



***Public version**

**Submission to the Committee Against Torture in relation to its examination of the Third
Periodic Report of the Philippines**

ILL-TREATMENT AND TORTURE OF CHILDREN DEPRIVED OF LIBERTY IN THE PHILIPPINES

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Submitted by:

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Introduction:

Children deprived of liberty are more likely to suffer from violence, abuse and acts of torture, cruel, inhuman and degrading treatment. As recently highlighted by the Special Rapporteur on Torture, even short periods of detention can undermine a child's physical and psychological well-being and their protection requires higher standards and broader safeguards.¹

This report presents an analysis of the situation of children in conflict with the law (CICL) on the Philippines, focusing particularly on cases of torture and ill-treatment in Manila Metro Area and Mindanao.

During monthly visits to juvenile detention centres, also known as "holding centers" or "houses of hope", CLRDC and the OMCT have heard testimonies from both victims and officials confirming the persistence of the use of physical and psychological violence, including threats, and corporal punishment, against children in prisons, and especially at the time of arrest and at police stations.

The violent acts committed against children are often perpetrated by police officers, Barangay officers, house parents and other detainees.

In addition, conditions of child detention often amount to inhuman and degrading treatment. Several of the juvenile detentions are overcrowded and do not fulfill the minimum conditions determined by international human rights law. The separation of CICL from other children, such as rescued children or street children is limited or nonexistent. And separation between boys and girls is also very restricted.

Children are also subject to long periods of confinement in their cells, which are often overpopulated and have little sunlight and no adequate ventilation. Another significant problem is the lack of access to lawyers and the long periods of preventive detention.

Despite some improvements in legislation such as the Anti-Torture Act and the Juvenile Justice Law, in practice, local authorities dealing with children are not familiar with these laws and do not implement them. For children deprived of liberty torture is still an everyday reality.

Context and Methodology:

The Republic Act 10630 or the Juvenile Justice Law of the Philippines mandates all Local Government Units (LGU) in highly urbanized cities to establish its own Bahay Pag Asa or

¹ Report of the Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment, Juan E. Mendez A/HRC/28/68/5 March 2015

“Houses of Hope” for Children in Conflict with the Law (CICL). Bahay Pag-Asa is defined as a 24-hour child caring institution providing short-term residential care for CICL.

The Juvenile Justice law stipulates that a CICL should always be detained in a Youth Center established by the local government. At the same time, every province and highly urbanized city shall be responsible for building, funding, and operating a Bahay Pag-asa within their respective jurisdictions following the standards set by the Department of Social Welfare and Development (DSWD).

Currently, in the National Capital Region, composed of 17 cities (Caloocan, Las Piñas, Makati, Malabon, Mandaluyong, Manila, Marikina, Muntinlupa, Navotas, Parañaque, Pasay, Pasig, Quezon, San Juan, Taguig, Valenzuela, and Pateros), there are only two Bahay Pag Asa which are located in Mandaluyong and Valenzuela.

The other supposedly Bahay Pag-Asa, operates as detention centers or what we also call Holding Centers, that are home to a huge number of CICL. They are the following: Manila Youth Reception Center (MYRC), Molave Youth Homes (MH), Malabon Bahay Sandigan (MBS), and Yakap Bata Holding Center (YBHC).

In the cities where there are NO Bahay Pag Asa nor detention centers for CICL, children can be detained in different Bureau of Jail Management and Penology (BJMP) jails nationwide, mixed with adults, a practice that is forbidden by law but continues to happen due to the failure of local governments in establishing their own Bahay Pag-Asa.

Since 2003, CLRDC has been conducting monitoring visits to detention centers even prior to the passage of the Juvenile Justice law.

However for purposes of this report, CLRDC and the OMCT used the information from the last years.

In 2015 and 2016 we have visited and consulted:

Name of Centers	Estimate No. of Children	Children Interviewed
Malabon Bahay Sandigan, Malabon City	25`	10
Bahay Pangarap, Valenzuela City	200	50 (mostly from Navotas)
Yakap Bata Holding Center, Caloocan City	35 to 55	45

Holding centers in Metro Manila visited by CLRDC from 2011-2013:

Name of Centers	Estimate No. of Children	Children Interviewed
Molave Youth Homes	200	60
Manila Youth Reception Center (MYRC)	300	120

Holding centers in Mindanao (Cagayan De Oro) visited by CLRDC from 2011-2013:

Name of Centers	Estimate No. of Children	Children Interviewed
Regional Rehabilitation Center for Youth	35	5
Rehabilitation and Reception Center	30	30

Relevant Legislative reforms:

The Anti-Torture Law of 2009

Republic Act (R.A. 9745) or “The Anti-Torture Act of 2009” was signed into law on 10 November 2009. It was enacted “to fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution and various international instruments to which the Philippines is a State party.”

The law penalizes torture, and other cruel, inhuman and degrading treatment or punishment. It also prohibits secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity.

R.A. 9745 specifically provides for the different forms of torture such as physical torture and mental/psychological torture.

The said law also recognizes the vulnerability of children as potential victims of torture. Thus, torture committed against children has higher penalty than that when the victim of torture is an adult.

Problematic: To date, there are no convictions for the crime of torture against children, despite its widespread practice by some of the law enforcers. Many problems are faced when trying to present a case for torture; among the most common difficulties are the fear of reprisals and lack of material evidence, including the lack of an independent medical exam for children deprived of liberty.

CLRDC and the OMCT have made attempts to file cases of torture committed by law enforcers against children, but these attempts were hindered by grave threats and the fear of reprisals from family members of the victims.

Another problem is that many of the local authorities that deal with children when they are arrested do not have enough knowledge about the law and often even if there is the intention to pursue a case were a State agent has committed violence against a child, it is done under other “less serious” legal norms such as “child abuse”.

Recommendations:

- ✚ The State should systematically investigate all allegations of torture and other forms of ill-treatment, prosecute and punish law enforcement officers responsible for such abuses against children deprived of liberty.
- ✚ Establish an independent, effective, confidential and child-friendly mechanism to facilitate the submission of complaints by victims of torture and ill-treatment to the competent and independent authorities and to ensure in practice that complainants are protected against any reprisal as a consequence of their complaint or any evidence given.
- ✚ All public authorities dealing with CICAL, such as police officers, social workers, Barangay officers, should receive adequate training in the anti-torture law and instructed on how to proceed when facing allegations of torture and ill-treatment.
- ✚ Medical examination of children deprived of liberty should be done by a doctor that is not affiliated to the police to ensure the independency of the diagnostic. Children should be reexamined when arriving to Holding Centers to document any injuries that might have happened during their period in police stations and Barangays.
- ✚ The National Commission on Human Rights should publicly report how they have used the budget for the implementation of the Anti-Torture Law.

National Preventive Mechanism (NPM)

According to its treaty obligations under the Optional Protocol to the Convention against Torture (OPCAT) the Philippines should have designated their NPM before May 2013. However, to date, the bill is still being evaluated in Congress and with the upcoming elections it will have to be refilled during the new Government.

The Subcommittee for the Prevention of Torture (SPT) visited the country for the first time last year and stressed the importance of the Philippines enacting a law to establish an effective national independent monitoring body.

The new proposal calls for the Human Rights Commission (HRC) to act as a NPM. We have received information that the HRC has created an interim-NPM until the bill passes. However, to our knowledge, only civil society organizations conduct independent monitoring of juvenile detention centres.

Recommendation:

- ✚ The Government of the Philippines should finalize the creation and establishment of a National Preventive Mechanism with a child rights dimension and appropriate budgetary allocation. Additional measures to enhance the prevention of torture and ill-treatment in custody should be taken. In this regard individual private interviews with detained children and prison staff and monitoring of prisons should be facilitated during visits by independent international bodies and NGOs.

The Juvenile Justice Law

The current Juvenile Justice Law (JJlaw) provides that 15 years-old and under are exempt from criminal liability and those above 15 (plus one day) and below 18 years of age are exempt unless they act with discernment. Discernment is defined as the mental capacity to understand the difference between right and wrong and its consequences. A CIJL who is 15 years or younger may be held civilly liable and has to undergo an intervention program, same as children that are above 15 years and below 18 years and acted without discernment.

Children above 15 and below 18 years old who have committed a crime – with discernment – punishable with not more than 12 years of imprisonment shall undergo diversion. Detention should only be considered as a last resort and only for the shortest appropriate period. It should always be in youth detention homes.

Problematic: Despite the child-friendly legal provisions, CLRDC and OMCT records show otherwise. Deprivation of liberty seems to be the first option for Social Workers (who determine if a child should go to a Holding Center). We have met children who had NOT committed any crime but were deprived of liberty for being “a trouble child”, due to the request of parents, or for *status violations* such as violation of curfew. Those are all illegal detentions, but since social workers don’t have adequate training, and judges and public attorneys are overwhelmed with cases it is a very common scene on the Philippines.

The Republic Act 10630 (formerly R.A. 9344 or the Juvenile Justice and Welfare Act of 2006) prohibits the torture or ill treatment of children-in-conflict with the law (CIJL). It also mandates law enforcers to immediately turn over children to the nearest office of the Department of Social Service and Development (DSWD) for their custody and corresponding proper action.

Problematic: Social workers have little training and a big workload, which is very problematic when they are the ones to decide whether a child is going to be deprived of liberty. It is seldom

that social workers screen children for possible torture or ill treatment. In many instances, the children also opt not to speak of their ordeal, as they fear that authorities can get back at them and make them stay longer in confinement as punishment.

The Juvenile Justice and Welfare Act also prohibit the confinement of child offenders in regular jails and called for their separation from adult detainees. However, many CICL are confined in so-called government-run “youth homes” that are like the regular detention places as the children are kept behind bars with very limited space or facilities to engage in developmental activities.

In addition we have noticed that some judges dealing with CICL are also not familiar with the new Juvenile Justice Law. This can be seen from the high number of children who reach 18 years-old while deprived of liberty and are immediately transferred to adult prisons (even though this measure is illegal under the new JLaw). We have documented cases where these 18 year-olds undergo severe violence from adult detainees and suffer from life long traumas, because the judge in charge of their cases was not familiar with the law.

Recommendations:

- ✚ All public authorities dealing with CICL, such as police officers, social workers, Barangay officers, and particularly family court judges should receive adequate training in the Juvenile Justice Law and international child rights and torture prevention standards.
- ✚ The Juvenile Justice system should be specialized with well-trained judges designated particularly for the cases of children in conflict with the law. New juvenile judges should also be appointed to deal with the great amount of cases and reduce the period of pre-trial detention.
- ✚ No child should be deprived of liberty without a reason prescribed in law and without having its due process respect. Every child accused of committing an infraction that is punishable with deprivation of liberty should have access to a lawyer and be sent immediately to see a specialized judge in a child-friendly court.
- ✚ Child friendly justice is accessible, adapted and focused on the needs of the child. A study and sensibilization work should be done, together with juvenile judges and other actors of the juvenile justice system in all jurisdictions of the Philippines in order to create a system that is adequate to each community.
- ✚ Deprivation of liberty should be a measure of last resort. The State must create alternative measures focused on rehabilitation and reintegration to the community.
- ✚ Children without family must receive adequate social support, shelter and education

and be held separately from children in conflict with the law.

Minimum Age of Criminal Responsibility

Although the Juvenile Justice Law settles the minimum age of criminal responsibility (MACR) to 15 years old (as previously noted), currently, there is a pending bill in Congress named House Bill 922 proposing to lower the MACR from 15 to 9.

The proposed bill is contrary to the provision of the UN Convention on the Rights of the Child to which the Philippines has ratified and vowed to comply. The Concluding Observations of the **UN Committee on the Rights of the Child in 2009 lauded the Philippines for increasing its MACR from 9 to 15 years old** through the enactment of the Juvenile Justice Welfare Act.² The UN CRC Committee also emphasized that **once the MACR has been increased, it should not be subsequently lowered.**

According to the CRC, for a nine-year-old child, imprisonment in a correctional institution is a form of 'cruel, inhuman, degrading treatment or punishment.'³ The Committee Against Torture has also in different occasions opposed to the reduction of MACR.

A direct result of this initiative if it passes is the overcrowding of juvenile centers with vulnerable children, facilitating acts of torture and ill-treatment.

Recommendation:

- ✚ Ensure that the minimum age of criminal responsibility is not reduced, in accordance with international standards.

Torture and Ill-treatment of children deprived of liberty

From March 2015 to February 2016, CLRDC and the OMCT have documented nineteen (19)⁴ cases of torture and ill-treatment committed against Children in Conflict with the Law (CICL) in Manila Metro Area. The majority of cases happened during arrest and prior to the turn over to holding centers for CICL.

² UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : concluding observations : the Philippines*, 22 October 2009, CRC/C/PHL/CO/3-4, available at: <http://www.refworld.org/docid/4ae9a11d0.html> [accessed 29 March 2015]

³ Article 40, Id.

⁴ The number of cases does not reflect the actual amount of children who suffered violence during this period. Those are only the children that we were able to individually interview and who have agreed to have their names sent to the Committee. For this purpose we have attached a confidential list to this report and we are available to provide further information on each case.

Specific acts of violence committed against the CICL are beatings, punching, kicking, hitting with rifle, electric shock, tight handcuffing and submersion of head in water. The majority of CICL we have documented have committed minor offenses, mostly thefts and economic crimes. Some of them are detained for stealing food.

Former children in conflict with the law mentioned that in some detention centres police officers are called to beat children in a queue. When this happens police tends to remove their name tag, so children cannot identify them. In other centres children are threatened to be sent for one or two weeks in an adult prison.

MV's Case – 15 years-old

MV was arrested in February 2015 for stealing a mobile phone. We met him one year later in Malabon Holding Center. He was arrested by the local police and taken to the Malabon Bayan Police Station where he was electrocuted for the purpose of interrogation. Police officers made him hold onto a steel bar and if he fell he was electrocuted. He fell a couple of times. Other children who have passed through this police station have made similar allegations.

On MV's case, his family wanted to press charges, but was threatened by a police officer.

JP's Case – 17 year-old

Last March 2016, during a OMCT mission to the country, we learned about the case of JP, a 17 years old, who was detained at Yakap Bata Holding Center in January 2015 for allegedly stealing a bicycle. Upon his turn over to Yakap Bata Holding Center (YBHC) in Caloocan City, he as all the other children there, was not allowed to "make noise". Talking, playing, singing was forbidden according to the children we interviewed.

On March 4, 2016, one week before our visit, we were informed that he strongly and repeatedly banged his head on the wall and against the floor. The children that were in the cell with him mentioned that he was "just bored". The conditions of detention, the lack of activities in the center, plus the additional struggle of not being able to even play had affected his mental health.

According to testimonies, the house parents (prison staff) tied him up "like a pig" and he was later transferred to the National Center for Mental Health.

JP had claimed his innocence since the beginning and was waiting for a sentence for more than one year when the incident happened. According to the children who shared the cell with him he had not showed any signals of mental problems before this incident.

The Nokia Mobile Case

In February 2016, X, 14 years of age, was accused of stealing a mobile phone. For such crime, X was arrested by local people and almost beaten to death. The Barangay arresting officers who

saw the incident silently watched and only intervened after the child had almost collapsed. The child didn't receive any medical care and was brought to the police station and transferred to a holding center for CICL.

The case of Chocolate

Z is a 15 year old girl and only finished grade 5. She was trafficked from Mindanao to Manila. Her parents were lured by the traffickers that they would provide Z a job as a waitress in nearby Mindanao area. Due to extreme poverty, Z's parents agreed to let her go. It was her first time away from her family and she did not have any communications with her parents. She was forced to work a domestic helper in Taguig City, Metro Manila, without any salary. One Sunday when her employers were not at home, she went to a nearby grocery store and saw a chocolate. She had never tasted that type of chocolate and was very hungry, so she took it. A guard saw her and brought her to the police station. Z was detained at Yakap Bata Holding Center for **one year**. After release she was transferred to an orphanage.

In child detention centers, young girls who are victims of serious crimes such as sexual abuse, exploitation and human trafficking are locked up in centers all over metro Manila and elsewhere. They are not treated as victims of the crimes committed against them, but seen as children in conflict with the law.

The Yakap Bata Holding Center

In our last visit in March 2016 to YBHC there were 39 children, from 8 to 19 years-old.

The center has three « dorms » that look like cages. The dorms have no furniture at all, and children sleep directly on the floor. A half blocked window provides the only sunlight and ventilation in the Centre accessible to children. There is a strong smell of urine when we enter the center, due to the little ventilation and poor sanitary conditions. Children never leave that space. There is no patio or another room with sunlight. Food is also considered insufficient and of bad quality.

The administrators of the center cited security reasons for covering the window and are now looking forward to move to a more spacious building with better facilities. Children have reported also frequent beatings and punching from certain staff members (house parents). None of those allegations have been investigated.

Some of the conditions in the center are:

- **No bed NOR mattress NOR matt to sleep on**
- **No sheets, pillow or blanket**
- **Spoon and fork are prohibited**

- The floor is filthy, and garbage is accumulated between the bars and the wall on one side of the cell
- The cells are poorly light, and only have a narrow 30 cm tall and 1.20m wide opening allowing natural light in
- In the corner of cell A that is adjacent to cell B, there is a tiny space, with no door, that contains a tiny toilet with no lid or mechanism to flush. There is a rusty faucet next to the toilet
- On the floor in front of this 'comfort room' is an old blue disheveled and damp rag. Sitting directly on the ledge to this tiny and filthy 'comfort room' is a small and dirt stained piece of soap, and the one plastic cup to be shared by all the children
- The children drink the water that comes out of the rusty faucet right next to the toilet
- THEY share a piece of toothbrush and a piece of soap, which contributes to the proliferation of skin diseases
- There are no towels and children must wash their own clothes and hang things to dry wherever possible such as through the cell bars and on strings hanging across the cell.
- Cells are frequently overcrowded

Recommendations:

✚ Safeguards for the prevention of torture and ill-treatment and child-friendly complaint mechanisms should be in place in all places of deprivation of liberty of children.

✚ Ensure that the juvenile justice system is in line with international standards such as the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

✚ Victims, their families, witnesses, and others who intervene on their behalf should be protected at all times against retaliation for claiming their legitimate right to obtain redress and accountability for past violations.

✚ Children deprived of liberty should be entitled to socio-pedagogical and educational activities. Children should also be provided with psychological support during their period of confinement and a reintegration plan for their release.

✚ Urgent steps must be taken to ensure that the dorms of minors are clean and safe. Ventilation and sunlight should also be improved.

✚ Prison officials (house parents) should reduce the number of hours of confinement in the dormitory. Centers that don't have adequate space for open-air activities should be immediately closed and children transferred to another facility.

✚ The quantity and quality of food rations in places of deprivation of liberty of children

need to be sufficient and adequate to their age and needs of human being in development.

✚ Ensure that conditions of detention in juvenile detention centres are consistent with the Convention and other international human rights standards, and that children in these centres receive care, protection and education.

Secret Places of Detention

Despite the prohibition under the Philippine Constitution and the Anti Torture Law of the use of secret detention facilities, unofficial and secret places of detention continue to exist. We have received information, for example, that the Malabon Bayan Police Station maintains an isolation/secret detention six feet underground (under a bridge) beside the river.

CICL and other alleged offenders have been put in this area and held incommunicado. One CICL described this isolation as total darkness, the size of a refrigerator, heavily locked with steel bars.

Under the Anti-Torture law, the Philippine National Police (PNP) must regularly update the list of detention facilities and the details about detainees. The Commission on Human Rights (CHR) is also mandated to conduct visit to detention places. In the situation of CICL, to our knowledge, the CHR has not conducted visits to holding centers yet.

Suspected child offenders who have been brought to police stations or offices of the *barangay tanod*⁵ belong to the population-at-risk of being tortured but are hardly given attention by authorities. According to the information we have received almost all of the minors (between 11 to 18 years old) have complained of being ill-treated by authorities for their alleged infractions of the law.

Electrocution, systematic beating, hitting with hard object on the sole of their feet, threats of death, and other forms of verbal abuse are among the kind of violence that have been documented by the OMCT and CLRDC.

Recommendations:

✚ All secret places of detention should be immediately closed and police officers involved in this practice brought promptly to justice.

⁵ A barangay tanod, also known as a barangay police officer -- and sometimes as BPSO (which can stand for barangay peace and security officer, barangay peacekeeping and security officer, or barangay police safety officer) -- is the lowest level of [law enforcement officer](#) in the [Philippines](#). He is a [watchman](#) for a [barangay](#) who is supervised by the [barangay chairperson](#) (head of the smallest geo-political administrative unit in the Philippine) and performs a variety of [police](#) functions. According to the Department of Interior and Local Government (DILG), tanods are "frontliners in the preparation and response to any type of atrocities, public disorders, emergencies and even disasters or man-made calamities that threaten peace and order and public safety".

✚ An independent investigation must be conducted in Malabon Bayan Police Station for the closure of its secret detention facility. All persons involved should be immediately suspended from duty for the duration of the investigation, particularly if there is a risk that the investigation will be obstructed.

✚ Children and other victims of incommunicado detention, torture and ill-treatment, must be provided the right to redress. Including adequate compensation and the fullest possible rehabilitation adequate to their age and necessity.

✚ All credible allegations of torture and ill-treatment must be thoroughly and impartially investigated in accordance with international standards, and perpetrators brought promptly to justice.

Access to Lawyers and Long Periods of Pre-trial detention

In the Philippines, theoretically, every child deprived of liberty has legal counseling provide by the Public Attorney's Office (PAO). In reality children rarely have information about their cases and only meet the PAO lawyer during trial. In Caloocan, Malabon, Navotas and Manila cities, to our knowledge, PAO lawyers have never visited the Holding Centers; they have never seen the situation of CICL and rarely attempted to provide to the CICL the benefit of a Diversion Program under the Juvenile Justice Law.

Children can be detained without trial for more than one year, for minor crimes, such as stealing food. The lack of a specialized juvenile system also contributes for the length of Pre-trial detention.

✚ A lawyer should be systematically designated by the State for children in conflict with the law from the moment of arrest and throughout the duration of the procedure. Children are entitled to be informed about their cases and their rights in a child-friendly way.

✚ Pre-trial detention should be used only as a measure of last resort, in particular for children. In that regard, the State party should consider alternative measures to its use and ensure that the decisions imposing pre-trial detention are based on objective criteria and supporting facts. It should also develop clear rules for the treatment of children in police custody and monitor the effective implementation in practice of these rules.

***Recommendations made by former Children in Conflict with the Law to the Committee Against Torture and the Government of the Philippines**

During the making of this report the OMCT and CLRDC conducted a child-friendly consultation with former children in conflict with the law. These children have been deprived of liberty in different Holding Centers and experienced violence and trauma. Their recommendations are:

- ✚ **Dorms should be like in a house, with a bed to sleep**
- ✚ **House parents should be trained on care giving**
- ✚ **Each child should receive its own hygiene kit**
- ✚ **Food needs to be of better quality and in higher quantity**
- ✚ **Spanking and physical abuse by house parents and other staff should be forbidden**
- ✚ **Children should have regular activities**
- ✚ **Centers should have a sports facility with space for basketball and soccer**
- ✚ **Children must have the right to know what is happening in their own case and meet with a lawyer**
- ✚ **Children must have the right to a medical exam by a doctor that is not a police officer**

Conclusion:

The Philippines has greatly improved in terms of legislation since its last review by the Committee Against Torture. However, new legislation is not enough to protect children.

Local authorities need to have the means to implement this legislation and at the very least to be aware of its existence. The OMCT and CLRDC have frequently met public officials who simply don't know that their actions are illegal. Social workers who have stated that putting a child in prison for "learning purposes" is acceptable. In other cases, authorities do know that they are committing torture, but won't change their practice since there is no accountability.

The State of the Philippines claimed it does not have "official reports on incidents of torture, inhuman and degrading treatment of children in detention." Maybe that is because children are too afraid to report, or because there is no independent monitoring of the juvenile detention centres. If impunity is not addressed, torture will remain a culture within the law enforcement institution and the most vulnerable will continue to suffer.



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