



JUST DETENTION
INTERNATIONAL

RAPE IS NOT PART OF THE PENALTY

*An Emerging Human Rights Crisis:
Sexual Violence in Philippine Detention Facilities*

An Alternative NGO Report Prepared for the 42nd
Session of the U.N. Committee Against Torture

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*“CASES OF RAPE, sexual abuse and torture committed against women detainees by the police, military and prison officials/personnel in the [Philippines] have been brought to the attention of the Commission on Human Rights.”—
Commission on Human Rights of the Philippines¹*

I. Introduction

Just Detention International (JDI) is pleased to submit this report to the U.N. Committee Against Torture (Committee). JDI is an international human rights organization based in the United States that seeks to end sexual violence in all forms of detention.²

The sexual abuse of detainees is an often overlooked aspect of the torture and ill-treatment that occurs in Philippine detention centers. The Commission on Human Rights of the Philippines (CHR),³ the Department of the Interior and Local Government (DILG),⁴ and human rights advocates⁵ have all highlighted cases of sexual abuse in Philippine detention facilities. Based on these reports and on anecdotal evidence, observers agree that prisoner rape is widespread in the Philippines and constitutes an urgent human rights concern.

Rape in detention, whether committed by corrections staff or by detainees, is recognized internationally as torture.⁶ Other forms of sexual assault and harassment in detention may constitute cruel, inhuman or degrading treatment, in which case they also amount to violations of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT),⁷ as well as other provisions of international human rights law. Cases of sexual abuse in detention tend not to be isolated incidents, but the result of a systemic failure to protect the safety of detainees. Victims of prisoner rape are left beaten and bloodied, contract HIV and other sexually transmitted diseases, and suffer severe psychological harm. Once released – and the vast majority of prisoners do eventually get out – they return to their communities with all of their physical and emotional scars.⁸

The Committee has identified a number of issues to be considered as part of the examination of the Philippines’ second periodic report that are directly linked to the government’s failings in meeting its legal obligations to prevent and address sexual abuse behind bars.⁹ These include: the lack of implementation of basic legal safeguards for detainees (para. 2); reports of torture and ill-treatment by police and military officials during investigative detention (para. 3); reports of severe overcrowding (para. 19); the failure to separate female inmates and juveniles from adult male inmates (paras. 20, 21); and ensuring the independent investigation and prosecution of reports of torture and cruel, inhuman, and degrading treatment of detainees by law enforcement and military officials (paras. 22-24, 30).¹⁰

II. Overview of Sexual Violence in Philippine Detention Facilities

Sexual violence in detention, like other human rights abuses, flourishes where it is surrounded by silence and secrecy. Few Filipino inmates are willing to come forward and report sexual abuse, but this lack of formal complaints is in no way an indication that facilities are safe. On the contrary, Philippine detention facilities exhibit many of the conditions that are most likely to lead to sexual abuse, including severe overcrowding, lack of adequate supervision, failure to separate the most vulnerable inmates from likely predators, homophobia, and a culture of silence around sexual abuse that results in impunity for corrupt officials.¹¹ Current and former inmates, corrections officials, prison ombudspersons, and human rights advocates agree that it is fear, shame, and a belief among inmates that no help is available that prevents survivors of sexual abuse from speaking out about their experiences.¹²

In one of the few official studies conducted on prisoner rape in the Philippines, four percent of 552 female jail inmates surveyed reported to the DILG that they had experienced sexual abuse while detained.¹³ Seven of the women had been raped, while others were subjected to abusive conduct including sexual touching, kissing, corrections officials exposing their genitalia, and attempted rape.¹⁴ A more recent study found that ten percent of the women detainees surveyed had had sex with jail officials prior to their transfer to the Correctional Institution for Women (CIW), illuminating the widespread abuse of women inmates by corrections staff.¹⁵

In 2001, in response to these and other reports of sexual abuse of women in detention by police, military, and prison officials, the CHR released the human rights advisory *On the Sexual Abuse and Torture of Women in Custody*, which noted that women who are prostitutes and those who have committed minor crimes or are alleged to have violated the Philippines' anti-vagrancy law are among those most likely to be subjected to sexual violence in custody.¹⁶ Such abuses have continued unabated, despite government efforts to address sexual violence against detainees, including a 2001 pronouncement by the Bureau of Jail Management and Penology (BJMP) that it had adopted a zero-tolerance policy toward staff sexual misconduct, and plans for the formation of a government task force on sexual violence against women in detention.¹⁷

Juveniles are also frequently the targets of sexual abuse in detention. Such abuse is often linked to the widespread failure to separate children from adults in detention facilities throughout the country, in violation of domestic and international legal protections.¹⁸ Despite the passage of the Comprehensive Juvenile Justice System and Welfare Act of 2006,¹⁹ which requires that children in police custody be held separately from adult detainees and from detainees of the opposite sex, children in custody continue to be placed deliberately in harm's way.²⁰ Moreover, it is not clear what steps, if any, have been taken to implement a key provision in the law that prohibits law enforcement officials from sexually harassing or making sexual advances toward juveniles in their custody.²¹

Documentation of sexual violence in Philippine detention facilities has focused predominantly on women detainees, juveniles, and political prisoners. However, there is growing evidence that sexual abuse is rampant throughout the country's criminal justice system, affecting men, women, and youth.²² In many provincial jails, officials continue to house women with male inmates,²³ and male corrections officers continue to guard female inmates in violation of agency regulations.²⁴ Gangs hold tremendous sway in male detention facilities and corrections officials often cede power to so-called "mayores" (gang leaders), due to corruption or in an effort to preserve institutional order.²⁵ Detainees most vulnerable to abuse and extortion regularly seek protection from the gangs, often providing money or sex in return.²⁶

The Anti-Rape Law of 1997,²⁷ the Rape Victim and Assistance Act of 1998,²⁸ and the Juvenile Justice and Welfare Act of 2006²⁹ are among the laws already in place that help to address sexual violence in detention. Notably, in 2008 lawmakers introduced to Congress the Prison Rape Elimination Act,³⁰ legislation modeled after a United States law passed in 2003.³¹ The law calls for the establishment of a zero-tolerance standard for sexual abuse in detention through the collection of national data on the incidence of prisoner rape along with an examination of the best and worst performing detention facilities, as well as the provision of grants and technical assistance to support efforts to address the problem. A second key piece of legislation calls for the separation of women detainees from males behind bars.³² In addition to this legislation, recently introduced to Congress are bills criminalizing torture,³³ improving professional standards and training for corrections officers,³⁴ and calling for the alleviation of overcrowding.³⁵

III. Recommendations

While the various enacted and proposed laws discussed above have the potential to bring about tremendous progress in the handling of sexual violence in detention, there are additional steps the government must take in order to fulfill its obligations under the CAT. Therefore, Just Detention International calls upon the Government of the Philippines to do the following:

Prevent Sexual Violence in Detention:

- Review current policies and procedures for the custody and treatment of detainees with an eye toward preventing sexual violence, in accordance with Article 11 of the CAT.³⁶
- Train all corrections personnel in the prohibition against torture – including the absolute responsibility under international law to protect detainees from sexual abuse – in accordance with Article 10 of the CAT.³⁷
- Ensure separation of juvenile detainees from adults, and of female detainees from males.

- Implement an effective classification system that identifies detainees vulnerable to sexual abuse and separates them from likely predators.
- Provide adequate housing for all detainees and take steps to address overcrowding.
- Enforce regulations calling for female inmates to be guarded by officers of the same gender.

Implement a Legal Framework for Addressing Prisoner Rape and Improving Independent Monitoring of Detention Facilities:

- Take legislative, administrative, and judicial measures to prevent torture and cruel, inhuman and degrading treatment, in accordance with Articles 2 and 16 of the CAT.³⁸
- Ratify the Optional Protocol to the Convention Against Torture (OPCAT).³⁹
- Enact the Prison Rape Elimination Act of 2008, as well as legislation criminalizing torture.
- Repeal the anti-vagrancy statute, a vaguely worded law that has often been used as a pretext for arbitrary arrest and detention of women who are then subjected to sexual abuse at the hands of law enforcement.⁴⁰
- Amend Penal Code §4, Article 245, “Abuses against chastity,” to criminalize all sexual contact between corrections staff and detainees, regardless of gender.⁴¹
- Enforce the Juvenile Justice and Welfare Act of 2006, to ensure, in particular, compliance with provisions aimed at protecting children in custody from sexual harassment and abuse.
- Permit Article 22 communications with the Committee, allowing individuals who are victims of sexual abuse in detention to address communications to the Committee once they have exhausted available avenues of relief within the Philippine legal system.

Ensure An Effective Response to Instances of Prisoner Rape:

- Ensure that detainees who 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 and impartially investigate and prosecute all instances of sexual abuse in custody in accordance with Articles 12, 13 and 14 of the CAT.⁴²
- Provide access to confidential medical and mental health care for survivors of sexual abuse in detention.

¹ Commission on Human Rights of the Philippines (hereinafter “CHR”), *On the Sexual Abuse and Torture of Women in Custody* 1 (Oct. 2001) available on-line at http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr029.pdf (last visited Feb. 27, 2009).

² To learn about Just Detention International’s (hereinafter JDI) *Philippines Initiative*, please go to http://www.justdetention.org/en/international_program.aspx. The Committee’s concerns about sexual violence in Philippine detention facilities are addressed in a more abbreviated manner in a joint civil society report to which JDI contributed. See PHILIPPINE HUMAN RIGHTS INFORMATION CENTER (PHILRIGHTS), et al., JOINT CIVIL SOCIETY REPORT ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN THE PHILIPPINES (2009).

³ CHR, *supra* note 1.

⁴ DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, GENDER AND DEVELOPMENT UNIT (hereinafter “DILG”), THE WOMEN OFFENDERS IN SELECTED REHABILITATION CENTERS IN THE NATIONAL CAPITAL REGION AND REGION IV AS OBJECT OF EXPLORATORY STUDY IN SEXUAL HARASSMENT (1996).

⁵ See, e.g., AMNESTY INTERNATIONAL, (PHILIPPINES) A DIFFERENT CHILDHOOD: THE APPREHENSION AND DETENTION OF CHILD SUSPECTS AND OFFENDERS (2003); AMNESTY INTERNATIONAL (PHILIPPINES) FEAR, SHAME AND IMPUNITY: RAPE AND SEXUAL ABUSE OF WOMEN IN CUSTODY (2001).

⁶ JDI, Fact Sheet, Prisoner Rape is Torture Under International Law (2009).

⁷ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”), G.A. Res.39/46, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51(1984) (entered into force June 26, 1987 and acceded to by the Philippines on June 18, 1986).

⁸ To learn more about sexual violence in detention, see JDI, Fact Sheet, The Basics About Sexual Violence in U.S. Detention (2009); JDI, Fact Sheet, Sexual Abuse in Detention is a Public Health Issue (2009).

⁹ Committee Against Torture, 42nd Session, List of Issues to be Considered During the Examination of the Second Periodic Report of the Philippines (CAT/C/PHL/Q/2).

¹⁰ *Id.*

¹¹ JDI (then Stop Prisoner Rape) examined the primary systemic conditions that give rise to sexual violence in detention and the populations most vulnerable to sexual abuse in an alternative NGO report submitted to the Committee. See STOP PRISONER RAPE (hereinafter “SPR”), IN THE SHADOWS: SEXUAL VIOLENCE IN U.S. DETENTION FACILITIES 8-17 (2006); see also, JDI, Fact Sheet, LGBTQ Detainees Chief Targets for Sexual Abuse in Detention (2009).

¹² SPR, *supra* note 11 at 17-21; Luz Rimban & Chit Balmaceda-Gutierrez, Philippine Center for Investigative Journalism, *No Justice for Women Raped in Jail* (Dec. 7, 1998) (citing 1996 DILG study which concluded that many cases remain unreported “mainly because of fear of authorities, of retaliation and punishment from the harassers, of being blamed, of humiliation, of shame, of not being believed.”); see also JDI, Fact Sheet, Mental Health Consequences of Sexual Violence in Detention (2009); JDI, Fact Sheet, The Need for Prison Oversight (2009); SPR, TEXAS UPDATE: TEXAS STATE PRISONS PLAGUED BY SEXUAL ABUSE 7 (2008).

¹³ DILG, *supra* note 4 [page unknown].

¹⁴ *Id.*

¹⁵ Nymia Simbulan et al., *High-risk behaviors and the prevalence of sexually transmitted diseases among women prisoners at the women state penitentiary in Metro Manila*, 52 SOCIAL SCI. AND MED. 599, 604 (2001). Because of the authority that corrections staff have over inmates, all sexual contact between staff and inmates is inherently abusive.

¹⁶ CHR, *supra* note 1.

¹⁷ See, AMNESTY INTERNATIONAL, (PHILIPPINES) TORTURE PERSISTS: APPEARANCE AND REALITY WITHIN THE CRIMINAL JUSTICE SYSTEM 38-39 (2003); see also, Press Release, KARAPATAN, KARAPATAN

demands unconditional release of peace advocate who was held incommunicado and tortured for two weeks (May 6, 2005) (describing sexual molestation suffered by political prisoner Angelina Bisuña Vda. de Ipong while in military custody).

¹⁸ PEOPLE'S RECOVERY EMPOWERMENT DEVELOPMENT ASSISTANCE FOUNDATION (hereinafter "PREDA"), REPORT ON THE DETENTION OF CHILDREN AND LAPSES IN THE IMPLEMENTATION OF THE COMPREHENSIVE JUVENILE JUSTICE SYSTEM AND WELFARE ACT OF 2006 10-12, 49 (2008).

¹⁹ Republic Act No. 9344 (2006).

²⁰ See, e.g., CHR, ASSISTANCE AND VISITORIAL OFFICE, JAIL VISITATION REPORT: PRISON AND JAIL CONDITIONS (JANUARY-DECEMBER 2007) 6 (2008).

²¹ Republic Act No. 9344 §21(d).

²² Rimban & Balmaceda-Gutierrez, *supra* note 11 (quoting Romeo Pena, then director of the Philippine National Police Directorate for Investigation, as stating that "there are cases of men getting raped [in prison]," even while denying that sexual violence against female detainees is common; see also, RAYMUND E. NARAG, FREEDOM AND DEATH INSIDE THE JAIL, A LOOK INTO THE CONDITION OF THE QUEZON CITY JAIL 63 (2005) (citing the practice by police of hitting and electrocuting the penis during interrogations of male detainees).

²³ CHR, *supra* note 20.

²⁴ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2008 HUMAN RIGHTS REPORT: PHILIPPINES (2009) (available on-line at

<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119054.htm>) (last visited February 27, 2009).

²⁵ NARAG, *supra* note 22, at 130; ASIAN AND PACIFIC CONFERENCE OF CORRECTIONAL ADMINISTRATORS, TWENTY-THIRD ANNUAL MEETING DISCUSSION PAPER: PHILIPPINES 14 (2003), available on-line at [http://www.apcca.org/Pubs/23/Philippines/Discussion%20Paper%20\(Philippines\).PDF](http://www.apcca.org/Pubs/23/Philippines/Discussion%20Paper%20(Philippines).PDF) (last visited Feb. 27, 2009).

²⁶ Editorial, 'I'm a human being, not an animal...'; THE MANILA TIMES (Oct. 24, 2008), available on-line at <http://www.manilatimes.net/national/2008/oct/24/yehey/opinion/20081024opi1.html> (last visited March 2, 2009).

²⁷ Republic Act 8353 (1997).

²⁸ Republic Act 8505 (1998).

²⁹ Republic Act 9344 (2006).

³⁰ *Prison Rape Elimination Act of 2008*, S.B. 2033, 14th Cong. (2008).

³¹ *The Prison Rape Elimination Act of 2003*, 42 U.S.C. § 15601 *et seq.* The law can be viewed on-line at <http://www.justdetention.org/pdf/PREA.pdf> (last visited March 2, 2009).

³² *An Act Providing for a Secured and Separate Prison Cell for Female Prisoners in Every District, City and Municipal Jail, Amending for the Purpose Section 63 of the Republic Act No. 6975*, H.B. 1137, 14th Cong. (2007).

³³ *Anti-Torture Act of 2007*, S.B. 1978, 14th Cong. (2007).

³⁴ See, e.g., *Professionalization of Prison Management Act*, S.B. 929, 14th Cong. (2007).

³⁵ *An Act Amending the 1st Paragraph of Article 39 of Act No. 3815...*, S.B. 3031, 14th Cong. (2009).

³⁶ CAT, Art. 11.

³⁷ CAT, Art. 10.

³⁸ CAT, Arts. 2, 16.

³⁹ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT"), G.A. Res. 57/199, U.N. Doc. A/RES /57/199 (Dec. 18, 2002). Philippine President Gloria Arroyo signed the OPCAT on April 22, 2008; it awaits ratification by the Senate.

⁴⁰ CHR, *supra* note 1. The anti-vagrancy statute is at Article 202 of the Revised Penal Code. S.B. 305, *An Act Decriminalizing Certain Acts of Vagrancy...*, 14th Cong. (2007), was approved by the Senate in 2008 and is currently pending before the House.

⁴¹ *An Act Amending Article 245 of the Revised Penal Code*, S.B. 1583, 13th Cong. (2004) would have renamed acts against chastity as sexual harassment by public officers. Congress did not pass the bill.

⁴² CAT, Arts. 12-14.