

# SALIGAN Batas

## Evictions and Demolitions of ISFs:

Supreme Court issues new guidelines for court-ordered evictions and demolitions of underprivileged and homeless<sup>1</sup>

Office of the Court Administrator (OCA) Circular No. 328-2022 is the latest OCA Circular concerning demolition and/or eviction orders issued by courts of law. It is the current and prevailing rule to be followed by all the judges, clerks of court, branch clerks of court/officers-in-charge, and sheriffs of the first and second level courts. It incorporates not only the previously issued Circulars but also other orders and circulars issued by different agencies of the government. In sum, the said OCA Circular aims to simplify the lives of the parties, the court, and the sheriff by laying down the procedure in the execution of demolition and/or eviction orders:



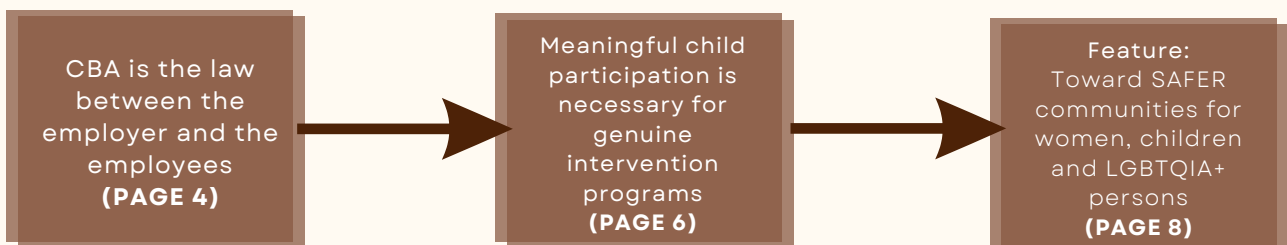
First, the new Circular states that the Writ of Execution<sup>2</sup> and the Notice to Vacate<sup>3</sup> shall be served to the affected parties of the eviction and/or demolition, their counsels of record, the Philippine National Police (PNP), and the Presidential Commission for the Urban Poor (PCUP).

Second, the affected parties shall be given a reasonable number of days to voluntarily vacate the concerned premises. They are specifically granted not less than three (3) working days from the sheriff's<sup>4</sup> demand.

Third, the sheriff is mandated to make the necessary report in case there is a failure to voluntarily vacate and turn-over the concerned premises within the period above.

Fourth, it is explicitly stated that if the order involves the underprivileged and homeless citizens, the court must serve copies of the Decision, Writs of Eviction or Demolition, and order of similar reports to the Office of the President, the National Urban Poor Sectoral Council-National Anti-Poverty Commission, the concerned local government unit (LGU) and local housing board (LHB)<sup>5</sup>, the Housing and Urban Development Coordinating Council (HUDCC)<sup>6</sup>, and the PCUP.

## WHAT'S INSIDE?



Fifth, pursuant to Executive Order No. 708, s. 2008, the sheriff shall make a referral of the matter to the LHB or any similar body in whose territorial jurisdiction the said activities shall take place. It is to be noted that this rule is applicable only to demolition and eviction activities of government agencies involving the underprivileged and homeless citizens.

Otherwise, the sheriff is only mandated to file a written request for the PCUP to certify that the case does not involve the underprivileged and homeless citizens.

Sixth, the sheriff shall secure a copy of the Resolution of the LHB or similar body and shall thereafter endorse the same to the PCUP for the conduct of the pre-demolition conference (PDC) after the referral has been made. This rule is applicable only to demolition and eviction activities of government agencies involving the underprivileged and homeless citizens.

Seventh, the latest OCA Circular provided for the attachments needed for a request for police assistance which may be filed by the proponent<sup>7</sup> through the sheriff.

Eighth, the sheriff is also mandated to submit to the court a list of estimated expenses for the conduct of the demolition or eviction activity. Thereafter, the court shall direct the affected party to deposit the required amount. The next step is the liquidation of expenses, if necessary. Any excess paid shall be returned to the concerned party.

Lastly, the sheriff is required to issue the Certificate of Turn-Over to the concerned party and report back to the court.

To recall, under Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992 (UDHA), the State, in cooperation with the private sector, is responsible for a comprehensive and continuing Urban Development and Housing Program. These programs shall uplift the conditions of the underprivileged and homeless citizens by providing for decent housing at an affordable cost with basic services and employment opportunities.<sup>8</sup> The law also provides that eviction and demolition shall be discouraged in general unless the circumstances fall under certain exceptions.<sup>9</sup>

These exceptions include (1) when the informal settler families occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places, (2) when a government infrastructure project with an allotted budget has been approved for execution, and (3) when there is a court order for eviction and demolition.

The same law provides that it is mandatory for the execution of eviction and demolition orders involving underprivileged and citizens (1) to have a notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition, (2) to have adequate consultations on the matter of resettlement between the government and those who are to be



resettled, (3) to have local government officials or their representatives present during the eviction or demolition, (4) to have proper identification of all persons taking part in the demolition, (5) to have the eviction or demolition done only within regular office hours and during good weather unless the affected families consent otherwise, (6) to avoid the use of heavy equipment for demolition unless there are permanent and concrete materials involved, (7) that the members of the PNP are in proper uniforms and shall occupy the first line of law enforcement and observe proper disturbance control procedures, and (8) that there should be adequate relocation. When a court order has been issued, the relocation shall be undertaken by the concerned local government units and the National Housing Authority (NHA) within forty-five (45) days from service of notice of final judgment. If relocation is not possible within this period, financial assistance shall be extended to the affected families by the local government units concerned.

OCA Circular No. 328-2022 is the latest OCA Circular implementing these

standards under the UDHA in cases of court-ordered evictions and demolitions of the urban poor. Other circulars have been issued by the Office of the Court Administrator<sup>10</sup> in the past, such as the following:

**OCA CIRCULAR NO. 72-2003**

OCA Circular No. 72-2003 was based on a dialogue with the PCUP concerning the implementation of R.A. No. 7279, especially in those cases involving the underprivileged and homeless citizens.

The Circular directed all judges, clerks of court, and sheriffs of first and second level courts to furnish the PCUP copies of decisions issued in cases involving the urban poor. In relation thereto, the PCUP shall be furnished with writs of eviction/demolition in those cases and they shall be furnished five (5) days prior to the intended implementation.

The purpose of the same is for proper and effective execution of the PCUP's mandate pursuant to Executive Order No. 152, s. 2002. The PCUP was declared to be the sole clearing house and monitoring body relative

to eviction and demolition in compliance with the provisions of R.A. No. 7279.

**OCA CIRCULAR NO. 05-2006**

Under this Circular, all judges, clerks of court, and sheriffs of the first and second level courts are directed to furnish the HUDCC with copies of decisions, writs of eviction/demolition, and/or orders of similar report.



**OCA CIRCULAR NO. 118-2013**

OCA Circular No. 118-2013 reflects the dialogue held in August 2013 among the Department of the Interior and Local Government (DILG), PNP, Sheriffs Confederation of the Philippines, City of Marikina, and the PCUP. Compliance with the procedure in conducting pre-demolition conference prior to eviction and/or demolition was raised. Correspondingly, all judges, clerks of court, and sheriffs of the first and

second level courts are directed to furnish the concerned parties of the eviction and/or demolition case, their counsels of record, PNP, and PCUP with writs of eviction or demolition and notices to vacate.

**OCA CIRCULAR NO. 183-2018**

OCA Circular No. 183-2018 is directed to all judges, clerks of court, and sheriffs of the first and second level courts. It reiterates the rule mandated by Section 28 (2) (8) of R.A. No. 7279 briefly

(8) of R.A. No. 7279 briefly discussed above.

In addition to the requirements decreed under the said law, OCA Circular No. 183-2018 directs all first and second level courts to furnish the Office of the President, PCUP, The National Urban Poor-Sectoral Council-National Anti-Poverty Commission, the concerned LGU and LHB copies of the decisions, writs of eviction or demolition and orders of similar report.

**CBA is the law between the employer and the employees:**

“Implicit understanding” does not hold when the terms of the CBA are clear, plain, and free from ambiguity.

It is doctrinal that the collective bargaining agreement (CBA) constitutes the law between the employer and union members. As such, the interpretation of its provisions is governed by the rules of statutory construction. If the terms of the CBA are clear, the literal meaning should prevail. Conditions that are not written or are merely based on an implied understanding cannot be imposed. This much was reiterated by the Supreme Court in Peninsula Employees Union-NUWHRAIN v. Manila Peninsula Hotel, Inc. (G.R. No. 250312; Feb. 1, 2023), which involved the entitlement to bereavement leaves under the CBA.

**What happened?**

Two employees filed an application for bereavement leave but was denied because of their admission that they will not attend the wake or burial of their deceased relatives. The employees’ union claimed that this constituted abuse of authority on the part of the company and non-implementation of CBA

benefit, which only required prior notice, proof of relationship, and death certificate. The CBA did not state that the employee should personally attend the burial of their deceased relative as a condition for granting the bereavement leave.

On the other hand, according to the company, there was an implicit

understanding between the parties to the CBA that the bereavement leave will be granted only if the bereaved employee will personally attend the wake or burial of his or her deceased relative. To prove this implicit understanding, the company showed that its previous employee who availed of the leave subsequently submitted a certificate of attendance.

The issue was submitted for resolution and Voluntary Arbitrator sustained the position of the union. However, on appeal, the Court of Appeals held that the language of the CBA indicates that attending the wake was indeed considered by the parties to the CBA. The allowable number of days of bereavement leave under the CBA depends on the place where the deceased is. It states that: “a. If the deceased is in Metro Manila - 4 working days; b. If the deceased is outside MM - 6 working days; c. If the deceased is outside Luzon - 8 working days.” The appellate court concluded that the provision took into account travelling time to the place of the wake; otherwise, the parties would have agreed upon a fixed period regardless of where the deceased is located.

**The ruling**

The CBA is the negotiated contract between the employer and a legitimate labor organization regarding wages, hours of work, and all other terms and conditions of employment in the bargaining unit. In reversing the decision of the Court of Appeals, the Supreme Court reiterated the fundamental doctrine in labor law that the CBA is the law between the contracting parties, and compliance therewith is mandated by the express

policy of the law. As a contract and the governing law between the parties, the general rules of statutory construction apply in interpreting its provisions.

The Court of Appeal’s decision ran counter to this. One of the basic rules in statutory construction is that when the words of a statute are clear, plain, and free from ambiguity, they must be taken in their literal sense and applied without attempted interpretation.



This rule dictates that the provisions of the CBA be enforced based on what is written. In this case, entitlement to bereavement leave under the CBA was predicated only on the following: 1.) death of a parent, spouse, dependent children, brother or sister, or parent-in-law; 2.) prior notice; 3.) proof of relationship; and 4.) death certificate. Because the CBA does not mention attendance to the wake, it

should not be considered a requisite. It does not matter that company’s standard operating procedure requires a Certificate of Attendance because this cannot defeat the CBA nor expand its provisions.

The Supreme Court’s pronouncements in this case highlight the importance of the CBA not only as an ordinary agreement but one which has the status of law between the contracting parties. Employers and unions should carefully review its provisions because once it is adopted by the parties, any additional requirement or condition not specified therein cannot be imposed. More than ensuring stability in labor relations, this guarantees that the benefits fought for and won by labor unions on the bargaining table are protected.



# Meaningful child participation is necessary for genuine intervention programs:

An analysis of the implementation of the 2015 Guidelines for the Localization of the Development of CLJIPs

As a signatory to the Convention on the Rights of the Child, the Philippines has garnered international recognition for its commendable efforts in adopting policies aimed at protecting the rights of children including not only those in conflict with the law but those who are at risk as well. While the country continues to dedicate itself in the enhancement of its policies to secure the welfare of children, its notable practices are not left unnoticed. The enactment of the Juvenile Justice and Welfare Act in 2006 is a key indicator of the Philippines’ commitment to the will of the Convention on the Rights of the Child. Through this policy, children in conflict with the law and children at risks are defined and provided suitable interventions under a mandated formulation of a Comprehensive Local Juvenile Intervention Program (CLJIP) by local government units. However, not all local governments were able to formulate the said program, hence the issuance by the DILG and JJWC of the 2015 Guidelines for the Local Government Units on the Development of the Comprehensive Local Juvenile Intervention Program (CLJIP).

Despite these issuances, advocacies and training, the results of the 2017 CAR and CICL Situational Analysis by the Comprehensive National Juvenile Intervention Program 2018-2022 found that LGUs do not seem to consider the situation and concerns of CICL as a priority issue. Public investments in relevant policies, services, facilities, and programs for CICL remain very low.<sup>1</sup> Care centers are found to mostly be inadequate to accommodate all CICL which leads to transfer and detention centers and jail with adults. There is also insufficient number of social workers and duty bearers mandated to provide services to CICL and do not seem to have adequate

knowledge of relevant laws and have sufficient skills for handling cases of CICL. These are only few of basis why a continues improvement of current programs and mechanisms for the protection of the rights and welfare of CAR and CICLs is needed.

As part of the project “Enhancing Local Government Capacities in Delivering Justice Services for Children at Risk and Children in Conflict with the Law, SALIGAN conducted a review and series of FGDs with several LGUs on the status of implementation of the said guidelines as well as the programs’ adherence to the international standards in providing interventions to

children at risks and children in conflict with the law using an assessment tool developed as well within the project. The review of the CLJIPs included the LGUs of Calamba City, Angeles City, Naga City, Bacolod City, Cebu City, Quezon City and Davao City, all of which are identified justice zones under the Governance in Justice Program. Not all of these LGUs formulated intervention programs for CAR and CICL as mandated



under the Guidelines.

The review revealed the following points:

1 - The formulation of existing CLJIPs and programs for CAR and CICL interventions did not undergo genuine consultations. There were no consultation sessions conducted for the purpose of formulating the CLJIPs as well as other CAR and CICL interventions. While the baseline data gathered from different agencies and barangays were sufficient to give the general situation of children in the locality, a consultation with the first-hand beneficiaries and rights-holders under the programs, children including CAR and CICLs, is a must. Doing so will promote genuine child participation and let them contribute as well in the monitoring of the interventions. The CLJIPs according to service providers are data driven, but most of the information are secondary which is also acceptable but with a consultation, some of the data may at least be validated by actual feedbacks from the beneficiaries. On the matter of children's opinion on interventions, some of the participants claim that children were consulted via their feedback. However, these feedbacks are

gathered from the regular process of implementation of services and not for the purpose of CLJIP formulation. As the direct persons for whom the intervention programs are created, it is only right and just that the direct feedback of children especially CAR and CICLs are heard in the formulation as well as monitoring of CLJIPs.

2 - There was no showing of a child rights situational analysis of CAR and CICLs. The situational analysis focuses more about children in general. There are no ingenious programs for CAR and CICL derived from the situational analysis, however, implementation of services varies in performance and efficiency, such as for example, mechanisms for PWD children/CAR/CICL, in this case, one LGU provides an interpreter whenever these children are participating in an activity.

3 - Some service providers and stakeholders involved in CAR and CICL intervention are not aware of child rights programming and do not practice child rights and gender sensitive language and behavior. In using child rights programming in CAR and CICL interventions, children are treated as rights-holders and not just beneficiaries. The interventions cater not only

to their needs but also to their rights. However, in the analysis of the CLJIPs and interventions, most of them focus only on their needs for survival and protection. While development is also given focus such as on education and recreation, the activities related especially with the latter are not always gender inclusive. Examples are recreational sports activities that are mostly preferred by boys. Whereas, the right to participation of children is mostly promoted through attendance in recreational activities. In addition to these, there are still authorities and service providers who are not child and gender sensitive in engaging with CAR and CICLs.

4 - Most intervention plans for CAR and CICL do not consider institutional mechanisms in responding to CAR and CICLs. In the guidelines by the DILG, sifting of existing programs and interventions is another way for the LGUs to map-out the available services and mechanisms for the benefit of CAR and CICLs in all LGU levels as well as private sectors. This has been a little lacking in most CAR and CICL interventions of the LGUs especially those who have yet to institutionalize their CLJIPs which causes difficulties in providing

suitable approaches to address the rights and needs of the former.

In sum, the review manifested that while there are notable efforts by the LGUs to provide intervention and diversion, there is still a need to improve programming of CLJIPs, such as the inclusion of a meaningful child participation to better address the appropriate needs of the children, children at risk and children in conflict with the law as rights holders as well as refine service providers and authorities' child and gender sensitivity.

**FEATURE**

**Toward SAFER communities for women, children and LGBTQIA+ persons**

Senentro ng Alternatibong Lingap Panlegal (SALIGAN), in partnership with the National Barangay Operations Office of the Department of the Interior and Local Government (DILG-NBOO) and the European Union's Governance in Justice II Programme (GOJUST II), has implemented the Safe, Fair-Environment and Responsive Barangays for Women (SAFER Women) Project in Quezon City and Calamba City from July 2022 to June 2023.

The project aims to strengthen the barangay responses to cases of Violence Against Women and their Children (VAWC) and Gender-Based Violence and Sexual Harassment (GBSH) by capacitating the local government service providers and increasing the community's awareness on the responses to VAWC and GBSH cases.

Among the highlights of the SAFER Women Project are the pilot-testing of the enhanced training manual on strengthening the capacities of local government units in handling VAWC and GBV cases by conducting a Training of Trainers and Training of Pilot Barangays in Calamba City and Quezon City, the enhancement of the Barangay Protection Order (BPO) Primer and development of an audio-visual presentation on BPO.

Twenty-six participants representing the Local Committee on Anti-Trafficking and Violence Against Women and their Children (LCAT-VAWC) of Calamba City and Quezon City and the



DILG Central Office participated in the three-day Training of Trainers. The trained LCAT-VAWC members served as resource persons in the rollout of the Training of Pilot Barangays in the following areas: Barangays Dos, Kan Anlog, La Mesa, Makiling, Milagrosa, Paciano Rizal and Prinza in Quezon City, and Barangays Bahay Toro, Batasan, Commonwealth, Matandang Balara, Novaliches Proper, Sauyo and Tatalon in Quezon City.



The conduct of the pilot barangay training sessions was well-received by the eighty-nine barangay officials and VAWC Desk Officers. A participant from Barangay Sauyo in Quezon City saw the training as a good learning experience and opportunity while a participant from Barangay Dos in Calamba City shared by having gained more knowledge in handling cases and complaints in the barangay. Another participant from Barangay Kan Anlog, Calamba City appreciated how the facilitators have conducted their respective sessions and further stated, **“Lahat po ng speakers ay maayos ang treatment sa amin kaya hindi po kami naiilang magtanong. Napakagaling ng mga speakers kaya naman uuwi kaming marami kaming natutunan at ma-share sa aming kasamahan sa barangay.”**

Meanwhile, the trained LCAT-VAWC members coordinated with the local government unit to ensure the participation of the barangay officials and VAWC desk officers. According to Atty. Angelica Malasa-Manaog of the Public Attorney’s Office, part of their preparation for the Training of Pilot Barangays was to review the topics to be discussed and deliver it in a manner that will be understood by the participants. Having a good rapport with the audience was also important to maintain their interest in the lectures. Each of the trainer was assigned with their respective tasks for a smooth facilitation of the training. Kitch Gogolin of DILG Region IV-A saw the value of drawing from the experiences of the participants to make the discussion of the laws easier to understand and more relatable. The trainers also expressed willingness to serve as resource persons should the training be replicated in other areas.

To sustain the gains of the project and ensure that each barangay will be a safe place not just for women but for every constituent, Jennifer Quirante of the Calamba City Local Government Operations Office shared that their LGU, through the LCAT-VAWC and the Gender and Development Office, will be replicating the training in the remaining barangays after the conduct of the barangay elections.



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## Notes

1 Contributed by SALIGAN's summer interns: Jessica Bacud (UP), Jaymi Margot Bondoc (UAF), Paulynn Stephany Santiago (UST), and Gabrielle Bea Tardio (DLSU)

2 A Writ of Execution is an order issued by the court enforcing the judgment it rendered in favor of the plaintiff or the person who filed for the commencement of the demolition and/or eviction process.

3 A Notice to Vacate orders the removal of persons and their belongings from a building/structure or area, or both.

4 A sheriff is the person who serves all writs, executes all processes, and carries into effect all decisions, orders or awards issued by the proper authority.

5 The LHB is a local special body whose purpose is to formulate, develop, implement, and monitor policies for social housing especially those pertaining to resettlement and demolition.

6 Under Republic Act No. 11201, HUDCC was replaced by the Department of Human Settlements and Urban Development (DHSUD).

7 A proponent is a person or entity who filed an application for the commencement of the demolition/eviction process.

8 R.A. 7279, Sec. 2

9 R.A. 7279, Sec. 28

10 The Office of the Court Administrator was created under Presidential Decree No. 828, as amended by Presidential Decree No. 842, to aid the Supreme Court in the exercise of its administrative supervision over the lower courts. It is the office tasked to look into personnel policy and administration, salary adjustments, housing and other loans, applications for resignation, application for retirement, among others.

1 Comprehensive National Juvenile Intervention Program, 2018-2022, pg. 13