

Treatment of Women in Detention in the Philippines

Submission to the **United Nations Human Rights Committee** for its consideration of the sixth periodic report of the **Philippines** at its 136th Session by the **Medical Action Group (MAG)** and the **World Organisation against Torture (OMCT)**

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1. Introduction

Violence against women and other forms of torture are particularly persistent in detention where women are under a heightened risk of sexual violence. While there is no official data available, the so called “war on drugs”, the criminalisation of Human Rights Defenders and government critics, produced a stark increase in prison population. The government of the Philippines has in recent years taken harsh approaches towards women who commit crimes in a context of poverty, violence, and discrimination. In addition, there are activities for which mostly women are punished, like abortion, or activities for which per law only women are criminalized, like prostitution. Since there are still far fewer women in detention than men, there is a lack of specific policies, measures or programs for women and facilities are ill equipped to meet the needs of women. They have been systematically overlooked in strategies for prisons. During the Covid-19 pandemic, hardship for imprisoned women further grew as they were mostly excluded from release schemes and had their contact with children cut off.

In the context of the Human Rights Committee’s (Committee) examination of the Philippines’ implementation of and compliance with, the provisions of the International Covenant on Civil and Political Rights (ICCPR), the Medical Action Group (MAG) and the World Organisation against Torture (OMCT) wish to bring to the Committee’s attention its concerns about the i. shortcomings in the legal and institutional framework regulating detention; ii. overcrowding, iii. physical and material conditions of detention; iv. lack of access to health care; v. deficient complaint mechanisms; vi. lack of independent monitoring and, vii torture and abuse in prisons.

This submission is relevant for the Committee’s evaluation of the Philippines implementation of its Covenant obligations and related Covenant rights under articles 2, 3, 7, 9, 10, 11, 14, 15.

Information in this report is based on the detention monitoring of MAG who has been visiting places of detention and providing support services to detainees since it was established in 1982. More recently, from 2019 to 2022, MAG visited 15 women detention centres located in Luzon, Visayas and Mindanao. In addition, interviews were conducted with a former detainee, family member of detained persons, a lawyer, a social worker who provide services to women in detention, a member of the Public Prosecutor’s Office and a police officer¹

2. Domestic Legal and Institutional Framework

In the Philippines, there are two types of detention regimes: Pre-trial detention and detention for those convicted to prison for up to three years fall under the **Bureau of Jail Management and Penology (BJMP)**.

There are 470 detention centers in the country consisting of municipal, city and district jails under the BJMP. The BJMP is mandated to take operational and administrative control over all city, district and municipal jails. The detainees under BJMP are accused before a court who are temporarily confined in such jails while undergoing investigation, waiting final judgement and those who are serving sentence promulgated by the court 3 years and below.²

The BJMP was established by Republic Act 6975 in 1990. Section 63 of this Act entitled “Establishment of District, City or Municipal Jail” provides that

¹ In order to protect the safety of the persons concerned, their names and place of detention will be kept anonymous.

² officialgazette.gov.ph/1990/12/13/republic-act-no-6975/.

“The municipal or city jail service shall preferably be headed by a graduate of a four (4) year course in psychology, psychiatry, sociology, nursing, social work or criminology who shall assist in the immediate rehabilitation of individuals or detention of prisoners. Great care must be exercised so that the human rights of this prisoners are respected and protected, and their spiritual and physical well-being are properly and promptly attended to.”³

Moreover, the BJMP has an Operation Manual that regulates treatment of detainees. There are, however, only very few provisions that address women’s specific needs.⁴ This manual does not have legislative authority and is therefore not an enforceable law.

Detention centers that house detainees who serve a sentence of more than 3 years are administered by the **Bureau of Corrections (BuCor)** which is under the Department of Justice. BuCor is mandated by Republic Act 1407 as amended by Republic Act 10575.⁵ None of these Acts contain any prisoners rights.

It is also worth noting that there are persons who stay in **police detention** for weeks or even months instead of few hours of a few days only. According to the Rules of Criminal Procedure, when the police arrest a suspect without warrant, he or she is brought to the police station. The police has 12, 18, to 36 hours (depending on the alleged crime) to file a case with the prosecutor who then has to issue a resolution. If the prosecutor finds probable cause for the alleged crime, he or she files a case in court. Only after a case is filed in court will the court issue a so-called Commitment Order with which a detainee is transferred to a BJMP facility. There is no time frame during which the prosecutor has to file a case in court. An official from the Public Attorney’s Office confirmed that at the height of the “war on drugs” and during Covid-19 restrictions, filing of cases in court was delayed due to lack of manpower and covid restrictions. An interviewee reported that she stayed in police detention for 25 days. A police officer shared that there is no budget for food and necessities of detainees and filing of cases in court is a perennial problem due to delays at the prosecutor’s office.

Furthermore, there is an **Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as Well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof from 1992**. While this act applies to every person detained, be it under the BJMP, BuCor or by the police, it only contains 6 provisions addressing visiting rights, the right to have a lawyer, and having one’s rights read (Miranda rights).⁶

The varying operating procedures, standards, levels of professionalism and trainings under the respective departments make monitoring and assessment difficult and are also reasons why comprehensive data is not available.

Moreover, the Philippines has an anti-torture act, the **Act Penalizing Torture and other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor**. This act criminalizes all forms of torture including of detained persons. Other forms of ill-treatment, relevant in the context of detention, and described below are not criminalized.

³ Ibid.

⁴ E.g. “Prenatal and post-natal care and treatment are to be provided by women’s institutions; where nursing infants are allowed to remain with their mothers, a nursery staffed by qualified persons is needed. “ «In an institution for both men and women, the part set aside for women shall be under the authority of a woman officer, who shall have custody of the keys that section. Male officers shall enter the section for women only in the presence of a woman officer and women prisoners shall be attended and treated only by women officers, without precluding male doctors and teachers from carrying out their duties.”, https://www.bjmp.gov.ph/images/files/Downloads/BJMP_OPERATIONAL_MANUAL_2015.pdf

⁵ <https://bucor.gov.ph/mandates-and-functions/>.

⁶ Republic Act No. 7438, https://www.lawphil.net/statutes/repacts/ra1992/ra_7438_1992.html.

Finally, various laws and amendments have been passed in recent years regarding violence against women and women's human rights. None of these, however, have given attention to women in detention, or have led to reforms within places of detention. In particular, there is no legislation, action plan or other policy in place that implements the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

3. Overcrowding

Philippine prisons are among those with the highest occupancy rate in the world. The prisons operated by the BJMP have exceeded their capacity by 403%.⁷ As of 31 May 2021, there were 117, 299 detainees in BJMP facilities with 104,114 male and 13,185 female detainees.⁸ The facilities under the BuCor held 48,458 persons as of October 2021, with a capacity rate of 11,981. Occupancy rate is at 404% with 304% congestion rate.⁹ The Correctional Institution for Women (CIW) under the BuCor which has a capacity of 1,008 has a congestion rate of 225% with 3,270 detainees as of July 2022.¹⁰

Overcrowding represents a larger problem in the Philippine administration of justice. Among the key issues are the slow disposition of cases or protracted trials, the delays at the prosecutors offices due largely to the delay in resolving inquest investigation and filing of corresponding cases in court, if there is a finding of probable cause; inability to post bail by the detainees; and steady influx of arrested suspects under the so called "war on drugs". MAG observed that many women are detained for drug use. Since the "war on drugs" started, more and more male detainees would report that their wives were also detained.

Victims and social workers consistently describe how large numbers of detainees are kept in **small rooms** and have to take turns sleeping because there is not enough space for everyone to lie down. A former detainee shared that the police cell, where she was detained for 25 days, had a dimension of about 3 meters by 2 meters including the toilet with not less than 25 and reaching up to 37 detainees. According to her, most women were detained for drug-related offenses. Food was provided by visitors. Some detainees stayed in police detention for 2 months. The Commission on Human Rights (CHR) reported about a detainee who said that she stayed in a cell with 75 women, whereas the capacity was 15. In order for everyone to fit in, detainees hang hammocks above one another.¹¹

The weaknesses in the justice system have been exacerbated by the **Covid-19 pandemic** during which most many procedures have been suspended. Many women had their cases delayed during the Covid-19 pandemic, particularly those detained in the provinces where many courts had no internet connectivity and some only started to hear cases online at the end of 2021. This contributed further to the slow processing of cases and overcrowding.

⁷ <https://www.rappler.com/nation/coa-report-plea-deals-pandemic-decongest-jails-but-still-way-beyond-accepted-standards/>).

⁸ https://www.bjmp.gov.ph/images/data_and_stats/BJMP_Actual_Jail_Population_Data.jpg

⁹ <https://bucor.gov.ph/wp-content/uploads/2021/11/PDL-Congestion-October-2021.pdf>

¹⁰ <https://bucor.gov.ph/wp-content/uploads/2022/08/PDL-CONGESTION-08242022.pdf>

¹¹ Commission on Human Rights, *Inside Stories: A Report on the Situation of Women Deprived of Liberty from Select Detention Facilities*, 2022, p. 8, <https://chr.gov.ph/wp-content/uploads/2022/01/Inside-Stories-A-Report-on-the-Situation-of-Women-Deprived-of-Liberty-from-Select-Detention-Facilities.pdf> .

4. Physical and material conditions

Women face particular challenges in detention, since facilities are ill-equipped to tend to their particular needs. Poor material conditions, in particular poor hygiene can have a more adverse effect on women compared to men, according to a report by the UN Special Rapporteur on Torture. There can be a lot of shame as detainees struggle to keep themselves clean during menstruation or after giving birth.¹² According to a former detainee, toiletries are distributed on a monthly basis and include one piece of sanitary pad, one small sachet of shampoo and one small bar of soap. This is usually not sufficient to last for a month, so detainees have to rely on relatives or NGOs. Sanitary pads can also be purchased but are very expensive.

A former detainee under the BJMP also reported having suffered from **hunger** at night. The food provided was not enough and she could not afford to buy more food. She said, “Ang taong nakakulong parang patay ka na rin. Walang saysay ang buhay mo.” (Being detained is akin to being dead. Your life has no value.). Women who do not have families or other relatives regularly visiting, suffer the most. Sometimes other detainees would buy food and other necessities for those detainees.

In most facilities of the BJMP, beds and electric fans are for **rent**, hence many detainees sleep on the floor. Payment is also necessary in order to sit near an electric fan or the corner of the dorm where there is more ventilation.

Often, the **toilet is located in the cells** separated by a curtain only, providing for hardly any privacy. With the lack of ventilation and high humidity, the foul odour permeates the small cell. When dorms do not have a toilet, access to a toilet is not provided at night.

Detention centers under the BJMP have **no facilities where mothers can stay with their babies** or infants. Pregnant mothers who are detained typically return to prison two to three days after giving birth, while their babies are given to the care of their fathers, other family members or the Department of Social Welfare and Development (DSWD). In 2021 the case of a young and arbitrarily detained human rights defender made headlines. After she gave birth to a girl on 1 July 2020, she was brought back to detention and her baby given to the care of the father. Her request to be imprisoned with her baby was denied. Three months after, the baby passed away.¹³

As shared by a former detainee who was released in July 2020, pregnant detainees did **not receive pre-natal and post-natal care** in the facility where she was detained. She has never seen an infant or baby visit the detention facility during the two years she was there. It was also shared that when giving birth, detainees are handcuffed to the hospital bed.

A former detainee shared that she greatly suffered during the **Covid-19** pandemic since **visits were not allowed** and relatives could not even send food. Mothers particularly suffer as they were unable to see their children for a long period of time. Moreover, IT facilities have mostly been allocated to centres where men are detained. The Manila City Jail for instance, has one telephone for 1,000 women.¹⁴

¹² Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, UN Doc. A/HRC/31/75, 5 January 2016.

¹³ <https://www.bbc.com/news/world-asia-54519788>

¹⁴ <https://www.penalreform.org/blog/coronavirus-and-women-in-detention-a-gender-specific/>

5. Access to Healthcare

Access to health care is restricted: most facilities only provide for first aid; blood pressure monitoring is not regularly done and no records are kept; when detainees were sick with fever during the height of the pandemic, no medical attention was provided; **request for medical attention takes a long time**, even in emergency situations and more so when there are no relatives that will facilitate and coordinate payment of medical expenses. In some facilities, they have what is called, “**Bantay Kalusugan**” (**health guard**), a detainee assigned to determine if a request for medical attention will be referred to the nurse or medical professional in the facility, if there is one. There is no system of health monitoring of detainees.

A relative of a detainee reported about a recent collapse of an 80-year-old detainee because of her diabetes, which was not monitored and had affected her kidneys. For a long-time she did not receive medical attention because she had no relatives. When she was brought to the hospital, other detainees financially contributed to her medical treatment of regular dialysis.

When MAG provides medical services to detainees, many are diagnosed with urinary tract infections due to unhygienic conditions. Providing medical care poses some challenges since a prison guard is always present. A confidential interaction between the health care provider and detainee is not possible. Consequently, the health care provider is often unable to get accurate and complete information on health, detention, or arrest related health issues.

In addition, MAG reported limited or no access to psycho-social support and mental health needs, unavailability of postnatal care or services for those experiencing postpartum depression and other specific mental health needs. For older women, the delay in the resolution of cases has a particular negative impact on their mental health and well-being.¹⁵

Moreover, there seems no clear and standard policy as to when a detainee can seek outside medical intervention. Even in an emergency, a court order can be required which takes days or weeks to secure.

Many women who enter the penitentiary system are victims of sexual or other gender-related violence. The trauma they suffer often worsens in detention settings. There is no system of needs assessment, counselling, or other support available for affected women.

6. Complaints

According to law¹⁶, detainees can complain to either the CHR or the Ombudsperson. In practice, there are serious barriers. The **CHR** is an institutionally and financially weak body. It has **cases that remain pending for years**. It is unable to provide protection to detainees who complain. A former detainee reported that she did not dare to complain. If the CHR would then visit the facility because of a complaint, this would **endanger** everyone who had submitted a complaint.

The Office of the Ombudsman is an independent agency with jurisdiction to handle complaints regarding public officials and employees, which also includes prison authorities. We are

¹⁵ Commission on Human Rights Online consultation with CSOs/NGOs: Assessment of psycho-social support and mental health programs for persons deprived of liberty during imprisonment 3 June 2021, 9 AM to 12 NN via Zoom Meeting

¹⁶ Ombudsman: Republic Act No. 6770; for the CHR: Executive Order No. 163 from 5 May 1987 for CHR.

unaware of any complaint submitted to the Ombudsman by a detainee as it is deemed to also pose a risk to the complainant.

A lawyer shared that during her visit in 2018, she was not able to talk with the detainee in private as **a prison guard was always present** and the detainee therefore did not share anything about her detention condition.

In most facilities, Covid-19 pandemic restrictions are still in place. Lawyers or other visitors and detainees have to speak through a phone as there are still plastic partitions that separate detainees and visitors. Detainees worry that **conversations are intercepted**. In other facilities there are still no visitors allowed, or the visitor can pay for an anti-gen test after which the detainee can be brought to an outside area for a meeting. The standards and procedure differ greatly from one facility to another and there are no uniform measures.

It is worth noting, that a former detainee who was interviewed relativised her account on detention conditions by frequently adding “okay lang naman” meaning not bad, not good -- just okay. She made sure that she would only narrate the situation and not sound as if she was complaining. Although she has been released from detention, she still seemed afraid of the authorities.

7. Detention Monitoring

The Philippines acceded to the Optional Protocol to the Convention against Torture (OPCAT) in 2012 but **has not yet established an NPM**. The Commission on Human Rights by way of Decree established itself as interim NPM. In this capacity it started to visit and monitor detention facilities. To our knowledge, the interim NPM visited three detention centres for women since it started operating in 2018; one centre in a province and two in Metro Manila. There is no publicly available report of these visits.

The SPT visited the Philippines in 2015, but the visit report was not made public. It is therefore unknown whether any facilities for women were visited and if so what the situation and recommendations were.

Because of the lack of a properly established independent prison monitoring, several CSOs visit detention facilities, including MAG. Since 2019, MAG has visited 15 detention facilities where women were detained. The processing of requests usually takes very long, and requests are often denied. The government recently increased the number of requirements and documents it requires before an NGO can visit, making it more challenging for CSOs to monitor detention.

From March 2020 to February 2022, MAG was only able to conduct virtual visits and provided virtual counselling. The first in person visit after Covid-19 outbreak was made in February 2022 to provide medical services to a detainee who requested that MAG visit her. MAG was, however, not allowed to enter the facility, the detainee was brought to an outside area.

8. Torture and Abuse

There have been numerous reports indicating that women experience rape and other forms of gender-based violence in detention, particular police detention.¹⁷ The CHR in a recent publication reported of inmates who described that they experienced sexual abuse, verbal

¹⁷ Dignity, *Conditions for Women in Detention in the Philippines*, https://www.dignity.dk/wp-content/uploads/pubseries_no11.pdf.

abuse, discrimination, humiliation as well as beatings.¹⁸ Moreover, detainees reported about punishments that included isolation, cleaning, physical exercises, and deprivation of communication with family.¹⁹

It has been reported that detention in police stations can be particularly dangerous for women. The longer women stay in police detention, the more vulnerable to violence they become and the greater the risk that they are coerced into sexual activities for their release.

Most detainees do not dare to complain as they are afraid that torture and abuse would get worse or do not know where to complain. Many women in detention lack education and financial means which contributes to their vulnerability and lack of justice.²⁰

9. Recommendations:

- Amend laws on detention and rights of detainees in compliance with the The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders;
- Improve conditions of detention by providing sufficient food and access to gender-sensitive health care, including adequate pre- and post-natal care, provide sanitary pads, and underwear;
- Reduce overcrowding by releasing women who are detained for non-violent crimes and by granting humanitarian releases;
- Establish an NPM and provide it with enough resources and institutional independence to monitor all places of detention including women detention centers;
- Enact a law or rule that requires prosecutors to file a case in court within 48 hours or less, in cases of warrantless arrest when a probable cause for the alleged crime is found in order to avoid lengthy stays in police detention;
- Allow CSOs with relevant expertise to visit and monitor detention facilities, also during emergency situations like Covid-19 pandemic;
- Repeal restrictive Covid-19 measures, including measures that do not allow for confidential meetings between detainees and their family and detainees and their lawyers;
- Provide for facilities under the BJMP and BuCor where women can stay with their infants;
- Ensure safety and support to women who are released;
- Ensure contact with outside world, including lawyers and especially children, also during emergency situations like the Covid-19 pandemic.
- Ensure gender-sensitive decision making on criminal justice matters by including women and those affected or those with lived experiences of prison;

¹⁸ <https://chr.gov.ph/wp-content/uploads/2022/01/Inside-Stories-A-Report-on-the-Situation-of-Women-Deprived-of-Liberty-from-Select-Detention-Facilities.pdf>

¹⁹ Ibid.

²⁰ Ibid.