



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Consideration of reports submitted by States parties
under article 19 of the Convention**

**Follow-up responses of the Philippines to the concluding observations of
the Committee against Torture (CAT/C/PHL/CO/2)***

[5 November 2010]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Torture and ill-treatment and insufficient safeguards during police detention

Paragraph 7 of the concluding observations

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a policy of total elimination in respect of any ill-treatment or torture by State officials. As part of this, the State party should implement effective measures promptly to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation, including minors, are included in a central register which functions effectively.

The State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Moreover, it should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.

Instituting a policy of total elimination in respect of any ill-treatment or torture

1. The Philippine National Police Letter of Instructions 55/07 (LOI "PAMANA") dated 7 December 2007 sets forth new policy directions and guidelines in the Philippine National Police (PNP) to respect, promote and protect human rights. Hereunder, the PNP leadership adopts the general policy that "under no circumstance shall any police officer inflict, instigate or tolerate... torture or other cruel, inhuman or degrading treatment or punishment against any person".
2. LOI "PAMANA" directs the implementation of a Comprehensive Human Rights Development Program (CHRDP) in order to serve as a blueprint for action on human rights and advocate human rights-based policing. Under the Human Rights Violation Prevention component of the CHRDP is the regular conduct of inventory of detainees in lock-up cells and random inspections of police stations to check lock-up cells which are now being currently undertaken on a monthly basis. Inspection of lock-up cells ensures that persons under custody are treated in a humane and dignified manner and that their individual rights are upheld under existing laws. To ensure compliance, a Memorandum-Directive dated 4 November 2008 was issued to concerned PNP units/officers/personnel prescribing the conduct of inspection in lock-up cells and the guidelines therefor. Specifically mentioned is the prohibition against any act of torture or inhumane treatment of detainees. For 2009, a total number of 3,798 lock-up cells were inspected.
3. The PNP Human Rights Affairs Office (PNP-HRAO) issued on 4 December 2009 and distributed 3,000 copies each of the following materials on human rights-based policing:
4. The PNP Guidebook on Human Rights-Based Policing serves as a reference and supplement to the official Police Operational Procedures Handbook and various PNP Training Manuals. Part II thereof explains the concept of human rights-based policing while Part III thereof expounds the 10 International Human Rights Standards for Law

Enforcement including Standard 7 (Detainees' rights), Standard 8 (Humane treatment of detainees) and Standard 10 (Reporting Violations).

5. "Know Your Rights: A Citizen's Primer on Law Enforcement" provides basic information that citizens can use to better understand police operations, which includes proper police operational procedures and citizen's rights during official contact with PNP personnel.

6. The PNP has issued LOI 21/08 (PATNUBAY II) which aims to clean up the ranks and rid the PNP of defiant cops who refuse to toe the line of transformation in the PNP and pushes forward the advocacy on the image of a God-fearing, humane, dependable, approachable and presentable "Mamang Pulis" (Mr. Policeman).

7. The Prevention Aspect of LOI "PAMANA" deals with the formulation of pre-emptive measures designed to lessen incidents of misdemeanors by eliminating the causes that breed them. Hereunder, all PNP offices/units are required to create/activate their own reporting systems to serve as watchdog or check and balance mechanism against erring PNP personnel and act with dispatch on reports reaching their office as well as maintain a watch list of PNP personnel with derogatory information or suspected to be involved in crimes and other nefarious activities.

8. The Philippine policy against torture was further reinforced when the 14th Congress of the Republic of the Philippines enacted Republic Act No. 9745 (RA 9745) known as the Anti-Torture Act of 2009 which was signed into law by the President on 10 November 2009.

9. Section 2 of RA 9745 enunciates the declared policy of the State:

(a) To value the dignity of every human person and guarantee full respect for human rights;

(b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times, and that no person placed under investigation or held in custody of any person in authority or, agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;

(c) To ensure that secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and

(d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; and all other relevant international human rights instruments to which the Philippines is a signatory.

Failure to bring detainees promptly before a judge, thus keeping them in prolonged police custody

Paragraph 7 (a) of the concluding observations

14. The PNP Operational Procedures Manual of 2002 mandates an arresting officer to deliver the arrested person to proper authorities without unnecessary delay and within the

time prescribed in article 125 of the Revised Penal Code (12, 18 or 36 hours, as the case may be). The random conduct of inspection of lock-up cells ensures that police personnel comply with this rule. A Memorandum issued on 4 November 2008 requires concerned PNP units/offices/ personnel not to detain arrested persons beyond the reglementary period prescribed by law.

15. Section 9a and Section 11 of RA 9745 provide ample protection, viz:

Section 9. Institutional Protection of Torture Victims and Other Persons Involved A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

(a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the Armed Forces of the Philippines (AFP). A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein;

Section 11. Assistance in Filing a Complaint The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.

The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BHRAC) nearest him/her as well as from human rights non-government organizations (NGOs).

Absence of systematic registration of all detainees, including minors, and failure to keep records of all periods of pretrial detention

Paragraph 7(b) of the concluding observations

16. The Bureau of Corrections Operating Manual (2000), chapter 1, provides for a Reception and Diagnostic Center in every prison which shall receive, study and classify inmates and detainees committed to the Bureau's penal establishments. The Center is tasked to keep a complete record of an inmate which shall include the inmate's personal circumstances; brief personal, social and occupational history; the result of the intake interview, and initial security classification.

17. Furthermore, every prison shall keep a bound registration book wherein all commitments shall be recorded chronologically. The register shall contain the following entries: (1) Name of the inmate, (2) Reason for commitment and authority therefor, (3) Sentence, (4) Date and hour of admission, and (5) Date and hour of discharge or transfer and basis therefor.

18. On the part of the Bureau of Jail Management and Penology (BJMP), guidelines provided for in the BJMP Operations Manual of 1996 on the commitment and classification of inmates, reception procedures, as well as the constitution of disciplinary boards have been duly issued and disseminated to the various field units.

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19. Rule III of the Manual provides for the proper classification of inmates according to their sentence, gender, age, nationality, health, criminal records, etc.
20. The two (2) general classes of inmates are:
- (a) Prisoners; and
 - (b) Detainees
21. Prisoners are classified as to length of prison term, viz:
- (a) Insular Prisoner – who is sentenced to a prison term of three (3) years and one (1) day to death; (b) Provincial Prisoner – sentenced to prison term of six (6) months and one (1) day to three (3) years; (c) City Prisoner – sentenced to a prison term of one (1) day to three (3) years; (d) Municipal Prisoner – One who is sentenced to a prison term of one (1) day to six (6) months.
22. Detainees are classified as to those – (a) undergoing investigation; (b) awaiting or undergoing trial; and (c) awaiting final judgment.
23. Rule IV of the Manual gives due recognition to a well-planned and orderly reception of inmates as part-and-parcel of good jail management. The belief is that a good first impression of the correctional process will greatly affect the inmates' behavior while in confinement and after their release.
24. In accordance with Rule IV, the following procedures are to be observed:
- (a) The Jail Desk Officer shall carefully check the credentials of the person(s) bringing in the inmate to determine his/their identity and authority.
 - (b) He shall examine carefully the arrest report and the authenticity of the commitment order or *mittimus* in due form to determine whether the inmate has been committed under legal authority as provided for by Section 3 Rule XIII, Rules of Court.
 - (c) The admitting officer or jailer shall search carefully the inmate for weapons and other contraband.
 - (d) The admitting officer or jailer shall take all cash and other personal property from the inmate or detainee, list them down on a receipt form in duplicate, duly signed by him and countersigned by the inmate. The original receipt should be kept for the record and the duplicate copy should be given to the inmate.
 - (e) All cash and other valuables of the inmate must turned over to the Trust Officer or Property Custodian for safekeeping covered by official receipts.
 - (f) The inmate shall then be fingerprinted and his photograph taken.
 - (g) The admitting officer or jailer shall accomplish a jail booking report in four copies, attaching thereto the photograph of the inmate to be distributed as follows:
 - (i) BJMP Central Office
 - (ii) Regional Office
 - (iii) Provincial Administrator's Office
 - (iv) Jail File
 - (h) The newly admitted inmate shall be thoroughly strip-searched followed by a careful examination of his clothing for contraband. He shall be checked for body vermin, cuts, bruises and other injuries, and also for needle marks to determine if he is drug addict.
 - (i) The Jail Physician or the Local Health Officer shall immediately conduct a thorough medical examination of the inmate.

(j) When it is not possible for the Jail Physician to be in attendance during the admission of the inmate, the receiving officer shall observe the mental alertness, overall appearance and any physical abnormalities or appearance of rashes or scratches or other identifying marks of the individual and note them down in the inmate's jail booking report. The inmate observed to be suffering from any contagious disease shall immediately be isolated.

(k) A medical record shall be accomplished by the Jail Physician or Local Health Officer showing the condition of the inmate at the time of admission, and, to include, if possible, his medical history.

(l) A social case study shall be made by a social worker as a basis for the inmate's classification and proper segregation.

(m) The sentenced prisoner shall be provided with jail clothing. His personal clothing should be receipted, cleaned and stored safely until his release. The detainee, for his own safety, may be allowed to wear civilian clothes.

(n) As soon as possible, the inmate should be briefed or oriented on the jail rules and regulations.

(o) The Warden shall establish and maintain prison records of all inmates consisting of information concerning the inmate's name and alias, if any; weight, height and body marks or tattoos, if any; nationality and, if a naturalized Filipino, his previous nationality; previous occupation/profession; prior criminal convictions; and previous place of residence. In the case of a prisoner, the record shall also indicate the crime for which he was convicted; the sentencing court, his sentence and commencement date thereof; institutional behavior and conduct, and the date he was received confinement.

25. In the case of a detainee, the record shall indicate the Investigation Slip number of his case, if pending with the prosecutor's office; or the criminal case number in the trial court where the case is pending; or the case number in the appellate court if the case is on appeal and the status of the appeal; or the reason for his detention.

26. The prison record shall be signed by the Warden.

27. On the matter of minors or children in conflict with the law (CICL), Republic Act 9344 (RA 9344 – Juvenile Justice and Welfare Act of 2006) requires the turnover of those minors to the Local Social Welfare and Development Office or other accredited NGOs not later than eight (8) hours upon their apprehension. The PNP Training Manual in full accord with RA 9344 provides for the proper handling of and record-keeping with respect to the CICL.

28. The implementation of RA 9745 would provide further protection, viz:

Section 7. Prohibited Detention – Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are hereby prohibited.

In which case, the PNP, the AFP and other law enforcement agencies concerned shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, date of arrest and incarceration, and the crime or offense committed. This list shall be made available to the public at all times, with a copy of the complete list available at the respective national headquarters of the PNP and AFP. A copy of the complete list shall likewise be submitted by the PNP, AFP and all other law enforcement agencies to the Commission on Human Rights (CHR), such list to be periodically updated, by

the same agencies, within the first five (5) days of every month at the minimum. Every regional office of the PNP, AFP and other law enforcement agencies shall also maintain a similar list for all detainees and detention facilities within their respective areas, and shall make same available to the public at all times at their respective regional headquarters, and submit a copy, updated in the same manner provided above, to the respective regional offices of the CHR.

Paragraph 7 (c) of the concluding observations

Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members (arts. 2, 10 and 11)

29. The Supreme Court has, through the Guidelines on the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties that it issued on 29 August 2006, added jail visitations among the tasks of the executive judges (AM No. 07-3-02-SC, Re: Guidelines on the Jail Visitation and Inspection, 14 October 2008).

30. Aside from preventing incidents of illegal detention, the new guidelines would ensure the protection of the dignity and wellbeing of the detainees. Presiding and executive judges, accompanied by their staff members, are required to personally conduct monthly jail visitations and inspections, inquire into the health conditions of the prisoners and determine whether or not the right of the accused to privately consult with counsel is being observed.

31. The presiding judges are also tasked to collect relevant data from such jail visitations and inspections, submit monthly reports pointing to areas requiring immediate action and recommendations for action, and to take immediate action on the conditions unfavorable to the detainees and urgent matters within their competence without the need of the executive judge's intervention.

32. Under the same guidelines, executive judges are obliged to ensure that the presiding judges are performing their jail inspection duties, to submit compliance reports of judges every quarter, and require jail wardens and heads of detention centers to submit monthly reports on the number of detainees who have pending cases under the courts. They are likewise required to check on the capacity, sanitary facilities, ventilation, food, medicines, access to health care, and the visiting hours in detention centers.

33. The Supreme Court would withhold salaries of presiding and executive judges who fail to comply with the new guidelines without prejudice to whatever administrative sanctions that it might also impose, as well as criminal action.

34. Under the Philippine National Police Operations Manual (POP), all PNP units are required to maintain an official police blotter which contains all basic information (the Rule 1, on the 5 "W"s, 1"H"). Police blotters are readily accessible to the public and the media with certain restrictions on confidential information.

35. Moreover, the POP directs the physical examination of an arrested person immediately after his arrest, prior to his release or any change of custody by a medico-legal officer or, in the absence thereof, by any government physician in the area. This procedure serves as a measure to check whether a person arrested or detainee has been subjected to any form of torture or ill-treatment during the entire period of his detention. The Guidelines in the Conduct of Inspection in Lock-Up Cells ensure that this procedure is followed by directing concerned PNP units to subject arrested persons to medical examination. In addition, the PNP has printed 5,000 copies of posters of the Rights of Persons Arrested, Detained or Under Custodial Investigation and distributed to all PNP units down to police stations.

36. Also, when a person is arrested, the arresting officer has the duty to inform the arrested person of his “Miranda Rights” as embodied under Republic Act (RA 7438), including the right to have a counsel of his own choice. The Memorandum on the conduct of inspection of cells directs the concerned PNP units to ensure that arrested persons have visitation rights by those persons provided for by law. Moreover, if they cannot afford the services of legal counsel, they shall be provided with one, free of charge.

37. In November 2007, all PNP Regional Offices were directed to print and distribute Miranda Doctrine cards to all PNP personnel assigned in their respective regions. The Cards were printed in English with a particular dialect translation on the other side. However, recognizing that many police officers still do not follow proper POP procedure on arrest and custodial investigation and the need to internalize the provisions of RA 7438, the PNP issued a Memorandum on the Use of “Miranda Doctrine Cards” dated 8 May, 2008 to concerned PNP units, directing all PNP personnel to carry the Miranda Doctrine cards at all times, know its contents by heart and properly read and explain the same to the suspects they are arresting or investigating.

38. The Commission on Human Rights of the Philippines (CHRP) remains a vigilant and vocal guardian of human rights, holding public hearings, conducting investigations and issuing advisories on specific cases and national issues such as the protection of human rights even during a state of national emergency. It provides assistance to victims, recommends cases for prosecution, and monitors the progress of cases through the criminal justice system. The CHRP also conducts visitation of jails to inspect the conditions of detention and treatment of prisoners. Specific complaints are looked into including medical examinations by the CHRP and its reports are made available to the public.

39. Section 12 of RA 9745 affords protection at the early stages of persons being detained, viz:

Section 12. Right to Physical, Medical and Psychological Examination.

Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment.

The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

Following applicable protocol agreed upon by agencies tasked to conduct physical, psychological, and mental examinations, the medical reports shall, among others include:

- The name, age and address of the patient or victim;
- The name and address of the nearest kin of the patient or victim;
- The name and address of the person who brought the patient or victim for physical, psychological and mental examination, and/or medical treatment;

- The nature and probable cause of the patient or victim's injury, pain, disease and/or trauma;
- The approximate time and date when the injury, pain, disease and/or trauma was/were attained;
- The place where the injury, pain, disease and/or trauma was/were sustained;
- The time, date and nature of treatment necessary; and
- The diagnosis, the prognosis and/or disposition of the patient.

Any person who does not wish to avail of the rights under this provision may knowingly and voluntarily waive such rights in writing, executed in presence and assistance of his/her counsel.

Training programmes for law enforcement personnel

40. The Comprehensive Human Rights Development Program (CHRDP) of the PNP (LOI "PAMANA") institutes Human Rights and International Humanitarian Law Seminars and Human Rights Deepening Seminars for police personnel that are regularly conducted to inform and educate them about various international human rights instruments as well as update them on current laws and procedures in connection with their law enforcement functions. The *Convention against Torture* and the recently enacted Anti-Torture Law (RA 9745) have been included in the Annual Training Programs and Mandatory Specialized Courses for police personnel.

41. Under LOI "PATNUBAY", all PNP units/offices are also required to conduct a 3-day mandatory Human Rights Seminar which shall include human rights violations, such as torture, which may be committed by PNP personnel.

42. RA 9745 further mandates in Section 21 on Education and Information Campaign:

The CHR, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (DILG) and such other concerned parties in both the public and private sectors shall ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The Department of Education (DepED) and the Commission on Higher Education (CHED) shall also ensure the introduction of human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.

Prompt, effective and impartial investigations

Paragraph 15 of the concluding observations

The State party should strengthen its measures to ensure prompt, thorough, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation, or continue any reported impermissible actions in breach of the Convention. The State

party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to ensure that the law enforcement personnel who are responsible for violations prohibited by the Convention are held accountable.

Strengthening of investigation measures

43. LOI HR-2009-01 was issued on 20 October 2009, creating the PNP Rights-Based Policing Committee (RPC) that serves as a high-level policy and advisory body for addressing human rights issues and concerns of the PNP. Under this LOI, the PNP adopts the General Policy/Guideline to “act on all reports and cases of alleged human rights violations with professionalism and transparency”. Regional RPCs are also created to decentralize and empower the leaders at all levels.

44. LOI PATNUBAY (GUIDANCE) of 30 April 2008 mandated the creation of a Task Force Organization to conduct strategic intervention to weed out defiant cops. The Investigation and Prosecution aspect thereof includes the institutionalization of procedures for acting on complaints against erring police personnel from receipt thereof down to the approval or disapproval of its Resolution by the disciplining authority. Chiefs of PNP offices/units are instructed to strictly and expeditiously implement existing directives, instructions and issuances to weed out undesirable elements from the PNP ranks and all Task Groups to strictly follow all laws, rules and regulations pertaining to personnel action.

45. Anchored on Republic Act (RA 8551 – PNP Reform and Reorganization Act of 1998) which lays down the processes and procedures for citizen’s complaints against police misconduct is the creation of the PNP – Internal Affairs Service (IAS). The PNP-IAS proactively conducts inspections and audits PNP personnel and units, investigates complaints and gathers corresponding evidence, conducts summary hearings on PNP elements facing administrative charges and files criminal charges as evidence warrants as well as assisting the Ombudsman in cases involving PNP personnel.

46. The PNP-IAS conducts *motu proprio* investigation of incidents where death, serious physical injury or any violation of human rights have occurred in the conduct of police operations or where a suspect in police custody is seriously injured and where established rules of engagement have been violated. (sect. 39, RA 8551). The commission of any form of torture or ill-torture during police operation is also a violation of the police operational procedure (Section 8, Rule 11, POP) which can be investigated by the PNP-IAS. In addition, the PNP Chief and PNP Regional Directors are empowered to summarily dismiss or remove, after due notice and hearing, any respondent PNP member when the charge is serious and the evidence of guilt is strong; or when the respondent is a recidivist or has been repeatedly charged and the evidence of guilt is strong; or when the respondent is guilty of a serious offense involving conduct unbecoming of a police officer (sect. 42, RA 6975 of 1990, as amended by sect. 53, RA 8551 of 1998).

47. The creation of Human Rights Desks nationwide sought to enhance the capacities of police officers as human rights protectors pursuant to PNP Implementing Rules on Human Rights dated 14 February 1995. General Order No. DPL-07-20 complementing LOI PAMANA mandated the activation and supervision of human rights desks under the Offices of the Directors of the National Operational Support Units (NOSUs), Directors of all Police Regional Offices (PROs), Police Provincial Offices (PPOs); City Police Offices (CPOs), District Police Offices, Chiefs of Police of CPOs and City/Municipal Police Stations, which shall serve as advocates of human rights and perform functions relative to the protection of rights provided under existing laws within their respective areas. Among the functions of human rights desks are to monitor and maintain records/files of cases involving human rights violations allegedly committed by the police, as reported by different groups and individuals through any means within their area of responsibilities as well as to receive reports/complaints on violation of human rights allegedly committed by

PNP personnel and assist in the referral of complaints to appropriate investigating offices/bodies.

Independence to review individual complaints of police misconduct

48. Any personnel who join the PNP-IAS may not thereafter join any other unit of the PNP; neither shall any IAS personnel be allowed to sit in a committee deliberating the appointment, promotion or assignment of any PNP personnel (sect. 38, RA 8551). This ensures that the independence of the PNP-IAS as an investigative body within the PNP for administrative cases involving police personnel is not compromised.

Suspension pending investigation

49. The courts can immediately suspend any member of the PNP upon the filing of the criminal complaints/information when the offense involved are grave felonies when the penalty imposed by law is more than 6 years or, even if lower, when there is evidence that the accused police personnel is harassing the complainant and/or witnesses (sect. 47, RA 8551, as amended by sect. 55, RA 8551).

50. The PNP maintains a list of police personnel with cases perceived as human rights violations (HRV) with the offense committed and status of their cases. In the administrative level, from January 2008 to December 2009, the PNP has already meted the maximum penalty of dismissal from service against erring police personnel. The PNP also maintains a list of police personnel with criminal cases perceived as HRV filed against them. As of end of year 2009, there were 29 cases under pre-charge investigation and 134 cases under summary proceedings, or a total of 163 alleged HRV cases taken into cognizance. The number of personnel with pending administrative cases for the years 2008 and 2009 totals 1,844.

Effectiveness and independence of the Commission on Human Rights

Paragraph 16 of the concluding observations

The State party should take the necessary steps to strengthen the mandate, including access to detention facilities, and independence of the CHRP, including through adoption of the proposed CHRP Charter as well as allocation of sufficient resources for its effective implementation. The visitation mandate of the CHRP should include unhampered and unrestrained access to all detention facilities, including those under the jurisdiction of the military.

Visitation Mandate of the CHR

51. A Philippine National Police Memorandum dated 4 November 2008 was issued to concerned PNP units/officers/personnel to uphold the visitorial powers of the CHR to have access to and inspect lock-up cells and to check on the condition of detainees in all police stations. Moreover, a Memorandum of Undertaking dated 23 June 2009 was forged between the CHR and the PNP to facilitate and rationalize the inspection as well as serve the security and safety needs of the lock-up cells.

52. With the passage of RA 9745, the Commission on Human Rights assumes a new role as the head of the Oversight Committee tasked to monitor the Philippine Government's compliance with the said law.

53. The CHRP recognizes the need to enhance its investigation and forensic capabilities. Areas identified for development include: obtaining and preserving physical evidence, crime scene processing and documentation, improving interviewing techniques and physical examination of suspected human rights victims, familiarization with modern

identification methods and better cooperation between law enforcement and military as well as with non-government agencies.

54. The CHR is working for the approval of the CHR Charter filed under Senate Bill No. 106 and Senate Bill No. 106 which will provide additional budgetary allocation to the CHRP as well as unhampered and unrestrained visitorial powers over jails, prisons or detention facilities. Senate Bill No. 106 grants to the CHR expanded investigative powers and functions, recourse to wider preventive and legal measures, grant of immunity, preventive suspension, referral to disciplining authority, and *motu proprio* dismissal of cases. Section 26 of HBN 6822 further grants to the CHR the exercise of concurrent prosecutorial powers and, functions, viz:

“In the event of the failure of the prosecution agency of the government to initiate a preliminary investigation within ninety (90) working days from its receipt of the case recommended for prosecution by the Commission, the latter shall conduct the preliminary investigation and, upon a finding of probable cause, refer the same to the appropriate prosecution agency for the filing of the information and prosecution of the case.

55. Likewise, Senate Bill No. 297, Section 10 (Quasi-judicial Powers of the Commission) states:

“In addition to the powers and functions conferred upon the Commission by the Constitution and pursuant to Section 18 (11) and Section 19 of Article XIII thereof, the Commission is hereby vested with primary original and exclusive jurisdiction to investigate the criminal and administrative aspects of human rights cases per se, involving civil, political, economic, social and cultural rights, except cases falling under the exclusive jurisdiction of the Department of Justice and the Ombudsman.

Specifically, such jurisdiction shall extend over, but not be limited to, human rights cases where the violation of law or acts complained of is:

- (a) Tantamount to summary and/or extrajudicial execution (salvaging), or cases of disappearances;
- (b) A deprivation of a person's right to a fair and public trial;
- (c) A willful disregard of the rights of a person under custodial investigation;
- (d) A deprivation of the rights of political detainees;
- (e) An illegal demolition, arbitrary eviction or disposition of residential houses or units;
- (f) A violation of international conventions and international instruments ratified by the Philippine government relating to human rights;
- (g) Committed by any person or group of persons in the name of or for the advancement of the cause of an organization for political purposes, for religious beliefs or because of cultural or ethnic causes whereby a person or group of persons are duly injured or killed or deprived of liberty, property, and the free exercise of their civil and political rights. The offender shall also be liable for the injury and death caused by his/her or their acts as fined and punished under existing laws;
- (h) Tantamount to a denial of the rights to return to one's country;

(i) Tantamount to a denial of the rights to seek and enjoy asylum from persecution pursuant to Article 14 of the Universal Declaration of Human Rights; and

(j) Tantamount to unlawful discrimination. Such discrimination shall cover, but not be limited to, cases where the violation of law or act complained of is:

- i. Related to age, sex or disability;
- ii. Access by the public to places, vehicles and facilities;
- iii. Right to housing, land and other accommodation.

“Subject to the essential requirements of due process, it shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide human rights cases or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt uniform rules of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.

The Commission shall have the power to grant preliminary injunctions or restraining orders, upon verified motion or of so prayed for in the complaint, when it is established on the basis of sworn allegations that the acts complained of, if not enjoined, would cause some grave and irreparable damage or injury to any of the parties in interest.

No inferior Court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the Commission or any of its duly authorized and/or duly designated officer(s) in any case or controversy pending before it in the exercise of its judicial function.

It shall have the power to summon the parties and witnesses to a controversy, administer oath, take testimony in any investigation or hearing before it, issue subpoena ad testificandum and subpoena duces tecum and/or delegate such power to any official of the Commission who shall be a member of the Philippine Bar. It has the power to require submission of reports in relation to cases before it, compel the production of books documents and answers to interrogations, to enforce and execute its decisions, directives, orders, writs, and instructions through sheriffs or other duly deputized officers which shall have precedence over those emanating from any other authority except the Supreme Court or the Court of Appeals and those issued in habeas corpus proceedings.

It shall have the powers to punish direct and indirect contempt in the same manner and subject to the same penalties, as provided in the Rules of Court. Any violation of any final and executory decision, order or ruling of the Commission shall constitute contempt thereof.

Any controversy, matter and/ or case brought before the Commission shall, after compliance with the requirements of due process, be immediately heard and resolved within sixty (60) days from the date of its submission for decision or resolution. No decision or resolution shall be rendered by the Commission unless taken up in a formal session en banc properly convened for the purpose.”

Sexual violence in detention

Paragraph 18 of the concluding observations

The State party should take effective measures to prevent sexual violence in detention, including by reviewing current policies and procedures for the custody and treatment of detainees, ensuring separation of juvenile detainees from adults, and of female detainees from males, enforcing regulations calling for female inmates to be guarded by officers of the same gender, and monitoring and documenting incidents of sexual violence in detention, and provide the Committee with data thereon, disaggregated by relevant indicators. The State party should also take effective measures to ensure that detainees who allegedly are sexually victimized are able to report the abuse without being subjected to punitive measures by staff, protect detainees who report sexual abuse from retaliation by the perpetrator(s), promptly, effectively and impartially investigate and prosecute all instances of sexual abuse in custody and provide access to confidential medical and mental health care for victims of sexual abuse in detention, as well as access to redress, including compensation and rehabilitation, as appropriate. Furthermore, the Committee calls upon the State party to consider enacting the draft Prison Rape Elimination Act of 2008.

Prevention of sexual violence in detention

56. The regular inspection of lock-up cells, which is currently being undertaken by the PNP, functions as a measure to prevent sexual violence in detention. The Memorandum setting up the guidelines in the conduct of inspection directs concerned police units to ensure that females are not detained together with males.

57. Consistent with its mandate under Section 57 of RA 8551, the PNP has installed Women's and Children's Protection Desks in all police stations nationwide to administer and attend to cases involving sexual abuses and other sexual crimes committed against women and children. In charge of these desks are female police officers (2,728 female police officers in 1,830 WCPDs in police stations nationwide) who may be approached by victims of sexual violence in detention. At the institutional level, the PNP Women and Children Protection Center is the office that primarily handles women's and children's concerns.

58. Pursuant to the provisions of the Violence Against Women and their Children Law (RA 9262 of 8 March 2004) and the Convention on the Elimination of Discrimination Against Women, and sensitive to the rights and needs of female inmates, the Bureau of Jail Management and Penology (BJMP) established female dormitories in municipal, city and district jails accommodating 50 or more female inmates. As of 31 March 2010, a total of eighty-nine (89) such female dormitories had been established administered by female jail wardens (wardresses). These have grown in number from seventy-one (71) from the previous year.

59. The Magna Carta of Women (Republic Act No. 9710) enacted last 14 August 2009 specifically tasks the Government to ensure that women, especially those in vulnerable situations, are protected from all forms of violence. Section 30 of the said law recognizes women in especially difficult circumstances (WEDC), which includes women in detention, and mandates local government units to deliver necessary services and interventions to WEDC, such as medical and legal services.

60. The Magna Carta of Women likewise provides for an incremental increase in the recruitment and training of women in Government services, such as the police force, to achieve a 50-50 gender balance within the next five years. As of July 2009, female cops comprised 10% of the 120,000-strong police force. In the PNP's recruitment in 2008,

13.59% were women. As the number of women in the police increases, so does the number of female jail wardens who are needed to guard female detainees.

61. With the anticipated transfer of the direction, supervision and control of our provincial jails from the Provincial Governments to the BJMP under a more efficient and unified jail system, abuses can be minimized or prevented outright. Paving the way towards integration of all provincial jails with the BJMP are House Bill Nos. 0316 and 1995 entitled “an act providing for the modernization of Bureau of Jail Management and Penology (BJMP) jails providing the funds thereof and for other purposes” and “an act professionalizing the recruitment and selection process in the Bureau of Fire Protection (BFP) and the Bureau of Jail Management and Penology (BJMP), amending certain provisions of R.A. No. 9263, and for other purposes”.

62. On the other hand, Senate Bill No. 236 or the “Jail Integration Act of 2010,” aims to integrate all the national, provincial, sub-provincial, city, and municipal jails under a new bureau in the hope of improving correctional services and solving overcrowding in jails, which has been identified as an important factor in sexual violence in detention.

63. In the meantime, the BJMP continues to forge Memorandums of Agreement (MOAs) with the Provincial Governments (e.g., provinces of Bohol and Siquijor) for the transfer of the management of the provincial jails to the Bureau.

64. The Government continues to summon and rely on the support of local governments, private institutions and international organizations towards uplifting jail conditions to international standards. The “Call for Action” program launched by the International Committee of the Red Cross (ICRC) in cooperation with the BJMP, seeks to reform places of detention nationwide. A MOA is also being worked out within the Inter-Agency Committee on Prison Reforms that is being steered by the CHR, with members from concerned agencies of government, civil society and non-government organizations. The MOA delineates a collaborative blueprint for action towards reforming the country’s detention and penal facilities.

Children in detention

Paragraph 19 of the concluding observations

The State party should further reduce the number of children in detention and ensure that persons below 18 years of age are not detained with adults; that alternative measures to deprivation of liberty, such as probation, community service or suspended sentences are available; that professionals in the area of recovery and social reintegration of children are properly trained; and that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions.

Police custody of CICL / Separation of CICL from adult detainees

65. The PNP draws reference to RA 9344 (Juvenile Justice and Welfare Act) for the procedure in handling children in conflict with the law (CICL) especially when it comes to initial contact with police personnel. The pertinent provisions of the law are being incorporated in the Women’s and Children’s Protection Center (WCPC) Training Manual on the Investigation of Crimes Involving Women and Children, which are to be observed in addition to and takes precedence over the general procedure for handling arrested persons.

66. In respect of CICL, PNP personnel action is properly guided by Rule 22 para. (f) of Part V of the Implementing Rules and Regulations (IRR) of RA 9344 which states:

(f) ...turn over the custody of the child to the Local Social Welfare and Development Office (LSWDO) or other accredited non-government organizations immediately but not later than eight (8) hours upon apprehension of the child...”

67. Likewise paragraph (c) of Part V of the same IRR states that:

(c) The law enforcement officer shall explain to the child in simple language and in a language or dialect that s/he can understand:

- (1) The reason for placing the child under custody;
- (2) The offense that s/he allegedly committed; and
- (3) His/her constitutional rights.

68. The PNP training manual requires police personnel to maintain a record of CICL held in custody and to inform the parents/guardian of the stated reasons. The manual also provides the guidelines for investigating officers on how to conduct interviews of CICL.

69. RA 9344 further mandates that:

“In the event the court finds that community-based rehabilitation is inappropriate and deprivation of liberty through institutional rehabilitation is required, the child in conflict with the law may be committed to one of the following:

- Youth Development Home
- Youth Rehabilitation Center
- Agricultural Camps
- Other training facilities

70. Detention of CICL is a matter of last resort and should it become necessary, the child will be secured in quarters separate from that of the opposite sex and adult offenders.

71. The PNP Guidelines for concerned police units regarding the regular inspection of lock-up cells ensure that CICL are treated in the manner appropriate and according to the dictates of the law on juvenile welfare and justice. As of December 2009, there were 2,865 CICL temporarily held in PNP lock-up cells.

72. On the basis of Court Orders for their commitment, CICL may be temporarily housed in BJMP facilities. The BJMP maintains 2 youth centers, namely: the CRADLE (Center for Restorative Activities, Development and Learning Experiences) at Camp Bagong Diwa, Taguig City and the Operation Second Chance at Cebu City. As mandated by law, the CICL have separate accommodations from adults, with the male CICL segregated from the females. From 442 CICL in January 2008, there are now 348 CICL under BJMP custody as of March 2010, with ages that range from 15 to 18 years old. 288 of the CICL are in the Youth Centers, while 160 are being held in other BJMP-managed jails in separate facilities segregated by sex and from adult offenders. The BJMP continues to coordinate with the courts and social workers for the immediate transfer of the CICL to DSWD youth centers or local government units (LGUs) that have youth homes to hold them.

73. The Department of Social Welfare and Development (DSWD) reported a total of 710 CICL served at its Regional Rehabilitation Center for Youth (RRCY) during year 2009. Currently the DSWD operates nine (9) RRCYs located in Region I, III, VI, VII, VIII, IX, X, XI and Caraga.

74. It also manages the National Training School for Boys (NTSB) at Region IV-A, the National Training School for Girls (NTSG) also known as Marillac Hills in the National Capital Region (NCR) and the Home for Boys in Region V for CICLS.

75. The availability of funds and support sought by DSWD from the Local Government Units (LGUs) resulted in the donation of lots from the latter for the construction of four (4) RRCYs.

76. A new RRCY in Bansud, Oriental Mindoro, Region IV-B was inaugurated on 24 July 2009. The construction of RRCYs at Sablan, Benguet (CAR); Enrile, Cagayan (Region II) and Tupi, South Cotabato (Region XII) are slated for inauguration in 2010.

77. Total number of CICL served as of December 2009 in all Community and Center-Based programs of the DSWD is 2,959 consisting of 2817 Male (M), and 142 Female (F).

78. DSWD's Community-Based Programs assisted 1,901 (1,839 M + 62 F) CICL-CNSP (children in need of special protection) broken down as follows:

- Released on Recognizance 551 (543 M; 8 F)
- Released on Bail 11 (11 M; 0 F)
- Custody Supervision 419 (415 M; 4 F)
- Mediation/ Diversion 454 (430 M; 24 F)
- Others 466 (440 M; 26 F)

79. Center-Based Programs assisted CICL numbering 1,058 (978 M; 80 F), broken down into: RRCY 976 (976 M; 0 F), and Other Non-Children/ Youth Center 82 (2 M; 80 F)

80. Pursuant to Rule 22 para. (f), Part V of the Implementing Rules and Regulations (IRR) of RA9344, accredited NGOs such as PREDA Foundation (Region III) and Bahay Pag-asa (Region VI) had 589 CICL under their keeping; while Local Government Youth homes had custody of 565 CICL as of December 2009.

81. On the part of the Bureau of Corrections (BuCORR), as of today, there remain 32 CICL aged 21 years old and below serving time in national prisons and penal farms nationwide. Their continued detention is on account of the fact that they fall outside of the purview of RA 9344 since at the time of the commission of the offense they were above 15 years old but below 18 years of age. By virtue of RA9344, BuCORR has referred their cases to the Public Attorney's Office (PAO) for review.

82. A recent promulgation, the Revised Rule on Children in Conflict with the Law approved by the Supreme Court last December 2009 clarifies many issues arising from RA 9344, viz:

- Section 7 exempts children 15 years or younger at the time of the commission of the offense from criminal liability. The succeeding section then outlines the procedure for handling these children. Section 8 states that the children shall immediately be released to the custody of the parent/s and/or guardian.
- Children aged 15-18 without discernment (capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act) are likewise released to the parent/s and/or guardian, according to Section 9.
- For those with discernment, Section 11 outlines the duties of a person in authority taking a child into custody, which ensures that the child is not locked up in a jail or detention cell during the investigation and that should detention of the child

in conflict with the law be necessary, the segregation of the child should be secured in quarters separate from that of the opposite sex and adult offenders.

- Section 14 ensures that the initial investigation conducted by the police is conducted in the presence of a parent or guardian of the child.
- Section 25 states that no child shall be ordered detained in jail pending trial or hearing of the child's case.
- Once charged with a non-serious offense, Section 26 states that the child may be transferred to a youth detention home or rehabilitation center or other appropriate facility recommended by the DSWD. In the absence of such facilities, Section 29 states that the youth shall be placed under the care of a provincial, city or municipal jail, but that the child shall be provided with adequate quarters separate from adults and prisoners of the opposite sex.
- Sections 31 to 38 deal with diversion (alternative child-appropriate process of determining the responsibility and treatment of a child in conflict with the law without resorting to formal court adjudication) and diversion programs (programs the child in conflict with the law is required to undergo in lieu of formal court proceedings, which range from a written or oral reprimand to work-detail programs in the community.)
- Section 48 allows suspended sentences. If the child is found guilty of the offense charged, the court, instead of executing the judgment of conviction, shall place the CICL under suspended sentence, without need of application.

83. This recent promulgation by the highest court of the land will doubtless strengthen the Philippine Government's response to the issue of children in conflict with the law.