

### *On Separate Detention Facilities for Women and Children*

The Commission on Human Rights of the Philippines, in Resolution CHR No. A92-007 dated January 28, 1992 and in the exercise of its visitorial powers pursuant to Section 18 (4) of Article XIII of the Constitution reiterated its recommendation to the President to:

" x x x

2. Provide separate detention facilities for women and children.

x x x "

Despite this, however, the Commission has been continuously receiving verified reports from its regional offices and concerned non-government organizations that the detention facilities are not sufficient to accommodate minors and women separately from men and those convicted of crimes for which they are charged and serving sentence.

The Philippines is a State party to the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and has, in fact, enacted laws, pursuant to the Philippine Constitution, e.g. Presidential Decree 603 for which reason the Government is under obligation to comply with the following:

#### I. International Covenant on Civil and Political Rights, Article 10

- "1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person;
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

#### II. Convention on the Rights of the Child, Article 37

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

III. Philippine Constitution, Declaration of Principles and State Policies (Article II),  
Section 12

"The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government."

IV. Philippine Constitution, Declaration of Principles and State Policies (Article II),  
Section 13

"The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs."

V. Philippine Constitution, Bill of Rights (Article III), Section 19(1)

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*."

VI. The Child and Youth Welfare Code (Presidential Decree No. 603)

Art. 191. Care of Youthful Offender Held for Examination or Trial.- A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance

in court whenever required: *Provided*, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court, may, in its discretion upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable persons who shall be responsible for his appearance whenever required.

In the light of these specific provisions under international standards and domestic legislations, it appears that there is failure to protect and promote the rights of children in conflict with the law considering that they have not been provided until now suitable detention centers and facilities separate from adults and/or those convicted of the crimes.

Considering, however, that the system of detention and/or imprisonment is designed to reform and rehabilitate, the Commission is convinced that, if the Government cannot provide suitable and separate detention centers due to budgetary constraints, children in conflict with the law, as defined in Article 199, should be released on recognizance to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required.

**NOW, THEREFORE**, the Commission on Human Rights of the Philippines resolved to propose the following:

1. For the Department of Social Welfare and Development to recommend the exercise of its authority under Article 191 of Presidential Decree No. 603, to prevent human rights violations and future occurrence thereof to children who languish in jail and detention centers together with adult detained and convicted persons and suffering sub-standard and inhuman conditions while incarcerated.
2. For the Department of Justice to review the complaints and cases against children in conflict with the law, especially those detained and convicted and serving sentence, for the adoption of measures to improve the justice system for their humane reformation and rehabilitation to include:
  - Recommend for the commutation of death sentence or for the imposition of less severe penalty to children in conflict with the law.
3. Investigate and/or take into consideration all forms of admission and confession of children in conflict with the law and allegation of torture, force, violence, threat intimidation or any other means which vitiate the free will.
4. Report the documented age of minors to all judicial and custodial officials
  1. For the Department of the Interiors and Local Government to coordinate efforts to provide humane detention centers and shelter for these children and to issue instructions and monitor compliance for
    - Law enforcement officials to immediately investigate and document on arrest or first contact, the age of any perpetrator who seems younger than eighteen.
5. The Bureau of Jail Management and Penology to ensure that children detainees are provided with separate detention facilities, in accordance with international standards.
6. The Bureau of Jail Management and Penology to adopt pro-active and effective measure, to prevent violence between child detainees or between adult and child detainees and to investigate and prosecute those responsible, or those abetting, by way of protecting or encouraging those who have the tendency to abuse.

The Commission firmly resolved to adopt an advisory for this purpose.

Let copies be furnished the Office of the President and concerned Offices for appropriate action.

*Quezon City, 17 December 2003*