



Rights of the Child in the Philippines



The aim of OMCT country reports
are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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COMMITTEE ON THE RIGHTS OF THE CHILD
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Report on the implementation
of the Convention
on the Rights of the Child by
the Philippines

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I - Introduction

1.1 General Background

President Gloria Macapagal-Arroyo has run the Republic of the Philippines since 20 January 2001¹. It is estimated that approximately 40% of the population lives below the poverty line. The dependency rate in the country remains one of the highest in South-East Asia, with the proportion of the population under 14 at 38,3% and the proportion above 65 at 3,5%. Meaning that approximately 42% of the population needs support regarding education, health, nutrition, and housing.²

The activities of political and regional rebel groups have created instability in the Philippines. The National People's Army (NPA) and the Communist Party of the Philippines (CPP) represented by the National Democratic Front (NDF) have collided for over 35 years with the Filipino government, which resulted in clashes between the Armed Forces of the Philippines (AFP) and the NPA. The NDF claims that the current government is a puppet regime of the United States that propagates the Filipino system of oppression and

exploitation. Peace talks with NDF have been protracted. In addition, the Filipino government has been in conflict with the Muslim minority.³ A peace accord between The Moro Islamic Liberation Front (MILF) and the government was signed in 1996 and concerned greater political autonomy for the South Western province of Mindanao with the establishment of the Autonomous Region in Muslim Mindanao (ARMM).⁴ However, the MILF continues to seek greater autonomy or an independent Islamic State. Currently the Philippine government and the MILF are on a yearlong cease-fire and prolonged peace talks have been negotiated by Malaysia.⁵

1 - Economically the country can be described as a market-based mixed economy with a current real economic growth rate of 4,5 %² and a relatively high unemployment rate of 11,4% (2003). The country is struggling with a high annual population growth rate and an unequal distribution of income.

2 - Asian Development Bank, Country Gender Assessment, Southeast Asia Department, 2004, <http://www.adb.org/documents/Reports/CGA/Phi-Ctry-Gender-Assesmt.pdf>, p. 7.

3 - Muslims constitute the largest single minority group of the Philippines, they account for approximately 5% of the total population (79,5 million in 2002). Information from Asian Development Bank, Country Gender Assessment, Southeast Asia Department, 2004, <http://www.adb.org/documents/Reports/CGA/Phi-Ctry-Gender-Assesmt.pdf>, p. 7.

4 - <http://www.state.gov/g/drl/rls/irf/2004/35425.htm>

5 - *Ibid.*

1.2. Participation to the Convention on the Rights of the Child and other international treaties⁶

The Republic of the Philippines signed the Convention on the Rights of the Child (CRC) on 26 January 1990 and ratified the Convention on 21 August of the same year. In addition, the Philippines ratified both Optional Protocols: on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography on 26 August 2003 and 28 May 2002 respectively.⁷

The Philippines is also party to the following international conventions which directly or indirectly advance the rights of the child: the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) on 5 August 1981, the Convention on the Elimination of Racial Discrimination (CERD) on 15 September 1967, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 5 July 1995. The Philippines also acceded to

the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT) on 18 June 1986 and the ILO Worst Forms of Child Labour Convention 1999, ratified by the Philippines on 28 November 2000.

1.3. Situation of children's rights in the Philippines

Although the Republic of the Philippines is struggling with poor economic conditions and reoccurring political unrest, the country has been actively engaged in law and policy making to protect children's rights. The subsequent alternative report aims at providing information on the state of affairs of the rights of Filipino children. The most important observation flowing from the report is the incoherence between theory and practice. Unfortunately, in many instances practice does not coincide with what the Filipino law prescribes. A manifest illustration of this problem is found with respect to the sex industry. The laws in the Philippines against commercial sexual exploitation of children, child prostitution, child sex tourism and trafficking are multiple. Regretfully, these kind of practices have been too often observed and

6 - First report of the Philippines to the CRC was submitted in 1993 after ratification, second report covers 1995-2000 (<http://www.cia.gov/cia/publications/factbook/geos/rp.html>)

7 - Both Protocols were signed by the Philippines on 8 September 2000.

are clearly in contravention with prescribed Philippine law and Article 34 of the Convention on the Rights of the Child (CRC).

Moreover, the report discerns that children have been affected by reoccurring incidences of armed conflict in the Philippines. In its fight against the New People's Army (NPA), the government has repeatedly unlawfully killed children and arbitrarily detained them. Regarding armed conflict in the Philippines, OMCT is also concerned with the continuing recruitment of children by non-State armed groups.

In addition, OMCT is gravely concerned with the conditions of the Filipino Juvenile Justice System. Although there is ample legislation that protects children in conflict with the law, implementation so far has been to say the least meagre. Filipino children languish and are jailed with adult prisoners in cramped police jails where a number of them are raped, tortured, tattooed and deprived of access to legal, medical, social, and psychological assistance and services in an institutionalized act of unlawful discrimination by the Philippine government against the children of the poorest of the poor. The right of the children to be treated in a manner conducive to their rehabilitation is

denied in all cases. This is a worrisome situation and a clear contravention of the Filipino obligations under Article 37 and 40 of the CRC.

In January 2004, OMCT, in partnership with Wedpro, Task Force Detainees of the Philippines and Preda Foundation, published an alternative report on State Violence in the Philippines for submission to the Human Rights Committee. The third part of this report concerned children's rights issues.

II. DEFINITION OF THE CHILD

The Family Code of the Philippines was amended by Republic Act (RA) No. 6809, which lowered the age of majority from 21 to 18 years old. Article 234 of the respective Act specifies that majority is acquired at the age of 18 with the termination of the parental authority over the child. Hence the CRC applies to 42,6% of the Filipino population, in other words 32,1 million Filipino children.⁸

The minimum age of criminal responsibility is stipulated in Article 12 paragraph 2 of the Penal Code in which a person under nine years of age is exempted from criminal liability. The criminal responsibility age is to be changed from 9 to 12 years by section 7 of the proposed Comprehensive Juvenile Bill 1402 authored by Senator Francis Pangilinan.⁹ (see section 5.1.1.)

For purposes of criminal procedures, Presidential Decree (PD) No. 1179 defines a young offender as a person over 9 but under 18 years old at the time of committing the offence.

In accordance with its obligations under the ILO Convention No. 138 on the Minimum Age For Admission to Employment (hereafter the ILO Convention No. 138) ratified by the Philippines in 1998, RA No. 7658 prohibits public and private employment of a child below the age of 15 provided that the employment does not endanger the child's safety, health, morals or impair his or her normal development. However, there are two exceptions to the minimum age employment; (1) the situation in which the child works directly under the sole responsibility of the parent/ guardian, or (2) in case of a child's necessary participation in public entertainment or information through cinema, theatre, radio or television.

The constitution provides for free compulsory primary education and free secondary education for all citizens. The compulsory schooling age is 6 years old set by Department of Education (Order No. 65).

OMCT welcomes the awareness by the government of the Philippines of the complexity and arbitrariness of the definition of the rights of the child in its legislation.

8 - http://www.cwc.gov.ph/documents/population_size_by_sex.xls.

9 - Similarly to Article 12, Section 7 stipulates that criminal responsibility is also exempted for a child above 12 years but below 15 years of age, unless (s)he has acted with discernment.

III. PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

3.1. Legal framework

The government of the Philippines, which became a Party to the Convention Against Torture (CAT) in 1984, has an obligation to enact laws that conform to the provisions laid down in the Convention. Article III, Section 12 of the Bill of Rights contained in the 1987 Philippine Constitution prohibits torture. The legislator however has not yet criminalized torture in the penal code. Nevertheless, the Revised Penal Code (RPC) does provide for other crimes that may be used instead of torture in order to punish State agents. Articles 19 (3) and 58, which sentence the abuse of public functions, constitute an example in this respect. Regarding children, Article 278 concerning the sexual exploitation of minors stipulates heavier sentences in case the victim is a child.

However, until now, the State has yet to pass a law criminalizing torture as such.¹⁰ On 26 June 2004, the International Day for Victims of Torture, Task Force Detainees of the Philippines, a Filipino based human rights

NGO, released a press statement urging Congress to pass a law criminalizing torture. “Bills criminalizing torture were filed in the Senate and the House of Representatives on the 12th Congress but until now, no law has been passed to declare that torture is a crime to be included in the RPC. It is hoped that the next Congress will not let a year pass without enacting an anti-torture law.”¹¹

OMCT urges the Republic of the Philippines to comply with its international obligations under the CAT and to pass a law criminalizing torture.

10 - <http://www.preda.org/archives/2004/r04062301.html>

11 - http://www.tfdp.org/resources/ps_20040626.htm

3.2. Practice – Cases of torture

The practice of torture and other forms of inhuman or degrading treatment or punishment against children has been reported on occasion. In the following sections cases of torture are reported:

- 4.2.1. Practice of commercial sexual exploitation of children, Child Prostitution, Child Sex Tourism, and Trafficking,
- 4.2. Children in situations of armed conflict and child soldiers (cases of grave violence, unlawful killings, arbitrary detention and torture towards children by military forces),
- 5.2. Lack of Compliance with the Convention on the Rights of the Child; with regards to juvenile justice system and especially the conditions of detention of children.

3.3. Arbitrary executions and extrajudicial killings (Davao and Digos Death Squads)

The Universal Declaration of Human Rights declares the inherent right of every human being to life. Article 6 of the CRC calls upon signatory States to recognise that every child has the inherent right to life, while Article 37 prohibits the imposition of the death sentence for crimes committed by persons below 18 years of age. Summary executions are considered being among the worst forms of human rights violations.

Davao and Digos Death Squads

For over eight years now, two vigilante groups, respectively known as the Davao and Digos Death Squads (DDS), have killed more than 150 people, including teenagers in and around Digos City in the Southern province of Mindanao. It is not clear how close the links are, if any, between both groups. However, the killings committed are carried out in a similar manner and against suspected drug pushers and petty criminals. The killings remain unpunished and seemingly not investigated. Although the death squads appeared to have stopped in 2000 after an

intensive campaign against the arbitrary killings of street children by the Davao Death Squads, they 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.

According to the press, the police named most of the 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 appear to be street dwellers.¹²

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 organised and well funded. 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 organised and well informed about their targets. In most incidents, responding policemen are late to arrive at the crime scene where victim(s) are shot.¹³

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. In October 2001, the Region XI Commission on Human Rights' Director linked the increase of incidents of summary executions to a bounty system catered by wealthy patrons. He 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 to intelligence work.

12 - A human rights defender, Rashid Manahan, was killed in broad daylight 24 August 2004 in front of Ponce Suites, Bajada, Davao City. Manahan was with Prof. Nymia Simbulan, Executive Director of Philrights and Ms. Martha Alvarez, a representative of the European Union. The three were to attend a forum against the death penalty and salvaging at UP Mindanao.
<http://www.preda.org/archives/2004/r04082601.html>

13 - A few months ago an independent investigating body composed of members of FIND (Families of Victims of Involuntary Disappearance) and the Commission on Human Rights discovered a killing field in Barangay Maa, Davao City where they found pieces of long bones, skulls and other remains scattered in an eroded portion of the place. Forensic analysis revealed that the skeletal remains belong to at least six persons, including a female child and that the killings most probably happened in the last six months to three years. Some of the skeletal remains were also found to have torture marks.

In addition, 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.¹⁴

OMCT strongly urges the government of the Philippines to do everything to stop the arbitrary executions and bring the perpetrators to justice.

14 - 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.

IV. PROTECTION AGAINST ALL FORMS OF VIOLENCE

4.1 Child sexual abuse, trafficking and other forms of exploitation

4.1.1. Legal Framework

The Philippines is a signatory party to the Optional Protocol to the CRC on the Sale of children, child prostitution and child pornography (ratification on 28 May 2002). Realising 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 CEDAW, upholding the right to be protected from all forms of trafficking and prostitution including sexual slavery, more generally and by the military, the deception of migrant women and “mail order” and false marriages.

As also emphasised by the Stockholm Agenda for Action, peer education programmes can be instrumental in countering child exploitation. The National Coalition of Children’s Associations in the Philippines is a body composed of 15 child representatives from 500 local Filipino children’s associations working for the defence of children’s rights. Currently, the group of children is giving theatre performances in schools and communities on children’s rights, and pays special attention to the issue of sexual exploitation. A similar initiative is *Tingong sa Kabataan*, a radio programme by children victims of sexual abuse for children in Cebu City aimed at the prevention of commercial sexual exploitation of children.¹⁵

15 - Economic and Social Council, Report submitted by Juan Petit, Special Rapporteur on the sale of children, child prostitution and pornography, 5 January 2004, 60th session, Commission on Human Rights, E/CN.4/2004/9, p. 21.

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 Programme on the Elimination of Child Labor (IPEC) of the ILO. The Philippine Labour Code defines child labour 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 labour except, when under the responsibility of their parents or guardians. It allows family labour, 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 Labour 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 labour 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.

Hence, in accordance with its obligations under international law, the Republic of the Philippines has enacted ample legislation ensuring the protection of children against all forms of violence, such as commercial sexual exploitation, child abuse, 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 Revised Penal Code (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 inhuman punishment to a child; leading the child to an immoral life; inducing a child to leave an institution where she is entrusted to care;

failing to report abuse; unauthorised 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 Department of Social Welfare and Development (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.

4.1.2. Practice: Commercial Sexual Exploitation of Children, 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 50,000 prostituted women are minors, UNICEF provides a higher estimate: that there are 100,000 girls in the country. 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 paedophilia accounted for twelve percent (12%). The government has already ordered the crackdown on paedophiles, 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.

The development of a kind of tourism in the Philippines, which featured sex and prostitution as attractions began during the 1980s. A few years ago, government authorities cracked down on Pagsanjan, famous for sexual tourism, when the phenomenon had become too obvious for comfort. But some insiders believe the paedophile activities there have merely become more discreet. Most cities have large entertainment districts; 40 percent of the establishments are fronts for prostitution. It is estimated that one third of the girls working in the bars and clubs are underage. They are provided with fake birth certificates and made to appear older than they actually are. Two children aged 13 and 14 were recently rescued by the Preda children Foundation in Olongapo city after finding that both were being privately offered to customers for huge sums of money because they were virgins.¹⁶

Other children are brought from remote villages to the tourist resorts that cater to foreign tourists. The example of Puerto Galera is illustrative. In 2003, pimps or parents brought children as young as eight and nine years old to the beaches where foreigners lived in rented beach houses. The children were given trinkets and shells to offer to

the foreign tourists who lured the children inside their beach house and showed them videos of child pornography, some of the images downloaded from the Internet. Pimps target and supply foreigners because of their wealth and willingness to pay huge sums to abuse children. Besides they know that the Philippine police are reluctant to investigate a foreign suspect. Only four children out of 25 victims found in the Puerto Galera child prostitution ring were given protection and shelter by the government. The government claims not to have the resources. However massive sums of money are squandered on useless and failed projects and are 'lost' through corruption. Social welfare officials say the victims are getting therapy in their homes. This is inexplicable as the parents are involved in gross neglect or in pimping their own children.

None of the suspected pimps or parents has been charged and only one foreigner, an American paedophile, is in custody. The government's tourist policy is not to prosecute the paedophiles and sex tourist perverts lest the publicity abroad scare off other tourists.¹⁷

If tourists are coming to the Philippines because of the children, there is also the

16 - Report of Sexual Abuse of Children in Tourism, Father Shay Cullen, November 2003, Preda Foundation, Philippines.

17 - Report of Sexual Abuse of Children in Tourism, Father Shay Cullen, November 2003, Preda Foundation, Philippines.

reverse flow— the out-migration of under-aged youth for the purpose of prostitution abroad. State policies and programmes and the international demand for cheap labour abroad have also facilitated the massive migration of women, even young girls, for work overseas. Government policies favour the export of entertainers and domestic helpers that put the lives of children and young women at risk. It is the combination of a legitimising 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.

Although more stringent laws against trafficking have been passed in 2003, notably the already discussed Republic Act No. 9208, implementation of these laws have been weak so far. No effective prosecution of traffickers takes place due to corruption, weak judiciary and absence of enforcement of legislation.¹⁸

OMCT urges the Republic of the Philippines to aggressively implement the legislation and to prosecute involved officials.

4.1.3. 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 with others. These photos are also easily replicated - they get into sex publications, manuals, or brochures. They are reproduced by thousands or tens of thousands, often in different languages and distributed in numerous 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 physical violence that accompanies the making of child pornography.

Since 1990 the Philippine authorities have been active in investigating and deporting pornographers such as Andrew Mark Harvey, a US National, for sexual abuse of children, and Hisayaoshi Naoyishi Maruyama, a Japanese national, for multiple abuses of

children as young as seven years old and kidnapped by intermediaries for the purpose, who was arrested ordered to pay a bail of USD 80 for each of the molested and/or disappeared child.

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. In practice, children are labelled for years, even well into their adult years. NGOs such as ECPAT have repeatedly asked Filipino media not to join in exploiting these already exploited children, and although there has been some response, the practice still continues.

4.1.4. Aids and sexual education

One of the great dangers of the thriving sex industry is the threat of an HIV/AIDS epidemic. In addition, the spread of the disease is also lingering in the Filipino jails, where

adult inmates often sexually abuse children.¹⁹ Partly due to the majority of Catholics among the population of the Philippines, there is a societal sentiment in the Philippines that rejects the use of condoms. Filipino schools only provide rudimentary sex education and local authorities have even prohibited the distribution of condoms in public health facilities (e.g. Manila Mayor Jose “Lito” Atienza). Simultaneously, AIDS is spreading and the two most powerful institutions in the country, the government and the Catholic Church, have taken little action to change the attitude.²⁰

A recent NGO report addresses the crucial failures of the Philippine government to adequately tackle the spread of HIV/AIDS. Not only do policies omit to stress the importance of the use of condoms for the prevention of the life-threatening disease, authorities expressly discourage their use. The anti-condom policies are manifested by bans of national funds for the supply of condoms and the prohibition on teachers to provide adequate sex education including health matters. In addition, numerous instances have been reported in which the police is said to have penalised a person in possession of condoms with prostitution. As a consequence, most Filipino youth and adolescents

19 - See section 5.2.4. Conditions of detention.

20 - “AIDS epidemic looms over RP”, Ami Evangelista, 4 July 2004, *Philippine Daily Inquirer*, http://www.inq7.net/opi/2004/jul/04/opi_commentary_1-1.htm

have no idea about the effects, transmission and protection against HIV/AIDS.²¹

OMCT urges the government of the Philippines to actively engage in the fight against the spread of HIV/AIDS and promote the provision of adequate sex education and the use of condoms.

4.2. Children in Situations of Armed Conflict

Since the time of authoritarian rule of Ferdinand Marcos in the 1970s up to the present 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 Muslim separatist movements. Forty-two of the country's more than 70 provinces have had recurring incidences of armed conflict, displacing around 1.3 million people. Half of this figure consists of children. The Department of Social Welfare and Development 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. On several occasions elements of the military have discriminatory used force and killed civilians in their fight against the NPA. These occurrences are clear violations of Article 38 paragraph 4 of the CRC under which a State is under the obligation to ensure protection and care of children affected by armed conflict in accordance with its duties under international humanitarian law.

Two cases illustrate the grave violence towards children by military forces.

(1) For instance on 7 May 2004 military soldiers unlawfully killed two minors Maylene Gollosso, 13 years old, and Raymund Golloo, 6 years old in Bulan, Sorsogin, Philippines. The victim's mother left the house to go to the centre and left her four children at home. Upon a loud burst of gunfire the children hid in the house and when the gunfire stopped for a short while, Mayelene and Raymund went outside to check if anybody was there and were hit by

21 - "Unprotected: Sex, Condoms and the Human Right to Health in the Philippines", Human Rights Watch report, May 2004 Vol. 16, No. 6 (C), <http://hrw.org/reports/2004/philippines0504/>

gunshots. Ms. Golosso ran back to the house when hearing the gunshots and saw seven soldiers hiding in the garden around her house. When she saw her dying children she cried for help, but they left. The soldiers later went to the captain of the village and after request received a signed certification stating that the soldiers had engaged in a fire fight with the NPA and that they were the ones who killed the children. However this was a fake certification, since evidence proved to be contradictory.²²

(2) On 26 August 2003, in an open letter to president Gloria Macapagal-Arroyo, the International Secretariat of OMCT, informed by the Task Force Detainees of the Philippines, 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 Infantry Battalion based in Brgy on February 13, 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. His uncle then rushed him to the hospital. The military arrived there and brought him to the Burauen Municipal Jail, having charged him with multiple homicides. 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.

OMCT urges the government of the Philippines to comply with Article 38 paragraph 4 of the CRC under which a State is under the obligation to ensure protection and care of children affected by armed conflict in accordance with its duties under international humanitarian law.

22 - OMCT, Urgent Appeal, Philippines: Unlawful killing of two children by the military, Case PHL 180504.CC
<http://www.omct.org/base.cfm?page=article&num=4894&consol=close&kwrd=OMCT&rows=11&cfid=1310942&cftoken=68782846>

4.2.1. Recruitment of children into armed groups

The Optional Protocol on the Involvement of Children in Armed Conflict increases the minimum age for the participation of members of armed forces in hostilities from 15 to 18 years. OMCT welcomes the fact that the Philippine military forces do not recruit soldiers under the age of 18. The same rule applies to non-State armed forces and “States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices” by virtue of Article 4 paragraph 1 and 2 of the Optional Protocol. However, armed paramilitary groups have been regularly found to resort to children to compose their rebel groups.²³ It is very difficult to quantify the number of children fighting with the various armed opposition groups. Especially the use of child combatants by the Moro Islamic Liberation Front (MILF) and National People’s Army (NPA) that are continually being reported. The Philippines Government estimated in 2001 that between 3 and 14 percent of the NPA’s 9,000-10,000 regular fighters were children.²⁴

A paper by the Sub-Group on Children in Armed Conflict and Child Labour (within the NGO Group for the CRC) pointed out that in clear violation of ILO Convention N° 182 on the Worst Forms of Child Labour, 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.²⁵ 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.²⁶

23 - Human Rights Watch, *The Philippines: Child Soldier Use 2003, A Briefing for the 4th UN Security Council Open Debate on Children and Armed Conflict*, January 16, 2004 , Multi Country Report

24 - Marliza A Makinano: *Child Soldiers in the Philippines* (International Labor Affairs Service, Department of Labor and Employment, Philippines, 2001), pp 39-40.

25 - 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

26 - The NGO Group for the Convention on the Rights of the Child, Sub-Group on Children in Armed Conflict and Child Labour’s paper on the Compliance with ILO Convention No. 182 on the Worst Forms of Child Labour Convention, August 2003.

The Philippines' Department of Labour and Employment,²⁷ and a UNICEF study on under 18 years recruited into non-State armed groups in the Asia Pacific Region²⁸ cited similar factors in children "volunteering" into armed groups such as rural poverty, lack of free secondary education, and high levels of child labour.

4.2.2. 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 No. 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 paper by the Sub-Group on Children in Armed Conflict and Child Labour (hereafter the NGO Sub-Group) mentioned above 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.

In addition, the NGO Sub-Group paper cited contraventions of ILO Convention No. 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.

4.2.3. Government Policy

Legal protection of children from military recruitment and use is specifically provided for in the 1991 RA No. 7610 (the Special

27 - Marliza A Makinano: *Child Soldiers in the Philippines* (International Labour Affairs Service, Department of Labour and Employment, Philippines, 2001), pp 65-70.

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

Protection of Children Against Abuse, Exploitation and Discrimination Act, July 1991), at Article X(22)(b).

The NGO Sub-Group paper concluded that the Government's legal provisions accord well with the requirements of ILO Convention No. 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 obli-

gations under the ILO Convention No. 182 as this is the major current problem, in particular with the NPA and the MILF.²⁹

In this context the NGO Sub-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 No. 182.

29 - 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)

V. CHILDREN IN THE JUSTICE SYSTEM

5.1. Legal Framework

5.1.1. Minimum age of criminal responsibility

The minimum age of criminal responsibility is stipulated in Article 12 paragraph 2 of the Penal Code in which a person under nine years of age is exempted from criminal liability. The following paragraph however seems less clear in its wording as it states that criminal liability is precluded for any person over nine years and under 15 years old, unless he has acted with discernment. The latter wording appears ambiguous, especially since no further clarification is provided in the penal code. The criminal responsibility age is to be changed from 9 to 12 years by section 7 of the proposed Comprehensive Juvenile Bill 1402³⁰ authored by Senator Francis Pangilinan.³¹ The same section also includes the ambiguous

wording of discernment in that it provides that a child above 12 and below 15 years old is also exempted from criminal responsibility unless he/she has acted with discernment. According to Article 68, 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.”³² Laying down the criteria of discernment could be helpful if consistently applied by the judge in each particular case and prevent misuse of the imprecision of the current term.

Children in conflict with the Law are those that are between 9 and 18 years old who committed an offence or a crime whose case is filed in court with the prosecutor or the police. For purposes of criminal procedures, PD No. 1179 defines a young offender as a person over 9 but fewer than 18 years old at the time of committing the offence. Article 68.1 of the Revised Penal Code (RPC) states that when the offender, at the time he commits the offence, is under 15 but over 9 years of age the penalty two degrees lower than that pre-

30 - However, this bill has not been passed by Congress yet, and cannot be regarded as law of the Philippines (see section 6.1.2.2)

31 - Similarly to Article 12, Section 7 stipulates that criminal responsibility is also exempted for a child above 12 years but below 15 years of age, unless (s)he has acted with discernment.

32 - <http://web.amnesty.org/library/Index/EN-GASA350142003?open&of=ENG-PHL>

scribed 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 offence, 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 age cannot be convicted of criminal offences under Philippine law. The RPC prescribes certain penalties depending on the seriousness of the crime.³³

5.1.2. Filipino laws protecting children in conflict with the 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. Presidential Decree (PD) No. 603 or the “Child and Youth Welfare Code” is the primary source of protection of children in conflict with the Law in the Philippines. PD No. 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. For example, Article 190 of PD No. 603, as amended, stipulates that it is the duty of the concerned law enforcement agency to take the youth offender³⁴, immediately after his apprehension, to the proper medical or health officer for a thorough physical and mental examination. Under PD No. 603 and the Implementing Rules, children in conflict with the law are given strong protection, with duties and responsibilities placed upon the State in line with international human rights standards.

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 circulars and rules of Court should apply to all cases involving children in conflict with the law. These include: “Special Treatment of Minor Detainees and Jail Decongestion” (February 2002), “Rule on Juveniles in Conflict with the Law”(April 2002) and

33 - For example, a person who is convicted of theft of an item worth between PhP 12,000 and PhP 22,000 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 PhP 6,000 and PhP 12,000 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 because stealing a less valuable item is deemed to be a less serious offense.

34 - Youth offender is still being used to describe children in conflict with the law in many government reports and documents.

“Rule on Commitment of Children”. Due to Preda’s reports on violations of previous circulars and strong lobbying to the Supreme Court and an international letter writing campaign, the Supreme Court issued another administrative circular No. 13-2004 “Cases involving youthful offenders” on 30 March 2004. The latter circulation emphasises the importance of the previous circulations for the protection of children in the juvenile justice system.

Republic Act (RA) No. 8369 or 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 No. 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 their cases might be treated sensitively and expeditiously. Under Section 5 of

RA No. 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 offence unless there is no Family Court in that particular province or city.

The subsequent acts regulate the administration of justice in the Philippines. They are general standards dealing with all persons in conflict with the law including children.

The Constitution of the Philippines, and the Bill of Rights guarantee several rights which apply also to children and 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.

RA No. 7438 defines certain rights of all persons, including minors, 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 or 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 wilfully inhibit or obstruct the expedition of justice. Supreme Court Circular 38-98 implements the provisions of this Act.

RA No. 7309 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.

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

Several provisions of the Revised Penal Code (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 children in conflict with the law to be provided separate quarters from adult inmates in the absence of a child rehabilitation or detention centres.

The proposed Comprehensive Juvenile Bill authored by Sen. Francis Pangilinan, would rise the age of criminal responsibility from 9 to 12 years old. In addition, the Bill makes explicit reference to its goal of complying with Articles 37, 39 and 40 of the CRC in providing “a set of protective rights related to the juvenile justice system”. The Bill prohibits the detention of children with adults; redirect cases of petty or victimless crimes from court to a diversion programme; and develops a comprehensive delinquency prevention programme. However as discussed earlier, this bill has not been passed by Congress. Senator Pangilinan filed the proposed Juvenile Justice System Bill during last Congress but unfortunately it was not passed in time before the 12th Congress adjourned. Senator Pangilinan re-filed it in the present Congress. Presently, it is undergoing deliberations on the Committee Level.³⁵

35 - Information provided by Teddy Francisco Political Communications Officer, Office of Majority Leader Francis Pangilinan, tedfrancisco@kiko.ph

OMCT strongly urges the government of the Philippines to adopt the proposed legislation.

5.2. Practice: Lack of Compliance with the CRC

Unfortunately, the amalgam of laws designed for the protection of people in conflict with the law is largely disjointed, often contradictory, and misapplied in practice. While these laws grant children in conflict with the law a high level of protection, in practice this is not the case. As highlighted by the following comments on the implementation of 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.

Each day, 36 to 54 Filipino children³⁶ languish and are jailed with adult prisoners in cramped police jails where a number of them are raped, tortured, and tattooed and deprived of access to legal, medical, social, and psychological assistance and services in an institutionalised act of unlawful discrimination by the Philippine government against the children of the poorest of the poor. This is worrisome situation and a clear contravention of the Filipino obligations under Article 37 of the CRC.

5.2.1. Arrest

Arrest with a Warrant

Since the apprehension of a person (either adult or minor) suspected of committing a criminal offence 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

36 - Thirty-six to fifty-four children-including girls and kids with mental disabilities-are jailed with adult prisoners everyday. This is based on statistics of the Public Attorney's Office who reported having handled 13,300 cases involving children in conflict with the law (36 kids per day) in 2002. The office of Philippine Senator Francis Pangilinan also expressed concern that 20,000 Filipino kids have been jailed (54 kids per day) in 2003.

following the conduct of a preliminary investigation³⁷ by a prosecutor, judge or other authorised 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 refuting evidence to contest 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 children in conflict with the law 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 refuting evidence to the investigating

prosecutor. The first real opportunity for these minors to submit evidence with the benefit of legal assistance came after weeks or months at the arraignment stage of criminal proceedings and after their incarceration in an adult jail.

Arrest without a Warrant

Of the children interviewed, the majority was taken into custody without an arrest warrant, allegedly while committing the offence 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, which determines the situations in which arrest without a warrant is lawful). Meanwhile, under Article 125 of the RPC, all persons (adults as well as children) who are arrested must be brought before the prosecutor, municipal court judge or duly assigned officer for an inquest

37 - 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.

investigation³⁸ 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.

Inquiry as to Age

Under PD No. 603, a child is supposed to be treated differently from an adult from the moment of arrest (with or without warrant). 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. But under Philippine law, there is no explicit requirement for an arresting officer to inquire as to the age of an accused immediately upon arrest. 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. More worryingly, the child will be unable to avail his rights under PD No. 603. (See also children on death row. Numerous minors are awaiting the death penalty because there is uncertainty regarding their age.) 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 a birth certificate. However various factors (i.e. poverty, homelessness, etc.) make it often impossible to present a birth certificate.

Use of Handcuffs or Other Force

Section 5 of the Implementing Rules states that handcuffs and other instruments of

38 - 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.

restraint should only be used on children when absolutely necessary. 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 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.

5.2.2. Police Custody

Duty to Inform Parents/Guardians and the Department of Social Welfare and Development

Under Section 4 of the Implementing Rules, the arresting police officer is obliged to notify the Department of Social Welfare and Development (DSWD) and the parents or guardian of the arrest of the 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.

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 reportedly 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.

Right to be Informed Immediately for the Reason for the Arrest

Under Section 4 of PD No. 603 and Section 2(b) of RA No. 7438, 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.

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 an assisting counsel. 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.

Right to Legal Counsel³⁹

After arrest, it is usual for children in conflict with the law to be brought to and questioned at the appropriate police station. According to the law, a child alleged to have committed any offence has a right to legal counsel effective from the time of his arrest. 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.

³⁹ - Several texts grant the right to legal counsel to persons in conflict with the law. Some of them especially apply to minors: Section 6 and 10 of the Implementing rules and section 8 and 26 of the Supreme Court Rules on Juveniles in Conflict with the Law

Delivery to the Proper Judicial Authorities

In accordance with Article 125 of the RPC⁴⁰, 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. In practice, it is usual for a child to have his inquest investigation performed within 48 hours of arrest. In addition, it is not considered necessary to bring to the inquest investigation those who had been arrested with a warrant, because it is presumed that they were afforded their rights to submit refuting 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 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.

Regarding practice, it is difficult to consider that the authorised officer conducting the inquest investigation is really fulfilling a judicial function. He or she is merely fulfilling an administrative formality. While the authorised 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, the authority to have the child released on recognisance or bail, or transferred to a Youth Detention Home or a Youth Detention Centre. 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.

40 - 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.

Waiver of Preliminary Investigation

If the child is arrested without a warrant it may ask to sign a waiver of preliminary investigation. He/she is then entitled to the more thorough preliminary investigation, which transgresses the prescribed time limits of a ‘normal’ preliminary investigation. From the case files of many of the minors interviewed, it is clear that the authorised 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

authorised 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 authorised officer however uses such failure to imply that the accused is waiving his right to preliminary investigation.

5.2.3. Pre-trial Detention

*Delay before the Court*⁴¹

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 all of the cases documented by PREDA, there is evidence of serious delays and breaches of

41 - 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 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.

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 children in conflict with the law. Delays and constant postponements seem to be accepted as inherent and unavoidable by those involved in the justice system.

Children accused of having committed a crime, like everyone else, are supposed to enjoy the presumption of innocence, as provided by Article 40(b) of the CRC, yet many find themselves languishing in jail prior to their trial for lengthy periods of time. Of the 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.

The lack of a sufficient number of court social workers means that writing case study reports and submitting them to the judges with a recommendation for transfer of custody takes several weeks alone. There is only one court social worker for dozens of

cases. NGOs are also assisting in the preparation of the reports, but the current staffing is far from adequate to deal with the number of children in conflict with the law cases. The children suffer weeks and months in prison before custody is approved.

The question of persons who reach the age of majority while awaiting trial

In cases where 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 applicable. He should therefore not receive the full penalty that an adult offender would receive. The law recognises the age of the accused at the time the offence was committed as a mitigating circumstance.

Presidential Decree (PD) No. 603 also applies to those who are sentenced before they turn 18. Article 192 of PD No. 603 states that if the court finds that the child has committed the acts charged against him, the prescribed penalties would be imposed. However, the court may decide - 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 Department of Social Welfare and Development (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 favourable to children in conflict with the law as it gives them the opportunity to undergo rehabilitation. PD No. 603 also provides an opportunity for such youths to be released early from Youth Rehabilitation Centres once the court is satisfied that they have been successfully rehabilitated. Thus 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.

However, unlike Article 68 of the revised penal code, the relevant provisions of PD No. 603 do not apply to children who turn 18 after arrest but before conviction. Such a person 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 No. 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.

OMCT urges the government of the Philippines to change PD No. 603 so as to also include children who turn 18 before conviction and hence can benefit from the suspension of sentence provisions.

5.2.4. Imprisonment

Minors in Jail Pending Judgment

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

Even in the rare cases where appropriate centres for children exist, legal provisions remain vague as to who is directly responsible for transferring the minor to such centres. 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 centre. 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, Youth Rehabilitation Centres (YRCs) do not take minors into their custody without a valid court order out of fear that arbitrary detention proceedings will be brought against them. Many arresting officers as well as Youth Detention Homes (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 authorisation 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 authorising a child transfer to a YDH or YRC.

Lack of awareness about the laws concerning children in conflict with the law 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 centre but was turned away because it was full. Without explanation, 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.

Lack of Youth Detention Homes (YDHs) and Youth Rehabilitation Centres (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 cen-

tres for a child under rehabilitation who has received a suspended sentence in line with the provisions of PD No. 603, and not for a minor who is waiting or undergoing trial. This has the effect of placing a child accused of having committed a crime in a centre 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 being one of the major problems

The almost total lack of local government facilities for minors as mandated by PD No. 603 which states that a detention home ought to be provided for in every town. For not complying with this law the municipality is fined no more than the equivalent of sixty Euros. It is therefore of no political advantage for the municipality to spend money on such a costly project and easier to pay the fine.

Preda visited several jails and monitored the cases of many children since October 2003 (after the report of the UN Human Rights Committee). In February this year Preda opened an alternative home for these children in prisons and has accepted 70 boys so far. Twenty-five of these have already been

reintegrated to their families as their cases have been dismissed or they have been acquitted. This reflects the changing attitude in the judiciary as at least eight judges have referred children from the prisons to the Preda alternative home. The main obstacle now in preventing the imprisonment of children in adult prisons is the lack of government-run holding centres to which judges can refer children. Even the Preda alternative home is filled up to capacity and needs expansion if it is to accept more children.

OMCT urges the executive branch of the Philippine government to establish additional holding centres for juveniles in order to accommodate the number of children in conflict with the law and consequently prevent children being imprisoned with adults. The government should create a strong incentive for the local governments to comply with PD No. 603, or centralise the provision of YDHs and YRCs.

Lack of Diversionary Procedures

Diversionary procedures, known as the *Katarungang Pambarangay* are established as a method of keeping children in conflict with the law 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 particular, 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*.

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 con-

sidered to constitute illegal and arbitrary detention and a breach of Article 125 of the RPC. While Republic Act (RA) No. 7309 provides for a Board of Claims under the Department of Justice 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 suffer.

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.

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 a Youth Rehabilitation Home. 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 centre. 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 articles 37 c) of the CRC and 10.2 b) of the ICCPR.

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.

Denial of Bail⁴²

In several of the case studies documented by PREDA, bail had been set at an inordinate and unreasonable amount that the children

42 - 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 offence 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.

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 with regards to the seriousness of the offences charged. However, there are no separate guidelines for minors who are guaranteed special protection under the law.

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 of-

ten provided by NGOs rather than the State. Since the previous alternative country report on the Philippines for the Human Rights Committee the conditions of abuse of children in detention have not changed. In fact, conditions have grown worse as poverty increases and more and more children are marginalized in society and families are breaking up in the desperate search for food.

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 centres 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 the total prison population.

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 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. In addition, children are often beaten and abused by senior prisoners, called the “Mayors” or the trustees. The children are repeatedly sexually abused, forced to do sex acts on the older prisoners and they are raped. Not to cooperate with the wishes of the senior prisoners or to complain would be a reason for severe beatings or even murder. 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 five of the city and 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 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 com-

monly 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 USD 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 detainee has a 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 odour. 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 odour. 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.

In Navotas jail (Metro Manila): Preda visited the site on 10 November 2004. Currently, there are 750 inmates, although the available space can only accommodate 200 persons. The children are mixed with adults. Thirty minors are detained with sixteen adults in cells sizing 15 by 25 meters. In another cell children are crowded in one area, which has little ventilation and no space for normal exercise, privacy, or any form of human stimulation. The jail is built on a former swamp. The cells are flooded with up to two feet of filthy water that carries the contents of household and prison septic tanks, floating excrement is common at these times. If it is high tide in the nearby fishing port, the hundreds of inmates crammed behind bars in suffocating humid conditions climb on shelves and stools to escape the rising waters. Like rats in a cage they panic every time the floodwaters come steadily in to the cells. Also the 22 or so children climb the bars and cling there for hours to escape the contaminated waters and the flotsam of human waste from flooded septic tanks. But when the adult prisoners locked in with them take all the stools they can only hold on to the bars for so long. Exhausted then drop into the black slime. The cell beside the boys cell is so packed that sleeping on the concrete floor is

impossible all together. They have to take it in shifts to lie down. The heat and humid heat is unbearable and the only respite is an electric fan. These are in short supply when there are 90 men crowded in a space good for twenty. They are malnourished and have red blotches of skin diseases, which are prone to infection. Cholera and typhoid is another deadly danger they all face besides tuberculosis and HIV-AIDS. The only food allowance for is 50 cents a day, but the weak do not get a fair share.⁴³

Mandaluyong City Jail (Metro Manila): 873 prisoners are detained in this prison although the facilities are only good for 200 inmates. The jail consists of 5 cells of which one for minors, in which 37 children were detained. Guards restricted access to the prison. However, Preda reports that the conditions seem similar to those of the above-described jails.⁴⁴

See Annex 1 for Sample Case Studies Documented by PREDA.

Secret Cells for Children: Documented Case of Abuses in a Government Centre

Established in 1998, the Olongapo Centre

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.

In February 2003 Swedish student researchers visited OCARE and interviewed 18 street children in Olongapo City and described inhuman and degrading conditions of detention, particularly the existence of secret cells where children between 8 and 15 were frequently locked up and mistreated.

After the issue was highlighted in a report on the Philippines to the Human Rights Committee⁴⁵, the Filipino government undertook action to change the appalling situation. The cells were cleaned for several months, no further detention of children was reported. However the detention centre is now in the Olongapo City Jail. This was an alternative arrangement made by the city administration Olongapo City by the then

43 - From the Streets to the Jails, Street children victims of prison torture, by Fr. Shay Cullend and Francis Bermido, Preda Foundation Philippines, November 2004.

44 - From the Streets to the Jails, Street children victims of prison torture, by Fr. Shay Cullen and Francis Bermido, Preda Foundation Philippines, November 2004.

45 - State Violence in the Philippines. An alternative report to the United Nations Human Rights Committee, OMCT, January 2004, p.95.

Mayor Katherine Gordon. On November 9th Preda visited the Olongapo Jail Station A. On 16 square meters ten minors are detained and stated that they had not been abused. There is a toilet in the cell, but no beds. Hence, the children are forced to sleep on the cement floor. The jail does not provide for any recreation for the children, no television, games, sports or exercise yard. They are in 24 hours detention. The walls are dirty and the jail is full of insects, but no mosquito screen is provided. The children are dependent on their relatives for food. No medical check-up is available to the inmates.⁴⁶ The situation is certainly not ideal but the children do not seem to be ill-treated.

5.3. Children on Death Row

By virtue of Article 37 paragraph a) of the CRC which states that ; “neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age”, the Philippines is exempted

from instituting the death penalty against a minor. The death penalty was abolished in 1987 but reintroduced in 1993, but its imposition on children was explicitly prohibited. Section 22 of Republic Act (RA) No. 7659, which amended the Revised Penal Code in order to provide for the death penalty, stipulates that persons below the age of 18 at the time the crime was committed cannot be subject to the death penalty. In addition, Article 68 of the Revised Penal Code, which sets out sentencing procedures for youth offenders, also prohibits the death penalty for minors.

A main discrepancy in the Filipino laws is the absence of any provision, which requires a formal ascertainment as to whether the suspect is below the age of 18. This is the main reason for several children to have been placed on the 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 offences like murder and rape and failure to raise the issue of minority during trial by either defence or prosecution presented evidence.

46 - From the Streets to the Jails, Street children victims of prison torture, by Fr. Shay Cullen and Francis Bermido, Preda Foundation Philippines, November 2004.

On 9 August 2004, acting Justice Secretary Ma. Merceditas Gutierrez visited the 6 youth offenders sentenced to death and confined at the Bilibid Prison in Muntinlupa City. Ma. Merceditas who is also Chair of the Special Committee on the Protection of Children said that minors are exempted from capital punishment, but during the time of their trial the six offenders have not presented any evidence regarding their minority. The six were transferred from the death row to the Medium Security Compound so they will not be mixed with adults on death row. In addition, she assured that she will look into their case, but before the government can grant any executive clemency, the decision of the court must become final.⁴⁷

Although the latest developments indicate that the situation of the 6 minors on the death row is about to change, OMCT urges the government of the Republic of the Philippines to take immediate action to remove the death sentence of the 6 minors currently on the death row. In addition, OMCT strongly recommends the Filipino government to pass a law, which obliges authorities to formally inquire into the age of the subject in order to prevent minors being placed on the death row in the future.

RECOMMENDATIONS

1. Regarding the protection against torture and other cruel, inhuman and degrading treatment or punishment in the Philippines:

- OMCT recommends that the Committee on the Rights of the Child ask the government of the Philippines to comply with its international obligations under the CAT and pass a law criminalizing torture and particularly to provide with effective and heavier sentence when the victim is a person under 18 years old.

2. **Regarding arbitrary executions, extrajudicial killings** and especially the numerous cases of killings by the Dava and Digos Death Squads:

- OMCT recommends that the Committee on the Rights of the Child asks the government of the Philippines to stop the arbitrary executions and to order a thorough and impartial investigation into the circumstances of these events in order to bring those responsible to trial and apply

the penal and/or administrative sanctions as provided by law.

3. **Regarding sexual exploitation:**

- Concerning the absence of determined age of sexual consent, OMCT encourages the Philippines to engage a debate at all levels in the society to discuss the age of sexual consent in a sense that could help to address the problem of sexual exploitation.

- OMCT welcomes the initiatives taken to tackle sexual exploitation, particularly programmes ruled by children themselves in order to make other children sensitive to this matter. However, this remains incomplete and OMCT recommends that the Committee on the Rights of the Child ask the government of the Philippines to adopt international and national legislations whose purpose is to protect children from all forms of violence, such as commercial, sexual exploitation, child abuse and child trafficking.

- OMCT also recommends that the Committee on the Rights of the Child ask the government of the Philippines to effectively implement the current legislation that prohibits sexual exploitation, child prostitution and trafficking of children and to prosecute officials involved in this crimes.

- OMCT also recommends that the Committee on the Rights of the Child asks the government of the Philippines to strengthen the repression against paedophiles, particularly those from foreign countries and also to provide material and personal means to combat internet networks of paedophiles and pornographers.

- OMCT recommends that the Committee on the Rights of the Child ask the government of the Philippines to actively engage in the fight against the spread of HIV/AIDS and set up specific programmes to sensitise children to the importance of this issue, particularly by providing for adequate sexual education and promoting the use of condoms.

4. **Regarding children in situations of armed conflict:**

- OMCT recommends that the Committee on the Rights of the Child ask the government of the Philippines to comply with Article 38 paragraph 4 of the CRC under which a State is under the obligation to ensure protection and care of children affected by armed conflict in accordance with its duties under international humanitarian law.

- OMCT welcomes the efforts made by the Philippines to comply with the international standards with respect to legal protection of children from military recruitment and use but OMCT remains concerned by the use of under 18s by rebels armed groups and recommends that the Committee on the Rights of the Child ask the government of the Philippines to develop a plan of action concerning this problem. In this regard, OMCT would like to remind the Committee that educational and economic and social background is highly linked with the recruitment of children in armed opposition groups.

5. **Regarding minimum age of criminal responsibility:**

- OMCT recommends that the Committee on the Rights of the Child strongly ask the government of the Philippines to adopt the proposed Comprehensive Juvenile Justice Bill (S.B. 1402), which raises the age of criminal responsibility from 9 to 12 years old and reforms the juvenile justice system in order to follow the provisions laid down in the CRC;
- and to clarify the wording “act with discernment” and ensure that it will be applied consistently by the judges according to each particular case.

6. **Regarding the issue of children in conflict with the law,** OMCT recommends that the Committee on the Rights of the Child ask the government of the Philippines to:

- reform the legal frame ruling children in conflict with the law by clarifying the current laws particularly the proceedings and create a criminal system specific to children that will be a real juvenile justice system;

- enable the effective access to legal assistance from the time of the arrest;

- ensure 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 is shift to the State. Such an accused should be treated as a child unless/until his majority is proved;

- ensure that child’s parents and the Department of Social Welfare and Development have been informed within 8 hours after the arrest;

- ensure 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;

- ensure that the arrested child is consistently informed by an officer of the reason of his or her arrest and possible custody and of his or her rights;

- ensure that the arrested child has effectively been delivered to the proper

judicial authorities within the required time limits and that his or her case has been examined;

- clarify children's rights during police custody, interrogation, for instance by setting disallowed questions in the absence of a social worker or legal counsel and to create a system that enables monitoring the proper enforcement of the procedures - this could be easily controlled with the presence of a legal counsel or social worker from the beginning of the procedure (particularly during all post-arrest interviews) and/or with the record by the arresting officer of each stages of the procedure from the arrest (inquiry about age, use of handcuffs, medical or physical examination, get in touch with the guardians, information about the rights, etc.).

7. Regarding the deprivation of liberty, OMCT recommends that the Committee on the Rights of the Child asks the government of the Philippines to:

- ensure that pre-trial detention is only used as a measure of last resort or at least for very short periods of time in compliance with international and national standards;

- provide judicial personnel with training in order to sensitise them to consistently use of the pre-trial detention and make them aware of the principle of presumption of innocence, including for children.

- change PD No. 603 so as to also include children who turn 18 before conviction and hence can benefit from the suspension of sentence provisions.

- ensure that deprivation of liberty, particularly as a sentence, is used as a measure of last resort and that no child is detained with adult prisoners.

- ensure that the procedure prescribing judges to visit children in jail is consistently applied; in this regard judges may be replaced by trained social workers.

- enforce the current legislation protecting from arbitrary detention.

- establish additional holding centres for juveniles in order to accommodate the number of children in conflict with the law and consequently prevent children being imprisoned with adults. The government should create a strong incentive

for the local governments to comply with PD No. 603, or centralize the provisions of Youth Detention Homes and Youth Rehabilitation Centres.

8. **Regarding the situation of children in the death row**, OMCT recommends that the Committee on the Rights of the Child asks the government of the

Philippines to take immediate action to remove the death sentence of the minors currently on the death row. In addition, OMCT strongly recommends the Filipino government to pass a law which obliges authorities to formally inquire into the age of the subject in order to prevent minors being placed on the death row in the future.



COMMITTEE ON THE RIGHTS OF THE CHILD
39th Session - Geneva, May 2005

Concluding observations
of the Committee
on the Rights of the Child :
the Philippines

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ON THE RIGHTS OF THE CHILD

1. The Committee considered the second periodic report of Philippines (CRC/C/65/Add.31) at its 1028th and 1029th meetings (see CRC/C/SR.1028 and 1029) held on 18 May 2005, and adopted at the 1052nd meeting, held on 3 June 2005, the following concluding observations.

A. Introduction

2. The Committee welcomes the second periodic report, which followed the established reporting guidelines, submitted by the State party, as well as the written replies to its list of issues. The Committee is encouraged by the constructive dialogue it had with the State party and acknowledges that the presence of an inter-ministerial delegation involved in the implementation of the Convention allowed for a fuller assessment of the situation of the rights of children in the State party.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee takes note of the adoption during recent years of several laws aimed at protecting and promoting the rights of children, inter alia:
 - (a) The adoption, in 2003, of the Anti-Trafficking in Persons Act (Republic Act 9208), which institutes policies to eliminate trafficking in persons, in particular women and children, establishes institutional mechanisms for the protection and support of trafficked persons, provides penalties for traffickers and also prohibits the recruitment, transport or adoption of children for engagement in armed activities in the Philippines or abroad;
 - (b) The adoption, in 2003, of the Republic Act No. 9231, which amends the Special Protection of Children against Child Abuse, Exploitation and

Discrimination Act (Republic Act No. 7610) providing for the elimination of the worst forms of child labour and affording stronger protection for the working child;

(c) The adoption, in 2004, of the Republic Act No. 9255, which allows illegitimate children to use the surname of their father, amending the Family Code of the Philippines (article 176 of Executive Order No. 209);

(d) The adoption, in 2004, of the Anti-Violence against Women and Their Children Act (Republic Act No. 9262) which defines violence against women and their children, providing for protective measures for victims and penalties for the perpetrators of this violence;

(e) The adoption of other legal or administrative measures to promote the implementation of the Convention, such as the ratification of international conventions and protocols referred to throughout these concluding observations.

C. Factors and difficulties impeding the implementation of the Convention

4. The Committee acknowledges the particular nature of the geographical configuration of the State party, which is comprised of over 7,100 islands, and the challenges faced by the State party in implementing adequate programmes and services for children living in rural and remote areas of the country which are in many instances isolated and very difficult to reach.
5. The Committee also acknowledges that the natural disasters caused by tropical storms and several destructive typhoons at the end of 2004 have devastated the infrastructure of several provinces of the country giving rise to a growing number of economic and social difficulties. Domestic instability caused by, inter alia, political uncertainties and rebel movements, has adversely impacted overall human rights development in the State party.

D. Principal subjects of concern and recommendations

1. General measures of implementation

Committee's previous recommendations

6. The Committee notes with satisfaction that various concerns and recommendations included in the concluding observations (CRC/C/15/Add.29) made upon the consideration of the State party's initial report (CRC/C/3/Add. 23) have been addressed through legislative measures and policies. However, some of the concerns expressed and recommendations made by the Committee regarding, inter alia, the minimum age of criminal responsibility and sexual consent, discrimination against children born out of wedlock, the lack of a comprehensive juvenile justice system, the lack of a monitoring system for the Convention and the prohibition of torture, etc., have not been sufficiently addressed.
7. The Committee urges the State party to make every effort to address the recommendations issued in the concluding

observations on the initial report that have not yet been implemented and address the list of concerns contained in the present concluding observations on the second periodic report.

Legislation

8. The Committee takes note of the relatively advanced legal framework and it is encouraged by many legislative initiatives, new laws enacted and legislative amendments adopted which aim to better protect and promote the rights of the child. The Committee is deeply concerned, however, about the insufficient implementation of laws, particularly at the local level. The Committee also notes that domestic legislation does not fully conform to all provisions and principles of the Convention.
9. The Committee recommends that the State party take all necessary measures to ensure the full and effective implementation of its domestic laws in order to better protect the rights of the child and harmonize its legislation fully with the provisions and principles of the Convention, for example with regard to

the existing minimum age of criminal responsibility and children in conflict with the law.

National Plan of Action

10. The Committee welcomes the launching of a National Strategic Framework Plan for the Development of Children 2001-2025, known as Child 21, and the holistic approach adopted to address child rights issues and related progress and shortcomings. The Committee is concerned that the existing monitoring mechanisms are insufficient to monitor and evaluate the implementation of the Plan in a coherent way. Furthermore, the Committee is concerned about the limited awareness of the Plan and its objectives at the local level.
11. The Committee recommends that the State party take all necessary measures, inter alia, by providing adequate human, financial and technical resources, for the full implementation of the National Strategic Framework Plan for the Development of Children 2001-2025 and ensure a rights-based, open, consultative and participatory process for the implementation of the Plan, paying

particular attention to the implementation of the Plan at the local level. In this regard the Committee recommends that the State party fully support the National Council for the Welfare of Children by providing it with the necessary resources to enable it to effectively coordinate the activities related to the implementation of the Plan and monitor and evaluate this implementation process. In addition, the State party is urged to promote as much as possible the establishment of local councils for the protection of children, particularly in the cities, municipalities and *barangays* (smallest unit of local government), provided with adequate resources to be important instruments in the implementation of the Plan, in particular, and the Convention on the Rights of the Child, in general. The Committee also recommends that the State party seek technical assistance from, among others, the United Nations Children's Fund (UNICEF), in the course of the implementation process.

Independent monitoring

12. The Committee welcomes the establishment of the Philippines Commission on

Human Rights (PCHR) in 1997, with the mandate to independently promote and monitor the implementation of human rights and notes that some other bodies are also given a monitoring role regarding the implementation of children's rights. The Committee acknowledges PCHR's activities regarding children's rights, however is concerned at its limited mandate and resources.

13. The Committee recommends to the State party, with reference to the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, that it consider broadening the mandate of PCHR regarding the monitoring of children's rights and providing PCHR with adequate resources in order to strengthen the investigation of individual complaints filed by children in a child-sensitive manner.

Allocation of resources

14. The Committee notes the slight increase in budgetary allocations for children's social services, the State party's efforts

to implement the 20/20 initiative for budgeting and the priority given to low-income families and combating poverty, for example through the creation of a Poverty Alleviation Fund. The Committee also notes with deep concern that the State party's debt servicing takes up more than 30 per cent of its national budget and that insufficient attention has been paid to sufficient budgetary allocations for children and to article 4 of the Convention regarding budgetary allocations to the implementation of the economic, social and cultural rights of children to the maximum extent of available resources.

15. The Committee recommends that the State party strengthen its efforts to reduce its level of debt servicing in order to, inter alia, allow an increase of budgetary allocations to the realization of children's rights and, in particular, the implementation of the economic, social and cultural rights of children. In order to be able to evaluate the impact of expenditures on children, the Committee recommends that the State party establish a systematic assessment of the impact of budgetary allocations on the implementation of children's rights and

identify the yearly budgetary amount and proportion spent on persons under 18 years of age.

Data collection

16. The Committee welcomes the various efforts to improve data collection but it remains concerned that in some areas covered by the Convention, including children with disabilities, migrant children, children living in extreme poverty, abused and neglected children, children within the justice system and children belonging to minorities and indigenous children, data are lacking or insufficient.
17. The Committee recommends that the State party strengthen its existing mechanisms for data collection and develop indicators consistent with the Convention and, where necessary, establish additional mechanisms for data collection, in order to ensure that data are collected on all areas of the Convention and that these are disaggregated, inter alia, by age for all persons under 18 years, gender, urban and rural areas and by those groups of children who are in need of special protection. It

further encourages the State party to use these indicators and data to formulate policies and programmes for the effective implementation of the Convention.

Dissemination of the Convention

18. The Committee notes with appreciation the establishment of a Task Force for Popularizing the Convention and it is encouraged by the efforts of the State party, in collaboration with UNICEF, other international agencies and national and international non-governmental organizations, in disseminating information about the principles and provisions of the Convention, for example through publications, broadcast media and the training of professionals. Nevertheless, the Committee is concerned that the Convention is not disseminated at all levels of society. In addition, the Committee notes that the training and re-training of professionals working with, and for, children is not systematic but more on an ad hoc basis.
9. The Committee recommends that the State party continue to develop creative and child-friendly methods of promoting

the Convention. It further encourages the State party to raise awareness of the Convention among children and adults in remote areas and to make the Convention available in at least the major languages and as much as possible in other indigenous and minority languages. The Committee further recommends systematic training of professional groups working with, and for, children, such as judges, lawyers, law enforcement personnel, teachers, school administrators and health personnel. With regard to the dissemination of the Convention, the Committee also recommends that the State party seek technical assistance from, among others, the Office of the United Nations High Commissioner for Human Rights and UNICEF.

2. General principles

Nondiscrimination

20. Notwithstanding the measures taken by the State party to eliminate discrimination against children, inter alia, through the implementation of the provisions of the Child and Youth Welfare Code (Presidential Decree No. 603), the Family Code and the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act and several programmes, such as the Third Elementary Education Programme, the Committee is concerned about discrimination faced by many children, in particular children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in Mindanao, migrant children, street children and children living in rural areas as well as children living in areas of conflict, as regards their access, inter alia, to social and health services and education. The Committee is particularly concerned about the de facto discrimination faced by girls in everyday life, which is often multiple discrimination based on their gender. The Committee finally reiterates its concern about the unequal status of children born out of wedlock, particularly with regard to their right to inherit and their discriminatory classification as “illegitimate”.
21. In the light of article 2 of the Convention, the Committee recommends that the

State party increase its efforts to ensure effective implementation of existing laws guaranteeing the principle of non-discrimination and adopt a proactive and comprehensive strategy to eliminate all forms of discrimination, including forms of multiple discrimination, against all vulnerable groups of children. The Committee recommends that the State party pay particular attention to the equal status and full enjoyment of all human rights and fundamental freedoms by girls. As regards children born out of wedlock, the Committee requests the State party to review its domestic legislation in order to secure their right to equal treatment, including their right to equal inheritance and abolish the discriminatory classification of those children as “illegitimate”.

22. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and

Related Intolerance and taking account of the Committee’s general comment No. 1 (2001) on the aims of education.

Right to life

23. The Committee expresses its serious concern about violations of the right to life of children, inter alia, due to the internal armed conflict. The alleged cases of extrajudicial killings of children by military soldiers in Bulan, Sorsogon, in 2004 and by so-called death squads in Davao and Digos cities during recent years give cause for very serious concern.
24. While noting that the provisions of the Revised Penal Code (Republic Act No. 3815) and the Act to Impose the Death Penalty on Certain Heinous Crimes, which amended the Revised Penal Code (Republic Act No. 7659), explicitly prohibit the imposition of the death penalty on persons below the age of 18 years at the time the crime was committed, the Committee expresses its deep concern at the cases where children, that is persons below the age of 18, have been placed on death row without definite proof of their age.

25. The Committee also notes with concern the deficiencies in the reporting system of newborn deaths and stillbirths due to limited access to civil registrars.
26. Referring to article 6 and other relevant articles of the Convention, the Committee urges the State party to make every effort to reinforce protection of the right to life, survival and development of all children, inter alia, by taking effective measures to prevent extrajudicial killings of children and to investigate thoroughly all alleged cases of killing and bring perpetrators to justice.
27. The Committee also urges the State party to take all necessary steps to prevent the execution of children sentenced to death and replace their death sentences with sanctions which are in compliance with the Convention and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33). The State party should also take immediate legislative and other measures to oblige authorities, such as police, prosecutors, defence, judges and social workers, to present evidence in courts regarding the precise age of an

accused person, or if failing to do so give a person the benefit of the doubt, in order to ensure that persons under 18 years of age are not sentenced to death or another adult punishment.

28. As regards reporting of newborn deaths and stillbirths, the Committee recommends that the State party facilitate access to civil registrars, particularly in the remote areas of the country.

Respect for the views of the child

29. The Committee notes that some of the State party's domestic laws, rules and regulations explicitly respect the consent and views of the child, for example in judicial and administrative proceedings and that the State party has promoted the participation of children, inter alia, through the National Youth Parliament (Republic Act No. 8044) and student councils. Despite these positive steps, the Committee is of the view that children's right to participation and free expression of their views is still limited in the State party, partly due to traditional attitudes in society.

30. In the light of article 12 of the Convention, the Committee recommends that the State party:

(a) Strengthen its efforts to promote, within the family, schools and other institutions, respect for the views of the child and facilitate their interactive participation in all matters affecting them, inter alia, through children's and youth councils, forums, parliaments, etc., while paying special attention to vulnerable groups of children;

(b) Undertake awareness-raising campaigns on children's right to be heard and participate by encouraging children and their parents, caregivers and professionals working with and for children to seek and increase children's opportunities to influence issues concerning them.

31. The Committee notes with appreciation the activities of the child helpline "Bantay Bata 163", which is an important instrument for children to express their concerns and views and seek help and advice. However, the Committee is concerned at the fact that the helpline is only accessible to chil-

dren living in the capital region and its expansion to the rural areas of the country lacks core funding.

32. The Committee recommends that the State party support the expansion of "Bantay Bata 163" child helpline by making it nationally accessible and toll-free and providing it with adequate human, technical and financial resources. As regards awareness of the helpline among children, the Committee recommends that the State party include information about the helpline in its child-related programmes.

3. Civil rights and freedoms

Birth registration

33. While noting the estimated increase in the birth registration rate and the measures taken by the State party in this respect, including the Unregistered Children Project conducted in collaboration with PLAN International and the National Statistics Office, the Committee remains concerned at the dif-

faculties in ensuring timely birth registration of children, in particular children belonging to religious or other minority groups or indigenous peoples and children living in the remote areas of the country and at the fact that birth registration is not free of charge and not equally accessible to all parents in the entire territory of the State party. The Committee also expresses its concern about the simulation of birth certificates.

34. In order to secure the full enjoyment of all human rights and fundamental freedoms by children and to achieve 100 per cent birth registration, the Committee recommends that the State party strengthen its efforts to develop an efficient and at all stages free of charge birth registration system, which covers its territory fully, including through using more effectively mobile birth registration units to reach the most remote areas of its territory. The Committee requests the State party to pay particular attention to improved access to an early birth registration for parents whose children were born out of wedlock and parents belonging to religious or other minorities or indigenous peoples.

35. The Committee recommends to the State party that it introduce awareness-raising campaigns aimed at changing public attitudes and sensitizing parents, maternity clinics and hospitals, midwives and traditional birth attendants, in order to achieve better birth registration coverage in the country. In addition, the Committee recommends that the State party deepen its cooperation with the international agencies and non-governmental institutions in this respect. The Committee recommends that the State party take effective measures against simulation of birth certificates, inter alia, by assigning a governmental body, such as the Department of Social Welfare and Development, to monitor the implementation of relevant provisions and file all simulation cases. The Committee also recommends to the State party that it launch an information campaign, particularly at the local level, on the child's right to identity at birth and on growing up in a family.

Name, nationality and identity

36. With reference to the high number of overseas Philippine workers, the

Committee is concerned about children born abroad to Philippine migrant workers. Due to the non-registration of these children, they are deprived of their right to name, nationality and identity as well as basic services.

37. The Committee recommends to the State party that it encourage and facilitate parents, irrespective of their residence status, to register their children born abroad. The Committee also recommends that the State party ensure that unregistered children without official documentation are allowed access to basic services, such as health and education, while waiting to be properly registered. In addition, the Committee recommends to the State party that it raise awareness among parents about the need and value of birth registration.

Torture and other cruel, inhuman or degrading treatment or punishment

38. The Committee notes that the Constitution of the Philippines prohibits torture and that the provisions of the Child and Youth Welfare Code (Presidential Decree No. 603) provide

protection for children against torture and ill-treatment and that all hospitals, clinics, related institutions and private physicians are obliged to report in writing all cases of torture and ill-treatment of children. Nevertheless, the Committee is deeply concerned at a number of reported cases of torture, inhuman and degrading treatment of children, particularly for children in detention. The Committee reiterates its previous recommendation on prohibiting and criminalizing torture by law and it is of the view that existing legislation does not provide children with an adequate level of protection against torture and ill-treatment.

39. As regards torture and other cruel, inhuman or degrading treatment or punishment, the Committee urges the State party to review its legislation in order to provide children with better protection against torture and ill-treatment in the home and in all public and private institutions and to criminalize torture by law. The Committee recommends that the State party investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings

and that his/her privacy is protected. The State party should ensure that child victims are provided with appropriate services for care, recovery and reintegration. The Committee recommends that the State party continue its efforts in training professionals working with and for children, including teachers, law enforcement officials, care providers, judges and health personnel in the identification, reporting and management of cases of illtreatment.

40. The Committee requests the State party to include in its next periodic report information about the number of cases of torture, inhuman and/or degrading treatment of children reported to the authorities or relevant agencies, the number of perpetrators of such acts who have been sentenced by the courts and the nature of these sentences.

Corporal punishment

41. While noting the State party's efforts to prohibit the use of corporal punishment in schools, prisons, institutions and forms of childcare by implementing various relevant provisions, the prevalence

of corporal punishment in society gives cause for serious concern. The Committee is concerned that a provision for corporal punishment is not included in the Child and Youth Welfare Code and regrets that corporal punishment in the home is not explicitly prohibited by law.

42. In the light of its general comment No. 1 (2001) on the aims of education and the recommendations adopted by the Committee on its day of general discussion on violence against children within the family and in schools (see CRC/C/111), the Committee reiterates that corporal punishment is not compatible with the provisions of the Convention and it is inconsistent with the requirement of respect for the child's dignity, as specifically required by article 28, paragraph 2, of the Convention. Therefore, the Committee recommends that the State party prohibit by law all forms of corporal punishment in the home, in schools and in private and public institutions, in the juvenile justice system and the alternative care system.
43. The Committee recommends to the State party that it conduct a comprehensive study to assess the nature and extent

of corporal punishment in different settings, including the home environment. Furthermore, the Committee recommends that the State party sensitize and educate parents, guardians and professionals working with and for children by carrying out public education campaigns about the harmful impact of violent forms of “discipline” and promote positive, non-violent forms of discipline as an alternative to corporal punishment.

4. Family environment and alternative care

Parental responsibilities

44. As regards parental responsibilities for the upbringing and development of the child, the Committee is concerned about many Philippine children living with loose family ties due to the fact that at least one parent is working overseas.
45. The Committee calls for effective implementation of the Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare

of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes (Republic Act No. 8042) and recommends to the State party that it take all necessary measures to ensure that overseas Philippine workers, equally women and men, are able to meet their parental responsibilities, including through concluding bilateral agreements with the countries of destination, and facilitate family reunification and a stable family environment for the upbringing of children. In addition, the Committee recommends that the State party continue its efforts to develop and provide child-sensitive family counselling services for overseas Philippine workers and their children.

Recovery of maintenance

46. While noting the high number of Philippine children with a parent or both parents working overseas, the increasing number of Philippine children born abroad during overseas migration and the cases where paternity has not been established, the Committee is concerned that the State party has not sufficiently ensured the recovery of maintenance in

practice. The Committee is concerned about the insufficient implementation of domestic laws, for example the relevant provisions of the Family Code and the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act, and the enforcement of court orders in this respect. In addition, the Committee is concerned at the actual implementation of, and in some cases, the absence of bilateral agreements for reciprocal enforcement of maintenance orders.

47. The Committee recommends that the State party secure in practice the recovery of maintenance for the child. As regards parent(s) working abroad, the Committee encourages the State party to conclude bilateral agreements for reciprocal enforcement of maintenance orders and consider establishing a fund to secure the payment of maintenance in those cases where the recovery of maintenance fails.

Foster care and adoption

48. The Committee welcomes the ratification by the State party of the Hague

Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and notes with appreciation the provisions of the Intercountry Adoption Law (Republic Act No. 8043) and the Domestic Adoption Law (Republic Act No. 8552). The Committee takes note with concern that the Government bill on the Foster Care Act has been pending in Congress for several years. The Committee is concerned that the lengthy process of declaring a child for adoption results in a prolonged stay in an institution. The Committee also notes with concern that intercountry adoption is not used as a last resort.

49. The Committee recommends that the State party make every effort to ensure that all adoptions fully comply with the principles and provisions of the Convention as well as with other relevant international standards and are conducted in the best interests of the child and that intercountry adoption is used as a last resort. The Committee encourages the State party to adopt and implement as a matter of priority the Foster Care Act. The Committee recommends to the State party that it identify

the factors in the adoption process which result in children's prolonged stay in institutions. Furthermore, the Committee recommends that the State party provide foster parents and foster children with adequate psychosocial services.

Abuse and neglect, mistreatment, violence

50. The Committee is deeply concerned about the increasing reports of cases of child abuse and neglect in the State party and the notable deficiencies in the domestic legislation as regards penalizing all forms of abuse, neglect and mistreatment, including sexual abuse. In addition, the Committee deeply regrets the alleged cases of sexual abuse of children in the framework of religious institutions.
51. The Committee urges the State party to review its domestic legislation in order to penalize all forms of abuse, including sexual abuse, neglect, mistreatment and violence against children and to clearly define these crimes against children, including incest. The Committee recommends to the State party that it take effective measures to prevent and protect

children from sexual abuse and exploitation in the framework of religious institutions, including by investigating the magnitude of such cases and by ensuring that the perpetrators of such abuse are brought to justice and that officials of religious institutions are held accountable in these cases of sexual abuse and the exploitation of minors.

52. The Committee urges the State party to conduct timely and adequate investigations of all cases of child abuse and violence with full practice of the rights of the child victim in legal proceedings, for example by allowing videotaped evidence, in order to bring perpetrators to justice and to ensure that child victims of violence and abuse have access to adequate counselling and multidisciplinary assistance with recovery and reintegration.

Children in prison with their mothers

53. As regards children living in prison with their mothers, the Committee is concerned about access to adequate social and health services for these children and particularly, about their living con-

ditions, which are often poor and fall short of international standards.

54. The Committee recommends that the State party ensure that living conditions and health services in prison are adequate for the child's early development in accordance with article 27 of the Convention and that the principle of the best interests of the child (article 3 of the Convention) is carefully and independently considered by competent child professionals prior to and during their stays with their detained mothers. The Committee recommends that alternative care for those children who are separated from their mothers in prison be regularly reviewed ensuring that the physical and mental needs of children are appropriately met. Furthermore, the Committee recommends that the State party ensure that alternative care allows the child to maintain personal relations and direct contact with the mother who remains in prison. The Committee encourages the State party to seek assistance from, among others, UNICEF and other United Nations bodies in this regard.

5. Basic health and welfare

Children with disabilities

55. Welcoming the State party's efforts to eliminate discrimination against children with disabilities and to promote their integration into society with equal opportunities, inter alia, by implementing the Programme on Community-based Rehabilitation, the Committee is concerned about the de facto discrimination faced by children with disabilities and their invisible role in society. The Committee notes with concern the inadequate implementation of domestic disability legislation, for example, the Magna Charta for Disabled Persons (Republic Act No. 7277 enacted in 1992) and the relevant provisions of the Child and Youth Welfare Code, particularly at the local level. The Committee is concerned that many children with disabilities live in poverty and their access to social and health services and education is limited. Furthermore, deeply rooted misbeliefs and prevailing prejudices against children with disabilities in Philippine society give cause for concern.

56. In the light of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities (see CRC/C/69), the Committee recommends that the State party take all necessary measures to:

(a) Prevent and prohibit all forms of discrimination against children with disabilities and ensure equal opportunities for their full participation in all spheres of life by implementing the domestic disability legislation and the national Community-based Rehabilitation Programme and by including disability aspects in all relevant policymaking and national planning;

(b) Collect adequate statistical data on children with disabilities and use such disaggregated data in developing policies and programmes to promote their equal opportunities in society paying particular attention to children with disabilities living in the most remote areas of the country;

(c) Ensure that public education policy and school curricula reflect in all their aspects the principle of full participation and equality and include children with disabilities in the mainstream school system to the extent possible and, where necessary, establish special education programmes tailored to their special needs;

(d) Provide children with disabilities with access to adequate social and health services and the physical environment, information and communication;

(e) Strengthen its efforts to raise awareness on children with disabilities, including their rights, special needs and potential, in order to change negative attitudes, misbeliefs and prevailing prejudices against children with disabilities by initiating and supporting public information campaigns;

(f) Ensure that professionals working with and for children with disabilities, such as medical, paramedical and related personnel, teachers and social workers are adequately trained;

(g) Strengthen the functioning and activities of the National Council on the Welfare of Disabled Persons and cooperation with the National Federation of Organizations of Persons with Disabilities in the Philippines and the non-governmental organizations working in the field of disability issues;

(h) Seek technical cooperation with, among others, UNICEF and the World Health Organization (WHO).

57. Furthermore, the Committee encourages the State party to pay particular attention to the rights and status of children with disabilities in the context of the Philippine Decade of Persons with Disabilities 2003-2012 declared by Presidential Proclamation No. 240 in 2003.

Health and health services

58. The Committee is encouraged by the progress achieved by the State party in the field of health and health services, particularly with regard to immunization, such as polio eradication and the elimination of neonatal tetanus and it notes

with appreciation the Health Sector Reform Agenda. Noting that 8 out of 10 births in rural areas are delivered without professional health facilities and that infant, under-five and maternal mortality rates are relatively high, the Committee expresses its deep concern about insufficient prenatal and post-natal health care, particularly in the rural areas of the country. The low prevalence of breastfeeding, malnutrition among children, including micronutrient malnutrition problems among school-children and in general, children's limited access to quality health services in the remote areas of the country give cause for serious concern. The Committee finally expresses its concern at the risk that free trade agreements currently being negotiated with other countries may negatively affect access to affordable medicines.

59. The Committee recommends that the State party:

(a) Adopt necessary legislative, administrative and budgetary measures in order to fully implement the Health Sector Reform Agenda and ensure that the reform process is carried out by giv-

ing primary consideration to the best interests of the child and to the full enjoyment of their rights;

(b) Ensure that appropriate resources are allocated for the health sector and develop and implement comprehensive policies and programmes for improving the health situation of children, so as to fully implement the Convention, in particular articles 4, 6 and 24;

(c) Implement measures to guarantee access to quality prenatal and post-natal health services and facilities, including training programmes for midwives and traditional birth attendants, by paying particular attention to the rural areas of the country;

(d) Take all necessary measures to lower infant, under-five and maternal mortality rates;

(e) Strengthen existing efforts to immunize as many children and mothers as possible by effectively implementing immunization programmes;

(f) Encourage exclusive breastfeeding for six months after birth with modifi-

cations for an appropriate infant diet thereafter and take measures to improve the nutritional status of children through education and promotion of healthy feeding practices;

(g) Make use in the negotiations of free trade agreements of all the flexibilities reaffirmed by the Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights and Public Health adopted at the Fourth Ministerial Conference of the World Trade Organization in Doha and the mechanisms at its disposal to ensure access to affordable medicines in particular for the poor and most vulnerable children and their parents;

(h) Continue to cooperate and seek technical assistance in this matter with, inter alia, WHO, UNICEF and the United Nations Population Fund (UNFPA).

Environmental health

60. The Committee is concerned, despite the legislative and other measures taken by the State party, about environmental

problems, such as air and water pollution and environmental degradation which have serious consequences for children's health and development. As regards access to safe drinking water and sanitation, the Committee is concerned about the regional disparities. Furthermore, poor knowledge of hygienic practices both among children and their parents give cause for concern.

61. The Committee recommends that the State party:

(a) Continue to strengthen its efforts to reduce pollution and environmental degradation by strengthening the implementation of domestic environmental laws, including Ecological Solid Waste Management Act (Republic Act No. 9003) and the Clean Air Act (Republic Act No. 8749);

(b) Increase children's knowledge of environmental health issues by introducing environmental health education programmes in schools;

(c) Take effective measures to improve access to safe drinking water and sanitation facilities, particularly in the

remote areas of the country, as well as raise awareness on hygiene among children and their parents.

Adolescent health

62. The Committee notes with appreciation the State party's efforts to promote adolescent health, including through implementation of the Reproductive Health Programme and a joint project on adolescent health in collaboration with the Population Commission and UNFPA. The Committee is concerned about alcohol, tobacco and drug abuse among adolescents, early pregnancies and in this respect adolescents' limited access to reproductive health counselling and accurate and objective information about, for example contraception. The lack of legislation establishing a minimum age for purchasing and consuming alcohol gives cause for concern. The Committee also shares the State party's concern about the lack of measures to prevent suicide among adolescents.

63. The Committee recommends to the State party that it:

(a) Implement national policies and plans on adolescent health, such as the Reproductive Health Programme and develop new policies and plans to cover all fields of adolescent health by taking into account general comment No. 4 (2003) on adolescent health and development;

(b) Ensure access to reproductive health counselling and provide all adolescents with accurate and objective information and services in order to prevent teenage pregnancies and related abortions;

(c) Strengthen formal and informal education on sexuality, HIV/AIDS, sexually transmitted diseases and family planning;

(d) Establish by law the minimum age for purchasing and consuming alcohol;

(e) Provide adolescents with information on the harmful consequences of alcohol, drug and tobacco use;

(f) Establish adequate mental health services tailored for adolescents;

(g) Seek technical cooperation with, among others, WHO, the Joint United Nations Programme on HIV/AIDS and UNFPA.

HIV/AIDS

64. The Committee notes the relatively low HIV prevalence rate in the country and welcomes the various efforts being made to address the prevention of transmission and the reduction of HIV/AIDS, including through the implementation of the AIDS Prevention and Control Act (Republic Act No. 8504), adopted in 1998, and the establishment of the National AIDS Prevention and Control Programme in 1998, the Committee is concerned about the presence of risk factors predisposing HIV-infection, such as the high number of sex workers. While noting that the AIDS Prevention and Control Act guarantees access to complete HIV/AIDS information in schools, the Committee expresses its concern about the inadequate level of HIV/AIDS awareness among Philippine adolescents.

65. In the light of the Committee's general

comment No. 3 (2003) on HIV/AIDS and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37), the Committee recommends that the State party continue to:

- (a) Strengthen its efforts to implement the AIDS Prevention and Control Act in order to prevent and treat the effects of HIV/AIDS;
- (b) Prevent discrimination against children infected with and affected by HIV/AIDS, for example by implementing the Philippine AIDS Prevention and Control Act of 1998 prohibiting any form of discriminatory act, and ensure these children have access to adequate social and health services;
- (c) Provide adolescents with accurate and comprehensive information about HIV/AIDS, including condom use, in schools;
- (d) Ensure access to child-sensitive and confidential HIV/AIDS counselling without parental consent when required by a child;

(e) Seek technical assistance from, among others, the Joint United Nations Programme on HIV/AIDS.

Standard of living

- 66. The Committee notes with concern the high number of children living in households below the national poverty line and the wide disparities in wealth between different regions. The Committee is deeply concerned about difficulties faced by children living in poverty, as to the enjoyment of their human rights, including access to social and health services and education. The Committee is also concerned about the poor housing situation in the State party and families living, for example in urban slums and squatter communities without adequate infrastructure.
- 67. In accordance with article 27 of the Convention, the Committee recommends that the State party take urgent efforts to raise the standard of living among its rural and urban population living in poverty, inter alia, through implementing a poverty reduction strategy and community development, including the

participation of children. The Committee requests the State party to increase its efforts to provide material assistance and support to economically disadvantaged children and their families. Moreover, the State party should ensure that children living in poverty are provided with access to social and health services, education and adequate housing.

6. Education, leisure and cultural activities

Education

68. The Committee takes note of the State party's efforts to improve the standard and aims of education, including by implementing the new school curricula for elementary and secondary schools, and the curriculum for early childhood, the Education for All Programme of Action and the Child-friendly School System, in collaboration with UNICEF. Notwithstanding these positive steps taken, the Committee remains gravely concerned that there still remain *barangays* which are not able to provide

children with elementary education and there are several vulnerable groups of children, such as children living in poverty, children with disabilities, child labourers, children in armed conflict, indigenous children, children infected with, or affected by, HIV/AIDS and street children, without equal access to elementary education. The Committee is concerned that the costs of schooling, such as meals, transportation, school uniforms and supplies, cause financial obstacles to many children from poor families and deny their equal access to education. The high rate of children not completing primary education gives cause for serious concern as well as the high drop-out rates in secondary education. The Committee also notes a low number of children enjoying early learning in preschools.

69. The Committee is encouraged by the State party's efforts to promote indigenous, minority and local languages in education including, inter alia, through the Lingua Franca Project. The Committee is concerned about poor schooling facilities, particularly in the remote *barangays*, including the insufficient number of classroom seats, text-

books and other schooling supplies. It reiterates its concern about the low rate of enrolment in secondary education and that children living in the remote *barangays* have very limited access to secondary education. The Committee notes with appreciation that the State party has made intense efforts to improve the quality of education by increasing the time spent on task and teaching methods that encourage children's participation. It also welcomes the expansion and improvement of pre-service and in-service teacher training. The Committee also recognizes the attempts to regularly monitor and evaluate the quality of education.

70. In the light of articles 28 and 29 of the Convention and the Committee's general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party allocate adequate financial, human and technical resources in order to:

(a) Increase budgetary allocations, governmental subsidies and assistance programmes for children from low-income families in order to secure their equal access to education of all levels;

(b) Urgently take all necessary measures to ensure universal and free primary education for all and pay particular attention to the schooling opportunities in the most remote *barangays* and to the educational needs of children belonging to vulnerable groups, such as children living in poverty, children with disabilities, indigenous children, child labourers, children in armed conflict, children infected with or affected by HIV/AIDS and street children, in order to fulfil their right to education;

(c) Adopt effective measures to rapidly decrease the drop-out rate in primary and secondary school;

(d) Provide access to early childhood education for every child making it affordable for poor families and raise awareness of the benefits of preschools and early-learning opportunities among parents;

(e) Develop and upgrade the infrastructure of the educational system by building new schools and classrooms, developing textbooks and other school supplies, enhancing teacher training and adopting innovative and interactive

learning methods tailored for children with different learning prerequisites;

(f) Provide indigenous children and children belonging to minority groups with equal access to quality education which respects their distinct cultural patterns and uses local indigenous and minority languages in education through, inter alia, the Lingua Franca Project;

(g) Continue its efforts to offer more facilities for informal learning and vocational training, including for children who have not completed primary and secondary education;

(h) Continue its efforts to reduce the number of dropouts and increase the number of children completing secondary education;

(i) Establish vocational schools that systematically prepare children in school for the requirements of the labour market and civic responsibilities;

(j) Mainstream human rights, including children's rights, into the school curricula;

(k) Cooperate with, among others, UNESCO, UNICEF and non-governmental organizations to improve the education sector;

(l) Continue to expand pre-service and inservice teacher training.

Leisure, recreation and cultural activities

71. Notwithstanding the State party's efforts to develop and organize sports and cultural activities for children, the Committee notes with concern the insufficient number of recreational and cultural activities and facilities for children and the discrepancies between *barangays* in this respect. The Committee is concerned that there are several groups of children, such as children not involved in primary education, child labourers and street children, who neither have equal right to enjoy their right to rest and leisure nor to engage in play, sport, recreational and cultural activities.

72. In the light of article 31 of the Convention, the Committee recommends that the State party make all necessary

efforts to protect the right of the child to rest, leisure, cultural and recreational activities. The Committee recommends that the State party strengthen its efforts to promote the right of the child to engage in play by providing children with creative play facilities. It requests the allocation of adequate human and financial resources to the implementation of this right and the payment of particular attention to vulnerable groups of children, such as children outside of the educational system, child labourers and street children.

7. Special protection measures

Refugee children

73. Notwithstanding the fact that the treatment of refugee children and the implementation of their rights have been viewed in the light of laws generally applicable to Philippine children, the Committee is concerned about the lack of domestic legislation addressing the specific needs of asylum-seeking and refugee children. The Committee notes that, for example, the provisions of the

Special Protection of Children against Child Abuse, Exploitation and Discrimination Act on children in emergency situations are limited to children in situations of armed conflict.

74. The Committee recommends to the State party that it introduce specific laws and administrative regulations that address the needs of asylum-seeking and refugee children and provide unaccompanied and separated asylum-seeking and refugee children with special procedures. In this respect, the Committee recommends that the State party continue its cooperation with UNHCR.

Children in armed conflict

75. The Committee welcomes the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict by the State party in August 2003 and the setting of minimum age of 18 years for recruitment into the national Armed Forces, however, with exception for training purposes. The Committee also takes note with appreciation of the adoption of a Comprehensive

Programme Framework for Children in Armed Conflict of 2001 (Presidential Executive Order No. 56) which promotes rescue, recovery and reintegration of children involved in armed conflict. Notwithstanding these positive steps taken by the State party, the Committee expresses its deep concern about children, sometimes as young as 11 years old, being recruited by armed rebel movements, such as the New People's Army, the Moro Islamic Liberation Front, and the Abu Sayyaf Group, to serve as combatants, spies, guards, cooks or medics.

76. The Committee is concerned that the State party is able to provide only the arrested child soldiers with physical and psychological recovery and social reintegration services, but the majority of children involved in and affected by armed conflict is never reached. Furthermore, the Committee is concerned about the continuing displacement of children and their limited access to social and health services, education and, above all, to development due to the adverse effects of internal armed conflict. In addition, the Committee is concerned at the impact of internal armed conflict

on children not involved in hostilities, particularly Muslim children living in the Mindanao region.

77. The Committee recalls that the State party has undertaken to respect and ensure all the rights set forth in the Convention for all children within its jurisdiction at all times. In the light of articles 38, 39 and other relevant articles of the Convention, the Committee urges the State party to continue its peace efforts with armed rebel movements in order to urge them to immediately cease the recruitment for and involvement of children in armed conflicts, and to ensure protection of all children who have been involved in armed conflict. The Committee recommends to the State party that it provide children involved in and traumatized by armed conflict with adequate assistance and counselling for their physical and psychological recovery and social reintegration into society in cooperation with national and international non-governmental organizations and United Nations bodies, such as UNICEF. The Committee recommends that the State party provide girl child soldiers with adequate gender-specific rehabilitation and reintegration services.

78. The Committee also recommends that the State party pay particular attention to the implementation of guidelines for Philippine Armed Forces on the treatment of children in armed conflict and ensure that children who are arrested are released from military custody within the prescribed time limits and that children are provided with adequate medical treatment and informed about their rights. As regards displaced children and children living in conflict areas, the Committee urges the State party to take effective measures to secure their access to basic services, including adequate social and health services and education and development. Finally, the Committee recommends that the State party ensure that all children living in areas affected by armed hostilities enjoy their human rights on equal footing without any discrimination.

Economic exploitation

79. The Committee welcomes the ratification of the Minimum Age Convention, 1973 (No. 138) in June 1998 and the Worst Forms of Child Labour Convention, 1999 (No. 182) in November 2000. The Committee notes with appreciation the State party's efforts to combat child

labour, for example through implementing the National Programme against Child Labour, the Omnibus Rules implementing the Labour Code, the establishment of local-level Programme Implementation Committees on Child Labour and the fruitful cooperation with the International Labour Organization and its International Programme on the Elimination of Child Labour. Despite these positive efforts, the Committee is deeply concerned at the high number of child workers (3.7 million working children) in the State party. The Committee is concerned about cultural attitudes and practices as regards child labour and the weak enforcement of labour laws.

80. The Committee recommends to the State party that it:

(a) Effectively implement its domestic labour laws and the National Programme against Child Labour as well as its subprogrammes, for example the Elimination of Child Labour in the Tobacco Industry Project and ensure that child workers participate in discussions about the solution to this problem;

(b) Improve the labour inspection system in order to safeguard that work performed by children is light work and not exploitative and, in particular, empower the system to monitor and report on the practice of domestic and rural labour by children;

(c) Provide former child workers with appropriate recovery and educational opportunities;

(d) Continue to seek technical assistance from the International Labour Organization/International Programme on the Elimination of Child Labour.

Drug and substance abuse

81. While noting the State party's efforts to combat drug trafficking and drug and substance abuse, inter alia, through implementing the Comprehensive Dangerous Drugs Act of 2002 (Republic Act No. 9165), and the increased number of treatment and social reintegration services for children, the Committee is deeply concerned at the massive narcotic trade in the Philippines and its adverse effects on

children and adolescents. It shares the State party's concern about the high incidence of drug and substance abuse, including glue and solvent sniffing among street children. Furthermore, the Committee is concerned about the fact that children, who voluntarily seek treatment in drug recovery and reintegration centres, are often asked to pay for treatment causing insurmountable obstacles to children of limited means and denying their access to treatment and reintegration.

82. The Committee recommends that the State party continue to strengthen its efforts to:

(a) Combat drug and substance abuse among children and adolescents, for example by effectively implementing the Comprehensive Dangerous Drugs Act of 2002 and secure due process of the law;

(b) Provide children and adolescents with accurate and objective information about drug and substance use, including hard drugs, glue and solvent sniffing, through public school programmes and media campaigns and protect children

from harmful misinformation and models;

(c) Develop free and easily accessible drug abuse treatment and social reintegration services for children who are victims of drug and substance abuse;

(d) Tailor specific drug abuse, including glue and solvent sniffing, recovery and social reintegration programmes and centres for street children and cooperate with non-governmental organizations in this respect;

(e) Allocate adequate budgetary funds to existing drug recovery and reintegration centres;

(f) Seek technical assistance from, among others, the United Nations Office on Drugs and Crime and WHO.

Street children

83. The Committee reiterates its grave concern at the high number of children living in the streets and their special vulnerability to various forms of violence and abuse, including sexual abuse and

exploitation, economic exploitation and substance abuse. The Committee notes the lack of a systematic and comprehensive strategy to address the situation and protect children living in the streets. The Committee emphasizes that unlawful arrest and detention of street children are serious violations of the provisions and principles of the Convention. Notwithstanding the efforts taken by the State party and, in particular, many non-governmental organizations working with and for street children, for example Child Hope Asia Philippines, the Committee is concerned about street children's limited access to adequate nutrition, clothing, housing, social and health services and education. Furthermore, the Committee is concerned about health risks faced by street children, including environmental health risks, such as toxic and hazardous wastes and air pollution.

84. The Committee recommends that the State party:

(a) Develop a comprehensive strategy with active participation of street children, non-governmental organizations and relevant professionals to address the

high number of street children, with the aim of reducing and preventing this phenomenon;

(b) Ensure that children living in the streets are not unlawfully arrested and detained, protect them from police brutality and where needed, secure their access to adequate legal services;

(c) Ensure that street children are reached through trained street educators and counsellors and provided with adequate nutrition, clothing and shelter as well as with social and health services and educational opportunities, including vocational and life skills training, in order to support their full development and provide them with adequate protection and assistance;

(d) Provide street children with adequate recovery and social reintegration services for physical, sexual and substance abuse and promote reunification with their families, when feasible;

(e) Reduce and prevent the environmental health risks faced by children living in the streets, inter alia, through raising awareness about environmental

health risks among these children and instructing appropriate behaviours which protect them from these risks;

(f) Support the efforts of street children to organize themselves in order to enhance their self-esteem;

(g) Collaborate with and support non-governmental organizations working with and for street children.

Sexual exploitation, child pornography and trafficking

85. The Committee expresses its grave concern about the sexual exploitation of children, including growing child prostitution, and the reported cases of child pornography in the State party. The Committee notes with concern that the provisions of the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act are mainly related to child prostitution and do not adequately protect victims of other forms of sexual exploitation. Furthermore, the Committee notes with concern that the minimum age of sexual consent is not clearly enough established

in the State party's domestic legislation and that the Revised Penal Code (Republic Act No. 3815) imposes maximum penalties for sexual offences when the victim is under 12 years of age but imposes lower penalties for sexual offences against minors over 12 years of age.

86. The Committee welcomes the adoption of, in 2003, the new Anti-Trafficking in Persons law and other measures taken by the State party in the areas of prevention of trafficking and protection of victims, such as the establishment of Anti-Illegal Recruitment Coordination Councils, the Trade Union Child Labour Advocate initiative and the establishment of an Executive Council to suppress trafficking in persons particularly women and children. But the Committee is gravely concerned about trafficked Philippine children both within the country and across borders. The Committee expresses its concern about existing risk factors contributing to trafficking activities, such as persistent poverty, temporary overseas migration, growing sex tourism and weak law enforcement in the State party.

87. The Committee urges the State party to:

(a) Review its domestic laws on the protection of children against sexual exploitation, including the use of children for pornography, in order to provide all child victims of such exploitation with equal protection, inter alia, by including in the law equal sanctions to all perpetrators of sexual offences against children;

(b) Set a clearly defined minimum age of sexual consent at an internationally acceptable level in its domestic law;

(c) Conduct a comprehensive study to assess the causes, nature and extent of commercial sexual exploitation and trafficking of children;

(d) Provide adequate programmes of assistance and reintegration for sexually exploited and/or trafficked children in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the First and Second World Congresses against Commercial Sexual Exploitation of Children;

(e) Pay particular attention to existing risk factors, such as the growing sex tourism in the region and continue to collaborate with the Department of Tourism and tourism service providers in this respect;

(f) Launch awareness-raising campaigns for children, parents and other caregivers, in order to prevent trafficking, sexual exploitation and pornography involving children, and sensitize officials working with and for victims of trafficking.

88. With regard to the trafficking of children in the Philippines, within the country and across its borders, the Committee endorses the recommendation adopted by the Human Rights Committee at its seventy-ninth session in 2003 (CCPR/CO/79/PHL, para. 13) on taking appropriate measures to combat trafficking in all its forms, by ensuring effective enforcement of the relevant legislation and imposing sanctions on those found responsible.

Administration of juvenile justice

89. The Committee is seriously alarmed at the high level of crime and the high number of persons below 18 years of age in detention in the State party, the persistent violations of the rights of children in conflict with the law, the alleged cases of torture, abuse, including sexual abuse and other forms of degrading treatment of persons below 18 years of age in detention, and the overall deficiencies in the administration of the Philippine juvenile justice system. The Committee notes with deep concern that adequate legislation governing juvenile justice is lacking and that a proposed bill on the Comprehensive Juvenile Justice System and Delinquency Prevention Programme has been pending in Congress since 1999. While noting that an Administrative Order issued in February 2000 designated Regional Trial Courts as Family Courts, the Committee is concerned about the lack of child-sensitive and adequately trained juvenile courts.

90. Furthermore, the Committee is concerned about the very low minimum age of criminal responsibility (9 years).

Referring to the provisions on youth detention homes of the Child and Youth Welfare Code and the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (Presidential Decree No. 603), the Committee is concerned about the inadequate implementation of these provisions and the placement of persons below 18 years of age together with adults in detention. Unlawful detention of children, street children for instance, for the extended period of time and limited, or lacking access to appropriate legal aid and assistance and adequate social and health services give cause for serious concern. In addition, the Committee is concerned about unreasonable amounts requested for bail, which cause insurmountable financial obstacles for children and their parents, limitations as regards the suspension of sentences and poor detention conditions, including so-called secret cells.

91. The Committee urges the State party to ensure that its legislation and practice concerning juvenile justice is in full compliance with the provisions of the Convention, in particular articles 37, 39

and 40, as well as other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113) and the Guidelines for Action on Children in the Criminal Justice System (annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In this regard, the Committee recommends to the State party in particular that it:

- (a) Adopt, as a matter of urgency, a proposed bill on Comprehensive Juvenile Justice System and Delinquency Prevention Programme and raise the minimum age of criminal responsibility to an internationally acceptable level;
- (b) Ensure that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in

appropriate conditions, and that persons below 18 years of age are not detained with adults;

(c) Establish juvenile courts staffed with sufficient, appropriately trained professional personnel;

(d) Ensure that persons below 18 years of age have access to legal aid and independent and effective complaints mechanisms;

(e) Implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences;

(f) Train professionals in the area of recovery and social reintegration of children;

(g) Continue to seek technical assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and UNICEF.

Children belonging to minorities and indigenous peoples

92. While noting the provisions of the Indigenous Peoples Rights Act (Republic Act No. 8371) as well as programmes and projects for children belonging to minorities and indigenous peoples, such as an alternative system of education for children belonging to indigenous cultural communities, the Childcare Development Programme and the Lingua Franca Project, the Committee is concerned about the widespread poverty among minorities and indigenous peoples and the limited enjoyment of their human rights, in particular, concerning their access to social and health services and education. The Committee shares the State party's concern about arranged early marriage in the indigenous communities. In addition, the Committee notes with concern more pronounced discrimination against Muslims.

93. The Committee recalls the obligations of the State party under articles 2 and 30 of the Convention and recommends that the State party ensure that indigenous children and children belonging

to minorities fully enjoy all of their human rights equally and without discrimination. In this respect the Committee recommends that the State party strengthen its efforts to implement the Indigenous Peoples Rights Act (Republic Act No. 8371) and develop and implement policies and programmes in order to ensure equal access for indigenous and minority children to culturally appropriate services, including social and health services and education. Furthermore, the Committee recommends that the State party strengthen its mechanisms for data collection on minority and indigenous children so as to identify existing gaps and barriers to the enjoyment of their human rights and with a view to developing legislation, policies and programmes to address such gaps and barriers.

94. As regards the child's right to use his/her own language, the Committee encourages the State party to continue its efforts to address the linguistic needs of indigenous and minority children. In addition, the Committee recommends that the State party seek, in close collaboration with indigenous and minority communities and their respective leaders,

effective measures to abolish traditional practices prejudicial to the health and well-being of indigenous and minority children, such as early marriage.

8. Optional Protocols to the Convention on the Rights of the Child

95. The Committee welcomes the ratification in May 2002 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the ratification in August 2003 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
96. In order to be able to examine the implementation of the Optional Protocols, the Committee underlines the importance of a regular and timely reporting practice. The Committee recommends that the State party fully meet its reporting obligations under the reporting provisions of the Optional Protocols and the Convention.

9. Followup and dissemination

Followup

97. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to provincial or State Governments and Parliaments, when applicable, for appropriate consideration and further action.

Dissemination

98. The Committee further recommends that the second periodic report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available in the languages of the country, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

10. Next report

99. In the light of the recommendation on reporting periodicity adopted by the Committee and described in the report of its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the implementation of the Convention. In this regard, regular and timely reporting by States parties is crucial. The Committee recognizes that some States parties experience difficulties in initiating timely and regular reporting. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 19 September 2007, the due date for the submission of the fourth periodic report. The report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.

ANNEX 1

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 recognisance 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 Youth Rehabilitation Centre 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 by the police, although he did inform the social worker at the Regional Youth Rehabilitation Centre 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 centre. 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 centre was prevented.

Table of Documented Cases

As of 8th November 2002

Children In Jail	Age of Minor On arrest	Warrant Shown on Arrest	Handcuffs Or Unnecessary Force used	Physical And Mental Exam	Parents or Social Worker Informed	Brought to Court/ Met legal Counsel	Education Mental Stimuli Provided	Separate Detention From Adults	Period Spent In Adult Jail
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 +

ANNEX 2 PREDA PICTURES ON CONDITIONS ON IMPRISONMENT

(available on Preda website <http://www.preda.org/home.htm>)



Minors in Navotas, Metro Manila prison during October 14, 2004 visit of Preda.



Caloocan City Jail, Metro Manila - April 23, 2004, visit of Preda: as many as 80 child prisoners in one room are detained which are also accessed by adult prisoners



Minors in Navotas, Metro Manila prison during November 10, 2003 visit of Preda