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# Philippines

## A different childhood: the apprehension and detention of child suspects and offenders

*“... the best interests of the child shall be a primary consideration.”<sup>1</sup>*

### 1. Introduction

Children<sup>2</sup> in the Philippines, as in all societies, are uniquely vulnerable due to their incomplete physical, emotional and intellectual development. They are dependent on adults and adult structures of political and economic power to safeguard their well-being. This combination of vulnerability and dependency is particularly striking for those children facing the adult world of law, detention and criminal justice.

Filipino children who come into conflict with the law are often from marginalized groups including street youth, drug users, and those with interrupted education, who have limited access to the family and societal structures meant to protect them. These children straddle the child and adult worlds and, in some ways, get the worst of each.

Photo caption: Police arrested this five-year old girl after they found her wandering the streets. She was held in detention with adults for 16 hours before child rights advocates secured her release. © PREDA

In recognition of the special needs of children, and in affirmation of the principle of special childhood rights, the Philippines ratified the Convention on the Rights of the Child (CRC) in 1990, one of the first states in the region to do so.<sup>3</sup> The CRC paved the way for domestic provisions protecting the rights of accused and detained children. The Philippines now has a wide range of national executive orders and laws<sup>4</sup> which provide for the welfare and protection of children - especially those in ‘conflict with the law’ within the juvenile

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<sup>1</sup> Article 3 (2) of the Convention on the Rights of the Child (CRC) states that, “ In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

<sup>2</sup> Children, as defined in Article 1 of the CRC and for the purposes of this report, are those under the age of 18 unless domestic law sets a lower age of majority. Under Philippine law a “youthful offender” is over nine but under eighteen years of age at the time the offence is committed (Article 189, PD 1179). Children under the age of 9 are exempt from criminal responsibility and those between 9 and 15 are liable only if they are able to demonstrate ‘discernment’ (a level of intellectual maturity including the ability to distinguish ‘right from wrong’) (Section 21, Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (the Implementing Rules), pursuant to Article 209 of the Child and Youth Welfare Code.)

<sup>3</sup> The CRC is one of the world’s most ratified treaties, with 191 States Parties.

<sup>4</sup> Including the Child and Youth Welfare Code (PD 603); The Dangerous Drugs Act of 1972 as amended, and RA 7610 - The Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992.

justice system. ‘Child and Youth Relations Officers’ exist within some police stations and have a responsibility to ensure that child suspects are treated appropriately, as set out in special regulations,<sup>5</sup> a police manual<sup>6</sup> and other codes. While these legal safeguards are to be commended and provide an important structural framework, it is only their full implementation and consistent application that will have a real and positive impact on the lives of child detainees.

Amnesty International is concerned that there continues to be a shocking discrepancy between the youth justice system on paper and that exercised in practice. Key provisions of international and domestic law such as: access to social workers and legal counsel,<sup>7</sup> detention as a ‘last resort,’<sup>8</sup> and prompt charging<sup>9</sup> are regularly violated. There are persistent reports of child detainees being ill-treated by officials as well as by complainants and adult detainees. Children are often detained before trial for periods largely exceeding explicit domestic standards and are frequently detained in the same cells or facilities as adults. Confusion about whether or not a suspect is a minor leads to inappropriate treatment and, on occasion, sentencing. Conditions of custody sometimes feature severe over-crowding and conditions which may violate minimum standards for the treatment of prisoners.<sup>10</sup>

This report<sup>11</sup> highlights the organization’s key concerns regarding the apprehension and detention of children with primary reference to the main international legal document in this area: the CRC.

## 2. Children in conflict with the law

Even before arrest, children who come into conflict with the law tend to represent the most disadvantaged and marginalized sectors of society. Many are fleeing difficult home situations, often exacerbated by abuse and poverty and resulting in an interrupted education. A nationwide study undertaken by an NGO in the Philippines found that less than a quarter of the child offenders interviewed lived with both parents prior to arrest, and a mere 2.2% of child offenders reported being enrolled in school.<sup>12</sup> Street youth are particularly vulnerable to arrest due to actual or suspected involvement in theft or glue sniffing. Additionally, they are

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<sup>5</sup> Implementing Rules (see note 2).

<sup>6</sup> ‘Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances’ 1993.

<sup>7</sup> Sections 4,6 Implementing Rules, Article 37(d), CRC, Section 40 (2), iii, CRC.

<sup>8</sup> Article 37 (b), CRC.

<sup>9</sup> Article 37 (b), CRC, Article 40 (2), iii, CRC.

<sup>10</sup> International standards for acceptable prison conditions are set out in the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN congress on the Prevention of Crime and Treatment of Offenders in 1955, approved by the Economic and Social Council through resolution 663C (XXIV) 1957, and 2076 (LXII) 1977.

<sup>11</sup> This report builds on an earlier document which provided an overview of Philippine criminal justice procedures which facilitate torture and impunity (“*PHILIPPINES- Torture persists: appearance and reality within the criminal justice system*” ASA 35/001/2003). Both reports are based on information collated from a number of different sources including meetings and interviews conducted by Amnesty International representatives during successive visits to the Philippines between 1997 and 2002.

<sup>12</sup> ‘Youth in Detention: Issues and Challenges- A Background Survey, PAYO, June 1996.

alienated from support structures of family and community. While not all youth in detention come from such disadvantaged sectors, street youth are consistently over-represented in the juvenile justice system.<sup>13</sup> The disadvantages that plague these children outside of detention are accentuated throughout the judicial process as they have a limited understanding of proceedings or their rights and little access to support structures such as family, legal counsel or social workers.

“I was here in Cayagan de Oro because my mother and father were quarrelling – they separated. I started roaming the city- sleeping on the sidewalk. I was arrested on suspect for robbery. ... Because of poverty I learned how to steal. This is the reason I am in jail. My hearing is still going on. I feel very tired here.” Sol, age 16.<sup>14</sup>

“... I learned to steal and snatch things just to earn money in order to buy food, because I felt ashamed begging... Until such time I was caught by the police and brought to OK<sup>15</sup> and Maharlika Detention Centre- and later on brought to the City Jail. My brothers and sisters don't know my whereabouts and they never visited me once.”<sup>16</sup> Thomas, age 14

Photo caption: Street children © PREDA

### 3. Arrest

*“Every child alleged as or accused of having infringed the penal laws has at least the following guarantees:*

*(i) To be presumed innocent until proven guilty according to law;*

*(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians ...”*

*(Article 40(b), CRC)*

For both children and adults, Philippine law allows for two different methods of arrest. The first type of arrest is through a warrant which is based on evidence, issued for a named

<sup>13</sup> An estimate put forth by Médecins Sans Frontières (Belgium), based on a series of interviews with approximately one thousand youth offenders in Metro Manila indicated that 70% of imprisoned minors are street children (‘Justice for Children, Human Rights and Legal Reform: International Experts Meeting, 4 February, 2000).

<sup>14</sup> While all cases listed are genuine, as reported to Amnesty International through interviews with and documents from local NGOs, unless stated otherwise, pseudonyms are used to protect the identities of the children concerned. Story as told to Father Ross Naylor, Balay sa Gugma, Cayagan de Oro.

<sup>15</sup> Operation Kahusay ug Kalinaw (Operation Order and Peace), a police precinct in the city of Cayagan de Oro.

<sup>16</sup> Story as told to Father Ross Naylor, Balay sa Gugma, Cayagan de Oro.

individual and served at the time of arrest. The Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances (Police Handbook) further specifies that in dealing with children, police officers should be especially vigilant to serve the warrant in a “legal, humane and responsible manner.”<sup>17</sup>

The second type of arrest is one without warrant where the person to be arrested is “actually committing or is about to commit an offence” or, where an officer has “personal knowledge of facts indicating that the person to be arrested had committed it.”<sup>18</sup> By law, in the event of an arrest without warrant, a suspect must be taken to the nearest police station or prison and, following a summary Inquest Procedure,<sup>19</sup> a charge sheet (known locally as an ‘information’) must be filed in court within a maximum of 36 hours, or fewer, depending on the seriousness of the offence.<sup>20</sup>

Amnesty International is concerned by reports that the majority of children in detention appear to have been arrested without warrants - reportedly after being caught while committing a crime. Many of these children are particularly vulnerable as they are street youth and are often apprehended without warrant on suspicion of ‘sniffing rugby’ (rugby is a local brand of glue). According to Philippine law, children arrested either with or without a warrant must be informed immediately of the reason for their arrest and be advised of their rights in language that they understand.<sup>21</sup> Yet, interviews with children in detention by local non-governmental organizations (NGOs) indicate that these provisions are often violated in practice.<sup>22</sup> Many children have little or no understanding of why they have been arrested or what they have been charged with.

One vital oversight in both forms of arrest as they apply to minors is the absence of any requirement to inquire into or establish whether or not a suspect is below the age of eighteen. Amnesty International is concerned that the lack of such a provision means that many

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<sup>17</sup> Police Handbook, p. 14.

<sup>18</sup> Rule 113 (Section 5) of the Rules on Criminal Procedure.

<sup>19</sup> An Inquest is, “an informal and summary investigation conducted by a public prosecutor [inquest fiscal] in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purposes of determining whether or not said persons should remain under custody and correspondingly be charged in court.” (New Rules on Inquest, Department of Justice Circular No 61, 21 September, 1993, Section 1).

For further information on the Inquest Procedure, see “*Philippines: Torture persists: appearance and reality within the criminal justice system*” ASA 35/001/2003, Amnesty International, January 2003.

<sup>20</sup> Article 124 of the Penal Code imposes penalties of imprisonment on officers who arbitrarily detain a person without legal grounds, and (Article 125) on those who fail to deliver suspects to the proper judicial authority within 12 hours for crimes punishable by light penalties, 18 hours for crimes punishable by correctional penalties, and 36 hours for crimes punishable by afflictive or capital penalties.

<sup>21</sup> Section 4 PD 603, Section 2 (b) of RA 7438.

<sup>22</sup> A study by Médecins Sans Frontières (Belgium), involving 1,000 children in detention in Metro Manila from September 1998-January 1999 indicated that 100% of those interviewed had not been informed of their basic legal rights (‘Justice for Children, Human Rights and Legal Reform: International Experts Meeting, 4 February, 2000). ‘Minors in Jail, The Philippines, PREDA Jail Monitor Team Report, November 24, 2002’ also found this provision regularly violated.

children in conflict with the law may be treated and detained as adults until they are brought before a judicial authority. Amnesty International believes that this omission effectively constitutes a violation of article 10.3 of the UN Standard Minimum Rules for the Administration of Juvenile Justice which requires that “[c]ontacts between the law enforcement agencies and a juvenile offender ... be managed in such a way as to respect the legal status of the juvenile.” In addition, it appears to seriously undermine the effectiveness of domestic legal provisions and regulations aimed at providing human rights safeguards for child suspects.

Fe and her friends were sleeping when they were woken up and arrested. They did not know the reason for their arrest. They were later accused of sniffing rugby which they denied.<sup>23</sup>

#### 4. Use of force at arrest

*“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...”(Article 37(b), CRC)*

*“Apprehension is the stage of first contact between the offender and the apprehending police. It is important at this stage to spare the child from traumatic experiences which he may carry with him throughout his lifetime.”(Police Handbook)*

Domestic law makes clear that the use of force or restraints is undesirable in the arrest of a child. Handcuffs or other implements of restraint are to be avoided unless absolutely necessary and violence or unnecessary force is prohibited.<sup>24</sup> When dealing with children, the Police Handbook states that, on arrest, children should be “taken by the hands” rather than “dragged” or “collared.”<sup>25</sup>

Photo caption: Drawing by a street child. Text reads: “ Caught and beaten although innocent. They were not satisfied. They put me in prison.” © Balay sa Gugma

Despite these provisions, many child suspects are handcuffed upon arrest and during transfer. Current law does not require any explanation or accountability of the circumstances of the use of physical restraints.<sup>26</sup> There also continue to be persistent reports of torture or ill-treatment including punches, slaps, blows on the soles of the feet, being grabbed around the neck, having fingernails singed with a lit cigarette, having bullets squeezed between fingers, being hit with a truncheon or rifle butts, being beaten with a cane, being given electric shocks, and having the head shaved as “punishment.” Amnesty International is also aware of reports of psychological torture and intimidation at the time of arrest including taking child suspects

<sup>23</sup> As reported to Tambayan, Davao City.

<sup>24</sup> Section 5, Implementing Rules.

<sup>25</sup> Police Handbook, p. 14

<sup>26</sup> A report by PREDA based on interviews with children in detention in the Luzon region in 2002 indicated that approximately 50% had been handcuffed. (Minors in Jail, The Philippines, PREDA Jail Monitor Team Report, November 24, 2002).

to graveyards, threatening them with guns, or threatening that they will be subject to the death penalty.<sup>27</sup>

At times the perpetrators of such human rights violations are *barangay tanods* (village/district officials who patrol the locality) who frequently are the first to confront or 'arrest' suspected youth offenders or street-children and may then attempt to mediate between the complainant and accused child without involving law enforcement agencies. In addition, some police officers are reported to ill-treat accused minors, both at the time of arrest and while in police station cells. There have also been reports of complainants assaulting child suspects in the presence of police in some instances with active police participation.

Fifteen year old Alberto was arrested without warrant, handcuffed and brought to a cemetery along with ten-year old Martin, and one other child suspect. In the cemetery the complainant identified the three children as thieves and asked the police to beat them. The children were reportedly beaten first by the police and then by the complainant. Alberto says that he was kicked several times, and then tied to a tricycle and beaten further. Martin says that he had his hands tied to a wooden post above his head and that he was punched, kicked on his buttocks and had cigarettes stubbed out on his legs. Around 15 police officers were reportedly present.<sup>28</sup>

"They placed me in a sack and I was beaten up by the police. They pointed their guns at me. Then the policeman said " If you want to see your mother just pray the Hail Mary ten times." I was frightened so much because of the great threats, and I was handcuffed behind my back. I was placed in the service jeep and they roamed around. I wasn't able to see because I was in the sack. I heard the voice of one policeman say "this is the cemetery already, so get him down." But I found out it wasn't the cemetery but the Maharlika Detention Centre. Then he placed me in the cell and they hit me again and kicked me."<sup>29</sup>

## 5. Access to social workers, parents & legal counsel

### 5.1 Notification of social workers and parents or guardians

*"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."(Article 37(c), CRC)*

*"Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter." (10.1, UN Standard Minimum Rules for the Administration of Juvenile Justice)*

<sup>27</sup> Two twelve-year old child suspects were reportedly threatened with death by the electric chair and/or by hanging by a law enforcement official, and were subsequently presented to the media where they were taunted in a similar vein by reporters. "PACC Tortured Child Suspects" by Luz Rimban, *Philippine Daily Inquirer, Manila Times, Today* 10 July, 1995.

<sup>28</sup> 'Minors in Jail Case Studies- the Philippines, PREDA Jail Monitor Team Report,' 6 September 2002.

<sup>29</sup> Experience of a seventeen - year - old detainee, as told to Father Ross Naylor, Balay sa Gugma, Cayan de Oro.

As children are unable to fully understand the legal system, their legal rights and the charges that have been brought against them, both Philippine domestic and international law specify that a number of adults must be notified promptly when a child is arrested.<sup>30</sup> Domestic law requires that the arresting officer notify the Department of Social Welfare and Development (DSWD) and the parents or guardians within eight hours and inform them of the reason for the child's arrest.<sup>31</sup> The Police Handbook further states that children must only be interrogated by police in the presence of their parents, guardians or social workers.<sup>32</sup> Such safeguards are more than procedural. Experience in many countries has shown that prompt access to family, visitors and legal counsel is very important in both preventing torture and ill-treatment and in facilitating reporting and prosecution of torture or ill-treatment should it occur.<sup>33</sup>

Despite the existence of these safeguards, persistent reports from groups working on human rights and legal issues<sup>34</sup> in the Philippines reveal how, in practice, these rights and procedural safeguards are often ignored. Child suspects, especially those from particularly vulnerable and marginalised groups such as street children, 'vagrants' and/or those involved in substance abuse, are detained without access to social workers for extended periods and are vulnerable to torture or ill-treatment. Amnesty International has documented cases in which children have been detained for weeks, months, and in one case more than a year without the benefit of a visit from a social worker.

## 5.2 Access to legal counsel

*"Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action." (Article 37(d), CRC)*

Access to legal counsel is a basic right intended to guarantee that suspects have access to an informed advocate on their behalf. This right is essential for all suspects, and the reasons for its necessity are particularly glaring in the case of child suspects. The Implementing Rules make clear that children shall only "be investigated or [their] statement[s] secured in the presence of legal counsel" and that the arresting officer, prosecutor or judge shall "ensure that the youth is represented by counsel before proceeding with the investigation or trial"<sup>35</sup>

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<sup>30</sup> Section 4, 6 Implementing Rules, Articles 37 (d), 40 (2) iii, CRC.

<sup>31</sup> Section 4, Implementing Rules

<sup>32</sup> Police Handbook, p. 16. This principle is also reflected in Section 6 Implementing Rules.

<sup>33</sup> See "*Philippines: Torture persists- appearance and reality within the criminal justice system*" (Amnesty International, ASA 35/001/2003). See also recommendations by the Special Rapporteur on torture A/56/156 3.7.2001 which recommend access to legal counsel within 24 hours and access to family within 18 hours as preventative measures against torture or ill-treatment in detention.

<sup>34</sup> 'Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System' 1998, Human Rights Center, Ateneo Law School and UNICEF. Also, 'Youth in Detention'. 1996, Philippine Action for Youth Offenders (PAYO).

<sup>35</sup> Sections 6 and 10.

In practice, however, interviews with child suspects by local NGOs indicate that children seldom have access to legal counsel prior to charging unless they are able to afford their own.<sup>36</sup> As the majority of children detained are from the most marginalized and disadvantaged sectors they have no means to hire their own counsel. Consequently, the lack of free legal counsel prior to charging is an effective denial of the right to counsel during investigation for the majority of child offenders. Many child suspects have also reported signing documents that they did not understand, without the benefit of counsel, sometimes in a language they did not understand, indicating a violation of the legal safeguards.<sup>37</sup> The absence of timely legal counsel also removes a key safeguard against torture or ill-treatment in detention. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment (Special Rapporteur on torture) has, for this reason, urged states to ensure access to counsel within 24 hours of detention.<sup>38</sup>

When sixteen - year - old Dodong was arrested no one told him why. His right to silence was not explained. Neither his parents, a social worker nor counsel were present when he signed a document which was not explained to him.<sup>39</sup>

## **6. The right to be brought promptly before a judicial official**

*“Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

*To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her legal guardians.” (Obligations on states party as outlined in Article 40.2(b) iii, CRC)*

Being brought promptly before a judicial official is important because it helps to ensure that an individual’s detention is lawful. This right is enshrined not only in the CRC, but also in the International Covenant on Civil and Political Rights (ICCPR), a major international human rights treaty to which the Philippines is a party. Philippine domestic law defines prompt access to “the proper judicial authorities” as being within a maximum of 36 hours, or fewer, depending on the type of offence.<sup>40</sup> This right should apply to all, neither international nor domestic law make any distinction between those arrested with a warrant and those arrested without in relation to this standard.

Once again, the principles laid out in domestic law are inconsistently observed in practice. According to a study carried out by a local NGO, the provision to be brought before

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<sup>36</sup> PREDA, ‘Minors in Jail, The Philippines- PREDA Jail Monitor Team Report’ 25 November 2002.

<sup>37</sup> See Article 40 (b) ii, vi of the CRC, outlining the right to legal counsel and to an interpreter.

<sup>38</sup> See A/56/156 3.7.2001, 39(f).

<sup>39</sup> ‘Minors in Jail, The Philippines- PREDA Jail Monitor Team Report’ 25 November 2002.

<sup>40</sup> Article 125 of the Revised Penal Code (see note 20).

“the proper judicial authorities” within 36 hours tends to be applied only to those arrested without warrant and often involves the child offender’s *legal file* being brought before a judicial authority as opposed to the child himself or herself.<sup>41</sup> In such cases, this means that there is little opportunity for the child to respond to or contest the charges brought against him or her.

In many instances a child suspect’s first contact with a judicial official is when he or she is charged in court (in the Philippines this process is referred to as ‘arraignment’). According to a study carried out by a local NGO it usually takes between two weeks and several months for a child to be arraigned.<sup>42</sup> Amnesty International was informed of one case where a child was detained for eighteen months before being charged.

The delays in being brought before a judicial authority, in conjunction with the lack of legal counsel early on, constitute an effective deprivation of the child’s right to challenge the legality of her or his detention under article 37 (d) of the CRC. Child rights organizations have repeatedly drawn attention to the fact that lack of timely legal counsel means that children often have no real understanding of the charges against them, the legal process or the significance of their pleas. Delays in being brought before a judicial authority also, in practice, contravene the requirement, as set out in article 37 (b) of the CRC, that children be detained only as a last resort and for the shortest possible time. The fact that a child suspect may frequently not see a lawyer until his or her arraignment in court, when a Public Attorney’s Office (PAO) defense lawyer may be assigned, also compounds the obstacles facing child victims of torture or ill-treatment. At this point in the process, there is likely to be insufficient time for the defense lawyer to prepare adequately, to thoroughly inform the child of his or her rights and to fully understand the child’s experience.

Marco, age fourteen, was not formally charged until two months and four days after his arrest for theft. More than one year later he was still being detained in an adult jail, he had not had a hearing for more than a year, and had still not been brought to trial. He had only seen his lawyer once in the entire period of his detention, and had only had the opportunity to speak to him for a few minutes.<sup>43</sup>

## 7. Pre-trial detention

*“...The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” (37( b), CRC)*

*“Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.” (13.2, UN Standard Minimum Rules for the Administration of Juvenile Justice)*

<sup>41</sup> ‘Minors in Jail, The Philippines- PREDA Jail Monitor Team Report’ 25 November 2002.

<sup>42</sup> ‘Minors in Jail, The Philippines- PREDA Jail Monitor Team Report’ 25 November 2002. A similar study undertaken by Médecins Sans Frontières indicated detention times varying from 3 days to three months (‘Justice for Children, Human Rights and Legal Reform: International Experts Meeting, 4 February, 2000).

<sup>43</sup> ‘Minors in Jail, The Philippines- PREDA Jail Monitor Team Report’ 25 November 2002.

International children's rights instruments recognize that the lengthy detention of children is undesirable in the vast majority of cases and recommend the frequent use of alternative measures as outlined above. Philippine law reflects the same principles allowing judges the discretion to order for children to be released on bail or "on recognisance" to their parents or responsible members of the community.<sup>44</sup> In cases where a child is permitted to be released on bail, but is unable to furnish it, the Child and Youth Welfare Code requires that in all but the most exceptional circumstances the child should be committed to the care of the Department of Social Welfare and Development or other appropriate juvenile centre from the time of arrest to trial.<sup>45</sup> The law allows for the detention of children in separate quarters of "provincial, city [or] municipal jail" only if there are no appropriate centres or agencies in the area.<sup>46</sup> In practice, children are often detained in prisons despite the existence of local youth facilities, partly because of a number of procedural obstacles.

After an inquest procedure or preliminary investigation, a prosecutor who files the information in court does not have authority to transfer the accused from police custody or prison to juvenile centres, or to release the child on recognisance or bail. The judge, who has this authority, will often not see the accused minor in court for two weeks or more after the initial arrest and detention.

Photo caption: Boy in a detention cell, Southern Philippines. © Balay sa Gugma

A lack of awareness about legal requirements and a lack of a sense of urgency amongst authorities responsible for detaining children appear to be a key contributory factor in repeated failures to transfer children promptly from police station cells or prison to juvenile centres. There also appears to be reluctance on the part of prison authorities to transfer children to juvenile facilities possibly due to fears that the juveniles may escape their custody.

Despite the creation of special courts<sup>47</sup> to hear cases involving children, serious backlogs and delays continue to occur. Delays heavily impact on minors and can dramatically lengthen the period of time that they are held in detention. Some child detainees are reported to be held in detention for periods exceeding the maximum punishment for their alleged offence (e.g. vagrancy or minor drugs offences).<sup>48</sup> In addition, in some cases transfer orders

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<sup>44</sup> Article 191, PD 603 (as amended by PD 1179), Section 13 of the Bill of Rights, Section 11 Implementing Rules, Section 15 of Supreme Court Rules on Juveniles in Conflict with the Law (A.M. No. 02-1-18-SC).

<sup>45</sup> Presidential Decree No. 603, Article 191 (as amended by PD 1179).

<sup>46</sup> PD 603, Article 191, states, "in the absence of any such centre or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees."

<sup>47</sup> The Child and Family Courts Act of 1997.

<sup>48</sup> Para. 3, Article 29.2, Revised Penal Code states that "Whenever an accused has undergone preventive imprisonment for a period equal to more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review."

are unreasonably delayed. In one case a child remained in an adult prison for over 40 days after a court ordered his transfer to a rehabilitation centre. Frequent practice indicates that pre-trial detention is effectively being used as punishment and it is not uncommon for children to be held, detained and released without ever having been tried, convicted and sentenced.

Fifteen - year - old Artemio waited six weeks for arraignment during which time he was held in a local jail, despite the fact that his parents were willing to take custody of him pending trial. No reason was given for the delay.<sup>49</sup>

## 8. Conditions of detention

### 8.1 Detention with adults

*“In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;” (37( c),CRC)*

Amnesty International is gravely concerned that, in contravention of the above article of the CRC, children continue to be detained in adult facilities. In many cases children mingle with adult detainees during the day and, in some facilities share cells with adult suspects where they sleep side by side. Such intimate and constant contact with adult detainees can impact on a child's life in a number of damaging ways. In the absence of other forms of education children learn from their adult criminal suspect companions, and some children are reportedly recruited into gangs. There have also been reports of child detainees being ill-treated, abused, and sexually assaulted by adult detainees. Children often receive the worst of available resources in detention when competing with adults for adequate sleeping space, or even food.

Photo caption: Child and adult detainees confined together in a crowded prison cell in the Visayas. ©SADHANA BUXANI, *photographer*, [undergroundpictures@yahoo.com](mailto:undergroundpictures@yahoo.com)

Even in areas where appropriate youth facilities exist, children often remain for long periods of time in adult penal institutions because of delays in processing their legal cases, as well as a general disregard for their rights. This issue was raised with concern in an urgent appeal by the Special Rapporteur on torture, regarding the detention of four children, aged 10 to 17, who were, despite the existence of juvenile facilities in the area, detained in an adult cell block in Angeles District Jail for between one and five months.<sup>50</sup> It appears common practice for arresting officers, rather than taking minors to juvenile detention centers, to place minors for 'safekeeping' in local adult jails (sometimes after a period of detention in adult cells in police stations) pending their inquest procedure or first court appearance.

“ at night, this room is filled with people both youth and adults... because the adults have more power, they usually get the space... the younger inmates stay out and sleep at the

<sup>49</sup> 'Minors in Jail, The Philippines- PREDA Jail Monitor Team Report' 25 November 2002.

<sup>50</sup> See E/CN.4/68/Add. 1, p. 229, para. 1125.

basketball court within the jail facility...and when rain comes, the floor of this quarter gets wet because the roofing is totally rusty.”<sup>51</sup>

“Despite existing juvenile facilities in the district [Angeles District, Pampanga Province], these four children are kept in the same prison block as adult detainees. Allegedly, the four children are detained 23 hours a day in a small dark and very hot cell with no sleeping facilities apart from the concrete floor. There is no electric fan and no ventilation in the cell. All of them are said to be wearing rags. It was reported that the only toilet facility is an unclean hole in the floor of the cell, infested by insects, only a few feet from where the children sleep. In addition, they reportedly do not have soap or water for washing in the cell.”<sup>52</sup>

## 8.2 Torture and ill-treatment in detention

Amnesty International is concerned by reports of ill-treatment in detention, in some cases amounting to torture. The organization is aware of reports of child detainees being sexually assaulted by officials, and at least on one occasion being offered early release in exchange for sexual favours.<sup>53</sup> Rape of detainees in custody by officials always constitutes torture. Other forms of sexual abuse, including the threat of rape and taunting of a sexually humiliating or degrading nature, may also often be of the requisite severity to constitute torture or other forms of cruel, inhuman and degrading treatment especially when inflicted on children. There have also been reports of physical abuse of children by officials in detention including punches, slaps, kicks and beatings. Amnesty International is also concerned by reports of child detainees being ill-treated, abused, and sexually assaulted by adult detainees while in detention.<sup>54</sup> The ability of a child to complain about torture and ill-treatment in custody is undermined by the fear of reprisals by both officials and other detainees.

Effective prosecution of the torture or ill-treatment of children either in detention or at the time of arrest is further complicated by the fact that the requirement for the post-arrest medical examination<sup>55</sup> of child suspects is often ignored. Medical examinations, which are required by law and ought to “form part of the record of the case of the youthful offender,”<sup>56</sup> are an important safeguard that must not be ignored. They can help prevent torture and ill-treatment and, should it occur either at the time of arrest or in detention, provide important evidence.

Rina was sleeping on a bench in the Sta. Ana police station in Davao City when she was awoken by a man fondling her breasts. He stopped and she went back to sleep, but woke up

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<sup>51</sup> A prison in the Visayas as described by a visitor.

<sup>52</sup> See E/CN.4/68/Add. 1, p. 229, para. 1125.

<sup>53</sup> See “*Philippines: Fear shame and impunity- rape and sexual abuse of women in custody*” ASA 35/001/2001, Amnesty International, for an overview of rape and sexual abuse of female detainees including cases of a number of girls.

<sup>54</sup> “Criminal Justice System-Thousands of Filipino boys are thrown into adults prisons- even onto death row- by indifferent courts” Mahlon Meyer, *Newsweek* 20 August 2001, p. 27 (describes boys being dressed up as girls and ‘molested’ by adult inmates).

<sup>55</sup> See Article 190, PD 1179.

<sup>56</sup> Article 190, PD 603.

again when the same man began touching her neck, kissing her face and trying to climb on top of her. Rina struggled and kicked him. He left and Rina again returned to sleep. The next time she awoke, the same men held her arms down and covered her mouth. He was naked and Rina noticed that her own pants had been removed. She cried because she thought she had already been raped. He threatened that if she told anyone about the incident, he would 'finish her off.'<sup>57</sup>

"Then he [the police officer] placed me in the cell and they [several police officers] hit me again and kicked me." The experience of a 17-year old male detainee at Maharlika Detention Centre, Cagayan de Oro.<sup>58</sup>

### 8.3 Conditions of detention facilities

*"States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." (Article 3(3) CRC)*

Over-crowding is a major problem in pre-trial and correctional facilities.<sup>59</sup> In some cases, facilities housing children, or a mixture of children and adults, are filled at five times their capacity. The severe lack of space means that in some institutions, detainees must sleep on the floor, and in staggered shifts. In one prison in Luzon, 35 children were reportedly detained in a basement and in another, children had nowhere to sleep as the beds were taken by adult detainees and the floor was wet with urine. Some prisons have inadequate sanitary facilities, such as toilets without water. Amnesty International has serious concerns that the conditions in many jails are unsanitary and overcrowded and fail to meet minimum international standards for the treatment of prisoners. As a result, the conditions themselves may constitute a form of cruel, inhuman and degrading treatment or punishment as they place the health of detained children at risk.

Photo caption: "A 12-year-old boy arrested for stealing a few pesos (less than one U.S. dollar) and three cans of sardines. He suffers from frequent stomach aches because the prison food is never enough and tastes terrible. At meal times young boys and teenagers fight over the meagre food available." © SADHANA BUXANI [photographer, undergroundpictures@yahoo.com](mailto:undergroundpictures@yahoo.com)

There have been persistent complaints from those detained about both the quality and quantity of food. The standard allowance allocated to prisons for food is a mere 30 pesos per person

<sup>57</sup> As documented by Tambayan, Davao City.

<sup>58</sup> As told to Father Ross Naylor, Balay sa Gugma, Cagayan de Oro.

<sup>59</sup> Supreme Court Administrative Circular No. 04-2002 issued in February 2002 on the "Special Treatment of Minor Detainees and Jail Decongestion" noted that "an immediate solution is necessary in order to protect the interest and rights of prisoners, specially minor detainees, and to eradicate or at least minimize the congestion of jails in the country."

per day (about half of a U.S. dollar). Prison visitors have reported seeing children fighting each other for food.

Children detained in adult facilities have little access to training or educational materials with which to begin or continue their schooling and facilitate their re-integration into society upon release. Instead, many children do small tasks for both adult detainees and prison wardens in exchange for money, such as shining shoes and giving massages.

“.. there is no running water, and the only toilet facility, which is just a hole in the ground, is within the cell which is barely 9 square feet. There is a foul odour in the cell. There is no bedding provided ... so inmates sleep on the concrete floor. According to three minors .. who were detained there for more than two weeks .. their families had to provide food for them and they were never left out of the small cell for the entire two weeks.”<sup>60</sup>

#### **8.4 Youth Detention and Rehabilitation Centres**

Two distinct institutions exist for children in detention in the Philippines: Youth Detention Centres for children awaiting trial, and Youth Rehabilitation Centres, which are meant to hold convicted juveniles. As described above, despite the existence of these institutions, many children in conflict with the law never enter either for a variety of reasons. In addition to procedural obstacles and the placement of child suspects in adult facilities by arresting officers, youth facilities are limited in number and are often stretched beyond their capacity and unable to accommodate any more children. In the Luzon region,<sup>61</sup> for example, there are currently only three youth detention centres. Amnesty International is concerned by the insufficient number of pre-trial detention facilities for children, and is gravely concerned that one of the consequences of this is the detention of children with adult offenders.

Following conviction, children are meant to be transferred to Youth Rehabilitation Centres. In practice, these centres may house both convicted child offenders and children awaiting trial due to the aforementioned lack of pre-trial facilities. In Youth Rehabilitation Centres, children are under the supervision of ‘mamas’ and ‘dadas’ who are generally untrained staff who live at the facility. Perhaps partly as a result of the intense demand for facilities, there is a provision in law permitting NGOs to establish Youth Rehabilitation centres.<sup>62</sup> Amnesty International is concerned by the lack of sufficient guidelines or adequate monitoring mechanisms accompanying this provision, which could leave children in unsafe or inappropriate conditions or at risk of abuse.

Amnesty International is concerned that the level of training of staff at Youth Rehabilitation Centres may be insufficient to provide child offenders with the care, support

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<sup>60</sup> Description of Masinloc Municipal Jail, Zambales, from ‘Minors in Jail, The Philippines- PREDA Jail Monitor Team Report’ 25 November 2002.

<sup>61</sup> The Luzon region, which includes Metro Manila, has a population of over 42 million people.

<sup>62</sup> Section 12 of PD 603 states, “ The Department shall establish regional rehabilitation centres. The local government shall collaborate and contribute support for the establishment and maintenance of said facilities. Non-Government entities may provide similar support.”

and guidance that they need.<sup>63</sup> The organization also encourages compliance with the Committee on the Rights of the Child's recommendation that those who interact with children in detention be trained in "the principles and provisions of the Convention (CRC) and of the relevant United Nations rules and guidelines."<sup>64</sup>

## 9. Sentencing

*"...Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." (37(a) CRC)*

### 9.1 Differential sentences for child offenders

Philippine law operates on the principle that children shall be punished less severely than adults committing the same crimes. This principle is laid out in article 68 of the Revised Penal Code which specifies that offenders between the ages of nine and fifteen (who demonstrate 'discernment') shall receive a sentence "two degrees lower" than an adult, and those under eighteen but above fifteen shall receive a sentence of 'one degree lower.' By "degree" the law refers to different gradations of severity in the same type of crime. The crime of theft, for example, is divided into several categories based on the value of the goods stolen and consequently, the law provides for differing sentences based on the "degree" of the crime.

Photo caption: A young boy in detention. © Balay sa Gugma

In recognition of the vulnerability and incomplete development of child offenders, Philippine law, also provides for the suspension of sentences in most cases.<sup>65</sup> If the court finds it in the "best interest of the public as well as that of the offender," the child offender will receive what is termed a "suspended sentence." This usually means that he or she will be committed to a Youth Rehabilitation Centre or other appropriate institution until the age of twenty-one, or earlier, if deemed to have been rehabilitated.<sup>66</sup>

One major inconsistency in this arrangement is that, unlike the provisions for differentiated sentencing based on the age of the offender at the time the crime was

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<sup>63</sup> Article 26.2 of the UN Standard Minimum Rules for the Administration of Juvenile Justice states that "Juveniles in institutions shall receive care, protection and all necessary assistance- social, educational, vocational, psychological, medical and physical- that they may require because of their age, sex, and personality and in the interest of their wholesome development."

Article 26.1 "The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society."

<sup>64</sup> *Implementation Handbook for the Convention on the Rights of the Child*, p. 556.

<sup>65</sup> Children who have already had sentences suspended or who have been convicted of an offence punishable by death or life imprisonment cannot be given a suspended sentence (Section 19, Implementing Rules).

<sup>66</sup> Section 16, Implementing Rules. The child offender may be committed to "the custody or care of the Department, or to any training institution operated by the Government, or any other responsible person."

committed, the provision for suspended sentences applies only to those under the age of eighteen at the time of sentencing. This means that older child offenders are particularly at the mercy of delays in the system. Two seventeen - year - olds who have committed the same crime may receive vastly different sentences based on the speed with which their cases move through the system, and when their birthdays fall. As a result, the very provisions designed to benefit child offenders in recognition of their age, depend in their application on extraneous factors.

## **9.2 Child offenders receiving adult sentences**

Amnesty International has serious concerns that despite the provisions outlined above, some child offenders continue to receive adult sentences. In contravention of both domestic law<sup>67</sup> and the CRC, Amnesty International has received information indicating that at least eight child offenders remain under sentence of death in the Philippines. These sentences constitute a gross violation of international human rights standards and must be commuted immediately.<sup>68</sup> In many cases, the incorrect sentence arose from an incorrect assumption that a child was legally an adult at the time of arrest. In order to ensure that children are not sentenced to death or life imprisonment, the onus must be on officials to prove that youthful offenders are not children as opposed to vice-versa.

Larina Perpinan<sup>69</sup> was sentenced to death in October 1998 by the Pasay City Regional Trial Court. She is reported to have been just seventeen years old when she was arrested along with ten others. All were sentenced to death for the kidnap and ransom of an elderly woman who was later released unharmed. According to reports received by Amnesty International, Larina barely saw her lawyer before the trial. She is reported to have lied to the judge about her name, age (giving an earlier birthday) and address for fear of getting into trouble at home. When she finally obtained her birth certificate proving that she had been seventeen at the time of the crime, the judge had already passed the death sentence and is reported to have refused to reverse the decision. Larina, who was pregnant at the time of her arrest, later gave birth to a baby boy in prison. She continues to be held under sentence of death at the Correctional Institution for Women.

## **9.3 Detention without sentencing**

Ironically, one significant problem regarding the sentencing of child offenders, is that many children in detention have not been sentenced at all. Many children are detained for long periods of time before trial. In some instances children have already been detained for longer than the maximum sentence for the crime they are accused of by the time they are brought to trial. In other circumstances, it has been reported that children are detained for a period of time and then the charges are dropped before trial and the child is released. In some cases this cycle is repeated. It must be made clear in law that pre-trial detention is not to be used as

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<sup>67</sup> Under Republic Act (RA) 7659, known as the death penalty law, the death penalty may not be imposed on those aged under 18 at the time the offence is committed.

<sup>68</sup> In late 2002 President Macapagal Arroyo ordered the suspension of executions while a bill on abolition was before Congress. Amnesty International welcomed this moratorium but remains gravely concerned by the fact that many individuals, including children, remain under sentence of death.

<sup>69</sup> Real name.

punishment or in lieu of sentencing and measures should be introduced to ensure this is the case in practice.

## 10. Recommendations

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (Article 3 (1), CRC)*

The Convention on the Rights of the Child and the Standard Minimum Rules on the Administration of Juvenile Justice set out a series of guidelines and safeguards intended to protect the special rights of children in detention. Elements of these two documents are reflected in Philippine domestic law, however, there continue to be a number of worrying omissions that leave children in detention vulnerable to extreme delays, ill-treatment and inappropriate sentences. Perhaps more worrying is the fact that many commendable domestic safeguards fail to be consistently applied in practice

Photo caption: A group of former street children who have been helped by children’s NGO PREDA and are now leading successful lives. © PREDA

Amnesty International is concerned that there are serious and widespread defects in the administration of juvenile justice in the Philippines that must be urgently addressed. In view of this concern, and in line with the international instruments described above, Amnesty International makes the following recommendations regarding the apprehension and detention of child suspects and offenders.

The Government of the Philippines should:

- Submit overdue reports to the Committee on the Rights of the Child in order to secure further guidance on how to fulfil its obligations under the Convention.
- Enforce the safeguards that exist under domestic and international law and hold those who fail to uphold such standards accountable.
- Ensure that law enforcement officials inquire immediately into, and document on arrest or first contact, the age of any suspect who appears to be younger than eighteen.
- Ensure that the documented age of a minor is brought to the attention of all judicial and custodial officials coming into contact with the child.
- Ensure that provisions requiring medical examinations on arrest are followed. The results of such examinations must form a part of the child’s record; any injuries noted must be explained.
- Immediately and impartially investigate any allegations of torture or ill-treatment of children on arrest or in detention. Those alleged to have committed torture or ill-treatment should be suspended from duty pending an investigation. Those found responsible must be brought to justice. Any information alleged to have been

obtained through torture or ill-treatment must only be admissible in court as evidence against those accused of torture or ill-treatment.<sup>70</sup>

- Ensure that child detainees are, in accordance with international standards, at all times detained separately from adult detainees and preferably in separate facilities.
- Ensure that conditions of detention, including bedding and food, conform with the UN Standard Minimum Rules for the Treatment of Prisoners.
- Take active and effective measures to prevent violence between child detainees or between child and adult detainees by investigating any reports of violence, prosecuting those responsible and offering protective custody to those who may be vulnerable to abuse.
- Deliver all child detainees promptly before a judicial authority following arrest.
- Ensure that parents, guardians and/or social workers are immediately informed of arrest and that notification attempts are recorded and open to independent scrutiny.
- Ensure timely access to legal counsel following arrest. Such access must be available for all child suspects prior to interrogation and charging.
- Limit the use of pre-trial detention for children to exceptional circumstances: all forms of detention should be consistent with the international standard that children should only be detained as a last resort and for the shortest possible period of time.
- Eliminate legal distinctions between child offenders who have reached the age of eighteen at the time of trial and those who have not in the provision of suspended sentences.
- As a matter of urgency, strictly enforce the law prohibiting the sentencing of child offenders to death. The age of any suspect accused of a crime for which Philippine law allows the death penalty must be established prior to sentencing in order to ensure that children are not sentenced to death.

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<sup>70</sup>For a thorough set of recommendations on the prevention and prosecution of torture, see “*Philippines: Torture persists-appearance and reality within the criminal justice system*” ASA 35/001/2003, Amnesty International, January 2003.