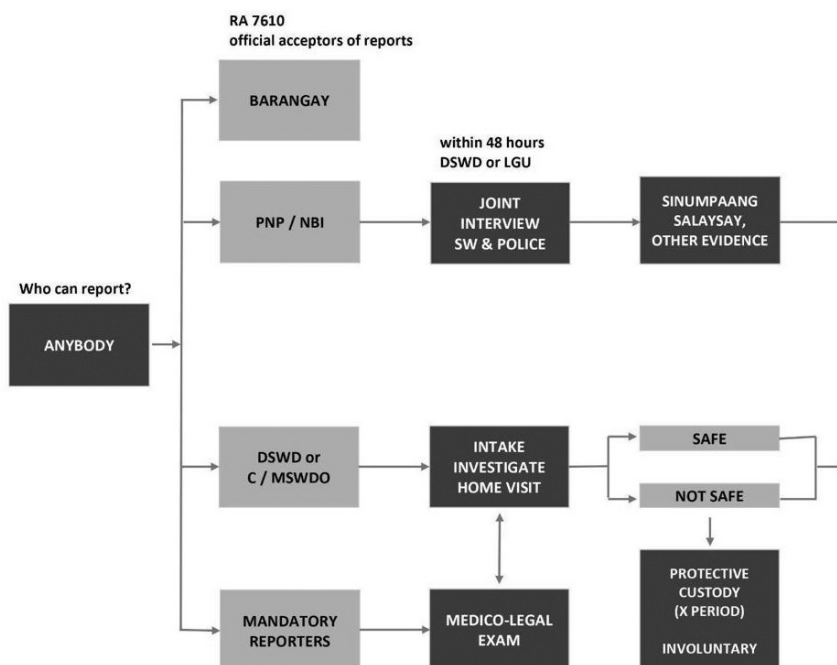
<sup>12</sup> In the Philippines, the *barangay* is considered the smallest local government unit.

the government officers and doctors enjoy the presumption of regularity, which is important to the prosecution when prosecuting the case later.<sup>13</sup>

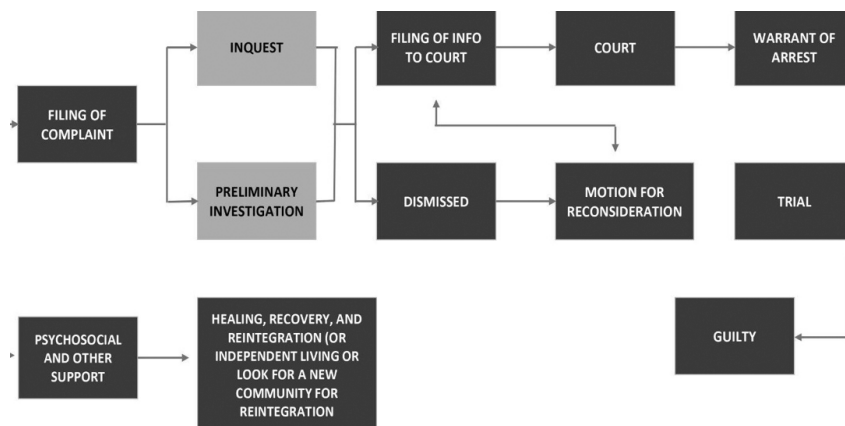
The importance of this procedure cannot be overemphasised since it is the proper observance of the established Protocol of the Special Committee for the Protection of Children which ensures the effective and successful prosecution of a child abuse case.

On the next pages is a flow chart summarising the management of cases of child abuse as found in the *Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation*.

*Tue Flowchart on the Management of Cases of Child Abuse, Neglect and Exploitation*



13 “By actual practice, only government physicians, by virtue of their oaths as civil service officials, are competent to examine persons and issue medical certificates which will be used by the government. As such, the medical certificate carries the presumption of regularity in the performance of his functions and duties.”, *Tarapen y Chongoy v. People*, G.R. No. 173824, [August 28, 2008], 585 PHIL 568–598.



#### D. Who Can File a Case of Child Abuse?

The violation of Republic Act No. 7610 is a crime against persons, a public crime. As such, the right to file a complaint does not rest solely and exclusively with the offended party. Under the law, a complaint against a person who abused a child may be filed by any of the following:

- 1) Offended party;
- 2) Parent or legal guardian;
- 3) Ascendant or collateral relative of the child within the degree of consanguinity;
- 4) Duly authorised officer or social worker of the DSWD;
- 5) Officer, social worker or representative of a licensed child-caring institution;
- 6) Punong barangay;
- 7) At least three (3) responsible citizens from the community where the abuse took place who have personal knowledge of the offences committed.

The inter-agency Protocol referenced above<sup>14</sup> provides that when a child abuse case is reported to the local social welfare officer or to the police, the former must determine if there is a need for the child to be taken under protective custody. Subsequently, the child victim should be brought

<sup>14</sup> Committee for the Special Protection of Children, Protocol for Case Management (cf. nt. 12).

immediately to a government hospital or clinic for physical and medical examination.

The medical certificate issued by the government doctor on the results or findings of the medical examination of the child is documentary evidence which could later be used in the determination of probable cause for the filing of the corresponding formal charge for child abuse in court. Thus, in these cases of child abuse, it is imperative to act with haste in order to prevent the child from being subjected to undue influence, threat and harassment. Otherwise, the child or any person who has his or her custody and care may in the end choose not to pursue the case, thereby preventing the child from being subjected to timely medical attention.

#### E. What Happens when the Alleged Child Victim Files the Case upon Reaching the Age of Majority?

A child victim who has reached legal age can still file a case for abuse committed against him/her in his/her minority provided that the crime has not yet been prescribed. In this case, the offended party would then have to undergo the penal process the regular way.

Depending on the crime committed against the victim, prescription periods can range from a few years to even a couple of decades.

As a general rule, prescription usually begins to run from the moment the crime was committed. However, there are instances when the law admits exceptions. The ‘blameless ignorance’ doctrine, as stated in the *Department of Finance-Revenue Integrity Protection Service vs. Office of the Ombudsman* (2021), is an instance wherein “the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action”.

In cases like this, an offended party enjoys a longer period within which he or she can pursue a case. If such a party was a naive minor at the time the crime was committed, the blameless ignorance doctrine can very well apply, which means that if he or she discovers the ‘existence of a cause of action’ much later, he or she still has the right to file a case by virtue of said doctrine.

In the Philippines, the running of the prescription is understood to be interrupted when the complaint or information is filed.<sup>15</sup> However, the prescription period is also understood to not run when the offender is not present in the Philippines.<sup>16</sup>

This is important in cases where the offender flees the country in order to escape liability or to prevent the victim from pursuing him or her. In that instance, the prescription period is deemed to be interrupted, and the victim could buy time to file the case in court.

#### F. Should the Child be Separated from his/her Parents?

One important question to ask after the *prima facie* determination that a child may have been subjected to child abuse is this: is it necessary to remove the child from the custody of his/her parents?

When a child/victim remains in the custody of his or her parents, he or she is left vulnerable to being influenced or coerced by them. Considering the authority and control they hold over the child, it is possible that the child can be forced to succumb to their pressure and be prevented from pursuing any legal action. In cases like these, two legal principles come into play: the law on Obstruction of Justice under P.D. No. 1829 and the doctrine of *Parens Patriae*.

Under sec. 1(a) of P.D. 1829 (1981: no. 25), the crime of obstruction of justice is committed when any person:

knowingly or wilfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by [...] preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats.

Thus, if parents, guardians, or *any person* for that matter, attempt to prevent a child from testifying or reporting the commission of the crime to the authorities, as prescribed by the State, they can be held liable for obstruction of justice and be made to face a penalty of up to six years.

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<sup>15</sup> Cf. Article 91, Revised Penal Code, Act No. 3815, [December 8, 1930].

<sup>16</sup> Cf. *ibid*.

However, the State has already anticipated the possibility that parents, or guardians may, for the sake of preserving honour, prevent their child from reporting abuse. This is where *Parens Patriae* comes in. Under the doctrine of *Parens Patriae*, the State has the inherent power to intervene and remove the child from the custody of his or her parents in order to protect the child's best interests. By virtue of this doctrine, the child can be committed to protective custody or involuntary commitment through a petition filed in court.<sup>17</sup> At this point, the parents cannot intervene in the judicial process anymore, as a general rule.

When the investigation discloses sexual abuse, serious physical injury, or life-threatening neglect, the social worker of the local social welfare and development office concerned, with the assistance of the law enforcement agency and/or barangay, shall immediately remove the child from the home or the establishment where the child was found and must place the child under protective custody to ensure the child's safety.<sup>18</sup>

When the social worker's assessment report calls for continuing protection of the child victim in view of the abusive or exploitative environment in their home, or the inability of parents/guardians to protect the child, and the high risk of the child being harmed in said situation, the local social welfare shall immediately, with the assistance of the DSWD social worker, file the Petition for Involuntary Commitment in court.

#### G. Can the Alleged Victim Appeal the Court's Decision?

In the case of *People vs. Hon. Asis* (2010: 462, 469), the Philippine Supreme Court stated that "In [Philippine] jurisdiction, [the Court] adhere[s] to the *finality-of-acquittal doctrine*, that is, a judgment of acquittal is *final and unappealable*". The rationale of this rule was further explained in *Chiok vs. People* (2015), where it is stated that:

the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as

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17 Cf. Implementing Rules and Regulations of Republic Act No. 7610, no. 10.

18 Protocol for Case Management, 23.

enhancing the possibility that even though innocent, he may be found guilty.

As such, an appeal on a judgement of acquittal is considered to be double jeopardy, which is prohibited under the 1987 Philippine Constitution.<sup>19</sup>

However, Philippine jurisprudence still admits certain departures from the general rule. In the case of *People vs. Alejandro y Pimentel* (2018), it is stated that “the rule on double jeopardy [...] is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances”.

Taking these case laws into consideration, it is submitted that despite a judgement of acquittal of the accused, an alleged victim still has a remedy for himself or herself, as long as the requirements as stated in the above-mentioned *Alejandro* case are met.

#### H. How Can the Victim Recover Damages in a Criminal Case?

In Philippine jurisdiction, a victim can recover civil damages from a criminal case simply by filing the criminal case and obtaining a judgement of conviction. Under Section 1, Rule 111 of the Philippine Rules of Court,<sup>20</sup> it is stated that the civil action for the recovery of civil liability arising from the offence (civil liability *ex delicto*) charged shall be deemed instituted with the criminal action. This means that the right for the victim to claim civil damages is already incorporated into the criminal case. An exception to this rule, however, would be if the offended party decides to waive the civil action, reserve the right to institute it separately or institute the civil action prior to the criminal action. In that case, the prosecution of the criminal offence would not involve the awarding of civil damages.

Taking these points into consideration, one may ask: what are the implications of civil liability *ex delicto*? What does it include?

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19 No person shall be twice put in jeopardy of punishment for the same offence. 1987 Phil. Constitution, (cf. no. 5).

20 When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offence charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. (Revised Rules of Criminal Procedure, A.M. No. 00–5–03–SC, [October 3, 2000]).

In Philippine law, civil liability includes the restitution, reparation or indemnification of the victim for the damage or injury she/he sustained by reason of the felonious act of the accused.<sup>21</sup> Thus, in cases of child abuse, civil liability can mean the accused being made to pay for hospital bills and/or psychological treatment in case the child victim ends up needing professional intervention. However, civil liability need not be based on the injuries suffered personally or directly by the victim. Under the law, it is submitted that civil damages can be awarded as well on the basis of injuries suffered by the victim's family, or even by a third person by reason of the crime. This is indemnification for consequential damages.<sup>22</sup>

Civil liability *ex delicto* can also include the awarding of moral and exemplary damages to the victim of a crime. Moral damages, under the law, are compensation for "manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation".<sup>23</sup> This type of damages can be significant in cases of child abuse, where a child victim would undoubtedly have suffered mental anguish and serious anxiety by reason of his or her abuser's conduct.

On the other hand, exemplary damages are those which are imposed by way of example or correction for the public good.<sup>24</sup> In other words, these are damages that a defendant could be made to pay for as a way of deterring people from committing a similar crime. In cases of child abuse, this type of damages can also be consequential. Considering the gravity of a child abuse case, courts would not hesitate to set an example to the general public by making the accused pay a hefty sum of money, if only to deter people from committing the same act he or she was convicted of.

## I. What Happens if Both the Victim and Perpetrator are in Different Jurisdictions?

It is a given fact that in some cases of child abuse, both the victim and perpetrator may be citizens and/or residents of different states, thus making them subject to different laws. This may pose a hitch in the prosecution of

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21 Cf. Revised Penal Code, Act No. 3815, [December 8, 1930].

22 Indemnification for consequential damages shall include not only those caused to the injured party, but also those suffered by his family or by a third person by reason of the crime. (Revised Penal Code, Act No. 3815, [December 8, 1930]).

23 *Del Mundo v. Court of Appeals* 1995, 367–378.

24 Cf. Civil Code of the Philippines, Republic Act No. 386, [June 18, 1949].



the criminal case, for one because the respective laws that govern both the victim and perpetrator might clash with each other (thus giving rise to the application of Conflict of Laws principles), and for another because of the plausibility that justice – which is best served by a tribunal that understands the child victim’s context and circumstances – may be dispensed in a way that fully accommodates the totality of the victim’s interests.

In situations like these, treaties and international agreements for the protection of victims now come into play. Extradition treaties and agreements for mutual legal assistance help ensure that a child victim properly receives thorough and more total justice.

#### a. Mutual Legal Assistance in Criminal Matters

The Philippines, for its part, has set in place mechanisms and legal frameworks to make this work. The *Mutual Legal Assistance in Criminal Matters* (2021) is a set of guidelines by which states can request mutual legal assistance for the prosecution of crimes committed across jurisdictions. The types of assistance it offers include:

- taking the testimony or statement of persons;
- providing documents, records and items of evidence;
- locating or identifying witnesses or suspects;
- effecting serving documents;
- making arrangements for persons to give evidence or assist in an investigation;
- identifying, tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities, including the restraining of dealings in property or the freezing of assets alleged to be related to a criminal matter;
- executing requests for searches and seizures.

The following countries have an agreement on mutual legal assistance in criminal matters with the Philippines: Australia, China, Hong Kong Special Administrative Region, Korea, Russia, Spain, Switzerland, United Kingdom, United States.

For countries without a mutual legal assistance agreement, recourse may still be had via an undertaking of reciprocity. Here, the Philippines can request legal assistance from a country with which it has no agreement; in return, that country would, in the future, expect the same assistance from

the Philippines when it is their turn to seek aid. Undertaking reciprocity can be accomplished with greater ease when the foreign country from which the Philippines requests assistance is a party in a relevant multilateral treaty of which the Philippines is also a member.<sup>25</sup> In this way, the interests of the child victim can be properly protected even in cases that span different jurisdictions.

#### b. Extradition Treaties

Another way through which a child victim's rights may be more properly protected across jurisdictions is through the process of extradition. According to P.D. 1069, which is the Philippine Extradition Law, extradition is the:

removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with any criminal investigation directed against him or the execution of a penalty imposed on him under the penal or criminal law of the requesting state or government.

In the Philippines, extradition matters are referred to a central authority, which is none other than its own Department of Justice. It is the Office of the Chief State Counsel of the Department of Justice that handles and processes all requests for extradition in accordance with the provisions of the Philippine Extradition Law and the applicable extradition treaty.

Under the law, the Philippines may only grant extradition pursuant to a treaty or convention. Countries which have an extradition treaty with the Philippines are: Australia, Canada, China, Hong Kong Special Administrative Region, India, Indonesia, Korea, Micronesia, Russia, Spain, Switzerland, Thailand, United Kingdom, United States.

By virtue of these extradition treaties, a perpetrator who flees to any of the above-mentioned countries can still be further pursued and prosecuted.

#### J. What if the Child Refuses to Undergo a Legal Process?

Indeed, not all abused children are willing to go through the burden of a legal process. Sometimes, forcing a child to submit to the system may not be in her/his own best interest. Taking these assumptions into consideration,

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25 Cf. Department of Justice, *International Legal Cooperation*.

we have now evolved a more victim-centred approach, one that gives a great deal of emphasis to the state of mind and psychological well-being of the child. It recognises the mental and emotional needs of the child victim more than simply dispensing retributive justice. The *video* and *audio taped interview* is just one strategy with which prosecutors can develop strong cases to convict the perpetrators despite the victim's unwillingness to testify in court. This strategy, along with other child-friendly strategies laid down above, all lead to a bigger picture of holistic, more integral justice, where the child's legal and psychosocial needs are met.

Of course, the victim-centred approach does not in any way diminish the necessity of criminal prosecution. Successful prosecution remains a top priority in addressing the child victim's best interests. In my years of handling child abuse cases, I believe that nothing can send a powerful signal to perpetrators more than a successful prosecution. It remains a strong deterrent to the commission of the crime. As such, the Church's seriousness in deterring clerical child abuse can be best manifested in its willingness to collaborate with the State, not only in the psychosocial care of the child victim but also in the successful prosecution of the offender. This will not only help the Church purge its clergy of abuse, but it would also greatly benefit its image in the public eye to a far greater extent than simply sweeping alleged offences under the rug.

#### K. Can a State Investigation into a Child Abuse Case be Replaced by a Church Investigation?

If a case of alleged sexual abuse committed on a child by a priest is referred to an investigative body and subjected to an internal process within the Church institution *instead of* or *prior to* being immediately reported to the state authorities, there is a danger of the child victim experiencing potential re-traumatisation as her or his issues would not be legally addressed with dispatch. Ecclesial investigations are not recognised by the State as a valid replacement for its own proceedings, so this would lead to a situation where a child victim initially subjected to the rigours of Church investigation would have to be subjected again to another investigation by the State, thereby exposing the child to a greater risk of psychological distress. Moreover, the Church is not legally competent under State law to investigate the existence of probable cause or to appreciate evidence acceptable in court

for the purpose of dispensing criminal justice. Such is the domain of the State.

Nonetheless, this does not legally preclude the Church from conducting its own internal investigation on the veracity of the alleged sexual offence. State and Ecclesial investigations may proceed *simultaneously* with each other, as long as the latter *does not replace* the former.

### 5. *How the Child is Protected Throughout the Penal Process*

Throughout the different stages of the legal procedure, or even before or after then, the mental and emotional well-being of the child is of paramount importance. This is why the Protocol has laid down specific measures to be undertaken by every social worker, doctor or government agent involved in each stage of the case. These measures are designed to ensure that the child's mental and emotional states are not compromised, and that psychological trauma is minimised as far as possible. A summary of these measures follows:

#### A. Before Trial

Before the trial of the case, the protection of the child rests mainly in the hands of the social worker. It is the social worker's duty to ensure the child's mental and emotional state is properly maintained. In light of this, the *Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation* lists the following responsibilities and duties for the social workers to comply with:

- 1) Enrol the child in a 'Kids' Court Program', if one is available in the area. In the absence of such a programme, take the child to court before his/her appearance to ensure the child is familiar with the physical set-up, the characters (i.e., judge, prosecutor, defence counsel, court interpreter and other court staff), and the procedure. Enrol the child's parents or guardian in a similar programme so they, too, will understand the court process and appreciate how they can help the child prepare for court testimony.
- 2) Several days before the scheduled hearing, arrange a meeting between the child and the Public Prosecutor for rapport building and orientation for court testimony.

- 3) Act as a guardian ad litem (GAL) or support person who will accompany the child to court.
- 4) If the child is not a resident of the area where the court sits, arrange temporary accommodation for the child before the child testifies.
- 5) Coordinate with the court social worker, if there is one, and/or the public prosecutor and provide information requiring immediate court intervention (e.g., issuance of protection or provisional orders).
- 6) If the social case study has not been submitted yet, furnish the court, through the Public Prosecutor, Private Prosecutor, if there is one, or the court social worker, with a copy to help the latter determine and order other interventions that the child needs. If the social case study is not yet completed, submit the accomplished intake interview form and preliminary assessment report to the court.
- 7) If subpoenaed by the prosecution, testify and give the assessment and recommendation. Otherwise, share relevant and crucial information and issues that affect the child's willingness to participate in the court process with the public prosecutor and court, if necessary.
- 8) Periodically communicate with the public prosecutor to monitor the status of the case filed.
- 9) Help the child and family understand court processes and procedures.
- 10) However, it is not only the social worker who has the responsibility to protect the child's mental and emotional well-being. The public prosecutor is duty bound as well to assist the child in familiarising himself or herself with the court processes. It is understood that helping the child acquaint himself or herself with the legal process minimises the stress and anxiety that he or she may experience on top of the trauma of being victimised. The prosecutor's duties under the protocol before a child's case is brought to trial are as follows:
  - a) Prepare the child and other witnesses before their court testimony.
  - b) On a case-to-case basis, identify the sequence of witnesses that will best help and facilitate the child's testimony. If the child has post-traumatic stress disorder (PTSD), present other witnesses first or seek continuance of the proceedings until the child is able to testify.
  - c) With the help and in the presence of the parent, legal guardian or social worker, interview the child and prepare the child for court.
  - d) Arrange with the court a one-day trial or marathon hearing to reduce the time in court and minimise the child's absence from school and the disruption of the child's daily routine.

a. Videotaped and Audio Taped in-depth Investigation or Disclosure Interviews

There may also be instances where a child might be incapable of rendering his or her testimony in open court. This may be due to the mental and emotional stress brought about by the child's traumatic experience. As such, Philippine Evidence Rules admit the possibility of recording a child's in-depth and investigative or disclosure interview or testimony through video and audiotape as a way of perpetuating it. In section 28 of the *Rule on Examination of Child Witness*, A.M. No. 00-4-07-SC (2000), it is stated that: "A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding".

For cases like this, it must be ensured that the child's videotaped and audio-taped in-depth investigation or disclosure interviews have been conducted by a duly trained member/s of a multidisciplinary team or representatives of law enforcement or child protective services in a situation where child abuse is suspected in order to determine whether child abuse occurred.<sup>26</sup>

This videotaped and audio-taped interview can later be used during trial as evidence in lieu of the testimony of a child who is unavailable.

B. During the Trial

During the trial of the case, the responsibility of ensuring the emotional and mental well-being of the child is now shared by the prosecutor and the court. For the Prosecutor's part, the *Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation* recommends the following:

- 1) Move for exclusion of the public from the hearing or to have it conducted in chambers to protect the identity of the child and ensure the confidentiality of proceedings.
- 2) Ensure that there is no direct confrontation between the child and the alleged perpetrator. Screens, one-way mirrors and other devices such as live-link monitors to shield the child from the accused must be used.
- 3) If the child is hearing-impaired or differently abled, move for the appointment of a sign language expert or other professionals (e.g., special

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26 Cf. Rule on Examination of Child Witness, no. 36.

education teacher) who may help him/her effectively communicate with the Court.

- 4) If there is danger to the safety of the child, file a motion for reception of the child's testimony through alternative means, e.g., Skype or video conferencing, or motion for a change of venue for the case.
- 5) If the child has developmental delay, and such delay incapacitates the child from competently testifying in court, present the testimony of a developmental paediatrician to explain to the Court the reason why the child cannot testify. If the child is suffering from PTSD, present a psychiatrist to explain the condition of the child and the adverse effects of the abuse on him/her and to share recommendations to hasten or facilitate the child's healing and recovery.
- 6) After the child has testified, debrief the child with the help of a parent, legal guardian or social worker, explain what will happen next and give the child the opportunity to ask questions about the process and the case, and to articulate other related issues.
- 7) If the child is unavailable, prosecute the case by presenting other witnesses and evidence deemed sufficient to prove the alleged perpetrator's guilt. The child is unavailable in any of the following:
  - a) Deceased, suffers from physical infirmity, lack of memory, mental illness or will be exposed to severe psychological injury; or
  - b) Absent from the hearing and the child's attendance in court cannot be procured by process or other reasonable means.
  - c) The child's hearsay evidence (e.g., audio-taped or videotaped interview) shall be admissible if corroborated by other admissible evidence, such as the testimony of the forensic interviewer and the person who recorded, preserved and observed the chain of custody of the audio or video interview.
- 8) Upon the recommendation of the social worker, request the court to issue provisional and/or protection orders for the child.
- 9) Tap the assistance of the PNP and NBI<sup>27</sup> to locate missing witnesses.
- 10) Upon receipt of verified and confirmed information about the alleged perpetrator's possible flight, request the Court to issue a hold departure order.
- 11) Communicate with the Court about the child's immediate and long-term concerns and issues.

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27 The PNP (Philippine National Police) and NBI (National Bureau of Investigation) are Philippine law enforcement agencies.

- 12) Keep the child informed about the development of the case.<sup>28</sup>
- 13) If requested by the case manager, attend a case conference to help thrash out the child's issues and concerns that also impact the case.

On the part of the Court and its staff, the protocol recommends that:

- 1) Except for election and habeas corpus cases, trials on child abuse cases must take precedence over all other cases.
- 2) Dismissal of a child abuse case is prohibited solely on the basis of an affidavit of desistance or recantation submitted by the child and/or the child's family.
- 3) Any record regarding the child shall be confidential and kept under seal. The name of the child must not be indicated in the calendar of cases and in the Court's decision. During the arraignment, the name of the child must not be publicly read in open court. The child's alias, as indicated in the sworn statement, resolution and criminal information, shall be used to protect the child's identity.
- 4) Set the schedule of the child's testimony at the time most appropriate and sensitive to the child's age and condition. The child should testify only when well rested. Long delays and waiting times must be avoided.
- 5) The child shall not be exposed to the public. The court shall prepare a waiting room for child victims separate from the waiting room used by children in conflict with the law, other witnesses and litigants.
- 6) The child may testify in open court only after the public has been excluded. Alternatively, a hearing in the chamber can be conducted to prevent exposing the child to the public.
- 7) Before the child testifies, the Court must, in simple language, introduce the main characters (judge, prosecutor, defence counsel) and their roles, explain the basic rules in a court proceeding and give the child an opportunity to ask questions.
- 8) Without violating the alleged perpetrator's right to confront the witness face to face, the Court shall use screens, one-way mirrors, other devices or live-link monitors to receive the testimony of the child and to prevent direct confrontation with the alleged perpetrator.
- 9) The use of *testimonial aids* (e.g., dolls, anatomically correct dolls, puppets, anatomical drawings and other appropriate demonstrative devices) shall be permitted to facilitate the child's testimony.

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28 This includes making the full text of the decision available to the child victim.



- 10) The Court shall ensure that the examination of the child is conducted with the use of simple, developmentally appropriate, non-threatening and non-victim blaming words.
- 11) Proper court decorum must be maintained. Badgering and other oppressive behaviour towards the child is prohibited.
- 12) Whenever necessary and to facilitate the child's testimony, the Court shall appoint any of the following:
  - a) Support person – preferably, a person chosen by the child who can accompany the child during court testimony to lend the child moral support.
  - b) Facilitator – a person who can pose questions to the child if unable to understand or respond to questions asked. A facilitator may be a child psychologist, psychiatrist, social worker, guidance counsellor, teacher, religious or tribal leader, parent or relative.
  - c) Interpreter – a person whom the child understands and who understands a child that does not understand English or the Filipino language or is unable to communicate due to their developmental level, fear, shyness, disability, condition or other similar reason. The interpreter shall take an oath or affirmation to make a true and accurate interpretation.
  - d) Guardian ad litem (GAL) – a person who shall explain legal proceedings to the child; advise the Court regarding the child's ability to understand the proceedings and questions propounded; advise the Public Prosecutor concerning the ability of the child to cooperate as a witness for the prosecution; attend the trial and monitor and coordinate the child's concerns and needs with the Court.
- 13) In controversial child abuse cases, a gag order shall be issued to protect the identity of the child and the confidentiality of the proceedings.
- 14) On its own or upon a motion by any party, the Court may issue protection orders to protect the privacy and safety of the child and/or to order other appropriate intervention (e.g., immediate medical attention, referral to a mental health professional, placement in a temporary shelter, and such like).
- 15) After the child has testified, the Court must order the DSWD, the LSWDO or the NGO social worker to continue monitoring the child's safety and requirements for other interventions.

### C. After Trial

Even after trial of the case, the protection of the child continues as the protocol recommends that programmes and services be undertaken to ensure the child's full mental and emotional recovery. It puts emphasis on the social worker in determining the proper psychosocial interventions "geared towards healing, recovery and reintegration".

#### a. Multidisciplinary Approach

Perhaps the strongest legal protection so far in practice and experience is the multidisciplinary approach to a child abuse case.

In the *Protocol for Case Management of Child Victims of Abuse, Neglect and Exploitation*, it is stated that:

[t]he social worker acting as case manager on the case may convene a multi-disciplinary case conference participated in by doctors, police, representatives of temporary shelter directly involved in the child, lawyers or mental health professionals to analyse issues pertinent to the child-victim and come up with an inter-agency plan and recommendation for the child and family.

This holistic approach involving collaboration between different agencies and disciplines promotes the child's best interests.

### 6. Conclusion and Recommendation

The laws, cases and protocols discussed above are a manifestation of the state's undeniable desire to afford its protection to children. Children, after all, are the future of the State, and a state that cares for its children cares for its destiny. Undoubtedly, the Church also sees its children in the same way. Just as children are the hope of the state, children too are the hope of the Church. Seeing, then, the common treasure that children are to both State and Church, it is imperative that the two institutions work hand in hand to ensure that their rights are well-respected.

One way both institutions can collaborate with one another in addressing the problem of child abuse is for the Church to benchmark the best practices that the State has in place. For instance, the State's particular emphasis on protecting the child victim's psychosocial well-being, as well

as its victim-centred approach expressed in the guidelines and protocols above, is an important objective the Church must consider in formulating its canonical procedures.

Another way the Church can collaborate with the State is for it to take a proactive stance within the community in advocating child protection. Children, after all, are not only members of the Church alone or of the State alone, but of a whole community where the Church and State both play an active role. The Church must not hesitate, then, to become a loud voice in the public sphere, ardently preaching the necessity to protect children's rights and the obligation to report violations thereof. It should also not shy away from actually engaging in partnership with the State's efforts to dispense justice for child victims, providing concrete assistance to the State as needed. In this way, the community, moved by the advocacy of its two most influential actors, can be mobilised to stand up and be vigilant in maintaining a more secure environment for children.

However, it is unavoidable that the interests of both Church and State can sometimes run into one another, thereby blurring an opportunity for a more ideal response to clerical child abuse cases. For this reason, I humbly recommend the creation of an independent lay body within the Church, subject directly to the Pope or through the Pontifical Commission, whose paramount duty is to collaborate with the State in addressing child abuse cases involving the Church's clergy and religious figures. Since it serves as an intermediary between Church and State interests, it is imperative that this body be composed primarily of lay people, preferably experts in legal, psychological and other similar disciplines. The lay character of this body is necessary considering that victims of clerical child abuse, whom this body represents, happen to be primarily lay. It is only logical, then, that those who are to advocate for them should be lay people as well.

In order to maintain a universal presence, this lay body shall have regional offices in every bishop's conference and satellite offices in every diocese. Its responsibilities include actively cooperating with the State in the investigation and prosecution of perpetrators, keeping track of every case reported to them, and monitoring the compliance of the local Diocese and Ordinary with the Church's mandates on the just treatment of alleged child victims. Lastly, in instances where a clerical child abuse case has already been prescribed under the laws of the State, this independent lay body shall be the first to assist in the psychological, social and spiritual healing of victims and their families, as well as to take charge in the indemnification of any damages they suffered as a result of the abuse.

On a final note, caring for the clergy's child abuse victims is not merely a legal obligation the Church owes to the State. It is a duty it owes to its Eternal Head, who once said "Let the little children come to me; do not stop them; for it is to such as these that the kingdom of God belongs".<sup>29</sup> An act of abuse against "the least of these" is a wound struck against Christ's Mystical Body, and every time their cries and plights are ignored, the Church risks losing more souls from the care of the Shepherd. It is imperative, then, that the Church takes drastic steps to purge itself of abusers and reach out to poor, abandoned victims, for the sake of Him who purchased their souls with the price of His Blood. If the Church is to present itself to the world as its Redeemer's Spotless Bride, it must be serious in ending this shameful and painful scourge.

### *Biography*

*Atty. Ma. Liza Miscala Jorda* is a Filipino lawyer and advocate for children's and women's rights. She has undergone training from various governmental and non-governmental agencies, including the US Department of State, and has received numerous recognitions for her advocacy such as the Ninoy Aquino Award for Professional Development and Public Service. She currently serves as the City Prosecutor of the City of Tacloban, Philippines.

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29 Mark 10:14, NRSV.

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