

# State violence in the Philippines

*An alternative report to  
the United Nations  
Human Rights Committee  
presented by*



*A project coordinated by*



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## Foreword

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Writing alternative reports is one of the main activities of the OMCT and a vital source of information for the members of the Human Rights Committee. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture.

Under the aegis of the European Union and the Swiss Confederation, the “Special Procedures” program presented this report on state violence and torture in the Philippines at the 79<sup>th</sup> session of the Human rights Committee, which took place in Geneva from 20<sup>th</sup> October to 7<sup>th</sup> November 2003 and during which the Government’s report of the Philippines was examined.

The study is divided into three parts. Part I provides a general overview of torture and inhuman or degrading treatments (in prisons in particular) committed by state officials. Parts II and III deal with torture and inhuman or degrading treatments of women and children respectively. This rather novel approach sheds light on the situation of particularly vulnerable groups of people. The Human Rights Committee’s Concluding Observations and Recommendations adopted following examination of the Filipino Government’s Report are included in the Appendices.

This report was jointly prepared by the following three Filipino human rights NGOs:

- ❖ **PREDA Foundation.** Nominated for the Nobel Peace Prize in 2001, Preda Foundation, Inc., was founded in 1974 in Olongapo City. Its services include a campaign against international pedophile syndicates, a residential healing center for sexually abused children, legal services, youth organizing, child jail rescue and public awareness building on human rights, a theater advocacy group, a trade fair, and community organizing.
- ❖ **The Task Force Detainees of the Philippines (TFDP).** TFDP deals with documenting human rights violations including torture, assisting the victims and their families in their welfare and legal needs, and conducting human rights education.
- ❖ **Women’s Education, Development, Productivity and Research Organisation (WEDPRO).** WEDPRO is a women’s organization established in 1989 as an undertaking of the active members of the first feminist collective in the Philippines, the *Katipunan ng Kababaihan para sa Kalayaan* (KALAYAAN) or League of Women for Liberation. Since its establishment, it has concentrated on research and advocacy and continued to build and share knowledge. It is committed to enabling conditions towards the advancement of women's empowerment and social change.

Three delegates from these NGOs presented the report during the information session and shared their observations and concerns with the members of the Human Rights Committee.

## Acknowledgements

The Task Force Detainees of the Philippines (TFDP) acknowledges the contributions of the following non-governmental human rights organizations in the Philippines who have put together their respective inputs and expertise and collective experience to make this report on torture:

- *Balay Rehabilitation Center*, which provides psychosocial rehabilitation to ex-political prisoners and internally displaced families and communities;
- *Families of Victims of Involuntary Disappearance (FIND)*, which documents cases of involuntary disappearances and gives direct services to the victims' families;
- *Medical Action Group (MAG)*, a health and human rights organization of health professionals, health students and health workers which provides biopsychosocial services to victims of human rights violations and advocates health rights particularly patients' rights.

Women's Education, Development, Productivity and Research Organisation (WEDPRO) has held report, consultative sessions to gather and verify data were conducted with the following women's organizations:

- *Bukluran ng Kababaihan sa Lansangan, Inc. (BUKAL)*, which organizes and educates women "streetwalkers" (women victims-survivors of trafficking and prostitution whose main areas of exposure are along streets) in Quezon City. It also provides direct services such as outreach clinics and referrals and conducts research for publication, networking and advocacy for human rights.
- *Buklod ng Kababaihan (BUKLOD)*, which is supporting women who have been victims-survivors of prostitution in Olongapo City, Philippines and provides education and training for women.
- *Lesbian Advocates Philippines, Inc. (LeAP!)*, which is one of the few lesbian organizations in the Philippines. Based in Quezon City, Philippines, it has been carrying out capacity building programs for lesbians to become advocates and leaders. Apart from this, it has also created a safe space for lesbians through community building that also links to other organizations by organizing political and social events.
- *Women's Crisis Center, Inc. (WCC)*, which was initially set-up to address women victims-survivors of military abuse, particularly rape. Due to more violations of women's rights, it has expanded its involvement to address issues of battering, incest, sexual harassment, trafficking in women, prostitution and other forms of sexual assault. These acts of violence are being handled through feminist counselling that is also backed up by education, training, research and documentation.
- *Women's Legal Bureau, Inc. (WLB)*, which is a feminist legal resource organization that provides services to women and women's organizations. It has legal services and develops, legal and policy research and advocacy, development education and training, and legal information, services and development.
- *Women's Legal Education, Advocacy and Defence Foundation, Inc. (WomenLEAD)*, which adopts feminist strategies in the critique and analysis of the law and the legal system. It provides services

such as paralegal training and education; feminist counselling and legal assistance; research, publication and library; campaigns, media and external links.

Other related documents coming from women's organizations working on reproductive health issues and trafficking in women were likewise reviewed in making this report.

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## **Part 1: State Violence In The Philippines**

### **1. Introduction**

The Philippines ratified the ICCPR (International Covenant on Civil and Political Rights) in October 23, 1986; the ICESCR (International Covenant on Economic, Social and Cultural Rights) in on June, 7, 1974; the CEDAW (Convention on the elimination of all forms of discrimination against women) in August 5, 1981; the CRC (Convention of the rights of the Child) in August 21, 1990 and the CERD ( Convention on the Elimination of Racial Discrimination) on September 15, 1967, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, July 5, 1995. The Philippines also acceded to the CAT (Convention against Torture and other cruel, inhuman or degrading treatment or punishment) in June 18, 1986.

In accordance with Article 40 of the ICCPR, the Philippines submitted to the United Nations Human Rights Committee (HRC) the combined Second and Third State Reports of the Philippines' Implementation of the ICCPR. The last time that the Philippines had been examined by the Human Rights Committee was in 1989.

Under international law, the Philippines is obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment; and criminalize acts of torture, including complicity or participation therein, making them punishable by appropriate penalties taking into account their grave nature.

This alternative report considers that despite international and domestic commitments, torture in the Philippines persists. Some techniques of torture used during the period 1989-2003 (from the date of the last periodic report to date) mirror those used during Martial Law in the 1970s and early 1980s. These torture methods include electro-shocks, the use of plastic bags to asphyxiate, burning with the use of cigarettes, strangulation and beating with fists, metal pipes or gun barrels. These techniques are used to extract information and forced confessions. Those most at risk of being tortured are alleged members of armed and unarmed political opposition groups, ordinary criminal suspects and members of poor or marginalized communities. Recently, those who are suspected of being terrorists have also become victims of torture. The sections in this report on violence against women and children show that both women and children are particularly vulnerable to violence.

### **2. Administrative, Judicial And Criminal Justice Structure**

The judicial system in the Philippines includes four levels of courts: local courts which include the municipal trial courts, municipal circuit courts, metropolitan courts and municipal courts in the cities; regional trial courts; court of appeals which have 17 divisions; and the Supreme Court with 15 members. The Sandiganbayan is a special court of the same level as the Court of Appeals but primarily established against graft and corruption. The office of the Ombudsman was created to investigate and prosecute officials and employees of government and government controlled corporations for acts or omissions especially those within the jurisdiction of the Sandiganbayan.

The Philippine Constitution provides that any suspect has the right to be informed of charges against him/her, has the right to counsel, speedy and public trial. Usually poverty prevents a defendant from having effective legal counsel. Time limits have been set for various courts to act on cases brought to them for action: 24 months for the Supreme Court; 12 months for the Court of Appeals and 3 months for the lower courts. However, there is no time limit for trials. It has been noted in many cases that such time limits have often been violated, as will be shown in cases that will be presented later in this report.

During the period under review, there had been many backlogs at the lower courts due to vacancies for judges. It was reported in 2002 that of the 2,100 trial courts, only 66% has a regular judge. In Mindanao and other poor villages, only 17 out of 54 trial courts have judges. Low pay compared to other occupations is said to be the main cause of the vacancies. Low pay among judges and prosecutors are also causes of corruption among the judges and prosecutors.

The Philippine Commission on Human Rights (PCHR) was created in 1987 to investigate cases of human rights violations, including torture, report and record patterns of violations and promote human rights education programmes for military and law enforcement personnel.

However, there have been occasions when the PCHR has been too willing to accept the authorities' version of events such that some investigations were pursued with inadequate vigour and cases were set aside or "archived" too readily and on weak pretexts.<sup>1</sup> On some occasions, the PCHR even becomes an apologist for the government. Human rights education programmes for police and military officers and personnel continue to be conducted by the PCHR but not enough to significantly change their practice related to arrests and detention and torture, as shown by statistics and surveys done by independent agencies.

Upon receipt of a complaint regarding allegations of torture, which under the current law can only be filed for lesser crimes such as maltreatment or serious physical injury or related crimes, the Department of Justice (DOJ) or the Office of the Ombudsman conducts a preliminary investigation. This, in general, involves the assessment of complaint affidavits and counter affidavits, with the possibility of the investigating prosecutor holding clarificatory hearings.<sup>2</sup> An information supported by affidavits is necessary to initiate criminal investigation and prosecution. The burdensome requirement of sworn statements and difficulties to get medical certificates for injuries sustained, have discouraging effects on torture victims, especially among the poor and marginalized sectors in the Philippines.

### **3. Relevant Legal Structure**

#### **3.1 Initiatives to Criminalise Torture**

The Philippine Constitution also provides that no torture, force, violence, threat, intimidation, or any other means, which vitiate the free will, shall be used against a person. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited (Article III, Section 12).

The Constitution reflects many of the obligations valid under the International Law.<sup>3</sup> These are:

- 1) General prohibitions against torture;
- 2) Prohibition of torture;
- 3) Limitation on the use of incommunicado detention;
- 4) Declaration that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings against the person making the statement;
- 5) Redress for the victims of torture through penal and civil sanctions against perpetrators, compensation and rehabilitation; and
- 6) Prohibition against other acts of cruel, inhuman or degrading punishment.

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<sup>1</sup>Amnesty International, Philippines, Torture Persists: appearance and reality within the criminal justice system, January 2003.

<sup>2</sup> *ibid.*

<sup>3</sup> Free Legal Assistance Group (FLAG) and Foundation for Integrative and Development Studies (FIDS), Torture Philippines: Law and Practice, 2003.

Although the absolute prohibition of torture and ill-treatment under international law is affirmed in the Philippine Constitution, torture has not yet been defined as a crime in the Revised Penal Code of the Philippines. Therefore, whilst the prohibition is now enshrined in the Constitution, no one can be prosecuted for acts of torture until a law is passed by the legislature and the law becomes part of the Penal Code.

Several bills criminalizing torture are currently pending at the House of representatives and Senate. The prohibition of torture, which is non-derogable, is defined by one bill as “any act by which severe pain or suffering, whether physical, mental or pharmacological is intentionally inflicted by or at the instigation of or with consent or acquiescence of a public official or other person acting in an official capacity, on a person for such purposes as obtaining from him/her or a third person information or confession, punishing him/her for an act he/she has committed or suspected of having committed, or intimidating and coercing him/her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted for the purpose of extracting information or confession.”

At present, victims of torture and their lawyers may file cases on maltreatment, physical injuries, grave coercion, mutilation, administering injurious substances or beverages and rape which are crimes under the Revised Penal Code<sup>4</sup>. However, the definitions of these crimes fall short of the definition of torture present in the Convention against Torture. Further, maltreatment and other related crimes of the Revised Penal Code are subject to statute of limitations as provided in Article 90. It is imperative that a law criminalizing torture be enacted to allow prosecutions for torture and inhuman and degrading treatment and which imposes severe penalties on perpetrators and persons in authority in order to help prevent further occurrence of torture.

There are pending anti-torture bills in Congress. However, during the 11<sup>th</sup> session of Congress (1998-2001), the bills did not pass the Congress committee levels. In terms of content, the pending anti-torture bills remain problematic as they provide the imposition of death penalty. During the 12<sup>th</sup> Congress session (2001-present), the anti-torture bills remained pending within committee level in both houses. There is no possibility of an anti-torture bill being enacted into law before the 12<sup>th</sup> Congress ends in the first quarter of 2004 because there are still several steps that have to be taken, such as the debates at the committee level in both houses, the passage of a consolidated bill by the Committees in both houses, the consolidation of a bill for deliberations by both Houses of Congress and the signing into law by the President.

### **3.2 Non-refoulement**

Article 3 of the Convention Against Torture, to which the Philippines is party, forbids expulsion, return ("refouler") or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. No statutory enactment, has been adopted to give effect to this.<sup>5</sup>

### **3.3 International Criminal Court**

Considering the absence of domestic mechanisms to prosecute perpetrators of torture, ratification of the statute of the new International Criminal Court (ICC) would be an important venue for redress. However, the Arroyo government is now depriving its citizens of this international venue for prosecution of individual perpetrators of grave crimes such as war crimes and crimes against humanity, wherein torture is included. The Philippines' signature on the Rome Statute for the International Criminal Court was

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<sup>4</sup> Act 3815, 8 December 1930, as amended by Executive Order No.62, 7 November 1986.

<sup>5</sup> Ibid.



deposited in the UN on December 28, 2000. However the process of ratification has been frozen due to the unwillingness of the Arroyo government to submit the instruments of ratification to the Philippine Senate.

Instead, on May 13, 2002, the Philippine government entered into a bilateral executive immunity agreement with the United States which states that, "When the Government of the Republic of the Philippines extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of the Philippines will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the UN Security Council, absent the expressed consent of the Government of the United States." This agreement virtually negates the prosecution of citizens of the Philippines and the United States by the International Criminal Court and other international tribunals not established by the UN Security Council, even if the Philippines ratifies the Rome Statute for the International Criminal Court.

Further, the Philippine government has also not taken steps to help put in place a regional mechanism for human rights among the Association of Southeast Asian Nations (ASEAN) countries.

## **4. General Background Information On The Right To Life**

### **4.1 Unlawful killings**

#### **4.1.1. Legal Framework**

The Universal Declaration of Human Rights declares the inherent right of every human being to life. Other international HR instruments reinforce this inherent right. Article 37 of the ICCPR prohibits the imposition of the death sentence for crimes committed by persons below 18 years of age and Article 6 of the CRC calls upon States Parties to recognize that every child has the inherent right to life.

#### **4.1.2. Practice**

During the authoritarian regime of Ferdinand Marcos (1966-1986), his mailed-fist policy against political opposition led to unprecedented mass arrests, extra-judicial killings, 'disappearances' and other forms of human rights abuses. Fourteen years of bloody rule left almost 100,000 persons arrested. Many were tortured, and about 2,500 summarily executed.<sup>6</sup>

After the dark years of martial rule, Corazon C. Aquino stepped in February 1986 as the next president of the Republic of the Philippines.<sup>7</sup> In her second proclamation on 2 March 1986, she declared that her government bound itself to the ideals of genuine liberty and freedom for all. On March 16, 1986, President Aquino issued Executive Order No. 8 creating the Presidential Committee on Human Rights (PCHR) and appointed former Sen. Jose W. Diokno and former Supreme Court Associate Justice J. B. L. Reyes as chair and co-chair, respectively. The PCHR was created to affirm the new government's commitment "to uphold and respect the people's civil liberties and human rights" and "to investigate complaints of unexplained or forced disappearances, extra-judicial killings or 'salvaging,' massacres,

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<sup>6</sup> Task Force Detainees of the Philippines, *Pumipiglas 3: Torment and Struggle After Marcos, A Report on Human Rights Trends in the Philippines Under Aquino, 1986-1992*, page 2.

<sup>7</sup> Corazon Aquino, or Cory as she was popularly called, challenged Marcos during the 1986 Snap Presidential Elections. Widespread cheating and tampering of election returns and the declaration of Marcos as winner resulted in the so-called EDSA or "People Power" Revolution, which eventually toppled the Marcos regime. Mrs. Aquino was the first woman president of the Philippines and wife of slain opposition leader Benigno Aquino, Jr.

tortures, hamletting, food blockades, and other violations of human rights," committed during the past and succeeding administrations. President Aquino also released all political prisoners in 1986.<sup>8</sup>

The Filipino people ratified a new charter of what is now known as the "1987 Constitution" on February 2, 1987. It contains provisions on human rights: the Bill of Rights enshrines all civil and political rights; the social, economic and cultural rights are found in the Article on Social Justice and Human Rights. The 1987 Constitution contained articles on Education, Science, Technology, Arts, Culture and Sports, the Family and other issues.

While certain provisions of the 1935 and 1973 (or Marcos) Constitutions were retained, the 1987 Constitution contained additional principles: the freedom of speech, of expression or of the press, the right of the people to assemble peacefully and petition government for redress of grievances; on the liberty of abode which shall not be impaired except upon court order; the right of the people to public information including government data "used for policy development"; free access to the courts and quasi-judicial bodies and adequate legal assistance.<sup>9</sup> The other provisions of the new constitution enshrined the rights of detainees under investigation; the prohibition of torture, secret detention, solitary confinement, incommunicado or other forms of detention; and the right to counsel.<sup>10</sup> Although many of these additional principles have been enshrined in the constitution of the Philippines, the legislature has not enacted legislation to make many of these rights and freedoms enforceable, such as a law to prosecute perpetrators of acts of torture or inhuman and degrading treatment.

However, President Aquino's declaration of a "total war" strategy against the Leftist guerrilla movement in February 1987 signalled the government's abandonment of an earlier policy to seek socio-economic and political solutions to the long-drawn civil strife in favour of a military approach.<sup>11</sup> Cases of extra-judicial killings (or locally known as "salvaging") during the Aquino government (1986-1992) were perpetrated by police, military and paramilitary units named the Civilian Armed Force Geographical Units (CAFGU) and some government-supported vigilantes.<sup>12</sup>

President Fidel V. Ramos, who won the 1992 elections and the first president to be elected under the 1987 Constitution, engaged in peace negotiations with the armed opposition groups. President Ramos, who was Aquino's defence secretary and head of police during the Marcos regime, signed a peace agreement with the largely secular Moro National Liberation Front (MNLF)<sup>13</sup> in 1996, raising hopes for lasting peace in the southern Philippines. In its drive to "pole vault" the country into the league of industrialized countries at the turn of the century, the Ramos government has carved a trail of human rights abuses cloaked in the language of so-called "development". There were 153 documented cases of summary executions or "salvaging" from 1992-1997.<sup>14</sup>

President Joseph E. Estrada, who succeeded Ramos in 1998, entered into peace negotiations with the armed opposition groups but later declared an all-out war especially against the Moro Islamic Liberation

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<sup>8</sup> Task Force Detainees of the Philippines, *Pumipiglas 3: Torment and Struggle After Marcos, A Report on Human Rights Trends in the Philippines Under Aquino, 1986-1992*, page 7.

<sup>9</sup> *Ibid*, page 11.

<sup>10</sup> *Ibid*, page 12.

<sup>11</sup> *Ibid*, page 5.

<sup>12</sup> *Ibid*, page 44.

<sup>13</sup> The MNLF, led by former university professor Nur Misuari, inked a peace agreement with Ramos in 1996. In 1998, Misuari became the governor of the Autonomous Region in Muslim Mindanao (ARMM), but his administration failed to deliver the aspired changes in the region, one of the poorest in the country.

<sup>14</sup> Task Force Detainees of the Philippines, *Philippines 2000: A Myth Shattered, Report on the Human Rights Situation (1996-1997)*, page 44.

Front (MILF).<sup>15</sup> This resulted in massive displacement, especially among the Muslims in Mindanao, due to bombings and large-scale military operations. TFDP documented 28 cases of extra-judicial execution under the Estrada government. President Estrada, a long-standing supporter of the Marcos regime almost throughout his political career, also dismayed the people in the country and abroad when he announced that he would allow the late dictator Marcos to be buried with full military honours at the Libingan ng mga Bayani (Heroes' Cemetery).<sup>16</sup> This did not push through due to massive protests.

#### **4.1.3. Summary executions in Davao City<sup>17</sup>**

Summary executions in Davao City were first reported during the early 1990s. A strong frustration by the general public with the arduous and ineffective judicial system and a climate of fear have nurtured a mute acceptance of summary executions as the “practical resort” to the suppression of crime in Davao City. This climate of fear sprung from the general perception of an “unseen enemy” and, among victims and witnesses, of perpetrators “with strong back-up and connections.” Summary executions are seen as a cheap price the city has to pay for maintaining peace and order. Davao City and the surrounding region notably possess a strong vigilante tradition, a reaction to the insurgency problem during the 1970s and 1980s.

Since May of 2001, two vigilante groups respectively known as the Davao and Digos Death Squads have killed at least 86 people, including teenagers. Press reports confirm that not one person has been brought to justice or even charged with the killings. Fourteen of the cases occurred in Digos City, with the remainder in Davao City. It is not clear how close the links are, if any, between the Davao and Digos Death Squads. However, the killings committed by both groups are carried out in a similar manner and against suspected drug pushers and petty criminals. The killings remain unpunished and seemingly uninvestigated. It appears from the media reports that the killings are not random attacks carried out by amateurs. The nature of the killings have lead NGOs to believe that they and their perpetrators are well organized and well funded.

The Davao Death Squad (DDS) is believed to have liquidated more 150 people over the last seven years. From 1999 to 2002, a total of 17 cases of summary executions were also reported in the areas near Davao City, with 11 cases in Digos City and Davao del Sur province, five cases in Tagum City, Davao Oriental province, and two in Tacurong City, Sultan Kudarat province. Sometime in June 2000 in Tagum City, unidentified gunmen, believed to be vigilantes, liquidated three suspected drug pushers. This development came after a noted increase of drug abuse, especially among the youth in Tagum City.

Since July 1999, child rights organizations in Davao City have been involved in the uphill campaign against the summary execution of children. The campaign is described as a torturous swim against the strong tide of public opinion tacitly favoring summary executions as a swift and effective method to curb criminality in the city. While many newspaper articles have been written on summary executions in Davao City, few have only been able to establish the trend represented by these incidents. Investigative stories were unable to pinpoint the perpetrators and link them to any group. None of these articles were able to capture the form and substance of the campaign, which has proven to be a baptism of fire for local

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<sup>15</sup> A splinter group of the MNLF, the MILF incurred heavy losses under the all-out war campaign by the Estrada and Macapagal-Arroyo administrations. Nonetheless, the MILF maintains a strong presence in many areas throughout Mindanao. MILF chairperson Islamic scholar Sheik Hashim Salamat recently died.

<sup>16</sup> A large cemetery dedicated to the gallant memory of Filipino soldiers who died during World War II and other conflicts. In an attempt to establish a cult following early during his presidency, Marcos made many claims of gallantry during World War II. While he did see action during the war, he was nowhere near Bataan and neither did the Japanese incarcerate him in Fort Santiago as he had claimed. The supposed medals and decorations attesting to his gallantry were exposed as fake.

<sup>17</sup> Produced by The PREDA Foundation.

child rights organizations, particularly those that have limited experience in leading human rights campaigns on sensitive issues such as summary executions.

A partner organization based in Davao City contacted the PREDA Foundation Inc. in 1999 after being threatened and intimidated by local authorities for having spoken out against the killing of street children. The partner organization had reported that an unidentified group, usually well-equipped gunmen riding black motorcycles, was summarily executing street children. Such killings went unchecked and the perpetrators unpunished to such an extent that the killers appeared to act with complete impunity. PREDA launched a massive and intensive Internet and publicity campaign to protest against the wanton killings of young people. Then Davao City Mayor Benjamin de Guzman sued PREDA for libel. In their defense, PREDA charged that the libel law ought not be used to stifle and silence the voice that speaks for HR against the killing of innocent people by "semi-official" death squads. PREDA eventually won the case. Because of the libel case and the ensuing publicity, the killings stopped in the year 2000.

The death squads reappeared after Rodrigo Duterte, who had campaigned on a strong anti-crime and anti-drugs platform, won the mayoralty race in Davao City. Since his election, Mayor Duterte has constantly warned suspected drug dealers and petty criminals to "leave his city or face his wrath." PREDA suspects that the renewed killing spree is an official policy aimed to curb street crime in order to garner support from local business people.

#### *Recent Events and Statistics*

While newspapers made no mention of any killings for six months between 05.12. 2001 and 11.02.2002, NGOs in Davao reported that the summary executions continued throughout the same period. NGOs claimed that since 06.12.2001, more than 45 people have been executed by the DDS. According to the press, the police named most of the 45 victims as suspected criminals or drug dealers – while no proof of any crime has been advanced nor any of the alleged convictions verified. Several of the reports indicated the ages of the victims, many of whom were children and youth. The majority appeared to be street dwellers. The reports do not contain any details about exact addresses of the victims and little reference is made regarding the victims save for their occupations.

Few complaints, if any at all, have been made to police officials due the atmosphere of fear and intimidation in the Davao area. Several NGOs reported to have made complaints to the Davao branch of the Commission on Human Rights. Davao-based NGOs noted that the police and media have incorrectly reported that the many killings in the city were the result of gang rivalries and not the handiwork of the DDS.

NGOs expressed extreme concern over the route Philippine law enforcement may take after Mayor Duterte, the newly appointed anti-crime consultant, had made alarming statements at a national anti-crime summit in Manila on 09.07.2003, which was attended by President Gloria Macapagal-Arroyo, Interior and Local Government Secretary Joey Lina and Philippine National Police Chief Hermogenes Ebdane. To loud applause, Duterte was quoted as saying, "The intention of the criminals is to instill fear in their victims and kill them. What should we do, but kill them also." He also recommended the government to pursue a policy of "an eye for an eye, a tooth for a tooth" against suspected criminals.

All of the killings appear to be carried out on the streets during broad daylight by armed men on unmarked motorcycles. Generally, there are two gunmen, usually wearing either black clothing or military fatigues, on each motorcycle. While no witnesses have ever surfaced out of fear, investigations and interviews with people witnessing the attacks, as well as newspaper accounts confirm that the assailants are organized and well informed about their targets. Many street children in the area have reported being stopped by men on motorcycles and shown lists of names of people, whose whereabouts and descriptions were asked.

Thirty-eight percent (38%) of the victims were suspected to be involved in theft-related incidents, while twenty-nine percent (29%) were involved in drug-related crimes. While no clear motives were given for eighteen percent (18%) of the cases, fourteen percent (14%) of the victims were suspected members of street gangs. Eighty-four percent (84%) of the victims were gunned down. The .45 caliber pistol was the preferred weapon of assault, although .38 caliber or 9mm pistols were also used. Fourteen percent (14%) of the victims were stabbed dead, while the method of execution in two percent (2%) was not indicated.

Seventy-six percent (76%) of the victims were adults, but nonetheless, a grim sixteen percent (16%) of the victims were children aged 13 to 17. The age of the victims in eight percent (8%) of the cases was unidentified, although one was positively identified as a teenager. Majority of the victims were male at ninety-three percent (93%). All of the child victims were boys. All of the female victims were adults.

#### *The Death Squads and Alleged State and Police Involvement*

Before acquiring the name Davao Death Squad, the group of gunmen who purposely kill “police or criminal characters” suspected of involvement in the drug trade or cellular phone snatching syndicates in the Davao area, was euphemistically known as *Suluguon sa Katawhan* or “Servants of the People”. Within a couple of years after making its first mark in 1993, the DDS, also known as the *Dunggab* Death Squad or *Los Pepes*, sporadically made its presence seriously felt. By mid-1997, the local press already attributed to the DDS more than 60 unsolved murders, mostly of people believed or confirmed by authorities to be involved in the drug trade. It has been observed that the DDS adopted the urban warfare tactics used in the 1980s by the so-called Sparrow Units<sup>18</sup> of the New People’s Army (NPA) during the height of the revolutionary movement. One source revealed in 1997, that the DDS had at least 10 members, mostly surrenderees or former members of the NPA.

In October 2001, the Region XI Commission on Human Rights (CHR) Director linked the increase of incidents of summary executions to a bounty system catered by wealthy patrons. He said that summary executions have become a lucrative business, with the patron paying at most PhP 35,000 for each victim killed. At least PhP 15,000 of the bounty reportedly goes to the triggerman, while the remainder is allegedly given to police officers said to be in cahoots with the vigilante groups. The regional director also pointed out that it was close to impossible for the police and military not to know the identities of the members of these groups given the huge budget allocated for intelligence work.

On the other hand, the PNP has not charged anybody in relation to the murders and does not appear any close to doing so. This is despite a Special Task Force, which was set up by PNP Chief Supt. Eduardo Matillano in October 2001, to investigate the murders. However, since its inception, Task Force Vigilance has not charged one person with the murders. Officially and consistently, the city police and Mayor Duterte deny any link or knowledge of the activities of the DDS. Meanwhile, the press made claims that there are former military and PNP officers in the DDS ranks. In 2001, some witnesses linked three police officers to the DDS. It was noted that the officers were, at one time or another, near the crime scene. They were suspected of either being the gunmen or having served as the contacts. The witnesses however were reluctant to provide written statements. Regardless of who is actually pulling the triggers, it is clear that the State has made no real attempt to investigate the killings and prosecute the perpetrators. As such, the killers appear to be allowed to act with complete impunity. Thirty percent (30%) of the cases transpired within the jurisdiction of the Sta. Ana Police Station in downtown Davao City. Twenty-six percent (26%) occurred in the jurisdiction of the San Pedro Police Station, with fifteen percent (15%) at the Talomo Police Station. Ten percent of the killings occurred in areas under the jurisdiction of the Buhangin Police Station, while six percent (6%) transpired in the area under the Sasa Police Station.

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<sup>18</sup> The Sparrow Units were assigned to eliminate individuals identified by the NPA to have committed “crimes against the people.” Their targets included common criminals such as robbers, military spies or “assets” and abusive police officers.

According to a report by a local paper dated 21.11.2001, Chief Matillano admitted that some police officers were involved in the vigilante killings. The same report quotes Matillano as saying that the vigilante killings have almost halved the crime rate in the city. In addition, an unnamed ranking police officer in the report says it is highly possible that Matillano had knowledge of the composition, plans and operations of the Davao Death Squad.

Very important local figures, such as local Counselor Angela Labrado, Human Rights Commissioner Dominador Calamba II, local priests, the Free Legal Assistance Group and the Integrated Bar of the Philippines have all condemned the police for their complete failure to investigate the killings or prevent them. They have demanded the police to implement their obligations under national and international law and investigate the murders. Human Rights Commissioner Calamba II, on the Philippines Government Information Agency website said on 05.03.2002, that the failure by the police and local executives to stop the vigilante killings was a blatant human rights violation. He indicated that local executives and the police knew the criminals but were, "seemingly tolerating them."

The press has meanwhile closely linked Mayor Duterte to the killings by the DDS. It is a widely held belief that the mayor is linked to the killings. The Dow Jones Reuters report dated 29.10.2001 indicates the apparent rationale behind the killings. The report cites businessmen of the area who claimed that the investment climate in the city improved significantly, after the security situation stabilized during Duterte's term in the mid-1990s, the same period the DDS began their campaigns. After Duterte was re-elected as a result of strong support from the business community for his "firm resolve" in solving criminality in Davao, the media reported the almost immediate intensification of incidences of summary executions. Reuters reported on 05.27.2002 that, "In the past, the DDS (Davao Death Squad) was linked to Mr. Duterte who seems to favour a heavy-handed law enforcement style for this city." On his weekly television show, Duterte has been repeatedly naming suspected criminals and drug dealers. Reuters reported of Duterte's admission that many of the people he had named were killed a day after broadcast. On 01.14.2002, Reuters reported that the mayor had threatened alleged kidnappers operating in Davao whom he also names in his television program. After telling them that he is ready to kill or be killed, Duterte said, "I know who your relatives are and where they live."

Duterte has consistently denied involvement with the DDS, and has even denied the existence of the DDS. The Davao Sunstar however, in a report dated 04.09.2002, quoted the mayor as saying, "I would rather see criminals dead, than innocent victims die, being killed senselessly." The statistics show that sixty-five percent (65%) of the documented cases of summary executions transpired during the current term of Mayor Rodrigo Duterte, while the remainder took place during the term of Benjamin de Guzman.

## **4.2 Death Penalty**

The Philippine Government Report states in paragraph 493: "... Initiatives to institute the death penalty were undertaken during the Ramos administration amid the rash of violent drug-related crimes in 1994." According to a report by the Free Legal Assistance Group, this statement is patently false, as the then President Ramos signed the death penalty into law on December 13, 1993, after congressional debates that began in July 1992 and ended in 1993. The death penalty became effective on December 31, 1993.

The Philippine Report in paragraph 496 refers to the death penalty abolition bills pending before both Houses of Congress. Congressional consideration of the abolition bills began on December 10, 2001, within the 12<sup>th</sup> and present Congress. There are strong arguments for the abolition of the death penalty, yet until now, the bills are still pending in Congress. The 1987 Philippine Constitution effectively abolished the death penalty when it stated: "...Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, Congress hereafter provides for it. Any death penalty

already imposed shall be reduced to reclusion perpetua..."<sup>19</sup> The Philippine Report fails to provide compelling reasons why it re-imposed the death penalty.

The Philippine Report in paragraph 511 outlines the "safeguards" it claims the Philippine government has instituted with respect to capital punishment. However, on many occasions, the death penalty is imposed after trials that do not conform to international standards of fairness and are attended by gross violations of human rights. Many death convicts report that they were tortured to get their confessions, denied access to competent and independent lawyers, and denied due process and a fair trial.<sup>20</sup>

At the House of Representatives and the Senate, death penalty abolition bills have been filed on August 13, 2002 and November 15, 2002, respectively. On August 28, 2002, the abolition bill at the House of Representatives was sponsored by Representative Loretta Ann P. Rosales while at the Senate, the abolition bill was sponsored by Senators Aquilino Pimentel and Francis Pangilinan. To pass a bill, debates follow at the two chambers separately, then a consolidated bill will be considered by both houses. Once the House of Representatives and the Senate pass the bill, the President will sign it into law.

One obstacle to the abolition of the death penalty is the position of the Executive branch of government. Although Vice-President Guingona announced the suspension of all executions pending deliberations of the abolition bills on September 2002, President Arroyo declared in her State of the Nation Address at the opening of Congress on July 28, 2003 the lifting of the suspension of executions for "drug traffickers." With only about five months before the closure of the 12<sup>th</sup> Congress and quite a number of President-endorsed priority bills (which does not include the abolition bills), it is unlikely that the bill will be passed by the 12<sup>th</sup> Congress.

### 4.3 Disappearances

The practice of enforced disappearance has been a brutal but effective tool during the Martial Law years. The number of incidences of involuntary disappearance continued to grow in the post-Marcos administrations. Under the Arroyo administration (January 2001-present), there are already 37 reported cases of involuntary disappearances. Needless to mention, there may be more unreported cases.

Statistics on involuntary disappearance in the Philippines from 1972 to August 18,2003 follows:

#### **CASES OF ENFORCED DISAPPEARANCE Documented by FIND**

| Government                         | Reported Cases | Documented Cases | Still Missing | Surfaced Alive | Found Dead |
|------------------------------------|----------------|------------------|---------------|----------------|------------|
| Ferdinand E. Marcos (1966-1986)    | 850            | 850              | 596           | 132            | 122        |
| Corazon Aquino (1986-1992)         | 820            | 611              | 407           | 108            | 96         |
| Fidel. Ramos (1992-1998)           | 87             | 87               | 40            | 37             | 10         |
| Joseph Estrada (1998- January2001) | 58             | 58               | 16            | 39             | 3          |
| Gloria Arroyo (January 2001-       | 37             | 35               | 23            | 11             | 1          |

<sup>19</sup> 1987 Philippine Constitution

<sup>20</sup> Free Legal Assistance Group (FLAG) and Foundation for Integrative and Development Studies (FIDS), *Torture Philippines: Law and Practice*, 2003.

|              |             |             |             |            |            |
|--------------|-------------|-------------|-------------|------------|------------|
| present)     |             |             |             |            |            |
| <b>TOTAL</b> | <b>1852</b> | <b>1641</b> | <b>1082</b> | <b>327</b> | <b>232</b> |

There is still no law on enforced or involuntary disappearance in the Philippines. Since 1995, FIND has been steadfastly lobbying for the enactment of a law that will penalize enforced or involuntary disappearance. The 10<sup>th</sup> (1995-1998) and 11<sup>th</sup> Congresses (1998-2001) failed to pass this measure, which has been re-filed in the current Congress. The Committee on Justice and the Committee on Civil, Political and Human Rights jointly passed an anti-disappearance bill in the House of Representatives on February 2003 and this is now pending before the House Committee on Appropriations. However, at the Senate, there had been no public hearings on the three anti-disappearance bills filed. It is, therefore, unlikely that this bill will be enacted into law before the 12<sup>th</sup> Congress ends in the first quarter of 2004.

## 5. The Practice Of Torture

From February 1982 to October 21, 1992, a total of 20,523 political arrests and detention were documented while 3,171 cases of physical assault and torture were recorded, some of which occurred even before President Aquino declared an all-out war policy against armed opposition groups such as the Communist Party of the Philippines-New People's Army (CPP-NPA).<sup>21</sup> During the Ramos government (1992-1998), TFDP documented political detention of 3,460 individuals, 179 of whom were tortured.<sup>22</sup> President Estrada's term of two years and six months, there was a recorded 681 political arrests with 53 cases of torture.

### CASES OF TORTURE, 1986-2003

#### Documented by TASK FORCE DETAINEES OF THE PHILIPPINES

| ADMINISTRATION                     | NUMBER OF TORTURE CASES |
|------------------------------------|-------------------------|
| Aquino (1986-1992)                 | 102*                    |
| Ramos (1992-1998)                  | 179                     |
| Estrada (1998-January 2001)        | 53                      |
| Arroyo (from January to June 2003) | 31                      |

\* documented by the Medical Action Group

There is a noted decreasing trend in the occurrence of political torture from the Marcos administration to the Estrada government. However, there is an indication that the incidence of torture might be higher during the administration of Pres. Gloria Macapagal-Arroyo, because of the heightened campaign against terrorism.

In the current Arroyo government's term of two years and four months, government and military forces committed torture on at least 49 persons since February 2001. Thirty-seven of these occurred in the first half of 2002. Most of the cases documented by TFDP occurred in Mindanao, where three victims are children (14, 16 and 17 at the time of the documentation), and one is a female.<sup>23</sup> Torture does not only

<sup>21</sup> Parong, Aurora, Torture, Ill Treatment and Inhumane Treatment in the Philippines Through the Years, speech delivered at the National Workshop on the Role of Judges, Prosecutors and Public Defense Attorneys on the Prevention of Torture, July 24-26, 2002 at the Legend International Resort, Waterfront Road, Subic Freeport Zone, Subic, Zambales, page 110.

<sup>22</sup> TFDP, Statistics of Human Rights Violations Under the Ramos Government, June 1, 1992-May 31, 1998.

<sup>23</sup> Documented Cases of Human Rights Violations with Torture, February 2001-June 30, 2002, TFDP-RDIP.



take place in political detention or abduction. It is an open secret that torture and maltreatment occurs almost always in the police stations during what is known as "tactical interrogation".<sup>24</sup>

## **CASES OF TORTURE UNDER THE ARROYO GOVERNMENT**

**January 2001-June 2003**

**Documented by TASK FORCE DETAINEES OF THE PHILIPPINES**

| <b>AREA</b>             | <b>NUMBER OF CASES</b> |
|-------------------------|------------------------|
| Luzon                   | 9                      |
| Visayas                 | 14                     |
| Mindanao                | 18                     |
| TOTAL                   | 31 cases               |
| TOTAL NUMBER OF VICTIMS | 88 victims             |

| <b>VULNERABLE SECTORS (VICTIMS)</b> |   |
|-------------------------------------|---|
| Elderly                             | 1 |
| Women                               | 7 |
| Children                            | 3 |

| <b>PERPETRATORS</b>              | <b>NUMBER OF CASES</b> |
|----------------------------------|------------------------|
| Philippine Army (PA)             | 20                     |
| Philippine National Police (PNP) | 6                      |
| PA/PNP                           | 1                      |
| Intelligence                     | 1                      |
| Marines                          | 1                      |
| NBI                              | 2                      |

In 1993, the LAWASIA Human Rights Committee and the Ateneo Human Rights Center conducted a research on the practice of administrative detention in the country. The results showed that during arrest, there is employment of unreasonable force and that ninety percent (90%) of detainees were arrested without warrants. Many were not informed of the charges against them. During custodial investigation, "Many policemen viewed lawyers as obstacles to their investigation... Many detainees claimed maltreatment by the police. Reasons given by the police are : a) to elicit information; b) to obtain confession/admission; c) as a result of provocation; d) the suspect is a hardened criminal; and e) the suspect's guilt is certain." It was noted that during the safekeeping period, "other illegal acts included maltreatment, extortion, forced labour, and extra judicial execution ("salvaging")."<sup>25</sup>

Torture usually happened immediately after arrest or abduction, often at night or at a place where there are few or no witnesses. The arresting officers may be in civilian clothes or in uniform but without nametags. Most often, they do not have the necessary warrant of arrest. They merely "invite" the victim for questioning. It was noted in a survey done on 309 inmates in 5 jails in Metro Manila that more common than warrant less arrests is the failure of arresting officers to inform suspects of their rights while

<sup>24</sup> Parong, Aurora, Torture, Ill Treatment and Inhumane Treatment in the Philippines Through the Years, speech delivered at the National Workshop on the Role of Judges, Prosecutors and Public Defense Attorneys on the Prevention of Torture, July 24-26, 2002 at the Legend International Resort, Waterfront Road, Subic Freeport Zone, Subic, Zambales.

<sup>25</sup> Medina, Carlos P. Jr, "The Law and Practice of Administrative Detention in the Philippines", in Proceedings of the Conference on Administrative Detention in Southeast Asia, Manila, 1998, pages 92-93.

they are handcuffed and taken for investigation.<sup>26</sup> Out of 309, 239 were not informed of their rights, eight were informed of their rights while 62 did not indicate any response to the questionnaire. After the arrest, the victim is interrogated and usually mistreated or tortured. Some, after the arrest, are blindfolded, sped away in an unmarked car and brought to a "safe house" where the interrogation and torture takes place. The number of "safe houses" has decreased, but they still exist.

The most common forms of torture are : the *ashtray*, which is burning the skin with cigarette butts; pulling off fingernails; *pompyang* or *el telefono*, slapping both ears simultaneously with great force; NAWASA<sup>27</sup> or water cure; *wet submarine*, submerging the victim's head in water or in a toilet bowl; and *dry submarine*, covering the victim's head with plastic to cause suffocation. Other torture methods include MERALCO<sup>28</sup> or electrocution, Russian roulette, rape and sexual abuse, solitary confinement, and psychological or mental torture.<sup>29</sup>

The method of strangulation was often used during martial law. During the administration of President Arroyo, strangulation as a method of torture has also been used.

1. On the morning of June 28, 2002, ten persons in blue long-sleeved shirts with bold (National Bureau of Investigation) NBI labels and high-powered guns arrested Orlando Estanes and his three fellow security guards of Metrocor Corporation in Las Piñas, Parañaque. No warrant of arrest was presented to them. Upon identifying himself, Estanes was made to board a van where he was placed in between two of his captors. He was told that he was a suspect in the killing of the Quintos brothers who owned large areas of land in Mindoro. His captors wanted him to testify against six other suspects in the killing, all Mindoro farmers currently detained at the Quezon City Jail. Estanes was brought to the captors' hideout in Cavite. There, his hands were tied, he was dragged inside the hut, and forced to kneel on the rough ground. One agent punched him in the stomach while three others kicked his back. Several times a woman agent put a plastic bag over his head to cut his air supply. He would gasp and faint every time. They kept telling him to divulge whatever he knew, otherwise his family would be killed. Later, he learned that his wife and four children were taken from their house by four other NBI operatives. The following day, his family was brought to him in Cavite. According to the agents, his family was brought there to force him to co-operate. The next day, Estanes' family was brought back to Mindoro, while he remained at the safe house for more interrogation. The physical and mental torture lasted 26 days, during which time Orlando was denied medical help and legal counsel by his captors.<sup>30</sup>
2. Two alleged members of the New People's Army (NPA) from Compostela Valley in Mindanao, Nestor Daven, 29 years old and Ruen "Wingwing" Maglinte, 17 years old, were arrested without warrants by unidentified members of the 60<sup>th</sup> Infantry Battalion Philippine Army on January 29, 2001. Immediately after arrest, they were brought to the army detachment in Barangay Banlag, in Monkayo, Compostela Valley where they were interrogated and tortured. Daven spoke about their experience. They were kicked and punched and hit with the barrel and butt of an M16 rifle in different parts of the body. There was an occasion when a rope tied around his neck was slowly pulled by a soldier who was asking questions regarding his membership to the NPA and a bag of cellophane filled with water was also placed over his head. He survived but he was later detained

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<sup>26</sup> Free Legal Assistance Group (FLAG) and Foundation for Integrative and Development Studies (FIDS), *Torture Philippines: Law and Practice*, Pasig City, 2003, page 26.

<sup>27</sup> This method of torture was named after NAWASA or the National Water Services Administration.

<sup>28</sup> MERALCO means Manila Electric Company.

<sup>29</sup> FLAG and FIDS, *Torture Philippines: Law and Practice*, 2003.

<sup>30</sup> Daguno, Divina and Gomez, Leonor, "Orlando Estanes: A Torture Victim Under a Democracy," *Philippine Human Rights Update*, vol. 16 no. 3, 2002.

at the Provincial Jail in Tagum City, while his companion, still a child under Philippine laws, was turned over to the Department of Social Welfare and Development (DSWD).<sup>31</sup>

The torture of 17-year old Maglinte is a clear violation of a Memorandum of Agreement in the Handling and Treatment of Children Involved in Armed Conflict, signed by then Vice-President and Department of Social Welfare and Development Secretary Macapagal-Arroyo and the heads of various government agencies and offices, including the Armed Forces of the Philippines.

## **6. Conditions Of Detention**

The Philippine Constitution of 1987 prohibits the use of torture, incommunicado detention, secret detention places and solitary confinement. The case of Orlando Estanes, above mentioned shows the continued existence of secret detention places, commonly known as "safe house". "Safe houses" may be in military camps which are in far-flung villages, secluded public buildings and places.

Moreover, international human rights standards require that the State ensure that doctors, lawyers and family members have access to detainees. In practice in the Philippines, the victims have no access to doctors and lawyers during the first few days after the proof of torture incident. In this context, existing problems in obtaining proofs that torture took place arise frequently because physical signs of torture have already disappeared, as in several cases of torture documented by Task Force Detainees of the Philippines (TFDP), thus weakening a victim's pursuit of justice.

### **TFDP documented cases of use of torture :**

TFDP documented the use of torture on Tohamie Urong, 16, Ting Idar, 20, To Akmad, 30, Jimmy Balulao, 15, and Esmael Mamalankas, 36, Davao bombing suspects who were arrested in Cotabato City on April 8, 2003. All of them were brought to a secluded place in Awang Airport in Cotabato City where they were interrogated and tortured. Urong said he was forced to admit he had a hand in the bombing of the Sasa seaport and the Davao International Airport. Each time he refused or denied the accusation, he was hit and beaten. An armalite was used to hit him on the chest. His head was wrapped with cellophane and was only removed when he could no longer breathe. Idar's wallet containing PhP 3,000 and other documents were also taken. Like Urong, Idar was also forced to admit to the bombing. For refusing to do so, he was strangulated with a rope. His left foot was also electrocuted every time he denied his involvement to the bombing. Akmad's head was wrapped with cellophane. He was forced to admit the allegation so that his suffering would end. He was suffering from tuberculosis, which could only get worse with the beatings he received. To end the maltreatment, Balulao also admitted to have had a hand in the bombing in Davao City. His belt was used to strangle him during the interrogation. His left hand, which was placed with bullets, was squeezed. Mamalankas also confessed that he had personal knowledge of the bombing after having been punched on different parts of his body.

One of the Davao bombing suspects was abused with torture marks but was only seen by a doctor after the marks have disappeared. The bombing suspects made sworn statements regarding their torture ordeal inside the Criminal Investigation and Detection Group (CIDG) Southern Mindanao detention center on May 8, but SPO2 Marcial Gabunada of the CIDG confiscated their affidavits. The CIDG claimed that the documents were misplaced and requested the suspects to make and sign another batch of draft affidavits pending approval by CIDG XI Chief Supt. Danilo Galapon. Alberto Sipaco Jr., the Commission on Human Rights Regional Director in Mindanao refused to look into the allegations of torture made by the Davao bombing suspects supposedly because a court case has already been filed against the

<sup>31</sup> TFDP Fact sheet 2001-424: Daven and Maglinte Arrests

complainants.<sup>32</sup> Until now, the victims are still detained by CIDG, the government agency where the torturers belong. They have not been arraigned for the charges filed against them. Their case is still pending investigation by the Department of Justice (DOJ).

The investigation process in "torture" cases (which as stated are only prosecuted as lesser crimes at present due to the deficiency in the penal code) is itself deficient. There is a very inadequate forensic system, rarely applying the international standards prescribed in the Istanbul Protocol on the preparation of medical reports. As a result, it is difficult to prove torture.

Conditions of detention in Philippine jails are shocking. Sr. Superintendent Mercedes Foronda of the Bureau of Jail Management Penology (BJMP) noted quite a number of problems in the prisons which she said do not help in rehabilitation of inmates.<sup>33</sup> Supt. Foronda noted the overcrowding problems in 22 Metro Manila jails, as of August 2002, where the percentage of overcrowding range from 23% to 269%. For example, in Pateros Municipal Jail, 80 detainees stay in a jail ideal for 65 only (23% overcrowding) while 369 stay in the Las Pinas City Jail which has an ideal capacity of 100 (269% overcrowding) and 3,800 stay in the Manila City Jail ideal for 2025 only (88% overcrowding). She noted further that while prison population increased in jails managed by the BJMP from 2000 to 2001 by 10%, the BJMP budget for maintenance and other operating expenses from which jail inmate food comes from did not increase during the same period.<sup>34</sup> She also noted poor jail recording system resulting "in many prisoners languishing (in jail) long after they should have been released."<sup>35</sup>

## **7. Remedies (Complaints, Investigations And Punishment)**

Because of the delay in the adoption of a criminal definition of torture, victims and lawyers may only file cases of lesser crimes, such as maltreatment, physical injuries and related crimes, against perpetrators of torture. Further, existing statutory law in the Philippines observes only territorial jurisdiction in the prosecution of maltreatment and related offences. In addition, Statues of limitations are applicable to these crimes.

In 2001, the Ateneo Human Rights Center conducted a study on legal and judicial aspects of impunity, with focus on the right to life or the violations of that right that occur in cases of disappearances or summary execution (or in the Philippines called "salvaging").<sup>36</sup> The research showed that there are socio-cultural, political, economic and legal factors that actually contribute to the phenomenon of impunity. Such factors include social status and values, power relationship, financial condition of the aggrieved party and inaccessibility of the justice system.

In the same research on impunity, prosecutors, law enforcers and judges point to fear of reprisal from the relatives or friends of the accused as a major cause of reluctance of the victim to cooperate and pursue investigation and prosecution if the accused is a law enforcer, a member of the military or a government official. It has been observed that the witness protection program provided by the Department of Justice (DOJ) was inadequate. One reason is the lack of resources. Witnesses have complained that protection is guaranteed only during and not after trial, leaving them open to retribution by the accused or from friends of the accused. There is also a general distrust of the judicial system and a perception that nothing will

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<sup>32</sup> TFDP Fact sheet: COT-006

<sup>33</sup> Mercedes Foronda, *Praxes and Prospects for Corrections in the Philippines*, November 2002, page 176.

<sup>34</sup> *Ibid*, page 175.

<sup>35</sup> *Ibid*, page 176.

<sup>36</sup> Ateneo Human Rights Center, *Human Rights Treatise on the Legal and Judicial Aspects of Impunity*, Conference Proceedings and Related Articles, 2001.

come off such trials due to the vulnerability of the institutions of justice to pressure, influence or corruption.

Justice delayed is justice denied. The system of justice is very slow in the Philippines which helps to perpetuate impunity. Failures in the prosecution of alleged government-perpetrators of summary executions highlights the lack of celerity of the judicial processes.

**TFDP documented cases of attempts of criminal prosecution :**

1. On September 4, 1997, Marlon 'Ka Pepsi' Fernandez was killed by members of the Philippine National Police (PNP) at Brgy. Belance, Dupax del Norte, Nueva Vizcaya.<sup>37</sup> According to witnesses, Fernandez was seen the whole day of September 4, 1997 and between 6:00 to 7:00 p.m., he was seen tortured at the yard of Provincial Board Member Pacial Igmin's house. Gunshots were also heard from the house of Igmin and these were believed to be the shots that killed Fernandez. The PNP claimed that Fernandez was killed in an encounter between the PNP and NPA. Because of witness' testimonies that there was foul play, the body of Fernandez was exhumed. The findings of the Forensic Division of the National Bureau of Investigation (NBI) corroborated the witness testimonies, that Fernandez's hands were tied with a rope, he was tortured, and the wounds on his body show that the gun was fired from within two to three meters. Fernandez's family filed a criminal case against Igmin and two other police officers, Ernesto Saldivar and Isabelo Carpio. The three were detained for nine months but were released on bail for P 200,000.00 each. The trial was characterized by many delays due to postponements caused by absences of judges, prosecutors, lawyers and witnesses. Nevertheless, on April 24, 2003, the hearing for the last witness of the respondents was conducted. Six years after the incident and five months after the last hearing, a decision has yet to be promulgated. Lower courts are required by law to issue decisions on cases within 3 months after they have been submitted for judgment.
2. Jesus Aniban, Jr, a member of the New People's Army (NPA), surrendered to the government. The military forced him to serve as their guide to capture other NPA members. When Aniban refused to do so, he was harassed by the military and was accused of still being connected with the NPA. On August 26, 1988, members of the Citizens' Armed Forces Government Unit (CAFGU) under the 48th Infantry Battalion (IB) killed Aniban. Using the testimonies of witnesses and the dying declaration of Aniban, his family filed a criminal case against Martin Arguesa, Jesus Doro, Juan Vinluan, and Boy Pacis, alleged perpetrators of the crime. In 1998, ten (10) years after the crime was committed, Judge Catral of RTC Branch 14, Lagawe, Ifugao, ruled in favour of the complainants. The accused filed a motion for reconsideration under the same RTC. Judge Catral was ordered transferred to another court and Judge Dionisio Anghad took over the case. Judge Anghad allowed the re-opening of the case on the basis of new evidence. Boy Pacis, one of the accused admitted the allegations against him and solely took all the blame. The fiscal ruled that Pacis' testimony was a lie testimony and prayed that the court's first decision be upheld. In 2000, Judge Anghad reversed the decision and ruled in favour of the accused on December 2000, when his transfer to another court was already effective on August 2000. With the assistance of Integrated Bar of the Philippines (IBP) President Atty. Joseph Molintas and his other colleagues, the complainants filed an appeal to the Supreme Court on August 26, 2001. At present, 25 months after the case was filed at the high tribunal, the case is still awaiting decision by the Supreme Court. The Supreme Court is required to act on cases for decision within 24 months after the cases are brought to their attention.

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<sup>37</sup>TFDP Documentation File No. 97-NUV-002, Fernandez Salvaging

As a State Party to the Convention Against Torture, Philippines is under an international obligation to make torture an extraditable offence and assist other states in connection with criminal proceedings brought in respect of torture. However, there are no statutory measures in this regard.<sup>38</sup> In fact, under the bilateral executive agreement entered into by the Philippine government with the United States government, a person of the United States of America can not be extradited and surrendered to international tribunals not established by the UN Security Council without the consent of the Government of the United States while a person of the Philippines may not also be extradited by the United States and surrendered to international tribunals not established by the UN Security Council without the consent of the Philippine government. A person is defined as all nationals in this agreement.

Although the Philippines has acceded, without reservations, to the Convention Against Torture (CAT), the government has not acted on Articles 21 and 22 of the CAT recognizing the Committee's authority to accept inter-state and individual complaints regarding torture.

As previously stated, it has not yet ratified the Rome Statute of the International Criminal Court. Since the Philippines have no regional mechanism, the International Criminal Court could be one possible venue for redress.

## **8. Reparations (Specific Cases)**

There were some efforts to seek reparations for torture victims during the authoritarian rule of Marcos in the Philippines and Hawaii. But the victories of these torture victims to seek reparations remain on paper only, and no compensation has been received, as the Philippine government has not enforced the Hawaii Court judgment.

### **TFDP documented cases of attempts to obtain reparation :**

The *Aberca vs. Ver* case: On February 1983, a civil case was filed against twelve (12) officials of Task Force Makabansa (TFM), a group composed of the Metrocom Intelligence Service Group (MISG), Intelligence Service of the Armed Forces of the Philippines (ISAFP), Military Intelligence Group-15 (MIG-15), Military Intelligence Group-4 (MIG-4) and Naval Intelligence Service Group (NISG). Formed in 1982, TFM's first task was "Operation Crosswind" where it will conduct pre-emptive strikes against alleged communists. Between February 26 and March 1, 1982, TFM conducted raids in several areas of Metro Manila. They searched houses and arrested Rogelio Aberca, Joseph Olayer, Marco Palo, Edwin Lopez, and sixteen (16) others. They were brought to different military intelligence agencies and severely tortured to extract information about their involvement in the leftist movement. The civil case is the celebrated *Aberca vs. Ver* case, as mentioned in paragraph 257 of the Philippine Report, filed by the petitioners against Maj. Gen. Fabian Ver, Lt. Col. Panfilo Lacson, Col. Fidel Singson, Col. Rolando Abadilla, Maj. Rodolfo Aguinaldo, 1Lt. Pedro Tango, 1Lt. Raul Bacalso, Col. Gerardo Lantoria, Col. Galileo Kintanar, Capt. Danilo Pizarro, 1Lt. Romeo Ricardo, and MSgt. Bienvenido Balaba.<sup>39</sup>

The case was assigned to Regional Trial Court (RTC) Branch 95 and presided over by Judge Esteban Lising. However, Judge Lising went on leave of absence. Judge Wilhelm Fortun took over the case. On November 8, 1983, Judge Fortun dismissed the case. Atty. Diokno of the Free Legal Assistance Group

<sup>38</sup> Free Legal Assistance Group (FLAG) and Foundation for Integrative and Development Studies (FIDS), *Torture Philippines: Law and Practice*, 2003.

<sup>39</sup> Maj. Gen. Fabian Ver lived in exile until his death a couple of years ago. Lt.Col. Panfilo Lacson, who eventually became the head of the Philippine National Police during the Estrada administration, was elected senator. Maj. Rodolfo Aguinaldo became the governor of Cagayan Valley province. He was killed by the NPA for crimes against the people. Abadilla was murdered and the suspected killers (Joel de Jesus, Lenido Lumanog, Augusto Santos, SPO2 Cesar Fortuna and Rameses de Jesus) are now on death row. The suspected killers of Abadilla were also severely tortured and continue to claim innocence to the crime.

(FLAG) filed a motion for reconsideration. Judge Fortun voluntarily inhibited himself and left the resolution of the case to Judge Lising. On May 11, 1984, Judge Lising issued an order stating that the November 8, 1983 decision was final. The plaintiffs again filed a motion for reconsideration on September 21, 1984 but Judge Lising denied the motion.

On March 15, 1985, the plaintiffs filed a petition for the review of the case in the Supreme Court, seeking to annul and set aside court orders of November 1983, May 1984, and September 1984. On April 15, 1988, Judge Pedro Yap of the Supreme Court remanded the case to the RTC.

Aberca vs. Ver was raffled to Branch 107 of the QCRTC presided over by Judge Delilah Magtolis. The court heard the case and in September 1991, with all the evidence presented, the court decided in favour of the plaintiffs, who were able to identify some of their torturers. The few who were identified were: Maj. Rodolfo Aguinaldo, Col. Panfilo Lacson, and Sgt. Balaba. In December 1995, the defendants petitioned to present their evidence and elevated the case to the Court of Appeals.

The slow system of justice is very evident in the Aberca vs. Ver case. It has been eighteen (18) years since the case was filed and eight years since the case was brought to the Court of Appeals. The Court of Appeals is required to act on cases brought to them within twelve (12) months. Until now, the case is still pending at the Court of Appeals.

Martial Law victims Class suit in Hawaii: In 1986, a human rights class suit was filed against Marcos/Marcos Estate on behalf of the human rights victims – those who were victims of involuntary disappearance, summary execution or salvaging, or torture during the Marcos dictatorship. The class suit was filed in the United States making use of the Alien Tort Law when Marcos was living in Hawaii. A case in the Philippines was seen to be difficult to pursue given the reality of a strong influence from Marcos loyalists in the judiciary since at that time, many judges at the different courts were appointees of Marcos. The Aberca vs. Ver was a case in point.

The preparations for the class suit and the actual class suit proceeded with difficulty. The making of testimonies by victims and relatives took some time due to the fact that many of them lived in far-flung villages where communications and transportation are either absent or difficult. The limitations of resources, considering that many of the victims were poor, did not help facilitate the preparations of the legal documents. Many victims also were not convinced of the need and importance of filing a class suit, some due to beliefs that nothing will come out of the case in the Philippines, more so in another country. Some victims and their relatives, instead continued their work for human rights given the continuing human rights violations under President Aquino, especially after the declaration of total war against the insurgents. During the hearings in Hawaii, consultations between lawyers and plaintiffs were infrequent due to the distance and the cost of communications and travel. These difficulties were in contrast to the ability of the Marcos family to get good lawyers because they did not have limitations of resources.

Nevertheless, on September 24, 1992, the Hawaii Court ruled Marcos guilty of human rights violations and thus liable for damages. On February 23, the judge awarded USD 1.9 billion plus interest for moral and exemplary damages. However, until now, there is no enforcement by the Philippines of the Hawaii Court judgment for the victims of human rights violations during Martial Law.

## **Part 2 : State Violence Against Women In Philippines**

### **1. General Information On Torture And Ill-Treatment Of Women By State Officials In The Philippines**

Torture is one of the major forms of violence against women in the Philippines as women and girls are among the most vulnerable persons. Violence against women occurs in the context on unequal gender relations where male power over women is exercised as a matter of right that is often sanctioned by society's norms and institutions. Simply by her gender, a woman is at risk and vulnerable to violence"<sup>40</sup> Gender is the set of roles and expectations society prescribes for women and men: women are weak, emotional, nurturing and should be conservative, domesticated and obedient; men are rational, strong, sexually driven and should be assertive, forceful and able to control. Gender stereotypes set dichotomies for women, either they are virgins or vixens. Poverty only renders women vulnerable to violence, but it is gender that legitimizes it.

Gender has often a determinative impact on the form of the torture, the circumstances in which the torture occurs, the consequences of the torture, and the availability of and accessibility of reparation and redress. Torture and ill treatment of women often has a sexual nature, including rape, sexual abuse and harassment. Although men are also targeted with rape, the threat of rape and other forms of sexual violence, sexual forms of torture and ill treatment are more consistently perpetrated against women in the Philippines.

Women under arrest and in detention in the Philippines are exposed to particularly high risks of torture and other forms of cruel, inhuman and degrading treatment, including rape and sexual abuse, by law enforcement officials. Police officials and prison guards abuse their power to rape and sexually abuse women in their custody. For women victims-survivors of domestic violence, abuse in intimate relationships, trafficking, and prostitution, the risks are similar. These risks, as reported, are due to the fact that they are women and intersect with additional factors such as being trafficked. The torture or ill-treatment is often sexual in form and include: rape (outside of police stations and while in police stations), being forced to sit in front of a typewriter and told to type anything, while the officer touches and gropes the private parts of the woman and masturbates; being forced to take off clothes while police officers masturbate; causing psychological violence through pointing of gun or if without gun, police officers wear their police uniforms as indication of power while raping a woman; forced to massage male officials.

In September 2001, The United Nations Special Rapporteur on violence against women and the Special Rapporteur on Torture jointly sent a letter to the Government of the Philippines with information received regarding which women in the custody of law enforcement officials are particularly vulnerable to torture, including rape and sexual abuse. Most of the victims are said to be members of socially disadvantaged groups, including suspected prostitutes, street children, drug addicts and other women considered to come from the lowest strata of society.<sup>41</sup>

As will be dealt with in greater detail later, the police use article 202 of the Revised Penal Code<sup>42</sup>, "the anti-vagrancy law", as a pretext to arrest women arbitrarily, extort money or subject them to sexual

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<sup>40</sup> De Dios, "Violence against Women in the Philippines", Hidden No More, 1999

<sup>41</sup> E/CN.4/2002/83/Add.1, Report of the Special Rapporteur on Violence against Women to UN the Commission on Human Rights, 2002.

<sup>42</sup> Article 202 of the RPC is on Vagrancy and prostitutes; penalty. This provision defines vagrants as:



violence. In 1997, the Committee on the Elimination of Discrimination against Women also expressed concern on the discriminatory application of laws enforced against women prostitutes and not the men involved as traffickers, pimps and clients.<sup>43</sup>

Women are particularly vulnerable to rape and sexual abuse between the time of arrest and arrival at the police station. Some women are not immediately brought to the police station after arrest, but taken to other places where they are raped or sexually abused. When the women are taken to the police station for questioning, they are held in a detention cell before being charged. Some women are kept in detention without being registered.

Despite article 245 of the Revised Penal Code which forbids public officers from making sexual advances towards female detainees, it is reported that police officers sometimes offer to release women or to give them preferential treatment if they agree to have sex with them. Also of grave concern, is that although in violation with Philippine regulations and United Nations Standard Minimum Rules for the Treatment of Prisoners, women and men are held together in many police stations.<sup>44</sup>

In the Philippines, under the death Penalty Law of 1993 (Republic Act No. 7659) and the Anti-Rape Law of 1997 (Republic Act No. 8353), law enforcement officials who are found guilty of raping women in their custody face mandatory death sentences. Some police officers found guilty of rape have been given the death sentence or long prison terms.<sup>45</sup> Although it is welcomed that perpetrators of such crimes are punished, the sentences should conform to international human rights standards.

However, in reality, perpetrators are rarely brought to justice. Many women who are subjected to sexual violence, including rape, by state officials in the Philippines are reluctant to report it out of fear, cultural stigma and shame. Victims of sexual abuse fear that lodging a complaint would entail their being subjected to further sexual violence by other police officers and would lead to reprisals against their family. Moreover, those who file a complaint are often threatened or pressured to withdraw it, particularly when the perpetrator has a powerful position. Lodging a complaint also often requires financial resources beyond the means of the victim. Since most of the victims are from disadvantaged social or economic group, perpetrators of these acts of violence against women therefore enjoy impunity. Also the general lack of gender sensitivity by the police and in the courts adds to the victim's suffering as will be explained later. Indeed, the use of sexual torture against women by a state agent has a particular negative impact on women's access to redress and reparation.

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- ❑ Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself to some lawful calling;
  - ❑ Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;
  - ❑ Any idle or dissolute person who lodges in houses of ill fame; ruffians or pimps and those habitually associate with prostitutes;
  - ❑ Any person who, not being include in the provisions of other articles of this Code, shall be found loitering I any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;
  - ❑ Prostitutes;
  - ❑ For the purpose of this article, women, who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct are deemed to be prostitutes.

Any person found guilty of any of the offenses above shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor to prission correccional* or a fine ranging from 200 to 2,000 pesos, or both, under the discretion of the court.

<sup>43</sup> UN : Doc. A/52/38/Rev.1, paras.275-305.

<sup>44</sup> UN. Doc. E/CN.4/20002/83/Add.1., Report of the Special Rapporteur on Violence against Women to UN the Commission on Human Rights, 2002.

<sup>45</sup> Ibid.

The lack of systematic monitoring in the Philippines and the fact that victims of sexual torture, including rape, are reluctant to lodge a complaint makes it difficult to estimate to what extent women are subjected to torture in custody.

## **2. Gender Bias By In The Philippine Police And In The Court**

Police officials lack gender sensitivity. Despite the establishment of women's and children's desks in many cities in the Philippines, sometimes staffed by women, most of these police officers lack training in dealing with gender-based issues. Rape cases are often not taken seriously and instead of protecting the women victims of rape, police officials humiliate them.

An article featured in the university publication UPDate noted that gender bias is prevalent in the Philippine court system. "It is embedded in the judicial culture," says author Bino Gamba, who wrote the article based on the findings of the study "A Policy-Action Research on *Gender Sensitivity in the Courts*." The first of its kind in Asia, the study revealed that judges are known to rule in favor of the defendants when women complainants fall outside 'traditional' roles and norms such as good homemakers. The study consisted mainly of reviewing related literature and analysis of court procedure transcripts.

In the article, UP Center for Women's Studies (UCWS) Director Carolyn I. Sobritchea says that gender crimes such as sexual harassment are even treated as less important and less deserving of judicial attention. Sobritchea says that rape victims in the case studies faced the blame for "bringing the rape upon themselves," – the result of behaving in "ways that elicit men's sensual desire." Gamba meanwhile writes that, "Women, especially rape victims, are censured for their provocative dressing, drinking with men till late at night, or being alone with a man for long periods." Questioning the victim's morality during pre-trial and court proceedings discourages rape victims from pursuing their cases. "Lawyers are quick to accept explanations such as, 'The woman seducing the rapist,' 'They would complain of rape in order to force a man to marry them', A lot of them [lawyers] are so insensitive to these kind of cases," said Sobritchea.

Prof. Myrna S. Feliciano, UP College of Law Associate Dean and project director of the study explains in the article the pressure exerted on the rape victims: "A woman is expected to defend her chastity at all cost and failing to do so is interpreted not as forcible sexual act but one which had the women's prior consent." In one of the cases, where a man raped his 15-year old daughter, the counsel for the accused asked the complainant why she did not wear any pajamas or long pants at the time when she was raped. "Another case showed the Supreme Court's acquittal of a defendant based on the complainant's 'loose moral behavior.' Complainants are required to prove that the sexual conduct was 'unwelcome.'" Some court procedures, Gamba notes, "become very insensitive to the situation and the needs of victims or complainants" particularly when the defendant is allowed to introduce evidence of the victim's "promiscuous" appearance and past sexual experiences.

The documented cases of gender bias in the courts are just a tip of the iceberg: the women, after having suffered sexual abuse or other forms of violence by state officials, are further subjected to humiliation in court as they seek redress and justice.

## **3. Conditions Of Women In Detention**

Women in prison are also reportedly the victims of torture and other forms of ill treatment, including rape and sexual abuse, by prison officials with impunity.<sup>46</sup> A clear contributing factor to sexual violence

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<sup>46</sup> Ibid.

against women in prisons is that despite the recommendations of article 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners male correctional staff are allowed to supervise female inmates, to undertake body searches, and to be present when female inmates are naked. In the Philippines, women are guarded and strip-searched by male guards. Another underlying source of sexual violence is the lack of separation between men and women inmates. It is alleged that in certain prisons in the Philippines, female and male detainees are not held in fully segregate areas (a violation of article 8 of the Standard Minimum Rules).<sup>47</sup>

Women in prison who become pregnant as a result of custodial rape are denied adequate medical care and counselling. In addition, as discussed below in greater detail, abortion is forbidden in the Philippines. In addition, rape is always associated with the risk of sexual transmitted diseases, particularly the human immunodeficiency virus (HIV).

Living conditions in detention centers are poor. While the delivery of basic needs such as food, water and the provision of sleeping areas have improved; such services are often insufficient or inadequate to address necessities beyond survival.

Water supply is not clean resulting to skin irritations and diseases. Insufficient ventilation has caused lung problems. Sleeping quarters are not well provided with mattresses and mosquito nets that lead to sickness associated with heat, cold and mosquito bites. This is aggravated by the fact that women also lack exposure to clean environment and clean air. The medical care women receive is inadequate.

Women who have children before they were imprisoned are more adversely affected by the thought that they are not with them. This is not addressed by counseling provided by the government.

#### **4. Torture And Ill-Treatment Of Women Who File A Complaint Of Domestic Violence**

Women who are victims of domestic violence may be put in detention for protection purposes, especially when there is the threat of further violence against the victim. The women stay in detention until documentation is completed.

Women victims of domestic violence who file a complaint are at risk of further physical and psychological violence by law enforcement officials, particularly when they refuse to give sexual favors. They are attacked and will be reported to have attacked police enforcers. Some women are raped; others are kept under detention without being documented. Women are often reluctant to lodge a complaint out of fear and shame.

Members of the police force treat complaints of domestic violence with indifference. Those who are directly involved with complaints of domestic violence are not gender sensitive and thus, not responsive to the needs of victims-survivors. Domestic violence is considered as private matter.

#### *Background Information on Domestic Violence Against Women in the Philippines,*

Official statistics and data collected by local NGOs confirm that domestic violence against women is a widespread problem in the Philippines. It is believed that domestic violence is a highly underreported crime in the Philippines due to, *inter alia*, the risk of further violence at the hands of police officials, the general lack of understanding and will to deal with the case by police officials, the lack of specific legislation addressing domestic violence.

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<sup>47</sup> Ibid.

The following statistics represent only the cases reported to authorities and do not include the thousands (perhaps millions) of undocumented cases.<sup>48</sup> The following statistics reveal the prevalence of abuse against women in intimate relationships. In surveys done by the Philippine National Police (PNP) and the Department of Social Welfare and Development (DSWD) from 1999 to 2002, the top three most common reported cases of VAW are physical injuries, rape and acts of lasciviousness. In 2001, the PNP and DSWD reported a total of 16,417 VAW cases. Physical injuries that include wife battering comprise most of the cases registered, with almost fifty-five percent (54.8%) and a little more than thirty-eight percent (38.2%) recorded by the PNP and DSWD respectively. The surveys done by the PNP in 2000 revealed that females comprised more than 90% of all the victims of all forms of abuse and violence. In more than eighty percent (80%) of these reported cases, the women's intimate partners were the perpetrators, with husbands accounting for twenty-seven percent (27%) of the cases and live-in partners at almost eight percent (7.6%). In terms of areas where these crimes of violence were committed, majority of the cases, at seventy percent (70%) happened at home, with the remaining thirty percent (30%) occurring elsewhere including open and public spaces.

In 2001, the Women's Legal Bureau, Inc. completed the Philippine Baseline Report on Abuse against Women in Intimate Relationships<sup>49</sup> with data on Violence Against Women based on studies of NGOs<sup>50</sup> on women victims-survivors. According to the Baseline Report, the abused women who sought the help of the NGOs are generally in their late 30s and have been living in abusive relationship for an average of 9.7 years. A little more than three percent (3.2%) of these had formal schooling and some were able to study at the tertiary or college level.

In another set of data gathered by from other women's organizations,<sup>51</sup> most of the victims had gone to school. The majority (66%) obtained elementary and secondary education and less than one fourth (23%) were able to pursue college education or vocational training.

According to the Baseline Study, the majority of the abused women were employed mainly in the informal sectors as unskilled laborers such laundry women, market vendor, and domestic helpers. There are few who are professionals and those that occupy managerial positions. Thus, VAW occurs across classes. This does not show however that there are a lesser number of well-off women who are victims-survivors of VAW.<sup>52</sup>

Abusers have different profiles. Most of them belong to the age range of 20-39 years, with the youngest and oldest at 18 and 60 years old, respectively. They are generally educated, and almost half of them are college graduates. Of the 2,208 women surveyed, more than half or 57% (1833 of 2208) reported that their intimate partners were gainfully employed in various fields including professional and managerial positions. This access to education and other resource networks give a great degree of influence and power they wield over women.

The above data set is confirmed by another set of data wherein half of the abusers were 35 years old and older. Next to this are those who belong to the age group of 26-34. Compared to the ages of the victim, the perpetrators are generally older and the level of educational attainment is similar to that of their victims. In the same manner, education and age enhance the capacity of men to exercise power over women. The perpetrators of violence were mostly (93.56%) the women's husband, live-in partners, boyfriends, and other intimate persons whom they have intimate relationships.

Aside from the well-known physical form of abuse inflicted on women, other violent actions against women are economic, psychological and sexual. Women reported to have been "beaten up", slapped, kicked, strangled,

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<sup>48</sup> Aside from "under reporting" It is important also to note that there are instances of double counting when victims-survivors approach agencies without mentioning that they have reported to other agencies, and there is no relational database that aggregates unique data.

<sup>49</sup> Facilitating the Fulfillment of State Obligations Towards Women's Equality, Philippine Baseline Report on Abuse of Women in Intimate Relationship presented by Women's Legal Bureau Inc. and International Women's Rights Action Watch-Asia Pacific on January 31, 2002 at Rembrandt Hotel, Quezon City.

<sup>50</sup> The report made use of the studies of the following institutions: the Women's Crisis Center (WCC) Action Research, Project Haven-EAMC, Arugaan ng Kalakasan, UPCWSFI, and UP Manila and WorldSafe.

<sup>51</sup> Bidlisiw, DAWN-Bacolod, Lihok-Pilipina and Ebgan

<sup>52</sup> There were less well-off women who approached NGOs for assistance for obvious reasons that their powerful partners could easily locate them

punched in the stomach or hurt with a bladed instrument. Others are being threatened and thus suffer from emotional abuse. There were also women who were put to shame in public and subjected to verbal abuse. Other women hardly survive with families to feed since their partners withdrew financial support. Some abusers still provide economic support but have control over all resources that should have been made accessible to the women victims-survivors. Sexual abuses on women are rape, sexual assault, molestation and sexual harassment.

## **5. Torture And Ill-Treatment Of Women In Prostitution And Trafficked Women**

Women in prostitution and trafficked women are particularly at risk for violence at the hands of state officials since being part of prostitution gives space for undue discrimination by the police. However, there are no instances known wherein these cases are filed in court. Moreover, most of these women are put in cells where other criminal offenders are jailed.

Prostitution is illegal under the law by virtue of Article 202 item 5 of the Revised Penal Code. In this provision, the defined offender is the woman. The following acts constitute prostitution:

- ❑ Sexual intercourse or more lascivious conduct such as allowing her private parts to be touched.
- ❑ The said sexual intercourse or lascivious conduct must be habitual
- ❑ The said sexual intercourse or lascivious conduct is done for money or profit, with profit to include gifts apart from money

However, since these are difficult to establish, police authorities invoke other provisions of article 202 such as loitering on the basis of soliciting prostitution. Men are on the other hand not apprehended under this article of the Revised Penal Code. In the same RPC, Article 341 of the RPC seeks to penalize individuals engaged in the business of prostitution under “white slave trade”. This addresses pimping and profiting from prostitution and can also be invoked against patrons and customers. However, this provision of the law has never been enforced.

### **5.1 Violence against Women in Prostitution and Trafficked Women in Olongapo City**

Olongapo City in Zambales province, some four hours north of Metro Manila, has long been the hotbed of trafficking of women and children and prostitution. Popular for its brothels and bars that mainly catered for decades to US servicemen from the nearby Subic Naval Base, the city is a case in point in understanding the phenomena and dynamics of prostitution in the Philippines. For a time, particularly after the pullout of US Naval Forces as a result of the abrogation of the mutual defence treaty by the Philippine Senate in 1990, it appeared that it was the end for Olongapo City, including its “entertainment” establishments. However, “casas” (brothels) are still much around.<sup>53</sup> Women are recruited from the streets by owners of these “casas” and are brought in for customers who are waiting for young women as their sexual objects.

More alarming is the attitude and practices towards prostitution and trafficking of women by the local government unit (LGU) and the local police force, particularly the “standard operating procedures” instituted in the protection of establishments. For example, at a place just in front of the municipal government building housing the main station of the city police, pimps negotiate for young women with ages as young as 14. The police force conducts seasonal “operations” to apprehend violators of the Anti-Vagrancy Law, many of whom are “streetwalkers” and children. However, these undertakings have

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<sup>53</sup> “Casas” are illegal. According to RPC Article 341. The acts constituting the crime are:

- ❑ Engaging in the business of prostitution
- ❑ Profiting by prostitution
- ❑ Enlisting the services of women for the purpose of prostitution.

become opportunities for corruption. Women pay a “lagay” (grease money) amounting to not less than PhP 200 (USD 4.00) to avoid being detained and eventually imprisoned, where more abuses, including rape, may take place against them.

Also female nude dancers are apprehended. On the other hand, the owners of the bars and restaurants are very seldom caught as violators of the laws. The latter, if interested to release the women from jail, would give grease money to the police with amounts ranging from PhP 300 (USD 6.00) to 1,000 (USD 20.00). The grease money is subsequently deducted from the earnings of the women at the rate of at least PhP 200 (USD 4.00) a night. This amount is roughly the nightly earnings of these women, who resort to imposing hefty “bar fines” to offset their losses. A bar fine of PhP 3,000 (USD 60.00) will allow the customer to bring the woman outside the bar. On the other hand, waitresses are paid as low as PhP 50 (USD 1.00).

Enforcement officials and military forces are involved in trafficking and prostitution in Olongapo City. They offer “protection” to bars and restaurants where trafficked women are brought for prostitution and through them the owners of such establishments are not arrested and prosecuted. However, the Filipino government has not been addressing this.

## **5.2 Abuse at the Hands of Law Enforcers in Quezon City**

Women in prostitution suffer abuse and gender-related violence under the hands of police enforcers. Police enforcers involved in the apprehension, transport, investigation and detention of women in prostitution are men. Very seldom women police enforcers are involved, and if ever, they are on the documentation level.

A case in point is the experience of women in prostitution caught in Quezon City. One of the major thoroughfares of the city, Quezon Avenue is known for its streetwalkers. Aside from the risk of running into various forms of abuse under the hands of their customers during the “gimik” or trick (which means in Quezon City “streetwalking” and being in street prostitution), violations have been reported during apprehension, particularly during transport to the police station, and while in custody, at the police stations. Some are not immediately brought to police stations, particularly during apprehensions not covered by “mission orders”.<sup>54</sup>

When the women are apprehended, their rights are not made known to them. Women pay grease money amounting between PhP 100 (USD 2.0) to 200 (USD 4.00) to policemen to escape imprisonment. Being engaged in an activity penalized by law under Article 202 of the Revised Penal Code (RPC) or having violated the Anti-Vagrancy Law, the women often have no choice but to haggle the amount of “multa” or fine with the police. The women are brought to the police station and are officially required to pay fines. There have been cases of “arbor” – where the women are sexually abused or used by the policemen in exchange for release.

While reports of illegal detention have been reduced, women being arrested on a Friday are sometimes forced to stay in jail over the weekend since there are no official functions on weekends. During these instances, women are abused while in jail. The low regard for women, prostituted women in particular, is exemplified in one documented case wherein a woman had been imprisoned for three months. Her child was unattended at home for the entire period. Barangay officials sent the child to the Department of Social Welfare and Development. After securing her release, woman could no longer find her child. There are also cases of disappearances. One streetwalker, who reportedly had a live-in partner, has been missing for three years.

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<sup>54</sup> In the absence of a mission order, police officials are doing their routine jobs. During this period, they also apprehend women in prostitution, however, they are not immediately brought to the police station.

### *Background Information On Prostitution And Trafficking In Women In The Philippines*

Documentation of some women's organizations<sup>55</sup> show that women trafficked for prostitution came from provinces<sup>56</sup> and outskirts of Metro Manila. Most of them used to work as housemaids, factory workers, sales representatives, sales clerks and waitresses. There were various reasons and circumstances that caused women to give up what they had and seek for their perceived better life in the known cities of the Philippines. These women were employed, but often with low pay and many were not even paid with other compensation-based benefits as required by laws. They also suffered physical, psychological/emotional and sexual forms of abuse at the hands of their employers. They were abused verbally, sexually harassed, raped, beaten up, and threatened with more severe abuses or death. Instead of reporting the abuses to the authorities, they preferred to leave with no hope for redress, justice or due compensation.

It was also documented that many of the women who eventually found themselves in prostitution came from family or home situations where they suffered from sexual abuse and physical and psychosocial violence while they were children. For various documented reasons, women leave their families or households. Many women, including girls felt the need to escape their spouses, particularly in cases of forced marriages, and after having been physically, psychologically and sexually abused and raped by their husbands or other male relatives. The discrimination and stigma brought about by unwanted or early pregnancies also brought these women and children to leave their homes and families.

The role of a strongly patriarchal culture and the prevailing mindset restrict the freedom and opportunity for women. Education, for example, is not a priority for females. They are considered more as housekeepers. Since women are not considered as labor force in attending to farms, construction projects and other so-called "male-dominated" jobs, they are encouraged to become workers in areas that are extension of households. These are being housemaids, factory workers, sales representatives, sales clerks and waitresses. Hence, when they are promised work as such and in the cities, they would readily accept offers.

With the above factors being present singly or collectively, women are trafficked and brought to work in bars, videoke<sup>57</sup> and other establishments catering to "male entertainment". For a start, they are asked to serve as waitresses, receptionist and cashiers. They are exposed to prostitution and with the lack of options for better life they end up in prostitution.

Cebu City in the Visayas Region located in the Central Philippines has high incidences of prostitution and trafficking of women. Barangay Camagayan is one of the red light districts within Cebu City. Almost ninety percent (90%) of the women and children found in the streets of this district were trafficked. A large portion of these women were lured from the different provinces of Mindanao, including the cities of Cagayan de Oro, General Santos, and Davao. Some of the women came from as far as Pampanga, Bulacan and other provinces on Luzon Island. In busy seaports, including Manila, women are pimped to board ship and "serve" the seafarers, who have been out in the seas for long periods. Called "akyat barko" (literally meaning "to board a ship"), the phenomenon has been documented by the Philippine media.

The following cases strongly suggest the strong link between the trafficking of women to the presence of military forces in a particular area. In Datu Odin Sinsuat in Maguindanao Province, Mindanao, there are about 10 videoke

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<sup>55</sup> Data from BUKAL, BUKLOD, WEDPRO, and Talikala. Documentation done in partnership CATW-AP covering the cities of Angeles, Olongapo, Quezon/Metro Manila and Davao.

<sup>56</sup> Southern Luzon and Visayas (Leyte, Cebu, Masbate, Samar), Central Luzon (Olongapo, Pampanga), Mindanao (Cagayan de Oro, Surigao)

<sup>57</sup> An extremely popular form of establishment among Filipinos where clients can sing to their hearts content. A focal feature in many of these establishments is the coin-operated machine that play videos complete with lyrics. Many of these videos feature women clad in bikinis and provocative poses. The more upscale forms have regular hosts.

bars that basically cater to the members of the Philippine Army based in Camp Siongco, as well Marines stationed in Matanog and members of the PNP in Parang. Working in these bars are some 50 women and children, originating from towns like Itulan and cities like Marbel and Pagadian and other areas throughout Mindanao. Some of the children have been prostituted in the streets of Cotabato City. Although local government had sent them back to their respective towns, they were found to be working in the bars in Datu Odin Sinsuat. In January 2002, during the height of the joint Philippine-US military “Balikatan” exercises in Western Mindanao, Talikala, Inc. recorded 35 cases of trafficking in women and children, some as young as 15, who came from Zamboanga and as far as Davao. According to the victims, recruiters, who took great lengths to lure them from their respective towns, offered payment in USDollars.

Trafficking of women for prostitution and other forms of human rights violations happen beyond the Philippines, making it a transnational crime. Women victims of cross border trafficking are young, mostly single, did not finish high school, and come from very poor families where they are expected to help earn. According to Philippine Center on Transnational Crime, the country continues to be a source, transshipment point and destination for trafficked and smuggled persons, mostly women and children. Meanwhile, the National Commission on the Role of Filipino Women (NCRFW) estimates a total of 25,000 to 35,000 Filipino women who are victims of trafficking every year. This figure is equivalent to 50% of all women victims of trafficking in Southeast Asia. Filipino women and children are abused and prostituted in Hong Kong, Malaysia, Japan, Korea, Nigeria, Cyprus, Jordan, Singapore, Canada, Greece, Germany, Italy, the US and the Commonwealth of the Northern Marianas Islands.<sup>58</sup>

The trafficking of women from Zamboanga del Sur province in Mindanao to Malaysia is rampant, given the weekly ship services linking Zamboanga City with Sandakan in Sabah. The so-called “backdoor trafficking” is however most prevalent in Bongao, Tawi-Tawi, where leaving the country without proper documentation is easy. Pump boats from Bongao, the jump-off point in the so-called “backdoor route,” can reach Malaysian shores in around four hours. Unlike using the 16 to 18 hour-long Zamboanga to Sandakan route, leaving the country via the “backdoor route” does not require legal documents such as passports. The lack of necessary travel papers complicates the situation for the women, particularly when caught by Malaysian immigration police and agents.

The trafficking of women being a global phenomenon, Filipino women are not the only ones trafficked for prostitution in the country. In recent years for example, particularly after the collapse of the Soviet Union, Russian women began to appear in exclusive and high-end establishments suspected of being fronts for prostitution.

With the advent of modern technology such as the Internet, technology-based information is being used to meet the global and local demand for prostitution. The trafficking of women has found a new venue: Women and children are sold through the Internet. There are several websites that introduce women, Filipino women in particular, for prostitution and these websites often feature almost, if not, pornographic shots. ([www.filipinobeauties.com](http://www.filipinobeauties.com), [www.balibago.com](http://www.balibago.com), and [www.angeles.com](http://www.angeles.com)).<sup>59</sup>

### *Violation Of Sexual And Reproductive Rights As Degrading Treatment*

The ICPD Programme of Action states that, “Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents, and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.”

The above rights are however being impinged on by the government at the national and local levels and through particular agencies. Artificial contraception is banned by the government and discouraged by the Catholic church and there are in general limited options to natural family planning and vasectomy. Local government units (LGUs) in Manila and Puerto Princesa in Palawan passed their respective ordinances prohibiting the provision of other

<sup>58</sup> CATW-AP (2003) and PCTC (2000)

<sup>59</sup> The names of two of these websites take from Angeles City and its red light district, Balibago.



means of family planning (FP) except natural methods. Moreover, in areas with remaining stocks of contraceptives, these are not provided to unmarried individuals and youth.

Abortion is illegal in the Philippines. This may add to the fear and shame, cultural stigma and fear suffered by women who become pregnant as a result of rape. However, illegal abortions are widely carried out by inadequate trained practitioners, resulting in health complications. There are cases in public hospitals wherein women who had an abortion resulted in complications or miscarriages are subjected to inhumane treatment and public humiliation. Doctors and staff have been known to threaten these women without knowing first, the reason why there was an abortion. Women are forced to admit having committed abortion then record them in a police blotter.<sup>60</sup> They are kept waiting in pain along the halls in the hospital. Once they are attended to, they are treated without having anesthesia. Some women were even asked to wear a label with humiliating statements, such as “I am a murderer.” Through the Bureau of Food and Drugs, the Department of Health (DOH) meanwhile issued an administrative instrument to implement an unjust rule: the prohibition of the use of Postinor, emergency contraceptive pill for victims of rape, incest and other sexual assaults.

Resistance towards artificial birth control methods reflects the strong role of the Roman Catholic Church and politics in the entire equation of sexual and reproductive health in the country. For instance, in Bukidnon, a province in Mindanao in the southern Philippines, twenty-four (24) women were forced to have their IUDs removed under the threat that unless they do so, they would not be allowed to take “communion” during “mass” and to participate in the activities of their parish. A stronger example of resistance and the role that politics plays in the impingement of reproductive health rights by the government is the refusal of President Gloria Macapagal-Arroyo to enact into law the Reproductive Health Bill, which calls for the strengthening of FP/SRH programs of the DOH. The bill encompasses and involves the understanding and analysis of the human condition of individuals and couples. It involves the formulation of a comprehensive response to the needs of all women, men and young people that have to do with their reproduction, sexuality, and total well-being. Crucial to this is the protection and promotion of their human rights and their entitlements to a better quality of life.

#### *Statistics*

- Maternal mortality rate for women aged 15-49 is 172/100,000 live births.
- Contraceptive prevalence rate among married women aged 15-49 is only 47.81%.; more than half of women in this age group do not use any form of contraception. This puts them at risk of unintended pregnancies.
- Estimated abortion rate annually is 25 per 1000 women aged 15-44; over 400,000 induced abortions a year and 80,000 of which end up in complications.
- 98% of victims of intra-family and household violence were women with an average age of 23 years.
- 1.8 million sexually active youths do not use any method to prevent pregnancy.
- Around 40% of the 80 million Filipinos are poor and have to survive with a daily income of less than PhP 38 a day. Poor women who are unable to exercise control over their bodies and fertility have to contend with the difficulties of caring and providing even the basic needs of their families.

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<sup>60</sup> A police record that can be used to apprehend a person having committed an illegal act.

## **Part 3 : State Violence Against Children In Philippines**

### **1. Introduction**

After the adoption of the ICCPR, the international community recognized specific provisions pertaining to the rights of the child. The Philippine government had committed itself to undertake all appropriate measures for the implementation of the Covenant. After the United Nations ratified the Convention on the Rights of the Child (UN CRC) on November 20, 1989, the Philippines immediately took measures for its ratification. On July 26, 1990, it became the 31<sup>st</sup> State to ratify the convention.

Non-government organizations (NGOs) in the Philippines have been playing a significant role in upholding and promoting human rights (HR). The Preda Foundation, Inc., fully agrees with one of the conclusions of the government, that, the country “has been in the forefront of HR promotion, particularly in terms of legislation but has regrettably fallen short of expectation when it comes to implementation. Hence, despite the legislative groundwork already put in place for children, there is still a very big gap between enactment and enforcement.”<sup>61</sup>

### **2. Torture/Juvenile Justice/Children In Conflict With The Law (CICL)**

#### **2.1 Legal Framework**

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the Beijing Rules, specifically stipulates in Rule 12 that police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units shall be established to exclusively deal with juveniles.

Meanwhile, Article 40 of the CRC recognizes the right of the every child who is alleged as, accused of, or recognized as having infringed upon the penal law to be treated in a manner consistent with promotion of the child's sense of dignity and worth. It thereby reinforces the child's respect for the human rights and fundamental freedom of others. It also take into account the age and emphasize the desirability of promoting the child's reintegration and constructive in society. It further stipulates the establishment of laws, procedures, authorities and institution to deal specifically with children who are alleged as, accused of, or recognized as having infringed upon penal law.

Despite the poor human rights record of the government of Ferdinand E. Marcos, the dictatorial regime made some worthy legislation regarding the protection of children. Article 190 of Presidential Decree (PD) No. 603, or the “Child and Youth Welfare Code”, as amended, stipulates that it was the duty of the concerned law enforcement agency to take the youth offender<sup>62</sup>, immediately after his apprehension, to the proper medical or health officer for a thorough physical and mental examination.

Proclamation No. 20, signed by former President Corazon C. Aquino on August 12, 1986, emphasized state policy to promote the well-being and total development of the Filipino youth and children and to protect them from exploitation, abuse, improper influences, hazard and other condition or circumstances prejudicial to their physical, mental, emotional, social and moral development. This proclamation also created the Inter-Agency Task force for the Protection of Children, of which the Philippine Constabulary - Integrated National Police <sup>63</sup> was a member. As the centerpiece of the Aquino government’s efforts to

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<sup>61</sup> Section 1039, Second and Third State Report of the Philippines’ Implementation of the ICCPR

<sup>62</sup> Youth offender is still being used to describe CICL in many government reports and documents.

<sup>63</sup> The present Philippine National Police pursuant to Republic Act No. 6975) was a member.

protect the rights of children, Republic Act (RA) No. 7610 or the “Special Protection of Children Against Child Abuse, Exploitation and Discriminatory Act,” provided for the formulation of a comprehensive program to protect children against child prostitution and other sexual abuse; obscene publications and indecent shows; other acts of abuse; and circumstances which endanger child survival and normal development. President Aquino also issued Proclamation No. 855, which called for the adoption and the implementation of the Philippine Plan of Action for Children (PPAC) towards the year 2000 and beyond as part of the government’s commitment to the CRC.

The main sources for the protection of Children in Conflict with the Law (CICL) in the Philippines are listed below:

**PD No. 603** - This is the primary source of protection of CICL in the Philippines. PD 603 and its implementing rules, the Rules on the Apprehension, Investigation, Prosecution and Rehabilitation of Youthful Offenders (“the Implementing Rules”), provide a framework for the treatment of children from the moment of their apprehension to the conclusion of their rehabilitation or jail sentence. Under PD 603 and the Implementing Rules, CICL are given strong protection, with duties and responsibilities placed upon the State in line with international human rights standards.

**RA No. 7438** – This act defines certain rights of all persons arrested, detained or under custodial investigation, as well as the duties of the arresting, detaining and investigating officers. It also provides penalties for violations committed by the said officers.

**RA No. 8493** - Also known as the “Speedy Trial Act of 1998,” this act provides time limits aimed at expediting criminal trials. It also contains positive obligations on government employees to ensure that criminal trials proceed expeditiously and provides for sanctions in cases they willfully inhibit or obstruct the expedition of justice. Supreme Court Circular 38-98 implements the provisions of this Act.

**RA No. 8369** – This act, the “Family Courts Act of 1997,”” establishes Family Courts and grants them jurisdiction over child and family cases. It also contains important provisions regarding the supervision of youth detention homes (YDH) or homes for children awaiting or undergoing trial, as well as the training of Family Court Judges. Section 3 of RA 8369 states that “[t]here shall be established a Family Court in every province and city in the country”. The Act further states that Family Courts “shall have exclusive original jurisdiction to hear and decide”, *inter alia*, criminal cases where minors are accused of crimes. Family Courts, therefore, are special courts aiming to give special attention to minors in conflict with the law so that these cases might be treated sensitively and expeditiously. Under Section 5 of RA 8369, only the Family Court has jurisdiction to deal with cases where the accused is a child at the time of the commission of the offense unless there is no Family Court in that particular province or city.

**RA No. 7309** - This act provides for the creation of a Board of Claims under the auspices of the Department of Justice (DOJ) for victims of unjust imprisonment and detention.

**Revised Rules of Criminal Procedure** – These rules outline the procedures to be followed during the apprehension, investigation and trial of all persons in conflict with the law.

**Revised Penal Code of the Philippines** – Several provisions of the Revised Penal Code of the Philippines (RPC) contain rules relating to the detention and investigation of all persons in conflict with the law. Article 125, for example, provides the rules on the apprehension of minors. Article 191 meanwhile provides for the right of CICL to be provided separate quarters from adult inmates in the absence of a child rehabilitation or detention center.

**The Constitution of the Philippines, and the Bill of Rights** – Some of the rights guaranteed by the

Constitution, which apply to children, include:

1. The right not to be deprived of liberty without due process of law.
2. The right to be informed of one's right to silence, legal representation etc.
3. The right not to be detained in circumstances that amount to torture.
4. The right to bail.
5. The right to be presumed innocent until proven guilty.
6. The right to a speedy, impartial and public trial.

**Supreme Court Rules** - The Supreme Court of the Philippines also issued resolutions and circulars providing guidelines for the implementation of the law as laid down by PD No. 603 and its implementing rules. These include: “Special Treatment of Minor Detainees and Jail Decongestion”, “Rule on Juveniles in Conflict with the Law” and “Rule on Commitment of Children”.

## **2.2 Practice/Lack of Compliance with International Juvenile Justice Standards**

Unfortunately, the amalgam of laws (mentioned in Section 4.1) designed for the protection of people in conflict with the law is largely disjointed, often contradictory, and misapplied in practice. While these laws grant CICL a high level of protection, in practice this is not the case. As highlighted by the following comments on implementation of the laws, there is an overwhelming need for reform in this area. Any reform should be aimed at clarifying the law, clearly setting the exact procedures to be followed starting from the time a child initially comes into conflict with the law. Such reforms should also provide for enforceable penalties for any breaches committed.

### **2.2.1. Arrest**

#### **2.2.1.1 Arrest with a Warrant**

Since the apprehension of a person suspected to have committed a criminal offense involves the deprivation of liberty – albeit temporarily – the Philippine Constitution requires that arrest should be made only by a virtue of a warrant and unless the circumstances in which the person is arrested falls within the exceptions provided by law. An arrest warrant is issued following the conduct of a preliminary investigation<sup>64</sup> by a prosecutor, judge or other authorized official, and the filing of a criminal case in court. Under Section 4 of the Revised Rules of Criminal Procedure, the pre-arrest preliminary procedure should provide the accused adequate opportunity to submit controverting evidence to refute the complaint prior to facing the risk of imprisonment and the filing of criminal charges in court.

There is no effective provision under Philippine law for legal representation to be provided at the preliminary investigation stage to an accused unable to afford legal counsel, who can nonetheless be provided legal assistance by the Public Attorney’s Office (PAO). In the majority of cases, a child will not have legal assistance at this stage and in practice, very few CICL are arrested pursuant to the issuance of an arrest warrant. Only two of the 69 minors interviewed in jail were detained on the foot of an arrest warrant issued after the conduct of a preliminary investigation. These two minors reported receiving a subpoena attached to an affidavit of complaint. Without legal assistance however, they were unable to understand the consequences. They ignored the documents and failed to submit any controverting evidence to the investigating prosecutor. The first real opportunity for these minors to submit evidence with the benefit of legal assistance came weeks or months at the arraignment stage of criminal proceedings and after their incarceration in an adult jail.

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<sup>64</sup> A preliminary investigation is an inquiry to determine whether there are sufficient grounds to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. This procedure usually involves the exchange of affidavits between the complainant and the respondent before the preliminary examination hearing in front of a prosecutor, judge or other authorized official. The complaint can then be either dismissed for want of evidence or filed in court as a criminal charge. Once the case is filed in court, it is given a criminal case number and an arrest warrant can be issued.

### **2.2.1.2 Arrest without a Warrant**

Of the children interviewed, the majority was taken into custody without an arrest warrant, allegedly while committing the offense or *in flagrante delicto*. This does not constitute any violation of the law if done in accordance with Section 5 of Rule 113 of the Rules of Criminal Procedure. Meanwhile, under Article 125 of the RPC, all persons who are arrested must be brought before the prosecutor, municipal court judge or duly assigned officer for an inquest investigation<sup>65</sup> with specific time frames, within 36 hours at the most, depending on the classification of the alleged crime. It would seem that in practice this only applies to cases of arrests without a warrant.

### **2.2.1.3 Inquiry as to Age**

Under Philippine laws, there is no explicit requirement for an arresting officer to inquire as to the age of an accused immediately upon arrest. Under PD 603, a child is supposed to be treated differently from an adult from the moment of arrest. It would seem to be an obvious requirement for the arresting officer to make all due effort to ascertain the age of those who appear to be minors as soon as it is practicable after arrest. The same rules should apply, whether a child is arrested with or without a warrant. It is often the case that the arresting officer's report will not contain details of the age of the accused. As a result, the case is mistakenly filed in a court other than the Family Court. The officer, usually the prosecutor conducting the initial inquest investigation – in practice – rarely meets the accused at this stage, making it impossible for him to visually identify him as a minor.

The filing of the case in a court other than the appropriate Family court generally means that the child will have his arraignment and trial delayed for months before the case is eventually transferred to the appropriate court. Such delays can pose serious consequences for the physical and psychosocial welfare of children. More worryingly, the child will be unable to avail his rights under PD 603 including the right to be held in a YDH as opposed to an adult jail.

Despite their youthful appearance, many of the children interviewed were treated as adults until such time as they were able to prove their age by producing of a birth certificate. As many CICL come from very poor backgrounds, were abandoned by their parents or are homeless, asking them to supply their birth certificates is often impossible. The accused bears the burden of proving his age before being treated appropriately as children who have come in conflict with the law.

### **2.2.1.4 Use of Handcuffs or Other Force**

Section 5 of the Implementing Rules states that handcuffs and other instruments of restraint should only be used on children when absolutely necessary. Unfortunately, the law does not demand that the police report on the children arrested for the commission of an alleged crime contain any details about the manner in which the arrest had been carried out. Approximately 50% of the children interviewed report that they had been handcuffed on arrest and often during their transfer to and from court. As there is no

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<sup>65</sup> Inquest investigation is not to be confused with preliminary investigation, which occurs before the issuance of an arrest warrant as discussed previously. An inquest investigation is provided for under Section 7 of Rule 112 of the Revised Rules of Criminal Procedure. It is a more expeditious and less thorough investigation than a preliminary investigation because, unlike the latter, it does not involve the exchange of complaint-affidavits. In theory, an inquest investigation ensures that the detention of an accused is not illegal as he is supposed to be afforded an opportunity to examine the complaint and any evidence against him. It is unclear whether or not he is afforded an opportunity to submit controverting evidence at this stage and/or question the legality of his detention. At the end of the inquest investigation, the duly authorized officer decides whether or not there is enough evidence to pursue the prosecution of the offense or to order the release of the accused.

obligation on the arresting officer to record details on the use of handcuffs and other instruments of restraint, there is no way to confirm or refute these allegations.

### **2.2.2 Police Custody**

#### **2.2.2.1 Duty to Inform Parents/Guardians and the Department of Social Welfare and Development (DSWD)**

Under Section 4 of the Implementing Rules, the arresting police officer is obliged to notify the Department of Social Welfare and Development (DSWD)<sup>66</sup> and the parents or guardian of the arrest of child within eight hours. The officer is also obliged to explain to them the cause and reason for the arrest. Unfortunately, this rule is not applied consistently. In some jails, it seems that the child's parents and the DSWD had been informed of the child's detention almost immediately. In others, little or no effort had been made to contact either the child's parents or the DSWD. Had efforts been made to contact both parties and had these been recorded, it would go some way towards proving that the arresting officer diligently enforced the rights of the accused, even if the parents or guardians were not contactable.

#### **2.2.2.2 Physical Examination of the Child**

Under Article 190 of PD No. 603, an arresting officer is obliged to take the arrested child to any available government medical or health officer in the area for a physical and medical examination. This provision is intended to act as a deterrent to the use of unnecessary force during and after arrest. Only a small number of the children interviewed report to have had such an examination. Several of the children reported the use of unnecessary force against them by police officers during and after arrest and a physical examination would help confirm or disprove these allegations of abuse.

#### **2.2.2.3 Right to be Informed Immediately for the Reason for their Arrest**

Under Section 4 of PD No. 603, the arresting officer is obliged to immediately inform the youth of the reason for his arrest, and to advise him of his legal rights in a familiar language. In practice, this rarely happens. Almost all of the children interviewed reported a failure on the part of the arresting officers to adequately inform them of their rights.

Section 2(b) of RA No. 7438 similarly demands that any public officer who arrests, detains or investigates any person shall inform the latter, in a language understood by him of his rights. RA No. 7438 also requires the arresting officer to reduce his custodial investigation report to writing. Section 2(c) of the same Act demands that the arresting officer must ensure that all accused persons have the contents of the custodial investigation report explained to them by their assisting counsel, who the arresting officer must appoint if the child cannot afford his own. Otherwise the custodial investigation report is null and void.

As none of the children interviewed had any legal counsel present at this stage, any custodial investigation report, whether signed by the minor or not, should be considered null and void. Consequently, there is no written evidence that any minor interviewed was ever informed of his constitutional rights. It seems that the police largely ignores RA No. 7438. Despite the penalties set out, many breaches go unpunished.

#### **2.2.2.4 Right to Legal Counsel <sup>67</sup>**

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<sup>67</sup> Under Section 12 of the Bill of Rights of the Philippine Constitution, any person under investigation for the commission of an offense shall have the right to have competent and independent legal counsel preferably of his own choice. Article 125 of the RPC states that "in every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel." Under Section 2(a) of RA No. 7438, any person arrested, detained or under custodial investigation shall at

After arrest, it is usual for the CICL to be brought to and questioned at the appropriate police station. It is clear from the Bill of Rights of the Philippine Constitution and other laws and rules governing CICL that a child alleged to have committed any offense has a right to legal counsel effective from the time of his arrest. However Section 1 of Rule 115 of the Revised Rules of Criminal Procedure states that in all criminal prosecutions, the accused shall be entitled to be present and defended in person by counsel at every stage of the proceedings, from arraignment to promulgation of judgment. This particular provision confuses the issue. It is not unclear whether the accused has a right to counsel immediately from the time of his arrest or merely at the time of his arraignment in court before a judge. In practice, this provision is relied upon to justify the absence of counsel during the post-arrest investigation and preliminary/inquest investigation of the accused.

In cases where the law is ambiguous or contradictory, it is a well-established legal principle that the provision that most favors the accused should be applied. Unfortunately, this principle does not apply in the Philippines where adherence to minimum requirements is the general principle. In all of the cases of children interviewed, there was no legal counsel present during the post-arrest interviews conducted by the police. Only rarely did the children have the benefit of the presence of their parents or guardians or a social worker. Many of the children reported that they have signed various unexplained documents under such circumstances. The law needs to clarify a child's rights during post-arrest investigations, with questioning disallowed in the absence of a social worker or legal counsel. This would remove all confusion if a child later asserts that his legal rights were not respected at the custodial investigation stage.

#### **2.2.2.5 Delivery to the Proper Judicial Authorities**

In accordance with Article 125 of the RPC<sup>68</sup>, the investigating police officer must forward the case of a child accused to have committed a crime to the appropriate official for the conduct of an inquest investigation within a maximum of 36 hours. This would seem to apply to CICL arrested without a warrant. While the limits in Article 125 are generally stretched, it is usual for a child to have his inquest investigation performed within 48 hours of arrest. The article however makes no distinction between persons who are arrested by virtue of a warrant and those who were not. In practice, it is not considered necessary to bring to the inquest investigation those who had been arrested with a warrant. It is presumed that they were afforded their rights to submit controverting evidence at the preliminary investigation stage, however these presumptions are often unfounded.

Article 125 of the RPC requires the delivery of an accused to the "proper judicial authorities" within the required time limits. However, most of the child respondents had no recollection of attending any inquest

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all times be assisted by counsel. Under Section 6 of the Implementing Rules, a youth shall only be investigated or his statement secured in the presence of his legal counsel. Section 10 of the Implementing Rules states that the arresting officer shall ensure that the youth is represented by counsel before proceeding with the investigation or trial. Under Section 8 of the Supreme Court Rule on Juveniles in Conflict with the Law, the police officer conducting the post-arrest investigation of a juvenile in conflict with the law shall do so in the presence of counsel of his own choice. Section 26(d) of the same rule states that in all criminal proceedings in the Family Court, the judge shall ensure the protection of the child's right to have legal and other appropriate assistance in the preparation and presentation of his defense.

<sup>68</sup> Basic international Human Rights Laws demands that an accused be brought promptly before the proper judicial authorities in order to question the circumstances of his detention. Article 125 of the RPC indicates that the purpose of bringing the accused before the inquest investigation is to provide him to submit controverting evidence to the prosecutor and challenge the legality of his detention. Article 125 is an attempt to fulfill the State's obligations under the ICCPR (Article 9(3) and the ICRC (Article 37(d)). These laws establish the right of an arrested person to be brought promptly before a judge or other officer authorized by law. The function of these officers is to decide whether there is sufficient evidence against the accused as to warrant their continued detention.

investigation or interview with any prosecutor or judge after their arrest. The information filed by the prosecutor in court is not signed by the accused and there is no proof that the child was actually brought before the judicial authorities. Many of the police officers interviewed informally stated that they would often only bring the papers for signature by the prosecutor, who will conduct the inquest investigation without seeing the accused. They merely view this investigation as a procedural formality, during which the arresting officer is not even questioned about the circumstances of the case. Article 125 requires that the accused, and not only just his legal file, be brought before the proper judicial authorities.

Furthermore, the child will not have legal representation if he is unable to afford his own at this stage of the proceedings. Without legal advice of any kind, the child's right to submit controverting evidence cannot be realistically vindicated. It is also difficult to consider that the authorized officer conducting the inquest investigation is really fulfilling a judicial function. He or she is merely fulfilling an administrative formality. While the authorized officer has the power to file the case in court or to drop the charges, there are several preliminary orders outside his realm of authority. For example is the authority to have the child released on recognizance or bail, or transferred to a YDH or youth detention center (YDC). It would take between two weeks to several months for a minor to be arraigned in court, during which time he is detained in an adult jail. Without legal counsel, the child has little or no opportunity to assert his legal rights to due process and fairness even at the early stage of the proceedings.

#### **2.2.2.6 Waiver of Preliminary Investigation**<sup>69</sup>

If a child signs a waiver of preliminary investigation, he is entitled to the more thorough preliminary investigation, although it will no longer be necessary to conduct same within the prescribed time limits. From the case files of many of the minors interviewed, it is clear that the authorized officer uses the absence of a signed waiver as evidence that the accused minor has declined his right to a preliminary investigation. In reality, it is very rare that a minor will be presented with such a waiver. Section 7 does not place a positive obligation on the authorized officer to inform a child of his right to a preliminary investigation: a child who does not sign a waiver is not necessarily waiving his right to a preliminary investigation. A legitimate and understandable reason for the failure of the accused to request a preliminary investigation is the lack of awareness of his rights. This is clearly due to the absence of any legal assistance at the inquest investigation stage. The authorized officer however uses such failure to imply that the accused is waiving his right to preliminary investigation.

### **2.3. Pre-trial Detention**

#### **2.3.1 Delay Before the Court**<sup>70</sup>

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<sup>69</sup> Under Section 7 of Rule 112 of the Revised Rules of Criminal Procedure, an accused person who is arrested without a warrant before the Information/Complaint is filed in court may ask for a preliminary investigation. However, in order for his request to be granted, he must sign a waiver of the time limits set out in Article 125 of the Revised Penal Code in the presence of his legal counsel. Section 7 intends to ensure that everyone has the right to the more thorough preliminary examination. The condition regarding the waiver is inserted as a practical safeguard as the legislature obviously recognizes that a preliminary examination within the prescribed time limits is not likely given that the crime was apprehended *in flagrante delicto*. As such, witnesses and evidence may take longer to locate (unlike the preliminary examination which occurs before the issuance of an arrest warrant where affidavits of complaint and counter affidavits thereto are exchanged). As Article 125 provides for penalties to be imposed on government employees who fail to adhere to the time limits, Section 7 is an escape clause which allows the police etc. more time in which to gather the relevant information.

<sup>70</sup> Section 7 of RA 8493 states that the arraignment of an accused shall be held within 30 days from the filing of the Information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Section 12 of the same Act places positive obligations on PAO and persons having custody of prisoners to obtain the presence of a prisoner for trial. Section 14 provides for sanctions in cases



The majority of the children in the case studies reported that the arraignment was their first opportunity to appear before the relevant court. It was also their first opportunity to meet with their legal counsel. As shown by the case studies, weeks or even months may lapse before the arraignment takes place. In one of the cases, a child was arraigned within a week of his detention. In the case of another, it took more than 18 months.

In practice, the arraignment is the first opportunity for the children to meet with his legal counsel, who often comes from the PAO as most are unable to afford private legal counsel. It is a violation of Philippine Law and international human rights law to deny a minor legal advice for such inordinate periods of time after their initial detention. In all of the cases documented by PREDA, there is evidence of serious delays and breaches of the laws. Delays of months between hearings remain the rule rather than the exception, and these delays may have serious repercussions on the penalties imposable under law for CICL. Delays and constant postponements seem to be accepted as inherent and unavoidable by those involved the justice system.

Delays in the administration of justice result in a ludicrous situation where pre-trial detention is the punishment for an offense that has yet to be tried, yet alone proved, in court. Children accused of having committed a crime, like everyone else, are supposed to enjoy the presumption of innocence yet many find themselves languishing in jail prior to their trial for lengthy periods of time. The majority of children located in the various jails, not one is actually serving a sentence after trial and conviction in court. All of them are awaiting the disposition of their cases. In practice, it seems that prosecutors, complainants and even judges view the pre-judgment period – which can amount to years in some cases - as adequate punishment for the crime that was allegedly committed. Knowledge of the delays inherent in the justice system means that a complainant can satisfy himself with the notion that a supposed crime against him does not go unpunished.

From interviews with DSWD staff operating YRCs in Luzon, it is evident that children who are detained in adult jails for long periods of time before being transferred to the appropriate centers are less likely to respond positively to the various rehabilitation programmes provided.

### **2.3.2 Persons who Reach the Age of Majority While Awaiting Trial <sup>71</sup>**

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where counsel for the accused, the public prosecutor or PAO obstruct the speedy resolution of criminal cases. Section 13 of the Act and section 9 of Rule 119 of the Revised Rules of Criminal Procedure also provide that when the accused is not brought to trial within the specified period, the Information may be dismissed upon the motion of the accused. Section 26(h) of the Supreme Court Rule on Juveniles in Conflict with the Law states that “In all criminal proceedings in the Family Court, the judge shall ensure the protection” of “the right to have a speedy and impartial trial, with legal or other appropriate assistance and preferably in the presence of his parents or legal guardian, unless such presence is considered not to be in the best interests of the juvenile taking into account his age or other peculiar circumstances”. Therefore, it is clear that the cases of minors should receive priority over the cases of adults in terms of how quickly they proceed.

<sup>71</sup> Article 68.1 of the RPC states that when the offender, at the time he commits the offense, is under 15 but over 9 years of age the penalty two degrees lower than that prescribed by law for persons over 18 shall be imposed as long as that person is found to have acted with discernment. Article 68.2 states that when the offender, at the time he commits the offense, is under 18 but over 15 years of age, the penalty one degree lower than that prescribed by law for persons over 18 shall be imposed. Persons under 9 years of cannot be convicted of criminal offenses under Philippine law. The RPC prescribes certain penalties depending on the seriousness of the crime. For example, a person who is convicted of theft of an item worth between P12,000 and P22,000 shall be sentenced to between 6 years and 1 day to 8 years imprisonment. However, a person who is convicted of theft of an item worth between P6,000 and P12,000 shall be sentenced to between 2 years 4 months and 1 day to 6 years imprisonment. The penalty in the latter case is described as being “one degree lower” than the former offense and is a lesser form of punishment

Philippine law defines children as persons below 18 years of age. Some of the youth that were interviewed no longer qualify as children, although they were under-18 years of age at the time of arrest. If the accused was a child at the time the crime had been committed, but not over 18 at the time of conviction, the penalties prescribed by the RPC are still applicable. He should not receive the full penalty that an adult offender would receive. The law recognizes that the age of the accused at the time the offense was committed as a mitigating circumstance.

However, unlike Article 68, the relevant provisions of PD 603 do not apply to children who turn 18 before conviction. These only apply to those who are sentenced before they turn 18. Article 192 of PD 603 states that if the court finds that the child has committed the acts charged against him, the prescribed penalties would be imposed. However, if the court – as a matter of upholding the best interest of the public and the child in question – to suspend all further proceedings and commit the child, who has not yet reached 18 years of age, to the custody of the DSWD or other appropriate institution for his rehabilitation until he reaches the age of 21 or for a shorter period as the court may deem proper.

This suspension of sentence mechanism is very favorable to CICL as it gives them the opportunity to undergo rehabilitation. PD 603 also provides an opportunity for such youths to be released early from said YRCs once the court is satisfied that they have been successfully rehabilitated. A child who is arrested, tried and convicted before he turns 18 is afforded an opportunity to undergo rehabilitation and may benefit from an early release. On the other hand, a person who was a child at the time of arrest and trial but has reached 18 at the period of sentencing can only benefit from the reduction by one degree of his sentence if aged between 15 and 17 and two degrees if aged between 9 and 15. The case of Marko illustrates this anomalous situation. At age 16, he was arrested for theft, but 18 months later, at age 18, he has yet to be arraigned. This means that he will not have the opportunity to benefit from the suspension of sentence provisions of PD 603 despite the fact that he was a child at the time of arrest. This also means that if found guilty, Marko is liable to a sentence of *reclusion temporal minimum* (12 years and 1 day) which is the penalty one degree lower than that prescribed for adult convicts. Instead of being able to avail of his right to a suspended sentence and rehabilitation, Marko might face a lengthy prison sentence as a result of the inexcusable delay on the part of the prosecution. Judging from Marko's case, serious delays in the processing of the criminal cases against children are primarily responsible for causing unjust situations. In practice, it means that the speed at which the trial of an accused occurs will determine the extent of punishment.

## **2.4. Imprisonment**

### **2.4.1 Minors in Jail Pending Judgment**<sup>72</sup>

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because stealing a less valuable item is deemed to be a less serious offense.

<sup>72</sup> PD 603 requires that a child, if unable to furnish bail, should be committed from the time of his arrest to the care of the DSWD or other appropriate juvenile center unless he is charged with a very serious offense such as murder or rape for example. Article 191 of PD 603, clearly states that “a youthful offender held for physical and mental examination or trial pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home”. This implies that the arresting officer can place a minor in the custody of the DSWD. The DSWD will then, in certain cases, be able to release the minor to the custody of their parents/guardians/other suitable person pending trial. Under Article 202 of PD 603, the DSWD is given the responsibility to establish regional YRCs for CICL throughout the Philippines. Article 203 of PD 603 places an obligation upon the Department of the Interior and Local Government (DILG) to establish YDHs in cities and provinces distinct and separate from jails, as does Section 8 of the Family Courts Act of 1997. Judges also have responsibilities to children who await trial in Philippine jails. Under section 1 of Supreme Court Administrative Circular No. 04-2002 (February 2002) on the Special Treatment of Minor Detainees and Jail Decongestion, “trial judges shall hold regular dialogues, conferences or visitations, in coordination with appropriate government agencies, as well as the local chief executives, jail wardens, chiefs of police and officials from social welfare office [sic] at least once a month with the inmates in all jails in their respective territorial jurisdiction”. The

Despite their respective mandates to establish detention and rehabilitation centers in the cities and provinces throughout the Philippines, the DSWD, the DILG, and local government units (LGUs) have not satisfactorily implemented their obligations to establish such centers. As a result, many areas of the country are left without these centers, and children awaiting trial are detained in jails along with adult prisoners

Even in the rare cases where appropriate centers for children exist, legal provisions remain vague as to who is directly responsible for transferring the minor to such centers. The prosecutor who initially files the Information in court against the child has no authority to transfer the accused from jail to a rehabilitation or detention center. While the judge has the sole authority to transfer the accused, he will rarely see the child in court until weeks after the minor had been arrested and placed in jail.

In practice, YRCs do not take minors into their custody without a valid court order for fear that arbitrary detention proceedings will be brought against them. Many arresting officers as well as YDHs and YRCs do not wish to transfer or receive minors because they think that, interpreting Section 8 of RA No. 8369, a judge, having many responsibilities in relation to YDHs, should first issue the authorization of such a transfer.

On the other hand, Section 8 of RA No. 8369 does not require the issuance of a court order by a Family Court judge authorizing a child transfer to a YDH or YRC. Such a legal requirement would create an unworkable situation since Family Courts – and hence Family Court judges – are non-existent in many judicial regions of the Philippines. This may be taken to mean that in cities and provinces where Family Courts are inexistent, the authority to transfer would not be vested in any particular person and the child would be left to await trial in limbo.

Lack of awareness about the laws concerning CICL and apathy among jail authorities appear to play a large role in the failure to bring children arrested for crimes immediately to the DSWD. Jail authorities generally appear reluctant to transfer children to the YDHs or YRCs alleging fears that the children might escape from custody.

Plain disregard on the part of jail officers and public defendants also explains how children have ended up in jail. Overworked public defendants often advise the children to plead guilty to hasten the process. The case of Junjun, charged with rape, demonstrates utter disregard for the law and the child's welfare and best interest. He was brought to a juvenile detention center but was turned away because it was full. Without explanations, his escorts simply dropped him off at the Bilibid National Penitentiary. No one is pursuing his case, no one is filing an appeal on his behalf.

Despite a circular issued by the Supreme Court on the conduct of regular dialogues and periodic visits to jails by trial judges, none of the children who were interviewed reported having witnessed any visits from judges. However, it is also acknowledged that Family Courts are burdened with a massive caseload. As discussed in the previous sections, PAO, prosecutors, and private attorneys who represent accused persons all have obligations to expedite the conduct of trials.

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main purposes behind such visitations are (a) to monitor the well-being of the inmates, especially minors, of prisons in a judge's jurisdiction, (b) to set limits for the number of detainees in jail and ensure the segregation of minors from adults therein, (c) to identify minor prisoners who are willing to plead guilty if qualified, and to inform them of the benefits granted by the provisions of PD 603 on suspended sentence of minors, and (d) to order the release of any accused who is already entitled to be released under the last paragraph of Article 29 of the Revised Penal Code, or who has already served his sentence as the case may be. Section 4 of the Circular also states that "strict compliance with the provisions of R.A. No. 8369 (An Act Establishing Family Courts) and its implementing guidelines is hereby enjoined".

#### **2.4.2 Lack of YDHs and YRCs**

A major problem with the current juvenile justice system is the lack of YDHs and YRCs throughout the Philippines. There is presently only a very small number of YDHs in the Philippines and there is not a much greater amount of YRCs. As a result, many courts will order the transfer of minors on trial to the custody of YRCs, which are centers for a child under rehabilitation who has received a suspended sentence in line with the provisions of PD 603, and not for a minor who is awaiting/undergoing trial. This has the effect of placing a child accused of having committed a crime in a center intended for children who have received sentencing. Furthermore, the very few YRCs in the country are unable to provide proper rehabilitation services to the children in their custody, with overcrowding one of the major problems

#### **2.4.3 Lack of Diversionary Procedures**

Diversionary procedures, known as the *Katarungang Pambarangay* are established as a method of keeping CICL out of the justice system. They are aimed at settling the problem in a child-friendly way. Rules dealing with the *Katarungang Pambarangay* have been issued by the Department of Justice. Ideally, the *barangay captain* or the local council chairperson can negotiate a deal regarding compensation between the complainant and the family of the child accused of having broken the law. This measure is to prevent the pressing of charges. While the *barangay* can legally dispose of a criminal case – in particularly those wherein the penalty does not exceed an imprisonment term of one year or a fine of PhP 5,000. However, in most of the cases documented by PREDA, the *barangay* was unable to dispose of the charges because of the absence of a private injured party. Many of the cases involved crimes against persons or personal property and the penalties involved exceeded the ceiling as required in the *Katarungang Pambarangay*.

#### **2.4.4 Arbitrary Detention: Pre-trial**

The inquest or preliminary examination procedure covers the majority of cases where no warrant of arrest had been issued. The legality of detention based on this procedure is questionable, with such a detention considered to constitute illegal and arbitrary detention and a breach of Article 125 of the RPC. While RA no. 7309 provides for a Board of Claims under the DOJ for victims of unjust imprisonment and detention, in practice, a child accused of having broken the law – with little or no legal assistance - will never be informed of his right to compensation for any illegal detention he may suffered.

Evidence of illegal detention is difficult to gather, since custodial reports and case files rarely include the necessary details. Due to the heavy workload of PAO lawyers, it is impractical for them to raise procedural issues of illegal or arbitrary detention. A child's right to be compensated for suffering illegal and arbitrary detention may prove illusory and unenforceable in all but the most exceptional circumstances.

#### **2.4.5 Arbitrary Detention: Post-trial**

Many of the children in the case studies indicated that they were detained for long periods in jails along with adult prisoners even after the appropriate court had ordered their release, or transfer to a YRC or YDH. In one of the cases, a child was detained in jail for 49 days after the court had ordered for his transfer to a drugs rehabilitation center. In many of the cases, the jail officials simply did not receive or act upon the court order days after it was made. Such detentions are deemed to be manifestly illegal and inexcusable and a breach of fundamental human rights, in particular of article 10.2 b) of the Covenant.

While Philippine law provides for adequate protection from such arbitrary detention and lays down

punitive measures for erring public officers, there is no attempt to implement and enforce the law.

#### **2.4.6 Denial of Bail** <sup>73</sup>

In several of the case studies documented by PREDA, bail had been set at an inordinate and unreasonable amount that the children or their parents/guardian could never be expected to pay. In one of the cases, the bail for a ten-year old child accused of theft was set at the equivalent of USD 2,000. This amount would be impossible for the average middle-income earner to pay in the Philippines, let alone an impoverished child. Under international human rights law and except in the most serious of cases, it is illegal for persons awaiting trial to be denied the right to bail while detained in custody.

Prosecutors conducting preliminary/inquest investigations have been given guidelines from the Office of the Public Prosecutor setting out the appropriate bail amounts having regard to the seriousness of the offenses charged. However, there are no separate guidelines for minors who are guaranteed special protection under the law.

#### **2.4.7 Conditions While in Detention**

Despite international texts which have established the minimum standards for the treatment of children in detention and recent rulings by the Supreme Court of the Philippines, such as the Rule on Juveniles in Conflict with the Law, any positive treatment of children in Philippine jails is rare and often provided by NGOs rather than the State. While in detention, the children are treated almost identically as adult inmates. In some of the jails visited by PREDA, the children were detained in separate cells from the adult prisoners. In the others, they were crammed into small cells along with convicted adult prisoners. In all of the jails, PREDA documented that the children mixed freely with convicted adult prisoners.

In the Philippines, children as young as nine years old could be tried as adults, and subsequently sent to adult jails. Although Philippine law stipulates that children with pending cases should be brought to the YDCs, in most cases, this has not been possible since only a dozen of these centers exist in the entire country, and they are usually full. According to conservative estimates, the number of children in jails has grown to more than 20,000, or 10 percent of total prison population.

In many of the jails, the children were made to perform massages on police officers and adult inmates in exchange for small amount of money or food. The right of the children to be treated in a manner conducive to their rehabilitation is denied in all cases. None of the children were provided with adequate exercise, and no attempt has been made to provide them healthy mental stimulation or rehabilitation.

Sanitary conditions vary from jail to jail. In some, like the Tarlac Provincial Jail, conditions appeared acceptable, while at the Angeles City District Jail and the San Fernando City Jail, both in Pampanga Province, the conditions posed a serious health risk to prisoners, including the child detainees, and detention in these two facilities amount to cruel, inhuman and degrading treatment. In many of the jails visited by PREDA, the children were made to provide their own bedclothes, clothing and sanitary items. In some of the jails, the children were made to sleep on the bare concrete floors or on very uncomfortable benches. In most of the cases documented, the children were initially detained at police stations and were forced to provide for their own food often for weeks before their eventual transfer to a jail facility.

The following paragraph further gives a description of the general conditions in three of the city and

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<sup>73</sup> Under Section 4 of Rule 114 of the Revised Rules of Criminal Procedure, all persons shall be admitted to bail as a matter of right. Similarly under section 13 of the Philippine Constitution, it is stated that “excessive bail shall not be required.” The only occasion bail is not applicable, under the Constitution, is where the offense is one which is punishable by death or life imprisonment, and where evidence of guilt is strong. As all minors are subject to sentences one or two degrees lower than adults - the mitigating circumstances rule of Article 68 of the RPC - it is therefore only on rare occasions that bail should be refused for a minor.

provincial jails visited by PREDA:

Angeles City District Jail: The children are detained in a small, unventilated, concrete cell measuring approximately 3x7 meters. The cell lacks a window and the children have only been recently been given access to an electric fan. There is a concrete cubicle/toilet in the corner of the cell. The cell is located in a block containing over a hundred convicted adult prisoners. Prisoners of all ages mix freely throughout the block. The same cell is always used to house male children. Reports from adult inmates indicate that the cell was used to contain up to 15 children. The jail does not supply any bedding or basic sanitary items. The children are not given any change of clothes and commonly wear rags. There have been recent reports of a Hepatitis and Tuberculosis epidemic in the jail. The children have only a maximum of a single hour of exercise a day, which they still have to request. They can have access to a small basketball hoop in the yard. Nonetheless, the children are allowed five hours a day to walk freely around the block and mix with the adult detainees. There are no mental stimuli of any kind provided to the children, who report being underfed. The daily food budget per child is PhP 30 or roughly US 0.55 cents.

Tarlac Provincial Jail: Has the highest standards in all of the jails visited by the PREDA team. It is a big, open-spaced prison. There is a large basketball court and open area surrounded by jail cells. It is clean, and quite cool. There is a constant supply of fresh water. The dining area has bench seating and is clean. The food is reported to be of a high standard, with meat like pork served regularly. However, similarly to other jails, the food budget is PhP 30 per prisoner per day. Health and sanitary conditions at the jail are reported by the minors to be high. All sick inmates are segregated from the others. Hence there are no reports of any epidemics, skin problems etc. Children in the jail share the same cell, which measures approximately 6 square meters. At the time of the visit, there were 4 boys in the jail, sharing the same cell. Each had their own bed. However, the Team was informed that at one time there were 13 minors in the same cell, meaning that some of the minors were forced to sleep on the floor. Bedding is supplied to the minors by the jail authorities. There is a CR facility in the corner of the minors' cell. It is not of a very high standard, but was found to be clean on inspection, with no insects or apparent foul odor. There is no educational stimulus provided to the children apart from weekly Bible studies. The children are confined to their cells only in the evening. During the day, they are free to mix with the adult prisoners and also to play sport.

Baguio City Jail: From outside appearances, the jail is quite small. Due to the use of basement cells, the jail is still large, with approximately 160 prisoners detained therein. The jail is dilapidated and in great need of repair. There is a small basketball court in a square in the middle of the jail. The cells for are located in the basement, in a dank and unventilated area. Apparently the basement cells were previously used as a solitary confinement area for adult prisoners. The steps down to the cell resemble steps to a dark dungeon. The lighting below is poor. Adjacent to the cells containing the children is another for convicted adults, with the children sleeping within 5 yards of them. Only bars separate them. The space provided for the children is minimal. While most of them have bunk beds, the younger ones are forced to sleep on a large table, without any bedclothes or mattress provided. The children reported that apart from weekly bible studies, there is no mental stimulus provided by the jail authorities. An NGO does provide limited amounts of education to the minors for two hours per day, three days a week. The minors do get 4 hours each day for exercise. They reported that they spend time playing cards, and gambling with adult prisoners, however they do not admit to being given alcohol. The children are fed twice a day with lunch and dinner. In general, they did not complain about the food. Sanitary conditions are reported to be passable. Toilet facilities are located outside the cells of the minors, and are basic but relatively clean and without a foul odor. There is a constant supply of fresh water. However, the dankness of the cells would suggest that virus and bacteria could spread easily and constitute a grave health risk. As Baguio is quite cool even in the summer, the children said that their cell rarely became unbearably hot.

## 2.5. Sample Case Studies Documented by PREDA

The individual case studies featured in this section are part of a study conducted by PREDA. They are, as far as possible, compiled from court records, and interviews with the children in detention, prison authorities, and the relevant State-appointed legal counsel and social workers. The names of all children have been altered in order to protect their identity.

Name: **Clark** (as of 20.11.2002)

Age: 15

Number of Visits by Parents: 1

Arrested: 10.08.2002

Arrest Warrant: None

Manner of Arrest: Handcuffs were used. Upon arrest, Clark reports that the complainant, in the presence of the police, hit him using a wooden stick measuring 2 inches wide and 2 inches thick.

Rights Explained Upon Arrest: No

Charges: Theft

Physical and Medical Examination Upon Arrest: No

Parents Informed of Detention (Within 8 Hours): No

Visit from Social Worker: No

Duration of Stay Under Police Custody: One and half months in Station A, Olongapo City

Memory of Inquest Investigation: Yes, 2 days post-arrest at the Fiscal's Office, DOJ

Previous Convictions: Previous charges for theft were dismissed

First Appearance in Court/Access to a Lawyer: 27.09.2002, arraignment conducted 6 weeks after time of arrest

Court Orders: Pre-trial, 29.10.2002, next hearing set for 01.10.2003

Total Period of Detention in Adult Jail: 3 months, 10 days and counting

NOTE: Clark also reports suffering physical abuse at the hands of the Olongapo Police during his arrest. He has had no opportunity to complain about this abuse. It took six weeks for Clark to be arraigned although without any reason for delay/ Although his parents are willing to take custody pending trial, no efforts have been made.

Name: **Noel** (as of 20.11.2002)

Age: 17

Address: Homeless

Arrested: 23.02.2002

Arrest Warrant: Originally arrested *in flagrante delicto*. However he was released on recognizance to his mother on 02.04.2002. After which, he failed to turn up to court hearings so he was arrested by warrant issued on 01.10.2002.

Manner of Arrest: Handcuffs were used upon his initial arrest. He also reports being beaten with a cane by police. He also claims that he was electrocuted by police using a live wire under his arm, to force a confession in Station A, Olongapo City where he was kept for two weeks after his initial apprehension.

Rights Explained upon Arrest: No.

Charges: Trespass/Burglary.

Physical and Medical Examination Upon Arrest: No.

Parents informed of detention (within 8 hours): Yes, but not within 8 hours.

Visit from Social Worker: No

Duration of stay in police custody: 2 weeks

Memory of Inquest Investigation: At OPP in Olongapo City

Previous Convictions: No, but there are 2 cases currently against him.

First Appearance in Court/Access to a lawyer: No record in court file of an arraignment.

Court Orders: 15.11. 2002, pre-trial terminated and set for initial hearing for 02.04.2003.  
Total period of detention in adult jail: Almost 8 months and continuing.

NOTE: It is not clear from said minor's court file when, or even if the accused was arraigned. Noel reports serious physical abuse at the hands of the police during and after his arrest, including electrocution. He has had no opportunity to complain about this treatment.

Name: **Dan** (as of 15.08.2002)

Age: 11 (age 10 at time of arrest).

Arrested: Mid-February 2001.

Charges: Theft committed with violence against the person. Stolen goods amounting to total of PhP 23,000 (Equivalent to US Dollars \$460).

Manner of Arrest: No arrest warrant. On arrest Dan reports he was handcuffed and brought to a cemetery along with another 2 minors. In the cemetery the complainant identified them as the thieves, and apparently requested the police to beat them. The police beat the children. The complainant was also given the opportunity to beat them. Dan says that in the cemetery he had his hands tied to a wooden post above his head while he was beaten. He claims he was punched and kicked on his behind, and also had cigarettes stubbed out on his legs. There is a faded scar on his leg which Dan says is a result of the cigarette burns. Apparently, around fifteen policemen were present during the episode in the cemetery. They were then brought to Masinloc jail.

Physical and Medical Examination Upon Arrest: No

Parents informed of detention: Yes.

Visit from Social Worker: No

First Appearance in Court/Access to a lawyer: 06.03. 2001 (*after 19 days in Masinloc jail*). No Attorney present. They were then ordered to be transferred to a YRC pending arraignment and trial.

Arraignment: 13.03. 2001. Represented by PAO Attorney. Bail was set at PhP 100,000 each (equivalent to US \$ 2,000).

Total Period of Detention in Adult Jail: 19 days.

NOTE: Dan knew that his trial was ongoing, but had little idea about the actual proceedings. He did not know his lawyer's name. He also felt scared to report any abuses done by the police, although he did inform the social worker at the Regional Youth Rehabilitation Center in Magalang after he had been transferred. While the social worker confirmed the instances of abuse, no further action was taken by the social workers. Dan's bail was set at the equivalent of USD 2,000 – despite the fact that he was only ten years of age at the time. Such an amount must be viewed as a breach of Dan's constitutional right to bail and his right to the presumption of innocence.

Name: **Marko** (as of 25.11.2002)

Age: 18.

Date of Arrest: 22.05. 2001 (when he was aged 16).

Charges: Qualified Theft (2 Counts).

Manner of Arrest: No arrest Warrant. Handcuffs were used.

Informed of Legal and Constitutional Rights: On arrest he was informed of the reason why, however he was never informed of his right to counsel, right to silence etc.

Other details: At his post-arrest interview, he had neither his legal counsel nor his parents present. He claims that he was never asked to sign a custodial investigation report. His parents first visited him after 2 weeks (it is not confirmed when they were informed of his arrest). First social worker visit after 1 month.

Physical and Mental Examination: No.

First Appearance in Court: Marko was set to be arraigned on 12.11.2002, *nearly 18 months after his arrest*. The case was being transferred to another court at the last minute and his arraignment was postponed. Marko denies ever having been present at any inquest investigation or preliminary



investigation after his arrest. Marko has therefore yet to receive the opportunity to question the legality of his detention. It also appears from his case file that the complainant expressed her wish more than a year ago to drop the charges as she is not willing to present evidence against him and has left the country to live in America.

Total Period of Detention in Adult Jail: 1 year, 6 months and continuing.

NOTE: Marko's predicament is an example of excessive delay. The delay appears to be the fault of the Office of the City Prosecutor, which appears to have let the case lie dormant for a year. The Prosecutor's Office pressed charges against Marko on 30.08.2002, more than a year after he was placed in jail. The prosecutor stated that the delay was caused by her massive workload. Marko's rights under Article 125 of the RPC have been breached. It also seemed that he was not provided the opportunity to submit any evidence during the preliminary investigation. As Marko is now 18, he is no longer avail of the rights under PD No. 603 afforded to children who have come into conflict with the law.

Name: **Tonton** (as of 15.07.2002)

Age: 16.

Date of Arrest: 13.04.2000 (age 14).

Charges: Theft.

Manner of Arrest: Tonton does not remember an arrest warrant being used. Handcuffs were used during his arrest.

Initial Detention: Initially held in a military camp for 2 days. Subsequently transferred to Iba Provincial jail after 2 days without any court order or court appearance.

Medical and Physical Examination: No.

Parents informed of detention: Yes.

Visits from Social Worker: Yes. 03.05.2000 National DSWD conducted a report into Tonton's case and recommended his transfer to a juvenile detention center. Apparently, local DSWD blocked the transfer as the complainant (Tonton's aunt) worked there.

First appearance before judicial authorities/meeting with lawyer: Tonton could not remember exact date but felt it was *more than a month after initial detention*. Bail was set at 20,000 Pesos (equivalent to US Dollars \$400).

Number of Subsequent Court Hearings: According to Tonton only 3 court hearings in 2 and a half years in Regional Trial Court, Iba, Zambales. Trial adjourned for various reasons on all 3 occasions.

Released to custody of Mother: 09.08.2002 Case ongoing.

Total time spent in adult Jail: 2 years, and 4 months.

PREDA Action: DSWD contacted and asked for immediate explanation. PAO and judge also contacted. DSWD finally took action towards having Tonton released.

NOTE: Tonton remembers signing a confession admitting his guilt for the crime. He reported that the confession was signed in the absence of a legal counsel or a social worker. It is apparent that Tonton spent nearly 2 years and a half in jail among convicted adults without any regard to his right to a speedy trial or due process. The delay in the case was a result of the complainant's ability to influence the administration of justice through her post as a DSWD social worker. Tonton's transfer to an appropriate center was prevented.

## 2.6. Table of Documented Cases

As of 8th November 2002

| <i>CHILDREN<br/>IN</i> | <i>AGE OF<br/>MINOR</i> | <i>WARRANT<br/>SHOWN</i> | <i>HANDCUFFS<br/>OR</i> | <i>PHYSICAL<br/>AND</i> | <i>PARENTS OR<br/>SOCIAL</i> | <i>BROUGHT TO<br/>COURT/</i> | <i>EDUCATION<br/>MENTAL</i> | <i>SEPARATE<br/>DETENTION</i> | <i>PERIOD<br/>SPENT</i> |
|------------------------|-------------------------|--------------------------|-------------------------|-------------------------|------------------------------|------------------------------|-----------------------------|-------------------------------|-------------------------|
|------------------------|-------------------------|--------------------------|-------------------------|-------------------------|------------------------------|------------------------------|-----------------------------|-------------------------------|-------------------------|

| <i>JAIL</i> | <i>ON ARREST</i> | <i>ON ARREST</i> | <i>UNNECESSARY FORCE USED</i> | <i>MENTAL EXAM</i> | <i>WORKER INFORMED</i> | <i>MET LEGAL COUNSEL</i> | <i>STIMULI PROVIDED</i> | <i>FROM ADULTS</i> | <i>IN ADULT JAIL</i> |
|-------------|------------------|------------------|-------------------------------|--------------------|------------------------|--------------------------|-------------------------|--------------------|----------------------|
| 1. MARK     | 14               | No               | YES                           | No                 | YES                    | AFTER 64 DAYS            | No                      | ADJACENT CELL      | 1YR, 2 WEEKS +       |
| 2. CLARK    | 15               | No               | YES                           | No                 | No                     | AFTER 6 WEEKS            | No                      | ADJACENT CELL      | 100 DAYS +           |
| 3. NOEL     | 17               | No               | YES                           | No                 | No                     | TBC                      | No                      | ADJACENT CELL      | 9 MONTHS +           |
| 4. JUNJUN   | 12               | No               | No                            | No                 | No                     | AFTER 21 DAYS            | No                      | ADJACENT CELL      | 36 DAYS              |
| 5. HADJI    | 17               | No               | No                            | No                 | YES                    | AFTER 16 DAYS            | No                      | ADJACENT CELL      | 112 DAYS             |
| 6. BERNARD  | 17               | No               | YES                           | No                 | No                     | AFTER 42 DAYS            | No                      | ADJACENT CELL      | 70 DAYS +            |
| 7. NICO     | 17               | No               | No                            | No                 | No                     | AFTER 74 DAYS            | No                      | ADJACENT CELL      | 107 DAYS             |
| 8. DAN      | 10               | No               | YES                           | No                 | YES                    | AFTER 19 DAYS            | No                      | YES                | 19 DAYS              |
| 9. MARKO    | 16               | No               | YES                           | No                 | No                     | NOT YET                  | No                      | SAME CELL          | 18 MONTHS +          |
| 10. MARTIN  | 15               | No               | YES                           | No                 | YES                    | TBC                      | No                      | SAME CELL          | 30 DAYS              |
| 11. NADIA   | 15               | No               | No                            | No                 | No                     | NOT YET                  | No                      | SAME CELL          | 5 MONTHS +           |
| 12. TONTON  | 14               | No               | YES                           | No                 | YES                    | AFTER 30 DAYS +          | No                      | SAME CELL          | 28 MONTHS            |
| 13. MARVIN  | 14               | YES              | No                            | No                 | YES                    | AFTER 30 DAYS +          | YES (NGO)               | ADJACENT CELL      | 32 DAYS +            |
| 14. GERRY   | 16               | No               | No                            | No                 | No                     | + 5 MONTHS               | YES (NGO)               | ADJACENT CELL      | 9 MONTHS +           |
| 15. RUDY    | 16               | No               | YES                           | No                 | No                     | AFTER 19 DAYS            | YES (NGO)               | ADJACENT CELL      | 4 MONTHS +           |

### 2.7. Secret Cells for Children: Documented Case of Abuses in a Government Center

Established in 1998, the Olongapo Center for Assistance, Rehabilitation and Empowerment (OCARE) was a project of Richard and Kate Gordon. Olongapo City won the award for the most-child friendly city of the Philippines in 2000 and 2002. This documentation is based on the reports given by Swedish student researchers who visited OCARE in February 2003 and interviewed 18 street children in Olongapo City. The street children who participated in the research composed of 13 boys, ages eight to fifteen, and five girls, ages nine to fifteen. There are hundreds more children roaming the streets of Olongapo City. They are incarcerated from time to time when caught for vagrancy, failing to drop-in into the OCARE, sniffing glue, sleeping in doorways and hanging out on the streets.

The study reported that there are secret cells where the children are locked up and mistreated. Children and minors from 8 to 15 are found frequently imprisoned in the cells but not everyday. The cells are small claustrophobic, they measure a mere 1.5 meters to three meters. There are no beds, furniture, faucet, hand basin or toilet. The air is full of the stench from the feces in the blocked toilet hole. There is insufficient air and light. Only a small slit high on the wall. Sometime there are as many as 14 children in the four cells at one time. The children are sometimes mixed with mentally disturbed adult women. All windows, doors and ceiling are barred as in a prison.

A hole in the floor is a toilet that is blocked and overflowing with feces. Insects, cockroaches, ants,

mosquitoes endanger the health of the children. They are bitten, have skin rashes, sores, malnourished and bruised from the beatings and kicks they receive in the OCARE center. The food is inadequate and they go hungry. They are beaten, punched, kicked, hit with wood, padlocks, bamboo, and the handles of brooms. They are doused with water day and night, and are forced to sleep on the concrete floor even when it is wet. They get no exercise, stimulation, education, proper hygiene and sanitation, no visitors, no parental contact, no legal rights.

Photographs of the conditions of the secret cells were very difficult to get as the children are sealed off from visitors. Nevertheless, the researchers were able to take photographs of women and children behind bars. The testimony of the children, as young as 8 years, indicate that jailing is a common practice as well as the barbaric treatment expected of a concentrated camp.

When there are visitors, the children are taken out and washed and fed as seen by the Swedish students. All 18 children have experienced being arrested, beaten and put in the cells. The abuses are listed below. The children are identified for the proper authorities in this report.

#### Acts of Abuse Reported by the Children in OCARE

The following is a list of abuses reported individually by the children during the secret interviews conducted secretly with the children detained inside OCARE :

- Imprisoned in the cells alone
- With the mentally disturbed women
- With other children, as many as 14 at one time.
- Beaten up in the OCARE center
- Punched in the stomach
- Hit with a padlock on the head in the cell
- The social worker throws water on them at night
- 4 days to one month in cells
- 14 at one time in the cells together
- Girls in the cells of OCARE
- Given leftover food
- Food left outside the iron bars on the floor (like animals, they eat through the iron bars)
- Kicked by a male staff
- Jailed up to 4 days
- Cells infested by mosquitoes and ants
- Kicked by a staff wearing heavy boots
- Beaten with a broom
- Left hungry without food
- Caught and roughed up by police and thrown in the back of the truck
- Kicked by staff when child is sleeping on the cell floor
- Beaten with a bamboo
- Beaten with a piece of wood on the head by social worker
- No sleep because of the stench of the feces in the blocked toilet
- Bitten by the ants.
- Sleeping on concrete floor
- Sleeping on the wet floor when the staff throw water on them
- Deprived of food, eat once a day, guard banging the bars, hit the minor
- Not allowed go to the toilet
- Beaten and kicked in the center
- Deprived of showers

All punished and jailed if one escapes  
The solvent glue is rubbed into their hair  
They are made to work by cleaning the cells  
They are hidden away if visitors arrive  
Deprived of water  
Slapped on the face  
Kicked in the face

## **2.8. Children on Death Row**

Despite a constitutional prohibition on the execution of person below 18 years of age, some children have been placed on death row. The problem stems from the assumption by the police, court and social workers that most teens are over 18. Moreover, the concerned authorities rarely take the time to track down the birth certificates of impoverished children who are convicted of capital offenses like murder and rape. Five children are awaiting execution while the State is disputing their ages. A human rights group saved a child on death row, Jelly Rodique Lipa, at the last minute after his birth certificate had been found, the result of a six-month search. Jelly was under 18. Court spokesman Ismail Khan meanwhile said that the fault did not lie with the government. He said that judges did not have the responsibility to look into the cases and simply acted on the presented evidence.

## **3. State Protection From Violence Against Children**

### **3.1. Legal Framework**

The Philippines is a signatory party to international instruments such as the UN CRC, the Optional Protocol to the CRC on the Sale of children, child prostitution and child pornography (since 8.09.200), has enacted ample legislation ensuring the protection of children against all forms of violence, such as commercial sexual exploitation, child labor, and child trafficking. Article 15, Section 3(2) of the 1987 Philippine Constitution ensures the right of children to assistance and protection from neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development. The RPC also lays down the laws for the protection of children. For example, the exploitation of children is the preserve of Article 278 of the RPC. Article 273, as amended by RA No. 7610, meanwhile defines rape as a heinous crime in cases when the victim is under 12 years of age and regardless whether it was consensual or not. Article 340 to 343, which tackles the corruption of children, also relates to the white slave trade and abductions. PD No. 603, or the Child and Youth Welfare Code of the Philippines defines the rights of children, the responsibilities of parents and the role of other institutions in promoting the welfare of Filipino children. Prohibited acts include: inflicting cruel and inhumane punishment to a child; leading the child to an immoral life; inducing a child to leave an institution where s/he is entrusted to care; failing to report abuse; unauthorized disclosure of information relating to child sexual abuse; and abetting, conniving or encouraging a child to delinquency.

RA No. 7610, as a landmark piece of legislation for the protection of children, provides stronger deterrence and protection against child abuse, exploitation and discrimination, including those who are being prostituted or are in danger of being prostituted. It lays down mandatory reporting in cases of rape or abuse. RA No. 7610 mandates teachers, school administrators, law enforcers and officials at the barangay or village level and other government workers to report all incidents of possible abuse to the DSWD, the government agency mandated by the RPC and Executive Order No. 56 to take protective custody of children in prostitution and sexually exploited children. The Family Code meanwhile prescribes the legal ages for marriage in the Philippines.

Realizing that the sexual exploitation of children is a global menace, some countries have adapted their existing domestic law. These changes allow the local prosecution of their citizens who have abused children overseas. These countries include Australia, Belgium, Denmark, Finland, France, Germany, Iceland, Japan, New Zealand, Norway, Sweden, Switzerland, and the USA. Countries in the process of changing their laws include Canada, Ireland, Italy and the United Kingdom. This change in the domestic laws in these countries allowed the Philippines to prosecute and incarcerate foreigners proven to have abused Filipino children. The Philippines is also a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, upholding the right to be protected from all forms of trafficking and prostitution including sexual slavery, generally and by the military, the deception of migrant women, and "mail order" and false marriages.

In 1998, the Philippines ratified the ILO Convention No. 138, which set the minimum age for basic work at 15 years of age and for hazardous work at 18 years of age. In 1994, the country signed the International Program on the Elimination of Child Labor or IPEC of the ILO. The Philippine Labor Code defines child labor as the "work of children below 15 years old or the engagement of children aged between 15 to 17 years old in hazardous work." The law prohibits child labor except, when under the responsibility of their parents or guardians. It allows family labor, except when it prevents children from going to school. The law however contradicts itself by allowing children of at least 14 years of age to work as apprentices in industrial establishments. The Philippine Labor Code also mandates that the granting of opportunity to at least acquire elementary education to children under 18 years of age who are employed in domestic house work. Violators of child labor laws are penalized with fines amounting between PhP 1,000 to 10,000 or an imprisonment between three months to three years or both. The law also prescribes the revoking of the operating license of repeat offenders.

### **3.2. Commercial Sexual Exploitation of Children (CSEC)**

#### **3.2.1. Child Prostitution/Child Sex Tourism and Trafficking**

Of the reported 1.5 million street children in the Philippines, 60,000 are prostituted. This makes the Philippines the fourth in nine countries with the most number of children in prostitution. Based on a report that 20% of the 500,00 prostituted women are minors, UNICEF provides a higher estimate: that there are 100,000 prostituted children in the country. This number excludes young boys. The DSWD, on the other hand, claims that the annual average increase of prostituted children is 3,266. It also reported a more than 100% increase in the case of sexually abused and exploited children. Rape constituted thirty-six percent (36%) of the reported cases, while child prostitution and pedophilia accounted for twelve percent (12%). The government has already ordered the crackdown on pedophiles, but the move, however, was not to protect the children, but - quoting former President Fidel V. Ramos - to "correct wrong perceptions about the Philippines, especially in the tourism industry." Ironically, child prostitution is highest in areas that are highly dependent on tourism, such as Puerto Galera in Mindoro, Pagsanjan in Laguna, Cebu and Baguio City, and Boracay Island in Aklan.

Prostitution of women and children in the Philippines flourished during the 1970s and 1980s. As a result of a mutual protection treaty between the Philippine and US governments, the United States maintained military facilities in the Philippines, a naval base in the Subic and Olongapo Bay areas and an airbase in Angeles City in Pampanga. Outside the notorious red light district in Manila, brothels and bars catering to US servicemen proliferated in the cities of Olongapo and Angeles. Through an agreement, US military personnel were granted immunity from persecution for any crimes they may commit while in the Philippines. In 1990, the Philippine Senate during the Aquino administration abrogated the treaty leasing the military facilities to the United States and American servicemen were pulled out. More than ten years later, however, a new mutual defense agreement was signed between the Philippine and US governments. It provided for the conduct of joint military exercises, and along with it, the immunity of US servicemen for possible crimes they may commit while in the country. NGOs felt that such agreement could only encourage the abuse of women and children and began to protest the ratification of the agreement, which was nonetheless ratified. NGOs noted that the presence of foreign military personnel, peacekeeping forces

and aid workers has also been a contributing factor to the incidence of cases of sexual exploitation of children through prostitution.

The 1980s saw the development of a kind of tourism in the Philippines that featured sex and prostitution as attractions. Foreign sex magazines started featuring the country as a place where tourists can find “partners “ very easily, including child partners. The most notable case in the role of tourism in the exploitation of children is Pagsanjan, a quiet town in Laguna province locally and internationally famous for its waterfall and rapids where the American movie “Apocalypse Now” had been filmed in the middle of the 1980's. An explosion of foreign visitors was seen in town. Many of the foreigners stayed long enough to acquire a certain permanency in Pagsanjan, buying houses and real property from residents. On ordinary days, the town had about 500 foreign visitors, the number jumping to 2,000 on weekends and holidays. One study noted that the tourists were mostly Americans, Australians, British, Germans and French. Most were found to be pedophiles. At the height of the tourist boom, Pagsanjan had 3,000 children servicing the pedophiles needs. They came not only from Pagsanjan but also from the neighboring towns and provinces, responding to the “ growing demand.” Eventually, a local term would evolve to refer to these children. They became known as “pom-pom”, the masculine equivalent of “pam-pam”<sup>74</sup>, meaning female prostitute. Pedophiles would pay \$10 a trick, which often lasted an hour. In nightlong orgies, a pedophile might pay his victims – sometimes numbering to a dozen -- \$50 each. Government authorities later cracked down on Pagsanjan when the phenomenon had become too obvious for comfort. But some insiders believe the pedophile activities there have merely become more discreet.

If tourists are coming to the Philippines because of the children, there is also the reverse flow – the out-migration of under-aged youth for the purpose of prostitution abroad. There are cases of this type wherein the children go out of the country unchecked for being minors. In the Philippines, young women who want to work in Japan as entertainers apply to a promotion agency where they are given, free of charge, training in singing and dancing. Recruiters of such agencies go out to provincial towns and villages to encourage girls to avail of the opportunities offered them.

State policies and programs and the international demand for cheap labor abroad have also facilitated the massive migration of women, even young girls, for work overseas. Government policies favor the export of entertainers and domestic helpers that put the lives of children and young women at risk. It is the combination of a legitimizing system that involves government and private sector recruiters and marketers, the local pressure of unemployment, the growing demand for bought sex and the operations of international crime syndicates, that have led to the worldwide explosion of the traffic in women and children.

### **3.2.2. Child Pornography and the Internet**

Unlike actual physical molestation, the very nature of pornography multiplies the abuse many times over. Pictures of the children being abused are shown or shared to others. These photos are also easily replicated - they get into sex publications, manuals, or brochures. They are reproduced by the thousands or tens of thousands, often in different lands and countries. Child pornography is becoming increasingly linked to the Internet, which provides new means to produce and distribute images secretly and globally. The pictures are usually accompanied with articles that give details about the child or children, about the Philippines, and how prostitution is run in the country. Filipinos are sold as sweet, warm, and hospitable. Behind the photos is the fact that the actual physical violence that accompanies the making of child pornography is also very common.

Since 1990 Philippine authorities have been active in investigating and deporting pornographers such as

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<sup>74</sup> The term “pam-pam” had been coined by American soldier assigned to Manila at the end of the Second World War.

Andrew Mark Harvey, a US National, for sexual abuse of children Hisayaoshi Naoyishi Maruyama, a Japanese national, for multiple abuses of children as young as 7 and kidnapped by intermediaries for the purpose, who was arrested ordered to pay a bail of USD 80 for each of the molested child and disappeared

Local and foreign media have often been careless and insensitive in handling victims of pornography. One of the major areas for future studies is the effect of child pornography on the victims and the problems that emerge during rehabilitation. Children are practically labeled for years, even well into their adult years. NGOs such as ECPAT have repeatedly asked Filipino media not join in exploiting these already exploited children, and although there has been some response, the practice still continues.

## **Conclusions**

Prostitution and tourism, and in the past, the presence of foreign troops, have done much to open the country to the activities of pedophiles. Yet, government and non-government groups who work for the protection of Filipino children against sexual abuse still have only glimpses and fragmentary views of how pedophiles in the country are thinking and behaving. Much more investigation and documentation have to be done. Such studies may reveal more about their nationalities, types of profession, the specific crimes they engage in, the places in the country that are the most vulnerable, the pedophile network, the existing legal cases and so on. There should be more studies done on local pedophiles.

### **3.3. Children in Situations of Armed Conflict**

Since the time of authoritarian rule of Ferdinand Marcos in the 1970s up to the present--- the time of so-called democracy and people empowerment--- almost 4.5 million children have become direct and indirect victims of war. The succeeding governments, from Aquino to Macapagal-Arroyo declared periods of all-out war against the Communist insurgency and Moslem separatist movements. Forty-two of the country's more than 70 provinces have had had recurring incidences of armed conflict, displacing around 1.3 million people. Half of this figure consists of children. The DSWD notes that 11,196 children annually become victims of war as a result of the anti-insurgency campaigns the government is waging in the countryside.

In addition, NGOs working throughout the affected areas reported violations of children's rights, which, according to the Task Force Detainees of the Philippines include arrest and detention, harassment and physical assault.

For instance on 26<sup>th</sup> August 2003, in an open letter to president Gloria Macapagal-Arroyo, the International Secretariat of OMCT, informed by TFDP, denounced the case of a young boy who was arbitrarily arrested and tortured by military forces. Sixteen year old Jenny Rom, was one of four youngsters arrested by members of the 19th IB based in Brgy on February 13th , 2003. The military were conducting an intensified operation against rebels in the boundaries of Ormoc, when they encountered Jonathan Rom, Louie Rom, Jenny Rom, Genson Rom. They were handcuffed and accused of being rebels. Although the boys argued that they had just come from a day's work in the farm, the military conducted an interrogation. According to the information received, during the interrogation Jenny was punched and beaten every time he denied being a member of the NPA. Finally he was violently hit on the neck and left for dead by the military in an isolated place. Jenny woke up after a few hours and, despite his injuries, he managed to walk to his house. He was then rushed to the hospital by his uncle. The military arrived there and brought him to the Burauen Municipal Jail, having charged him with multiple homicide. Meanwhile, his three other friends were released after spending three days under military custody. No charges were filed against them. Last July, Jenny was transferred to a detention cell for minors at the Leyte Sub Provincial Jail while the perpetrators of the acts of torture remain unpunished.

### **Recruitment of children into armed groups**

It is very difficult to quantify the number of children fighting with the various armed opposition groups. However, the Philippines Government estimated in 2001 that between 3 and 14 percent of the then NPA's 9,000-10,000 regular fighters were children<sup>75, 76</sup>.

The NGO Group paper cited below pointed out that in clear violation of ILO Convention 182, article 3 (a), some children are physically forced or compelled to join the armed groups. Further the paper showed that although an ILO Study, showed that 34-40% of the respondents said they joined "voluntarily", others were invited to join by family members or rebel group leaders, or joined out of religious duty or for revenge.<sup>77</sup> However the paper went on to show that such volunteering was not always quite so voluntary as it identified reasons for such volunteering as domestic exploitation and abuse, lack of access to education and lack of alternative choices.

The Philippines' Department of Labor and Employment,<sup>78</sup> and a UNICEF study on under 18s recruited into non-state armed groups in the Asia Pacific Region<sup>79</sup> cited similar factors in children "volunteering" into armed groups such as rural poverty, lack of free secondary education, and high levels of child labour.

### **Conditions of service for children in armed groups**

All of the children interviewed for the UNICEF study above were in situations which were intrinsically hazardous to the "health, safety and morals of children" within the meaning of ILO Convention 182 (article 3 (d)). Child soldiers and children working in a military environment are constantly exposed, both in combat and in training, to life-threatening situations, which, if they survive, could leave them severely physically or emotionally damaged.

The NGO paper showed that aside from the obvious hazards of living and working in a military or conflict environment, all of the children interviewed underwent harsh treatment and conditions (such as detention cells or only being allowed to eat at night) and that such harsh conditions compounded any illnesses to become severe diseases.

The NGO paper cited contraventions of ILO Convention 182 Article 3(d) such as working long hours, away from home and lack of education. In addition many state that they do not get paid for their services as child soldiers. Even those who volunteered and appreciate some aspects of the way in which they were treated by contrast with their normal existence, on escape or capture express concerns about the danger and fear associated with being involved in armed confrontations.

### **Government Policy**

Legal protection of children from military recruitment and use is specifically provided for in the 1991 Republic Act No. 7610 (the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, July 1991), at Article X(22)(b).

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<sup>75</sup> Marliza A Makinano: *Child Soldiers in the Philippines* (International Labor Affairs Service, Department of Labor and Employment, Philippines, 2001), pp 39-40

<sup>76</sup> The NGO Group paper on the Convention on the Rights of the Child Sub-Groups on Children in Armed Conflict and Child Labour paper in August 2003 on the Compliance with ILO Convention No. 182 Worst Forms of Child Labour Convention (ratified in 2000)

<sup>77</sup> ILO IPEC: Philippines: Child Soldiers in Central and Western Mindanao: A Rapid Assessment (Investigating the Worst Forms of Child Labour No. 21), February 2002; UNICEF EAPRO: Adult Wars, Child Soldiers: Voices of Children involved in armed conflict in the East Asia and Pacific Region (October 2002), pxvi

<sup>78</sup> Marliza A Makinano: *Child Soldiers in the Philippines* (International Labor Affairs Service, Department of Labor and Employment, Philippines, 2001), pp65-70

<sup>79</sup> UNICEF, "Adult Wars, Child Soldiers: Voices of Children Involved in Armed Conflict in the East Asia and Pacific Region" (2002) pp 23-31.



The NGO Group paper concluded that the Government's legal provisions accord well with the requirements of ILO 182 both in relation to government armed forces and to armed opposition groups. However, it is not clear what action the Government actually takes to deter recruitment and use of under-18s by armed opposition groups in line with its obligations under ILO Convention 182 as this is the major current problem, in particular with the New People's Army and the Moro Islamic Liberation Front.<sup>80</sup>

In this context the NGO Group concluded that it was particularly important that the Government develop an action plan, which addresses the reasons why children become child soldiers in armed opposition groups in addition to the legislative provisions prohibiting such activities as required under Articles 6 and 7 of ILO Convention 182.

Finally, the latest estimate of child refugees is 75,234. This figure excludes children displaced by natural disaster and those dislocated by government and private development project. Many of the displaced, either by armed conflict or natural disasters, belong to peasant and indigenous families.

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<sup>80</sup> ILO IPEC: Philippines: Child Soldiers in Central and Western Mindanao: A Rapid Assessment (Investigating the Worst Forms of Child Labour No. 21), February 2002; UNICEF EAPRO: Adult Wars, Child Soldiers: Voices of Children involved in armed conflict in the East Asia and Pacific Region (October 2002)

## **Recommendations**

### **1. General Recommendations**

The Philippine State should adopt the following recommendations. It should be remembered that the fight to outlaw and eliminate torture is an integral part of the obligation to respect, protect and fulfill human rights.

1. The Philippine government should adopt a law for the prohibition and prevention of torture.

Compounding the problem of impunity is the deficiency in the domestic legal regime in the prevention of torture. The Philippines has yet to adopt a legal definition of torture as crime. Thus torturers can only be charged with lesser crimes such as maltreatment or physical injuries, if they are charged at all.

The law should fully reflect the provisions of the Convention Against Torture, and use the definition of torture as set out in that Convention under Article 1.

The law should also comply with the Philippines' obligations under other human rights instruments and should not apply the death penalty.

Bills pending in Congress, both in the Senate and in the House of Representatives, should provide for rehabilitation of victims and prosecution and penalties for the perpetrators.

2. The Philippine government must ensure that competent authorities undertake a prompt and impartial investigation, whenever there are reasonable grounds to believe that torture has been committed. If an allegation of torture and other forms of cruel, inhuman or degrading treatment or punishment is well grounded, the offender shall be subject to criminal, disciplinary or other appropriate proceedings.

3. The government should issue an Executive Order for a general and unconditional release of all political prisoners, whatever their political affiliation may be, similar to the first acts in government by President Corazon Aquino in 1986.

4. The use of secret detention places or "safe houses" and incommunicado detention should be stopped and perpetrators prosecuted. A mechanism of "transparency" with particular stress on the importance of "open access to all places of deprivation of liberty" must be put in place.

A law criminalizing the use of "safe houses" and incommunicado detention must be passed and the perpetrators prosecuted. The government of the Philippines should extend standing invitations to all of the special mechanisms of the United Nations human rights bodies and as a priority to the Special Rapporteurs on torture and on violence against women.

5. The State should act on Articles 21 and 22 of the Convention Against Torture to allow inter-state and individual complaints, respectively.

6. Human rights education, in particular a multidisciplinary national education campaign against torture should be promoted by the government.

Education should be ensured, especially at the grassroots level, with international solidarity actions, leading to institutionalization of the criminalization of torture through resolutions, ordinances, executive orders and national laws.

Addressing the problem of torture requires political will as well as greater awareness and sensitivity to reverse the sense of helplessness and resignation prevalent, especially among the marginalized sectors, which are in reality, the ones most often affected. People need to be empowered by the knowledge of their self-worth, of the innate dignity they possess as human beings, so they may rightfully assert and act to protect their rights.

Due process should also be emphasized during human rights training given to the police, military and other law enforcement agencies.

Training courses and manuals should be provided for all police and security personnel on the Code of Conduct for Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners, and the Basic Rules on the Use of Force and Firearms by Law Enforcement Officials.

Health sector personnel should be instructed on the Principles of Medical Ethics relevant to the role of health personnel in the protection of detainees and prisoners.

There is definitely an imperative for a paradigm shift in consciousness, particularly for officials both in the government and in the military. As long as there is the idea that those who are treated as people who are different are less human, torture, inhuman and ill treatment will persist.

7. The Philippine State should ratify the Rome Statute of the International Criminal Court, which includes torture as one of the acts that can constitute crimes against humanity or war crimes.

8. The Philippine government should withdraw from the Bilateral Executive Immunity Agreement it entered into with the government of the United States.

Impunity is the main factor contributing towards the prevalence of the practice of torture.

## **2. Recommendations With Regard To Women**

1. It is of deep concern that women who have been arrested or detained are frequently subjected to torture and ill treatment, including rape and other forms of sexual violence, at the hands of state officials. The government of the Philippines must ensure that all forms of torture and ill treatment of women are investigated, prosecuted and punished with due diligence.
2. The government of the Philippines must ensure that women victims of violence have access to adequate reparation and remedies. Special services for women victims of violence should be established where they can benefit from professional assistance (psychologists, psychiatrist, lawyers, doctors, counsellors).
3. Conditions in detention should meet international standards, including article 53(3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners which states that women prisoners shall be attended and supervised only by women officers and article 8 of these Standard minimum rules which states that the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex. Protective measures should be guaranteed in all situations of custody.
4. The Philippines should abolish “protective custody” of women victims of violence, including domestic violence, as this frequently results in further violence by state officials in custody. The government should instead provide shelters for women victims of violence.

5. The government of the Philippines should take adequate measures, including legislation, to suppress trafficking in women and children and the further exploitation of women in prostitution. The government of the Philippines should amend the law in order to exclude women in prostitution from criminal liability. Instead women in prostitution should receive protection from all forms of violence, including at the hands of the police. Moreover, discriminatory attitudes towards women in prostitution should not prevent prosecution and punishing of traffickers as well as persons exploiting women in prostitution. The Philippines should actively combat complicity by the police and other law enforcement officials in the trafficking and the exploitation of women in prostitution. These efforts should lead to provide comprehensive programmes of assistance and rehabilitation to women who were in prostitution.
6. Finally, the government should ensure specialised training programmes to raise awareness of law-enforcement officials, including judges and prosecutors, with regard to violence against women and the particular problems linked to the gender-specific nature of the crime.

## **2. Recommendations With Regard To Children**

### **Concerning State violence against children:**

1. NGO's strongly urge the Filipino people, especially the government leaders to protect the children and people of cities of Davao and Digos by issuing an urgent appeal addressed to the Davao City Mayor to immediately act to stop arbitrary killings and bring those responsible to justice. The NGOs also strongly recommend authorities to carry out an investigation and instigate substantial action against those to be found responsible, with consistent updates on the progress of the investigation. It should also be ensured that the families of the victims of the DDS are provided adequate compensation and protection from future attacks.
3. That the officer conducting the preliminary examination ensures that the appropriate contact details of the PAO are sent to the accused together with the subpoena and affidavit of complain in the event the child's family cannot afford private legal representation.
4. That the officer conducting the preliminary examination ensures that the contact details of the accused, including his place of detention, are sent to the PAO together with the subpoena and affidavit of complaint in the event the accused child cannot afford private legal representation.
5. That where an accused claims to be a child and objectively has the appearance of a child, the burden of proving the age of the accused should shift to the State. Such an accused should be treated as a child unless/until his majority is proved.
6. That any efforts made to establish the age of an arrested person be noted in the custodial investigation report of the arresting officer in order to provide clear evidence that due effort to ascertain the age of the accused was made.
7. That the arresting officer be required to record in the child's custodial investigation report whether handcuffs or other instruments of restraint were used, and the if so, the reasons for their use.
8. That the arresting officer be required to record in the custodial investigation report any efforts had been made to contact both the parents or guardians of the child and the DSWD.
9. That the arresting officer be required to record in an arrested minor's custodial investigation

report precise details of the physical and medical examination.

10. That the relevant police officer be required to record the reason for failure to submit an arrested minor for a physical and mental examination in the minor's custodial investigation report.
11. That the police be required to include in an arrested minor's custodial investigation report a statement that they adequately informed an accused of his rights upon arrest.
12. That any such statement be witnessed by an attorney or a social worker acting on behalf of the minor.
13. That all post-arrest interviews take place in the presence of either a qualified social worker or legal counsel.
14. That the investigating police officer be required to record on custodial investigation report the names of those persons in attendance at the post-arrest interview and all other relevant circumstances.
15. That all statements signed by the child at his post-arrest interview be witnessed in writing by the social worker or legal counsel in attendance.
16. That the minor be afforded the opportunity to appear at the inquest investigation, to submit controverting evidence and to question the legality of his detention.
17. That the minor be afforded legal representation at the inquest investigation where he cannot provide his own.
18. That the authorized officer who conducts the inquest investigation be given the authority to make the following preliminary orders on completion of the investigation:
  - (a) Order to release the minor on recognizance to his parents or other suitable person.
  - (b) Order to release the minor on bail.
  - (c) Order to transfer the minor to an appropriate juvenile institution pending trial.
19. That, where possible, a judge be required to preside over the inquest investigations stage when a minor is accused of an offense.
20. That before deciding whether or not to sign any waiver under Section 7 of Rule 112 of the Revised Rules of Criminal Procedure, the accused minor be explained the contents thereof by his legal counsel.
21. That any waiver under Section 7 of Rule 112 of the Revised Rules of Criminal Procedure, whether signed by the minor or not, be witnessed by the minor's legal counsel.
22. That in the case of children detained in custody, a fast-track procedure shall be introduced to ensure that their arraignment and trial is disposed of expeditiously and within the exact time limits prescribed by law and only with limited exceptions.
23. That if the convicted person was a child at the time he committed the offense, he is to be entitled to avail of the suspension of sentence provisions of PD 603 provided that he is still under the age of 21 when he is convicted.

24. That there be a positive statutory obligation on an arresting officer and/or the jail authorities to commit all minors to the care of the appropriate YRC/YDH from the time of arrest.
25. That representatives of Family Court Judges be appointed to assume the duties of the former in relation to jail visits in accordance with the Supreme Court Circular on the Special Treatment of Minor Detainees and Jail Decongestion, and to report their findings to the Family Court Judge who shall take the appropriate action.
26. That in provinces or cities where no Family Courts have been established, representatives of the local Regional Trial Court be appointed to assume the same duties as the representatives in recommendation 2 above, and to report their findings to an appointed judge in that territorial jurisdiction.
27. That LGUs be required to immediately implement their legal obligations and establish YDHs in every province and city in the Philippines.
28. That the DSWD be required to implement its obligations to establish YRCs in every Region in the Philippines.
29. That the use and applicability of the *Katarungang Pambarangay* be expanded to include cases where there is no private complainant and cases involving offenses punishable by less than six years imprisonment and fines up to PhP 30,000.
30. That any court order which relates to a minor in jail, particularly an order for the release or transfer of a minor, be given directly to the jail officer present in court for immediate enforcement.
31. That separate guidelines taking into account the age and circumstances of the child should be introduced for the setting of bail for CICL.

**Concerning State protection of children from violence, the government of the Philippines should be urged to guarantee that:**

- 1) Hotel, pension, inn and resort managers are made aware of the provisions of RA No. 7610 through the conduct of workshops, seminars and advisories that outline the relevant provisions of the law as it effects their establishments, such as scandal, closure, charges against employers and owners. That these provisions are made a part of any training course for hotel staff.
- 2) Senior staff are obliged to educate their junior staff on these provisions and issue guidelines on how suspected pedophiles are to be identified, if the law is being violated and how it must be reported and to whom.
- 3) Tourism establishments and the Department of Tourism (DOT) should issue advisories to guests warning them of Philippine law that protects children as any guest would be warned regarding fire hazards and other common tips on traveling in the Philippines.
- 4) NGOs and child protection groups are willing to assist establishments in educating their staff in becoming aware of the problem, how to minimize it and protect children.
- 5) A confidential hotline is set up to report suspects who may be seen with minors in a particular establishment. That to protect a suspect by covering up or not reporting it is a crime in itself.
- 6) They cooperate with NGOs and child protection groups and understand that these groups are willing to help and protect the establishment by identifying child molesters using the place.
- 7) The DOT take an active role in the education process and abandon any policy that might be understood as protecting foreign tourists who have broken Philippine laws in general and child

protection laws in particular.

- 8) All establishments do not employ persons aged under 18. That they have the birth certificates of their employees available and made on record in the local Department of Labor and Employment (DOLE) office for access and verified for authenticity by the Bureau of Census.
- 9) Hotel and resort security personnel are specially trained in how to prevent and report suspicious guests and employees who might be secretly acting as pimps and how necessary it is for cleaners and room inspectors to carefully observe evidences of child pornography or child abuse.

#### **Concerning children affected by armed conflict:**

1. The Government should declare all involvement of under-18 year olds with government, government-aligned or opposition military groups as work which by its nature is likely to harm the health, safety or morals of children under Article 3(d) of ILO Convention 182, and in line with their own recognition of this fact under the 1991 Act and 1994 rules and regulations.
2. Recognising that not all recruitment of children into military groups is directly forced or compulsory, the Government should identify factors, such as poverty, domestic exploitation and abuse, lack of access to education and lack of alternative choices, which are leading to children's involvement in this worst form of child labour.
3. The Government should devise and implement a programme of action of measures to prevent the recruitment of particularly vulnerable groups of children into armed groups as stipulated in articles 6 and 7 of ILO Convention 182. This should include:
  - socio-economic programmes targeted at particularly vulnerable groups of children and their families, in particular to enable all children to enter and remain in education, including ensuring that education is, and is seen to be, relevant and culturally appropriate;
  - economic programmes and policies to support families including rural women, so that children are more likely to be able and encouraged to stay in school, rather than dropping out or being taken out in order to be used as domestic or other forms of child labour;
  - programmes to address the causes of domestic violence;
  - public awareness programmes, directed at particularly vulnerable groups of children and their families, to warn of the dangers of recruitment into military forces.

## Concluding observations of the Human Rights Committee

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NATIONS

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on Civil and  
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### **Concluding observations of the Human Rights Committee: Philippines : Philippines. 01/12/2003. *CCPR/CO/79/PHL. (Concluding Observations/Comments)***

Convention Abbreviation: CCPR  
HUMAN RIGHTS COMMITTEE  
Seventy-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

#### **Concluding observations of the Human Rights Committee**

##### **THE PHILIPPINES**

1. The Human Rights Committee considered the consolidated second and third periodic reports of the Philippines (CCPR/C/PHL/2002/2) at its 2138th, 2139th and 2140th meetings, held on 20 and 21 October 2003 (see CCPR/C/SR.2138, 2139 and 2140). It adopted the following concluding observations at its 2153rd and 2154th meetings (CCPR/C/SR. 2153 and 2154), held on 30 October 2003.

##### **A. Introduction**

2. The Committee notes the submission of the consolidated second and third periodic reports of the Philippines, which contain detailed information on domestic legislation in the area of civil



and political rights, and the opportunity to resume the dialogue with the State party after an interval of more than 14 years. The Committee considers that the failure to submit a report for such a long period constitutes a failure to observe its obligation under article 40 of the Covenant.

3. The Committee welcomes the information provided in the report. While appreciating the delegation's comments on a series of questions posed orally by members of the Committee, it regrets that an extensive number of questions remained wholly or partly unanswered at the conclusion of the discussion. Some additional written material received on 24 October 2003 was taken into account by the Committee.

#### B. Positive aspects

4. The Committee appreciates the progress made by the State party to reform its domestic legal order to comply with its commitments under the Covenant. It welcomes, among other actions, the ratification of the Optional Protocol to the Covenant in August 1989. The Committee considers that the process of reform should be accelerated and strengthened.

5. The Committee notes with satisfaction that the State party has facilitated international assistance in relation to education and training on the protection of human rights.

#### C. Principal subjects of concern and recommendations

6. The Committee notes the absence of information regarding the status in domestic law of the Covenant and on whether any Covenant provisions have been invoked in court proceedings to date.

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations subscribed to under the Covenant.

7. The Committee regrets the lack of information on the procedure for the implementation of the Committee's Views under the Optional Protocol. In particular, it is concerned by the grave breaches by the State party of its obligations constituted by its lack of compliance with the Committee's requests for interim measures of protection in cases submitted under the Optional Protocol (*Piandiong, Morillos and Bulan v. Philippines*).

The State party should establish procedures to implement Views of the Committee and to ensure compliance with requests for interim measures of protection.

8. The Committee is concerned about the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators. Furthermore, the Committee is concerned at reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated.

- a. The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 6 and 9 of the Covenant, and ensure effective enforcement of the legislation.
- b.
  - (b) The State party should provide information on the outcome of the proceedings related to the cases of Eden Marcellana and Eddie Gumanoy and the execution of 11 persons on Commonwealth Avenue, Manila, in 1995.

9. The Committee has noted pending legislation related to terrorism awaiting adoption by the Congress of the Philippines. While the Committee is mindful of the security requirements associated with efforts to combat terrorism, it is concerned by the exceedingly broad scope of the proposed legislation, as acknowledged by the delegation. The draft legislation includes a broad and vague definition of acts of terrorism which could have a negative impact on the rights guaranteed by the Covenant.

The State party should ensure that legislation adopted and measures taken to combat terrorism are consistent with the provisions of the Covenant.

10. The Committee notes the current partial moratorium on execution of death sentences (while drug-related crimes are excluded from this moratorium), but it remains concerned by the adoption of legislation providing for the death penalty after article 3, section 19(1), of the Constitution of the Philippines had prohibited the imposition of the death penalty. In any event, the Committee has noted that the death penalty is mandatory for a number of crimes and extends to an excessive number of offences which do not fit the definition of the "most serious" crimes within the meaning of article 6, paragraph 2, of the Covenant. The Committee notes that the death penalty is prohibited for persons under 18 years of age, but is concerned that minors have been sentenced to death, seven of whom are currently detained on death row.

The Committee urges the State party to take measures to repeal all laws which have made it possible to impose the death penalty and to accede to the Second Optional Protocol to the Covenant. It should also ensure compliance with article 6, paragraph 5, of the Covenant prohibiting the imposition of the death sentence for crimes committed by persons below eighteen years of age.

11. The Committee expresses concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse, including of detainees, many of whom are women and children, that have neither been investigated nor prosecuted. Such a situation is conducive to perpetration of further violations of human rights and to a culture of impunity.

The State party should adopt and enforce legislative and other measures to prevent such violations, in keeping with articles 6 and 9 of the Covenant and to improve the implementation of relevant laws. The State party should conduct prompt and impartial investigations, and prosecute and punish the perpetrators.

12. The Committee is concerned about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of

the Covenant. The Committee notes that evidence is not admissible if it is shown to have been obtained by improper means, but remains concerned that the victim bears the burden of proof in this event.

The State party should institute an effective system of monitoring treatment of all detainees, to ensure that their rights under articles 7 and 10 of the Covenant are fully protected. The State party should ensure that all allegations of torture are effectively and promptly investigated by an independent authority, that those found responsible are prosecuted, and that victims are given adequate compensation. Free access to legal counsel and a doctor should be guaranteed in practice, immediately after arrest and during all stages of detention. All allegations that statements of detainees have been obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture, and the burden of proof, in such cases, should not be borne by the alleged victim.

13. The Committee notes with concern numerous instances of trafficking (art. 8) of women and children in the Philippines, both within the country and across its borders. While noting the importance of existing legislation (R.A. 9208) in this domain, it is concerned that insufficient measures have been taken actively to prevent trafficking and to provide assistance and support to the victims.

The State party should take appropriate measures to combat trafficking in all its forms, by ensuring effective enforcement of the relevant legislation and imposing sanctions on those found responsible. The Committee encourages the State party to ensure gender-specific training to sensitize the officials involved with problems faced by victims of trafficking, in accordance with articles 3, 8 and 26 of the Covenant.

14. The Committee is concerned that the law allowing for warrant-less arrest is open to abuse, in that arrests in practice do not always respect the statutory conditions that the person arrested is actually committing a crime or that the arresting officer has "personal" knowledge of facts indicating that the person arrested committed the crime. The Committee is also concerned that a vaguely worded anti-vagrancy law is used to arrest persons without warrant, especially female prostitutes and street children.

The State party should ensure that its laws and practices with regard to arrest are brought into full conformity with article 9 of the Covenant.

15. The Committee is concerned at continuing reports of displacement of persons and evacuation of populations, including indigenous population groups, in areas of counter-insurgency operations.

The State party should take urgent measures to ensure the protection of civilians in areas affected by military operations, in accordance with its human rights obligations.

16. The Committee welcomes the adoption of the Indigenous Peoples' Rights Act (IPRA) in 1997 and the subsequent establishment of the National Commission on Indigenous Peoples (NCIP), but remains concerned about the lack of effective implementation of the legislation. The Committee welcomes the positive measures noted by the delegation, but considers their scope to

be limited. It is further concerned at the human rights implications for indigenous groups of economic activities, such as mining operations.

The State party should ensure effective enforcement of the above legislation and ensure that indigenous peoples' land and resource rights enjoy adequate protection in relation to mining and other competing usage, and that the capacity of the National Commission on Indigenous Peoples is strengthened. Positive measure should be expanded to include land rights issues.

17. The Committee is concerned that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable. While recognizing that certain legislation has been adopted in this respect, many problems remain in practice, such as:

- a) The absence of adequate legislation governing juvenile justice and the deplorable situation of children in detention, including those held without evidence for prolonged periods of time;
- b) Persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (art. 7);
- c) Street children vulnerable to extrajudicial executions and various forms of abuse and exploitation;
- d) Children as young as 13 allegedly being used by armed groups without adequate measures of protection by the State (art. 24);
- e) Economic exploitation of children, in particular in the informal sector.

The State party should:

- a) Expedite the adoption of legislation governing juvenile justice which complies with international standards of juvenile justice in accordance with article 10, paragraph 3, of the Covenant. The Committee recommends that training for professionals in the area of administration of juvenile justice be enhanced and that human and financial resources for effective implementation of the new legislation be secured;
- b) Devise programmes for street children which offer support and assistance. Support to relevant non-governmental organizations is encouraged in this respect;
- c) Take all appropriate measures to ensure protection of children who have been involved in armed conflict and provide them with adequate assistance and counseling for their rehabilitation and reintegration into society (art. 24); and
- d) In relation to child labour, the State party should pay particular attention to the situation concerning the monitoring and effective implementation of labour

standards for street children and children working in the informal sector, as well as those working in the Free Trade Zone.

18. While the Committee takes note of the constitutional provisions guaranteeing equal treatment of all persons before the law, the lack of legislation explicitly prohibiting racial discrimination is a matter of concern (arts. 3 and 26).

The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.

#### D. Dissemination of information about the Covenant (art. 2)

19. Attention of the State party is drawn to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fourth periodic report should be prepared in accordance with those guidelines and submitted by 1 November 2006. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's consolidated second and third periodic report and the present concluding observations be published and widely disseminated throughout the country.

20. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 10, 11 and 14. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.