

**UNITED NATIONS  
HUMAN RIGHTS COMMITTEE  
Geneva, Switzerland**

*“The Committee is concerned that...many problems remain in practice, such as:  
xxx*

*Persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (art. 7)...”*

- *Human Rights Committee  
Concluding Observations, Philippines (2003)*

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**Summary**

**Complainants**

The five complainants are respectfully filing this petition to the Human Rights Committee in their own personal and/or representative capacity as child prisoners—illegally detained with adult crime suspects in police jails—by way of a class suit for and on behalf of an estimated 20,000 children accused of violating the law (CAVL) jailed every year in the Philippines<sup>1</sup> pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights.

Unlawful discrimination characterizes these violations committed by the President of the Philippines and top government officials, based on the principle of command responsibility, on account of the children's bleak economic status, lack of property, poor social origins, tender age, political powerlessness, and in the case of girl prisoners, sex, in contravention of Articles 2(1)(a) in relation to Articles 24 and 26.

They are representing not only themselves but all the other child prisoners, who are similarly situated and who cannot on their own seek redress for the dastardly violation of their dignity and human rights save through the complainants' representation before this Committee, due to the wall of impunity surrounding this Covenant violation and on account of their intimately and inextricably joint and common interests in seeking relief from the widespread, continuing, and institutionalized violation of the Covenant's *mandatory* requirement for the segregation of children and adult prisoners under Articles 10(2)(b) and 10(3).

### Violations

Their petition pertains to the institutionalized, widespread, and continuing incarceration of children with adult crime suspects, in contravention of Article 10(2)(b) and 10(3), in police headquarters, stations, and substations all over the Philippines, save for Cebu City. This occurs without transparency, accountability and redress, in violation of Article 2(3)(a), and contrary to the provisions of domestic laws in violation of Article 9(1).

In violation of Article 7, children are held under sub-human conditions thereby subjecting them to torture, cruel, inhuman, or degrading treatment or punishment. In the process, children—contrary to Article 10(1)—get stripped of their dignity and humanity and exposed to greater risks of being sodomized, raped, tortured, tattooed, and subjected to various despicable forms of abuse.

In violation of their right to equal protection of the law under Article 26, law enforcers deny children access to psychosocial, health, and legal services. Law enforcers also routinely violate the children's right to be informed of their right to remain silent and to have an independent and competent counsel of their own choice, pursuant to the Custodial Investigation Act (Republic Act 7438), in violation of Article 9(1).

Date: December 10, 2005 (Manila time)

#### 1. Information concerning the author of the communication

Surname (Family Name)	Caparas
Given Name	Perfecto
Nationality	Filipino
Profession	Attorney-at-Law

*Pro Bono* Counsel for Complainants and some 20,000 Class Suitors on a cumulative basis every year  
Supreme Court Attorneys Roll No. 39200  
Integrated Bar of the Philippines Lifetime Membership No. 00277  
IBP-Manila III Chapter  
Founder-Convener, Coalition to Stop Child Detention Through Restorative Justice  
<http://stopchilddetention.com>  
<http://coalitiontostopchilddetention.blogspot.com/>  
Place of Birth Manila, Philippines  
Present Address 433 Algeciras Street  
Sampaloc, Manila, Philippines

Please specify how you are submitting this communication:

Appointed representative/legal counsel of the alleged victim(s)

2. Information concerning the alleged victim(s) (if other than the author)

**Victim No. 1**

Deleted privileged information

**Victim No. 2**

Deleted privileged information

**Victim No. 3**

Deleted privileged information

**Victim No. 4**

**Victim No. 5**

Deleted privileged information

3. State concerned

What is the name of the State concerned? Philippines

4. Articles violated

Article 2(1) in relation to Articles 24 and 26 on discrimination

Article 2(3)(a) on effective remedies

Article 7 on torture, or cruel, inhuman, or degrading treatment or punishment

Article 9 (1) on procedures established by law

Article 10(1), 10(2)(b), and 10(3) on treatment with humanity and segregation of children and adult prisoners

#### 5. Domestic remedies

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies—recourse to the courts or other public authorities, when and with what results.

If possible, enclose copies of all relevant judicial or administrative decisions.

There is no official acknowledgment that the violations have been going on. Officials sweep the violation under the rug and refer to child prisoners as those held under BJMP custody only, without mentioning anything at all about children languishing in police prisons all over the country. Human rights advocates, concerned citizens, and counsel have mounted a sustained campaign to eradicate the institutionalized crime of locking up children with adult crime suspects in police jails for more than three years. This includes the following:

- Personal appeal and meeting with the President of the Philippines, Her Excellency Gloria Macapagal-Arroyo. Fr. Anthony J. Ranada, S.V.D. and counsel, sometime in January 2003 met with the President at the Parish of the Sacred Heart in Kamuning, Quezon City, where the President served as a sponsor in a wedding officiated by Fr. Ranada, with counsel assisting as sacristan. With Fr. Ranada, counsel personally handed over a letter of appeal signed by Fr. Ranada for the President to stop the detention of children with adult crime suspects in police jails, and proposed that the children be immediately diverted to the care and custody of the Department of Social Welfare and Development and/or next-of-kin by virtue of an executive order, pursuant to Article 191 of the Child and Youth Welfare Code (Presidential Decree 603) and Section 11 of the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders. Counsel pleaded to President Arroyo to stop the illegal detention of children with adult crime suspects, saying that all sectors of society welcomed such a move, and that the Filipino people would never forget her for such a gesture. The President replied that “Filipinos easily forget.” The President also replied that a violation of the law cannot be remedied by the issuance of an executive order. She also said that the matter should simply be referred to Secretary Jose Lina of the Department of Interior and Local Governments. She also asked counsel how many children were in prison. The letter handed over to the President proposed the issuance of an executive order to stop the Covenant violations, a draft of which was attached to Fr. Ranada’s letter. The President referred the matter to Secretary Silvestre Afable, of the Presidential Management Staff. Thereafter, Secretary Afable referred Fr. Ranada’s and counsel’s appeal to the Department of Social Welfare and Development.
- On April 1, 2003, the DSWD replied to Fr. Ranada, harping about the 2002 Rule on Juveniles in Conflict with the Law issued by the Supreme Court, without mentioning anything about the actual occurrence of the jailing and mixing up of children with adult crime suspects in police jails nationwide. Needless to say, the practice of detaining children with adults in police jails continued unabated.

- Appeal to and meeting with Honorable Chief Justice Hilario Davide of the Philippine Supreme Court to stop the illegal detention of children with adult crime suspects in police jails in 2003 as evidenced by attached two-page letter dated January 2, 2003 officially received by Chief Justice Davide's office. Fr. Anthony J. Ranada, President of the PRESO Foundation, Atty. Rene V. Sarmiento, PRESO Foundation Trustee, and counsel met with Chief Justice Davide in his office and personally appealed to him to stop the incarceration of children with adult crime suspects. The Chief Justice referred the matter to the Supreme Court *en banc* and eventually came up with a Circular<sup>2</sup> for the judiciary to confront the violation within its own realm. However, the President and her top officials persist in committing human rights violations against child prisoners by locking them up with adult crime suspects in police jails.
- "Petition to issue a memorandum circular to stop the illegal detention of children" addressed to the Department of Interior and Local Governments (DILG) signed by Fr. Anthony J. Ranada, counsel, and other concerned citizens, asking then Interior Secretary Jose Lina to direct law enforcers to divert and turn over children immediately upon arrest to the care and custody of the Department of Social Welfare and Development, and for law enforcers to refrain from further jailing them with adult crime suspects in police jails This six-page letter was received by Secretary Lina's office on March 3, 2003 as shown by the rubberstamp marking and signature found on page 1 thereof (Annex \_\_). The Department of Interior and Local Governments, who exercises supervisory authority and control over the Philippine National Police, however, did not stop the illegal detention of children with adult crime suspects in police jails, despite this petition.
- Two separate appeals titled *Tattooing and Beating Up of Children in Police Custody* addressed to then Interior and Local Governments Secretary Jose Lina signed by Fr. Anthony J. Ranada, and the other by concerned citizens and counsel, dated June 30, 2003, and received/signed by Secretary Lina's office on the same date. As a result, The DILG circulated the petition among the various officials of the National Police Commission and DILG as shown by the attached one-page routing slip and disposition form, consisting of three pages. This paper work, however, never impacted the situation of child prisoners, who continue to be locked up by law enforcers with adult crime suspects in police jails upon arrest.
- Appeal by counsel to all Family Court Judges of Quezon City, National Capital Judicial Region, Philippines, titled *An Open Exhortation for Grassroots Judicial Activism to Stop Police Child Detention*, to dismiss the cases against children accused of violating the law on the ground of failure of jurisdiction due to the violation of the constitutional rights of children committed by law enforcers and prosecutors by means of locking them up with adult crime suspects in police jails, consisting of 12 pages and signed/received by the different Family Court judges on March 25, 2003. The Family Court judges, however, continued to assume jurisdiction over the cases of child prisoners, some of whom were shown by counsel to the Family Court judges to be sporting fresh tattoos emblazoned by adult prisoners with whom they were lumped together during police custody, despite judicial notice that the children brought before them for trial had suffered from illegal detention in the company of adults in police jails.
- Petition to the Commission on Human Rights by Fr. Anthony J. Ranada, Atty. Rene V. Sarmiento, and counsel to investigate and denounce the illegal detention of children with adults in police jails nationwide dated April 23, 2003.<sup>3</sup> As a result, the Commission on Human Rights headed by Chairperson Dr. Purificacion Quisumbing, a staunch human rights advocate herself, came up with a Resolution dated December 17, 2003<sup>4</sup> condemning the Philippine government's violation of its treaty

obligation to segregate children from adult crime suspects. Still, the police practice persisted due to the callousness and child-insensitivity of the Office of the President, Secretary of Interior and Local Governments, Secretary of Justice, and Chief of the Philippine National Police.

- Complaint to the Secretary of Justice bringing to his attention the torture, tattooing, sexual abuse, and other atrocities committed against children accused of violating the law during police detention, signed/received on November 24, 2003. No action.
- Mass petition to the Supreme Court for the expansion of the scope of judicial diversion signed/received on January 8, 2004. The Supreme Court referred the matter for further evaluation and study.
- Petition by human rights advocates, concerned citizens, and counsel to the Department of Justice, calling for the Secretary of Justice to require all prosecutors nationwide to ensure the compliance by law enforcers with Article 191 of the Child and Youth Welfare Code (Presidential Decree 603), signed/received on January 7, 2004. Then Acting Justice Secretary Merceditas Gutierrez promised to require prosecutors to ensure that law enforcers observe Article 191 of the Child and Youth Welfare Code as published in a national daily.<sup>5</sup> But the violations persist.
- Draft Department of Justice Memorandum Circular signed/received on January 7, 2004. No action.
- Rally in front of the Ombudsman Building simultaneous with the symbolic filing by former child prisoners and street children on December 10, 2003 of the five complainants' class action against the President and her top officials for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 7610), covered by national television and national newspapers.<sup>6</sup> This resulted in the dismissal of the child prisoners' class suit.
- March-rally in front of the Commission on Human Rights Building and dialogue with Commission officials on December 10, 2003. This resulted in the reiteration of the Commission's resolution calling for the Office of the President to comply with the Philippine government's treaty obligation, to no avail.<sup>7</sup>
- March-rally near the Presidential Palace by children belonging to various organizations, together with counsel, on January 8, 2004, covered by national television and various national newspapers.<sup>8</sup> No effect, other than the action of the police in getting the name of counsel and the various organizations engaged in the mass action.
- Online and print media appeals to the President on various occasions, including the putting up by the Coalition to Stop Child Detention Through Restorative Justice of a website proving the wide scale violation.<sup>9</sup> The President and her top officials feigned ignorance about the illegal practice of jailing some 20,000 children on a yearly basis with adults in police jails. They instead subtly passed the buck to the judiciary, although the detention occurred without the knowledge and authority of the court, since the children were arrested and locked up without judicial warrants.
- Exactly two years ago, during the commemoration of International Human Rights Day on December 10, 2003, the complainants, through counsel, brought a 50-page class suit on behalf of all child prisoners against the President of the Philippines, the Chief of the Philippine National Police, the Secretary of Interior and Local Governments, and the Secretary of Justice, docketed as CPL No. C-03-2723, demanding that the Office of the Ombudsman charge all of them with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 3019), for causing undue injury to child prisoners on account of their incarceration with adult crime suspects in police jails under sub-human conditions and denied of access to psychosocial, health, and legal services. They also demanded for the Ombudsman

to order the President et. al. to stop the institutionalized barbarity. The Ombudsman dismissed the complaint and defended the President et. al., claiming they were all “far removed” from the violations. The “undue injury” averred to by the child prisoners was also disparaged by the Ombudsman as purely “speculative.” Counsel filed a Motion for Reconsideration, which the Ombudsman denied, saying the referral of the children’s complaint to the Department of Social Welfare and Development and the Commission on Human Rights already constituted “effective remedies.” Yet, despite this so-called “effective remedies” provided by the Ombudsman, the wide scale incarceration of children with adult crime suspects in police jails persists. In reiterating their appeal to the Ombudsman to order the President and her top police and Cabinet officials to stop the Covenant violations, complainants even cited the Committee Concluding Observations, thus, to wit:

“The United Nations Human Rights Committee, in its concluding observations<sup>10</sup> adopted on October 30, 2003 after considering the Philippine government’s own second and third consolidated report, remarked:

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*11. The Committee expresses concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse, including of detainees, many of whom are women and children, that have neither been investigated nor prosecuted. Such a situation is conducive to perpetration of further violations of human rights and to a culture of impunity.*

*The State party should adopt and enforce legislative and other measures to prevent such violations, in keeping with articles 6 and 9 of the Covenant and to improve the implementation of relevant laws. The State party should conduct prompt and impartial investigations, and prosecute and punish the perpetrators.*

*12. The Committee is concerned about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of the Covenant. The Committee notes that evidence is not admissible if it is shown to have been obtained by improper means, but remains concerned that the victim bears the burden of proof in this event.*

17. *The Committee is concerned that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable. While recognizing that certain legislation has been adopted in this respect, many problems remain in practice, such as:*

*a) The absence of adequate legislation governing juvenile justice and the deplorable situation of children in detention, including those held without evidence for prolonged periods of time;*

*b) Persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (art. 7);*

*c) Street children vulnerable to extrajudicial executions and various forms of abuse and exploitation; (underscoring supplied)*

Despite the complainants' averment that the matter of the illegal detention of children with adult crime suspects constitutes a matter of judicial notice, the Ombudsman nonetheless failed and refused to heed their clamor for the President and her top officials to be ordered to stop this injustice. In short, the complaint was dismissed.

- On December 11, 2003, the Office of the President, speaking through then presidential spokesman Ricardo Saludo, vowed to investigate and stop the violations when representatives of the national media raised the issue during a press conference in Malacanang (Presidential Palace). Saludo told reporters, thus:

*"We will speedily take any measures necessary in order to address any injustice or violation of rights that may be happening. At this point we do not have any solid information yet on the situation and we'll have to look into this."*

This official statement made by the Office of the President was published in the December 12, 2003 issue of *TODAY* newspaper.

For more than three years, concerned citizens in the Philippines and overseas, along with the Coalition to Stop Child Detention Through Restorative Justice, have been



clamoring to stop these Covenant violations to no avail. The materials posted on the Web as a part of the media and cyber campaigns to stop these violations could still be accessed through the Internet.<sup>11</sup> Journalist Chris Rogers of BBC even testified before the U.S. Congress about these violations, to wit:

*Statement by Chris Rogers, ITN<sup>12</sup>  
Members of Congress, ladies and gentlemen:*

*When I was sixteen years old I presented a series for BBC television aimed at children my age. The series looked in depth at the lives of teenagers around the world. In Rio de Janeiro, Brazil, I spent many days filming with some of the city's 10,000 street children, who steal, beg and sniff glue to get by for another day. Their plight shocked me just as it was intended to shock a young British audience. From that moment on I decided to dedicate much of my career as a journalist to highlighting the plight of the youngest of the poor, and so my relationship with the Jubilee Campaign began. I have filmed children sleeping in the sewers of Bucharest, Romania, and found an eight-year-old girl working for rice by chipping rock boulders in a stone quarry in Katmandu, Nepal. She had maggots seeping from her leg; her flesh was rotting from a wound caused by a rock which had fallen on her. These images I have reported have never failed to shock the audience I brought them to, and yet nothing seems to change. Millions of children continue to suffer.*

*Five months ago I was on the Internet, researching a story I wanted to do on the gun culture of Brazil's street children, but the amazing Google took me to a web site created by a Catholic missionary in the Philippines. There I saw a photo of five-year-old Rose, one hand clinging to the bar of a prison cell, the other clinging to a can of Coke. Sitting behind her in the crowded cell were adult convicts and other children who had been rounded up by the police that night. On his website Father Shay Cullen explained that his only weapon against the imprisonment of children was his camera. He hoped this photo would inspire an end to this breach of children's rights. With the help of Jubilee, I made contact with Shay in the hope that I could tell Rose's story. What I didn't realize was that there were 4,000 other children like her, all held in overcrowded adult jails, accused of petty crimes, some guilty of nothing, unwanted and homeless. This was a bigger story than I first thought--one that had not been told, one that would be difficult to tell--but Shay Cullen, it seemed, had faith in me. We decided the only way I could possibly obtain the images I needed was to go undercover and pose as a member of Shay's team--a group that tirelessly tours the country's prisons helping child prisoners. You will see the results of this undercover investigation in a moment and they will shock and appall you.*

*It's just after 2 p.m. in Washington. What happens at 2 p.m. in a Manila jail? In Novatas Prison there are around forty children standing in a cell with adults right now, their hands tightly gripping the cell door bars. The metal, heated by the intense sun, will be scorching their palms and fingers. They have to cling to something, as they are so weak from hunger and thirst. They would lie on the hot floor but there isn't any room; they have to stand! Just*

outside the cell there is a television set hung on the wall, and sometimes the sexual images of women in films and commercials become too much for the sexually deprived adult inmates. The child prisoners know that soon they will have to have sex with one of the adult men yet again, or else face a beating. Thirteen-year-old Hussain has been there four months after being accused of stealing a necklace. He is soaking wet; the temperature is as hot as a heated oven. He feels sick from the neverending stench of body odor and urine. At this time of day sewage water starts to bubble out of the drains on the floor, and in about ten minutes Hussain will have to find the energy to climb the prison bars to escape the filthy water that is already up to his ankles. The local sewage system can not cope with the monsoon rains. If he isn't sexually abused today he will definitely be beaten until he has swept the floors and dried the furniture when the water retreats.

In another jail we found ten-year-old Karim, accused of stealing flip-flops. At first, the prison warden wouldn't let us into the open cell where Karim was being held; even he didn't want to go in there. He said "our lives would be at risk" because Karim was sharing the cell with rapists, murders and alleged terrorists. In another city jail we discovered 45 young boys sharing a cell with what appeared to be two adult men and a woman. Some of the boys looked traumatized, sitting in silence and staring into the air, lifeless, perhaps disturbed. One of them pointed to the woman and said to me, "He is dangerous." I said, "He? Don't you mean she?" "No, he," the boy replied. The transvestite giggled as he told us he had a "special relationship" with the boys. One of the men dragged a young boy out of a wooden box attached to the wall. These are known as privacy boxes; in other words, they are used for sexual privacy. Today those boys are still there, sharing their cell with sexual offenders. The prison insists that it is an important part of a sexual offender's rehabilitation to have responsibility over minors.

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When I brought these images, these stories, this suffering to British viewers, the ITV News switchboard was jammed. 8,000 viewers called in the space of one hour, all wanting to express their horror and shock at what they had seen. They offered money; some even offered to adopt some child prisoners, but it isn't enough. Not even Father Shay and his organization can save every single child prisoner. 20,000 are thrown behind bars in the Philippines every year; it's just too many to save. All the countries that lock up children in adult jails are signatories of international treaties on children's rights. This is the only thing that can save every child prisoner, but it's not worth the paper it is written on until politicians and organizations such as the UN act by imposing and enforcing such laws. If a country says it can't afford to abide by the law, give them the money.

Shortly after my reports were broadcast, I received a letter from the chief executive of ITV News. It said, "It is not our jobs as journalists to change the world, but it is our job to expose events that the world might not otherwise have seen. If that inspires change then it is a glorious side effect. I truly believe your work is doing just that."

*I never believed that was possible until I was told of the reaction of ITV News viewers and I was invited to speak here today. Please don't let me down. More importantly, don't let the world's one million child prisoners down. Their lives are in your hands.*

Fr. Shay Cullen, founder of the PREDA Foundation, decried the Philippine government's restriction of the PREDA staff visit to children in prison after Chris Rogers exposed the barbarity the Philippine state commits against the children. Fr. Shay's disclosure of the Philippine state's fresh efforts to further put a veil of secrecy to this practice runs as follows:

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*Filipino children in prison, an appeal to the US Congress*

*(republishing, copying, no restrictions)*

*By: Father Shay Cullen<sup>13</sup>*

*The situation of children in jail is not greatly improving as the Philippine government has restricted our visits to the children's cells to monitor the conditions and to see that adults are not allowed inside with them. The President has also banned any media reporting on the situation. This is a deplorable cover up of the violation of the rights of the children and in effect will allow the abuse to go on with impunity as pedophiles and rapists and hardened criminals are in those jails. There are dungeons of fear and filled with frightened children. The Jubilee Campaign headed by the charismatic founder and director Danny Smith has been working with Preda to change this situation bring new legislation to protect the children and to support them in recovery and schooling at the Preda home for abused and traumatized children.*

*Jubilee has arranged for me to address the US Congress twice and to get their help and support. Five congressmen and two senators have written to the president of the Philippines to persuade her to change the situation and give Preda a disused building in Castillejos, Zambales for a new home for these victims of inhumanity and brutality.*

*I testified a second time at the US Congress and here are excerpts from my address to them.*

*Dear honorable members of Congress,*

*Since I last testified before the Congressional Sub-committee on International Relations on 13th of September this year I returned to the Philippines to continue the work visiting the prisons and jails and working to have as many children and minors released as possible. The state itself admits as many as 3,700 children are incarcerated at any given time, but in reality over a period of one year or so, an estimated 20,000 children can see the inside of a jail for weeks or months before being released. Many are not even legally charged and few are actually convicted of any crime. They are in fact accused and imprisoned in the most dangerous conditions as innocent and blameless children.*

*I am from Ireland and a missionary in the Philippines for 35 years. I bring to your attention the condition of children in prison in the Philippines. I founded the Preda Foundation in 1974. It is based in Olongapo and with 54 dedicated Filipino professionals and in coordination with committed organizations like Jubilee Campaign works to counter the trafficking of children, human rights violations and visits and rescues children from prisons all over Metro Manila.*

*There are now more than 100 children rescued by Preda social workers from the terrible conditions of the prison cells which inflict physical and psychological abuse on the kids some are only ten years old. This has been made easier, thanks to the compassionate action of the Supreme Court that responded to a request to ease the rules of court and permit diversion and custody of children in conflict with the law be given to accredited child caring organizations such as the Preda Foundation (People's Recovery Empowerment and Development Assistance).*

*Fifty-seven of these children and youth aged 12 to 17 are residing at the Preda Home and they have disclosed to us the extent of the suffering, abuse and treatment that in some cases amounts to torture. They are the most convincing witnesses of their own sufferings. Even after my last testimony we are now banned from visiting the children in their cells.*

*The gross systematic and daily violations of these inviolable and sacred rights are nothing new. In the past years we at Preda have documented these violations and when ignored by Philippine authorities we brought the evidence before the United Nations Committee on Human Rights in Geneva, October 2003. The Philippine government panel, present at the hearings, was asked to explain but failed to do as adequately as the conditions of children in prison were unknown to them. We resorted to the media to inform them.*

*We have appealed to the Philippine authorities for the children to be separated from the criminals and pedophiles but little has been accomplished. Small steps are noted. The minors in the Navotas prison cell were transferred to a rehabilitation center south of Manila and the Philippine Senate has brought the Comprehensive Juvenile Justice Bill forward as a result of publicity. We hope there will be a new-found commitment to human rights and care of the poor and the downtrodden especially poor youth, the weakest and most vulnerable of all.*

*Filipino children in prison, appeal to US Congress Part 2*

*By: Father Shay Cullen*

*(Published in the UK, Ireland, Hong Kong, Philippines  
and Worldwide by Internet)*

*The general reason or excuse as to why the children are subjected to such sub-human conditions is that there is no money for children's homes to provide therapy, rehabilitation and education for children in conflict with the law. However this is far from reality as government officials have announced huge spending on city beautification projects and other infrastructure projects that are less important and urgent than the plight of thousands of children behind bars. It is a matter of what the officials think or consider being the priority of good governance, the protection of the rights of abused and suffering children or self-promotion and enrichment projects.*

*The Philippines is among the richest nations in Asia but only 2% of the population of 85 million own or control 70% of the national wealth. The ruling elite also control the political process and the government itself. Inequality, unjust foreign debt and corruption have caused thousands of children to be left abandoned. The Department of Social Welfare and Development estimates that 70,000 children are living on the streets of Metro Manila*

partially or fulltime. As many as 1.2 million are working children throughout the country.

*In recent weeks I found the same if not worse conditions of children mixed in with criminals and rapists in filthy, disease-infested prison cells that are no better than medieval dungeons. Here the children are crammed into hot humid overcrowded cells where bodies lie on bodies in a shocking tangle of humanity, all struggling to remain sane and alive in conditions where disease such as TB, HIV-AIDS, scabies and hepatitis are prevalent. Children don't have a chance and are physically and psychologically scarred for life.*

*Sub-human conditions; attempted suicide  
There is no room in many cells for all to sleep together, some stand while others lie down on the hard concrete floor. Insects, mosquitoes, cockroaches and even rats have to be endured. The children live in constant fear and terror of being beaten, abused and raped by the adult criminals. Some slash their wrists to escape the wretchedness and hopelessness of their lives. They receive no medical or dental treatment other than occasional charitable organizations can provide. There is no regular outdoor recreation, schooling or exercise.*

*Visits are strictly limited and active legal assistance is not existent other than what the charities can provide. Social workers are banned from visiting the cells for fear of witnessing the inhumane conditions or the presence of adults.*

*The only relief from the sticky, oven-like humidity is electric fans, which we provide, and a TV. To ease their pain and danger of getting raging blisters and infected boils we are distributing mattresses to some jails. The food allowance for each inmate is the equivalent of .25 cents a day. They eat what the children describe as pig slop, usually scooped by hand from common pot and as the weakest, they get the least. Providing vitamin supplements is useless as these are taken from them by the adult prisoners before they can even swallow them.*

*One 14 year old boy, Mark, reports he was attacked by a mentally deranged prisoner and beaten to the point of semi-conscious. Another described how he had to fight off the pedophiles and rapists that prey on the young boys. There are small wooden cubicle in the cells where the young boys and brought and forced to perform oral sex on the adults and others are gang raped. Each cell is ruled by a mayor, or cell boss and his word is law. The minors must obey like slaves, provide services to the adults, massaging, rubbing, and easing their sexual needs. They clean the sometimes single toilet hole and empty the buckets of urine that serve as a toilet in some cells.*

*Visits curtailed, cell visits banned  
Instead of allowing Preda social workers to visit the jail cells to see the health and condition of the children we are banned and prevented from entering the cells. It is an order from higher authorities we are told, by whom we don't know. The use of an abandoned building in Zambales for a children's home has not been approved to date. [End]*

- Appeals to the officialdom can be found even in the official website of the Office of the President, as follows:

*Eliminate DSWD, BJMP red tape to divert kids from adult police jails, Arroyo urged*<sup>14</sup>

• (3347 bytes)

Posted: 9/19/2005 • 11:36 GMT+8

Quote-reply

By:

perfecto

registered: 8/24/2005

member

Philippines

*The statement of Executive Secretary Eduardo Ermita vowing to pull out all children languishing with adult crime suspects in cramped city and municipal jails and turn them over to the care of the Department of Social Welfare and Development is welcomed by the Coalition to Stop Child Detention Through Restorative Justice. This attempts to answer the legitimate clamor by all sectors of society for the government to stop this institutionalized crime of lumping up children with adult prisoners, victimizing thousands of children belonging mostly to the poorest of the poor.*

*In order to weed out this barbarity permanently, we urge the President to de-operationalize the bureaucratic requirement of DSWD and the Bureau of Jail Management and Penology for a court-issued commitment order before admitting children to their custody. Instead, DSWD, and to some extent, BJMP – where appropriate facilities for children exist – should be ordered by the President to immediately admit children upon their arrest even without such court orders.*

*This approach would effectively divert and save children from being incarcerated with adult crime suspects in police headquarters, stations, and sub-stations, where they risk getting sodomized, raped, tortured, and tattooed on a national scale.*

*The usual practice is for the police to lock up children, upon arrest, over extended periods in filthy police cells swarming with adult crime suspects all over the country, save for Cebu City, while awaiting orders from backlog-ridden courts to commit the children to BJMP custody. For its part, however, DSWD generally admits only children with a suspended sentence – also by virtue of court orders – after having been found guilty by family courts.*

*This bureaucratic technicality being followed by DSWD and BJMP is the reason cited by law enforcers in routinely condemning children to rot with adult crime suspects in police dungeons. The President should decisively eradicate this ghastly police practice by directing the police to immediately turn over children to DSWD and/or BJMP, and for the latter to admit the children to their custody, without exemption, even in the absence of court orders. By simply casting this DSWD and BJMP bureaucratism into oblivion in favor of the best interests of child prisoners, the President would be able*

*to break this scourge of widespread police child prison abuse once and for all.*

*For their part, the police and prosecutors could do their investigative and inquest duties after the children's turnover to DSWD and/or BJMP custody.*

*The President should also earmark operational budgets for DSWD and BJMP, from the President's discretionary or intelligence funds, for their child-oriented initiatives and efforts to reintegrate children with society. The corporate community – together with other stakeholders – could follow suit by bankrolling just and humane alternatives to detention as medium- and long-term strategies to prevent and erect the barrier of non-recurrence of criminal behavior among the young.*

*Atty. Perfecto Caparas*

*Convener*

*Coalition to Stop Child Detention Through Restorative Justice*

*Email: [coalition@stopchilddetention.com](mailto:coalition@stopchilddetention.com)*

*Reference:*

*Ermita bares transfer of children in prisons to DSWD youth rehabilitation centers*

*<http://www.gov.ph/news/default.asp?newsid=13464>*

*Global Filipinos take child prisoner issue to UN Security Council<sup>15</sup>*

*• (5751 bytes)*

*Posted: 9/6/2005 • 13:34 GMT+8*

*Quote-reply*

*By:*

*perfecto*

*registered: 8/24/2005*

*member*

*Philippines*

*<http://nanay.com/NANAY%20PHILIPPINES/NEWS%20UPDATES/UN%20Council.htm>*

*URGENT: An Open Letter to the UN Security Council*

*September 5, 2005*

*Lauro L. Baja, Jr*

*Ambassador and Permanent Representative to UN*

*Security Council*

*Philippine Center Building*

*556 5th Avenue*

*New York, NY 10036*

*Dear Ambassador Baja:*

*In September 2005, Philippine President Gloria Macapagal Arroyo will be presiding over a summit meeting of the Security Council, and Foreign Affairs Secretary Alberto G. Romulo is also scheduled to preside over a thematic debate in the Security Council on "The Role of Civil Society in Conflict Prevention and the Pacific Settlement of Dispute."*

*As a member of the Security Council ([http://www.un.int/philippines/security\\_council/](http://www.un.int/philippines/security_council/)), the Philippines will focus its attention and energy on the following objectives:*

- 1. Strengthen the collective security mechanism established under the U.N. Charter.*
- 2. Emphasize the importance of the rule of law in the maintenance of international peace and security. (including, among others: the prevention of impunity by violators of human rights and international humanitarian law; and protection of civilians, their rights and freedoms*
- 3. Provide a strong basis for a multilateral consensus in pursuing the Security Council's primary responsibility for the maintenance of international peace and security.*

*This month's Summit provides a unique opportunity to have an open, frank and constructive dialogue with the members of UN Security Council, and to address a number of critical issues that threaten the international security and protection of human rights.*

*We are referring to the CNN-ITN documentary aired on August 9, 2005 entitled "UNICEF: Million Kids In Prison". In the Philippines alone, the number of small children as young as 8 years old in the Philippines who are potential victims of sodomy, rape and abuse for being imprisoned with adult criminals has risen from 20,000 in 2003 to a soaring 52,000 in 2004 ! Similar problems have been documented in Pakistan, Albania, Brazil, Burundi and Indonesia.*

*Global outrage in response to the CNN documentary has resulted in the unified and intensified effort among both Filipinos and non-Filipinos throughout the world, to address this crucial human rights issue that further aggravates the already volatile political situation and conflict in the Philippines. In less than two weeks, a Petition to Save Philippine Children in Prison which was posted online on August 22 (<http://www.petitiononline.com/FilChild>), has elicited more than 4,000 signatures from around the world, urging the United Nations to hold the Philippine government responsible and accountable for its failure to protect the rights of Children in Conflict with the Law, as mandated by the UNICEF-sponsored Convention on the Rights of the Child (CRC). The United Nations Human Rights Committee is also urged to take effective measures for immediate implementation of the UN Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions, for the Philippine government to pass the Consolidated Juvenile Justice Act and provide appropriate funding to protect the human rights of Children in Conflict with the Law.*



*In his report entitled "In Larger freedom: Towards Development, Security and Human Rights for All" that was presented on March 21, 2005 in preparation for the September Summit, the UN Secretary General stressed that these words from the UN Charter "convey the idea that development, security and human rights go hand in hand". We therefore urge the President to address, discuss and resolve this crucial issue, among others with the other members of the UN Security Council, for the sake of the millions of children whose international basic human rights are currently being violated.*

*As a corollary, we also would like to emphasize that the United Nations Millennium Declaration, adopted by over 150 Heads of State in September 2000, resolved to halve the world's poverty level by the year 2015. We urge the world leaders attending the United Nations Global Summit to consider various initiatives, including debt-for-equity proposals that would help to improve the poverty level of the most heavily indebted nations.*

*Sincerely,*

*Jocelyn H. Bruce, MD  
Founding President & CEO, NANAY Inc  
(On behalf of numerous national and international organizations concerned about the human rights of children in prison)*

*cc:  
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*Justice Secretary should divert kids away from police jails<sup>16</sup>*

*• (7434 bytes)*

*Posted: 8/27/2005 • 06:23 GMT+8*

*Quote-reply*

*By:*

*perfecto*

*registered: 8/24/2005*

*member*

*Philippines*

*The Honorable Secretary*

*Department of Justice*

*Republic of the Philippines*

*The Honorable Justice Secretary:*

*In the name of thousands of children of the generations to come - we, members of government and non-government organizations and concerned individuals - would like to appeal to your good office to please uphold the best interest of the child principle enshrined in the UN Convention on the Rights of the Child (CRC) at the inquest prosecution stage by diverting children, especially girl-children and children with mental disabilities, in conflict with the law to the custody of their own family and/or responsible persons who would act as in loco parentis to ensure their appearance during trial rather than hauling them off to jail to suffer from dehumanization and trauma.*

*This way, a number of children would be saved and spared from further brutality occasioned by their illegal detention in cramped police jails in the company of adult prisoners during which children get tattooed, tortured, sodomized, and raped. We say spared from further inhumanity because in practice, and as the de facto state policy, children get arrested and illegally detained at congested police jails together with adults over long periods of*

*time without access to legal, medical, social, and psychological assistance and services.*

*We are deeply concerned over this continuing human rights violation perpetrated against our voiceless children, especially in light of the fact that the turn of the century witnessed the growing number of children in conflict with the law estimated to have mushroomed to 52,000 last 2004.*

*In 2003, the office of Senator Francis Pangilinan estimated the number of children in conflict with the law to have jumped to 20,000. This could be considered a conservative estimate in view of the lack of monitoring and documentation on the worsening phenomenon of children in conflict with the law that is being aggravated by the gnawing economic hardships that victimize especially the children of the poorest of the poor. In 2002 alone, the Public Attorney's Office reported having rendered legal aid to 13,300 children in conflict with the law.*

*According to Bureau of Jail Management and Penology statistics, there were 1,936 children prisoners throughout the country as of April 2002, on top of the 96 children prisoners who had been sentenced during the same period. These children formed part of the 39,038 prisoners' population during the same period.[1]*

*Police child detention stands as the official norm, notwithstanding the fact that the law prohibits police child detention and mandates that a child "from the time of his arrest be committed to the care of the Department of Social Welfare." [2]*

*Police child detention itself should be criminalized pursuant to the letter and spirit of the Special Child Protection Act or RA 7610 as nothing could be more inimical to the psychological, emotional, social, and holistic development and well-being of children other than incarcerating them over long periods of time under sub-human conditions. This also contravenes the law against the infliction of any form of cruel, inhumane, and degrading treatment and punishment under the 1987 Constitution, the UN CRC, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

*The Department of Justice is empowered to institute this diversionary measure during inquest proceedings based on the principle of *parens patriae*. This is also in compliance with the Philippines' treaty obligation.*

*This move is welcomed by all sectors of society.*

*The findings of United Nations experts have already shown that subjecting children to contact with the criminal justice system only exposes them to the virus of criminality as well as ingrains in them a deep sense of social antipathy and rebelliousness against authority. After suffering from prolonged detention occasioned by the snail-paced administration of justice - aggravated by child insensitive judicial players and retributive laws - children*

*prisoners who metamorphose into hardened individuals because of this insidious child rights violation suffer from social stigma and ostracism.*

*What is widely considered as the cure therefore is even worse than the perceived problem of supposedly criminal behavior among the young who need our guidance and love.*

*In light of the enactment by the Honorable Supreme Court of the 2002 Rule on Juveniles in Conflict with the Law, which further entrenches in our municipal law the best interest of the child principle embodied in the Family Courts Act of 1997 or RA 8369, we propose the adoption by the Department of Justice of a humane, child-sensitive, and human rights-oriented alternative to child detention pursuant to the principles of restorative justice embodied in Section 4 paragraph o of the Supreme Court-enacted Rule on Juveniles - a form of justice that heals and seeks to identify, address, and eradicate the root causes of the perceived criminal behavior of children, repair the harm that has been done and indemnify the victim, as well as seeks to involve the family and the community in crime prevention and non-recurrence.[3]*

*Our proposed DOJ Memorandum Circular seeks to divert children age 10 to 14 to the custody of their parents and legal guardians and those age 15 and above to the care of DSWD. Those charged with victimless crimes like vagrancy, solvent-sniffing or illegal gambling should not be detained but released immediately to the custody of their next-of-kin.*

*Our proposed policy - which upholds the Tokyo Rules[4] - addresses the problem of jail congestion, overworked social workers, understaffed DSWD, BJMP, and PNP offices, lack of adequate facilities, and absence of budgetary allotment for children prisoners.*

*The judicial practice of subjecting children prisoners to prolonged detention pending the conduct of protracted court proceedings should likewise be criminalized for contravening the best interest of the child principle and the mandate of the Beijing Rules[5] that detention should only be a measure of last resort and undertaken only after proper consideration of the child's best interests, peculi@r circumstances and special needs and characteristics.*

*Thank you very much.*

*Coalition to Stop Child Detention Through Restorative Justice*

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*[1] In 2001, there were 1,824 child detainees (consisting of 1,714 boys and 110 girls) on top of the 99 sentenced child prisoners who formed part of the total 37,158 prisoners during the period.*

*Children prisoners also made up 1,800 of the total 35,783 inmates in 2000, on top of the 130 sentenced boys and seven sentenced girls.*

*[2] PD 603 or the Child and Youth Welfare Code (Article 191) and the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (Section 11)*

*[3] Further, Section 8 of RA 8369 provides that “alternatives to detention and institutional care shall be made available to the accused including counselling, recognizance, bail, community continuum, or diversions from the justice system.”*

*[4] UN Standard Minimum Rules for Non-Custodial Measures*

*[5] UN Minimum Rules for the Administration of Juvenile Justice*

*Child prisoners<sup>17</sup>*

*• (3472 bytes)*

*Posted: 8/24/2005 • 08:03 GMT+8*

*Quote-reply*

*By:*

*perfecto*

*registered: 8/24/2005*

*member*

*Philippines*

*Law enforcers who lock up kids with adults liable for 12-year jail term*

*The ghastly state norm and practice of throwing 13,300 to 20,000 children in police jails packed with adults—including those facing capital offenses like murder and rape—is brazenly illegal, nay, a criminal act, for which law enforcers, and their superiors who walk in the corridors of power, are liable for up to 12 years imprisonment.*

*Locking up children with adult crime suspects constitutes a flagrant violation of Article VI, Section 10(a) of the Special Child Protection Act (Republic Act 7610). This provision penalizes ordinary individuals who commit “other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development” with imprisonment ranging from six years and one day to eight years (prision mayor minimum). It reads:*

*“(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.”*

*But Article XII, Section 31 of RA 7610 slaps a higher penalty of imprisonment—ranging from 10 years and one day to 12 years (prision*

mayor maximum)—upon law enforcers and their superiors who violate this provision. It reads:

*“(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee.”*

*It is a matter of judicial notice (requiring no evidence for being beyond dispute) that jailing children with adult crime suspects, including gang members, under sub-human conditions—and deprived of access to psychological, medical, social, and legal assistance and services—is grossly inimical and prejudicial to their psychological, emotional, social, moral, spiritual, and physical well-being and development. The damage on the part of the victims could even be permanent, i.e., initiation to a career of crime, distrust and antipathy towards authority and society, trauma, and stigma, etc. This is especially true for hapless children living in the shadows of social existence, including street urchins, beggars, child laborers, prostituted girls and boys, children with mental disabilities, and those hooked on substance abuse, who get sodomized and raped, tortured, tattooed, and subjected to various forms of cruel, inhumane, and degrading treatment and punishment during police custody. Remember Baby Ama?*

*Were it not for esprit d' corps and the blessings of the powers-that-be, law enforcers, along with their superiors holed up in Malacanang—who knew and were in a position to know about this grievous injustice, but failed to punish their subordinates and stop this institutionalized human rights violation—are liable for prosecution under RA 7610 for their shameless act of jailing children with adults with impunity and on a continuing basis.*

*The international community universally condemns this egregious form of crimes against humanity. Both the United Nations Convention on the Rights of the Child and the International Covenant on Civil and Political Rights outlaw the non-segregation of children and adult prisoners.*

*Atty. Perfecto Caparas*

*Convener*

*Coalition to Stop Child Detention Through Restorative Justice*

*Other domestic remedies exhausted:*

**PRESS RELEASE: COALITION TO STOP CHILD DETENTION THROUGH RESTORATIVE JUSTICE<sup>18</sup>**

*Hold GMA, top officials liable for wide scale child prison abuse, rights group urges Ombudsman*

*PRESIDENT Arroyo and top officials should be held criminally liable for the wide scale jailing of children with adults due to command responsibility, a rights group urged the Ombudsman today.*

*In its motion for reconsideration asking the Ombudsman to reconsider its earlier order dismissing the suit against Arroyo and her top officials, the Coalition to Stop Child Detention Through Restorative Justice, a group of 26 human rights groups in the country, urged the Ombudsman anew to slap graft charges against Arroyo and top police and Cabinet officials and order them to stop the widespread abuse of children in prison.*

*“The President’s and the alter egos’ inaction, notwithstanding their own actual and/or constructive knowledge of this serious affront to the children’s fundamental dignity and human rights, as they actually know and/or are in a position to know the egregious, wide scale, and continuing violations, bespeaks of their own acquiescence to and giving of their tacit approval and authority, for the continuing commission of such violations, under the cloak of impunity, and contrary to the peremptory norm of international human rights law prohibiting the jailing of children with adults,” the group stressed.*

*“In effect, the President and the public respondents effectively conspired and are conspiring with the officers and members of the Philippine National Police in committing this form of crimes against humanity,” the group charged.*

*In seeking to charge Arroyo and top officials for violating the Anti-Graft and Corrupt Practices Act (RA 3019), the group said that mixing up children with adults is “injurious to the human rights of children in conflict with the law.”*

*The practice, the group stated, goes “on a continuing basis.”*

*“This practice is going on right at this very minute and would continue to emasculate the dignity and human rights of thousands of children in the days to come.”*

*Earlier, the Ombudsman junked the class suit filed by five children prisoners, aged 11 to 17, who were hauled off to police prisons packed with adult inmates, on behalf of children mixed up with adult detainees nationwide, asking that Arroyo, the secretaries of the Department of Justice and Department of Interior and Local Governments, and the Philippine National Police chief be charged for violating the Anti-Graft and Corrupt Practices Act (RA 3019) for causing undue injury to the complainants.*

#### *Class suit*

*In dismissing the complaint filed on December 10, 2003, the Ombudsman said that the undue injury asserted by the children was merely “speculative.” The Ombudsman also said that Arroyo and her top officials were unaware and far removed from the violations.*

*The group feared that the dismissal of the complaint would lead to further violations. “The Order further gives to the officers and members of the Philippine National Police the green light in continuously perpetrating this injustice, this form of crimes against humanity, and this act of torture, cruel, inhumane, and degrading treatment and punishment that smacks of injurious*

*discrimination against children belonging to the poorest of the poor,” the group declared.*

*The group stressed that the Ombudsman’s dismissal of the case “leaves children prisoners without redress, in the face of the continuing, recurring, non-stop, and officially sanctioned violation of their human rights.” “Sadly, instead of redeeming thousands of children, this Order opens up the floodgates for the perpetration of gross violation of the human rights of children in conflict with the law,” the Coalition stressed.*

*“Nowhere in the world has this ghastly practice of jailing children with adult crime suspects received as much official condonation and acquiescence as in this country,” the group lamented*

#### *Impunity*

*“Contrary to international human rights norms and standards, the Order effectively immunizes state functionaries from any accountability for their obligation to respect, protect, and fulfill the human rights of children in conflict with the law,” the group stressed.*

*“The Order of this Honorable Office regrettably entrenches further the wall of impunity surrounding the state practice of jailing children belonging to the poorest of the poor with adults in cramped police jails nationwide during preventive detention, and prior to their turnover to the custody of the Bureau of Jail Management and Penology by virtue of court orders.”*

#### *Command responsibility*

*“The President, like Chilean General Augusto Pinochet, and the President’s own alter egos cannot escape culpability for jailing children with adult prisoners since the practice constitutes a continuing act of torture, cruel, inhumane, and degrading treatment and punishment and/or a form of crimes against humanity that is universally outlawed by humankind,” the group said.*

*The group belied the Ombudsman’s claim that Arroyo and top officials have no knowledge of the wide scale prison abuse that victimizes 13,300 to 20,000 children every year.*

*The group charged that mixing up children with adult prisoners has been “happening with the President’s, and the President’s co-respondents’ own knowledge and acquiescence and tacit authority.”*

*The group cited that Ricardo Saludo, Arroyo’s former spokesperson, promised to look into the matter on December 11, 2003 during a press conference in Malacanang.*

*“Moreover, given the fact that the jailing of children with adults has been taken cognizance of by experts belonging to the Human Rights Committee as well as the Committee on the Rights of the Child, the baseless claim by the Office of the Ombudsman that the President, the Chief of the Philippine National Police, and the Secretaries of the Department of Justice and of the Department of Interior and Local Governments have no knowledge of this*



*criminality is readily exposed as an attempt to protect the Public Respondents with the mantle of impunity, thereby further institutionalizing the barbarism,” the group said.*

*The Coalition cited the concluding observations issued by the United Nations Human Rights Committee on October 30, 2003 lamenting “that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable.” The HRC also assailed the “persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment.”*

*For its part, the UN Committee on the Rights of the Child condemned last June 3 “the placement of persons below 18 years of age together with adults in detention.”*

*The reports from these UN bodies had been officially transmitted to the government. “To absolve the President and the President’s alter egos who receive instructions, directly or indirectly, from the Office of the President, from culpability for the large scale jailing of children with adult crime suspects in police jails is tantamount to the Ombudsman’s giving its own stamp of approval to a wide scale and serious human rights violation committed shamelessly by the Commander-in-Chief, the President’s alter egos, and the officers and members of the Philippine National Police in blatant disregard of the best interests of the children of this country,” the group charged.*

*“The sufferings and pains to which children are subjected to by officers and members of the Philippine National Police, with the full knowledge, acquiescence, and authority of the President and top Cabinet officials constitute torture, cruel, inhumane, and degrading treatment and punishment outlawed internationally and domestically,” the coalition added.*

*“No doubt,” the group averred, “these constitute undue injury for which the Public Respondents should be held criminally liable as well as ordered to refrain from further committing immediately and unconditionally.”*

*“The Rome Statute of the International Criminal Court that was signed by the Philippines, the Pinochet doctrine, the Nuremberg Charter and Judgments, and the jurisprudence hammered out by the International Criminal Tribunals for the former Yugoslavia and Rwanda establish the Public Respondents’ culpability for the institutionalized, systematic, organized, and widespread violation of the human rights of children in conflict with the law based on the principle of command responsibility,” the group argued.*

*“The claim by the Honorable Ombudsman that the President and the Cabinet officials named herein are not at all aware of this ignominy is ludicrous,” the group said.*

*“The President and the rest of the public respondents know and/or are in a position to know about this continuing violation of human rights on a grand scale, but until now, continue and opt to refuse, and criminally neglect to do anything to stop the violation and/or to punish the direct perpetrators, thereby giving rise to the applicability of the doctrine of command responsibility entrenched in international law,” the group said.*

*“Such criminal negligence, omission, and acquiescence to the despicable practice on the part of the President and the top Cabinet officials show tacit, official approval on their part of the de facto norm and practice of jailing children with adults,” the group pointed out.*

*“The President’s and the President’s alter egos’ knowledge and acquiescence to this serious human rights violation and continuing failure, refusal, and criminal neglect to stop the practice as well as to punish the officers and members of the Philippine National Police who directly perpetrate this evil partakes of the nature of a conspiratorial act,” the group charged.*

#### *Undue injury*

*The group debunked the Ombudsman’s claim that the undue injury sustained by children mixed up with adult detainees was “speculative.” “Detaining children with adult prisoners traumatizes and criminalizes the young as a matter of judicial notice,” the group stressed.*

*“This initiates them to a career of crime due to the virus of criminality.”*

*“Detaining children with adult prisoners subjects them to a host of abuses, such as torture and beatings, tattooing, rape and other forms of sexual abuse, forced confessions, and other acts of cruelty, etc., without redress in the hands of agents of the state as well as some adult prisoners,” the group continued.*

*“What the children who have been detained with adults and who are going to be detained in the future with adults have sustained constitutes a factual injury as this is inimical to their psychological, emotional, social, moral, spiritual, and physical growth and well-being,” the group countered.*

*“What these children have suffered and are going to suffer in the future likewise constitutes a legal injury, for being blatant violations of the Philippine state’s treaty obligations,” the group added, citing the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child, the 1987 Philippine Constitution, the Child and Youth Welfare Code, the Special Child Protection Act, and the Family Courts Act.*

*“Mixing up children with adults has been outlawed by the community of nations since this destroys the young in more ways than one that fits right under the definition of undue injury in its multifarious, concrete, and specific forms,” the Coalition stressed.*

*For queries, please contact  
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Other appeals are as follows:

*Coalition Call for President Gloria Macapagal-Arroyo to Stop the Unlawful Discrimination by the Police Against the Children of the Poorest of the Poor<sup>19</sup>  
by Coalition to Stop Child Detention through Restorative Justice*

*Specter of Brutalized Child Prisoners*

*Today, we witness the specter of children prisoners emerging from police custody as victims of rape, torture, tattooing, and other despicable forms of human rights violations, without redress.*

*Today, we witness the specter of children of the poorest of the poor languishing in prisons practically all over the country deprived by the state of their human right to have direct and immediate access to legal, medical, social, and psychological services and assistance.*

*They emerge by the thousands.*

*Thousands and thousands of children are being illegally jailed with impunity by the police with adult crime suspects and subjected to rape, torture, tattooing, and other atrocities.*

*At least 36 children-including girls and kids with mental disabilities-are jailed with adult prisoners everyday.*

*This is according to the Public Attorneys Office who reported having handled 13,300 cases involving children in conflict with the law in 2002.*

*There were 10,094 children in conflict with the law served by the Department of Social Welfare and Development in 2000 alone. This staggering figure was even less than the recorded number of children who had been imprisoned in 1999-which leapfrogged to 13,073.*

*Children prisoners numbered 6,410 in 1998, 8,623 in 1997, and 7,057 in 1996, based on DSWD figures alone. But more cases do not get documented at all.*

*Girl-children also get imprisoned with adult prisoners. Out of the 10,094 children prisoners served by DSWD in 2000-703 were girls.*

*Virtually all these children have been illegally hauled off to police jails and locked up together with adult crime suspects upon their arrest.*

*Virtually all these children who would live with us as well as with our children's children have already been exposed to the virus of criminal behavior due to their illegal detention in cramped police cells with adult prisoners.*

*They emerge from prison traumatized, scarred for life.*

### *Brazen Illegality*

*The state practice of jailing children with adult crime suspects in police jails does not only lack any basis in Philippine law. It violates-with impunity-a host of our own national laws as well. Article 191 of the Child and Youth Welfare Code (Presidential Decree 603) mandates that a child "from the time of his arrest be committed to the care of the Department of Social Welfare."*

*Section 11 of the Rules and Regulations on the Apprehension, Investigation, Prosecution, and Rehabilitation of Youth Offenders (1995) provides that "a youth... from the time of his arrest be committed to the care of the Department or the local rehabilitation center or in a detention home distinct and separate from jails."*

### *Unlawful Discrimination*

*Children prisoners mostly aged 15 to 17 belong to the poorest of the poor. Their dignity and human rights are emasculated by the state on account of their powerlessness.*

*Statistical findings of the Social Services Development Department (SSDD) of the Quezon City government show that most children prisoners come from families who could hardly support their own sustenance.*

*In 2002, 189 out of the total 497 children detained at the Molave Youth Home, a detention center for children run by the SSDD-representing 38 percent-came from the P3,000 income group. The others-101 kids (representing 20 percent) and 97 others (comprising 19 percent)-came from the P4,000 and P2,000 income bracket, respectively.*

*They comprise 77 percent of the entire 497 children prisoners at Molave in 2002.*

*The same pattern could be observed among children prisoners in 2001 who comprise 74 percent of the entire 538 jailed children of Molave during the period-with 178 kids coming from the P3,000 income group (representing 33 percent), 142 from the P4,000 income bracket (26 percent), and 85 others from the P2,000 group (15 percent).*

*The bulk of these prisoners-305 children (57 percent)-were jailed for property-related offenses, including 139 for robbery and 120 for theft.*

*In 2000, at least 121 jailed kids came from the P3,000 income bracket (29 percent), 92 others from the P2,000 income group (22 percent), and 80 from the P4,000 group (19 percent)-comprising 74 percent of the children detainees during the period.*

*The SSDD studies on the children prisoners' economic background also showed that-from 1990 to 1999-the bulk of children prisoners comes from families belonging to the lowest P2,000 to P4,000 income groups, confirming the nexus between poverty and crime incidence allegedly involving the young.*

*This trend reflects the general condition of children prisoners who are mostly concentrated in urban centers. Their powerlessness makes them vulnerable to state agents' abuse.*

*The poverty of children prisoners spurs the commission by the state of this crime against humanity that smacks of unlawful discrimination.*

*Faced with no available space to separately detain arrested children, including those suffering from mental disability, law enforcers mindlessly mix up and detain children with adult crime suspects, unafraid of any culpability on their part for their commission of this human rights violation due to the poverty and powerlessness of their children victims and lack of effective grassroots mechanisms providing redress for this inhumanity.*

*Lacking in a child rights-oriented political leadership, officers and members of the Philippine National Police callously resort to this brutal state practice with impunity, knowing fully well that children prisoners who come from the ranks of the poorest of the poor cannot defend and protect their own dignity and human rights against their onslaught.*

*Nobody cares. As these children-as far as the state is concerned-are inexistent.*

*This is how this crime against humanity perpetrated by the state against poor Filipino children gradually became institutionalized over the last 50 years or so.*

*The economic marginalization and political powerlessness bedeviling child prisoners call for affirmative action on the part of the state in order to address this injustice.*

*And this affirmative action should be carried out by no less than President Gloria Macapagal-Arroyo at the crucial point of contact by these children with agents of the law.*

*For queries, please contact Atty. Perfecto G. Caparas II  
Email boyetcaparas@yahoo.com  
Cell phone no. 0920-5086009*

The following was submitted by counsel for posting at the website of the Philippine President but never got posted:

*GMA liable for 12-year jail term for child prison abuse: Open letter to President Arroyo<sup>20</sup>  
Created by Perfecto Caparas on August 29th, 2005 at 12:17 am AST*

*GMA liable for 12-year jail term for child prison abuse: Open letter to President Arroyo*

*Her Excellency Gloria Macapagal-Arroyo  
President  
Republic of the Philippines  
Malacanang, Manila*

*Dear President Arroyo:*

*We—members of the Coalition to Stop Child Detention Through Restorative Justice composed of 26 organizations nationwide—respectfully demand that the Office of the President immediately stop the barbaric, systematic, organized, and wide scale crime being committed with impunity by officers of the Philippine National Police (PNP) against 52,000 child prisoners.*

*These police officers—who are acting under the President’s control and supervisory authority—flout the law by locking up children with adult crime suspects in police stations and headquarters as a matter of standard operating procedure all over the country, save for Cebu City. This happens over extended periods and prior to their turnover to the Bureau of Jail Management and Penology by virtue of court-issued commitment orders. Routinely locking up children, upon arrest, in filthy jails swarming with adult crime suspects constitutes cruelty, torture, and abuse. It subjects them to conditions inimical to their development.*

*This is punishable under Article VI, Section 10(a) of Republic Act 7610 or An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes. According to Article I, Section 3(b) of this law, child abuse covers “(p)sychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment.” Child abuse also embraces “(a)ny act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being.”*

*Through the chain of command, the police officers are wantonly committing this continuing crime under the President’s implicit, if not direct, orders.*

*The President controls and supervises the Secretary of Interior and Local Governments. The Interior Secretary, in turn, supervises and controls these PNP lawbreakers. In the final analysis, therefore, the President—by virtue of the principle of command responsibility—bears criminal responsibility for abetting and indirectly perpetrating, as well as perpetuating this institutionalized hooliganism.*

*For tacitly acquiescing, consenting, and authorizing, hence, being ultimately “responsible for other conditions prejudicial to the child’s development,” the President becomes liable for violating Article VI, Section 10(a) of RA 7610. For effectively abetting this widespread form of child torture, cruelty, and abuse—despite Your Excellency’s actual knowledge or being in a position to know about this prevalent crime against children of the poorest of the poor and Your Excellency’s positive duty to prevent and stop this monstrosity, as well as to punish violators—the President, for being a “public officer,” could be slapped with a 12-year jail term under Article XII, Section 31(e) of RA 7610.*

*The President cannot evade criminal liability, by hiding under the mantle of sovereign immunity from suit, for egregious human rights violations such as this bizarre form of torture and crimes against humanity.*

*Atty. Perfecto Caparas  
Convener  
Coalition to Stop Child Detention Through Restorative Justice  
Email: coalition@stopchilddetention.com*

*For a copy of RA 7610, pls. refer to  
<http://www.chanrobles.com/republicactno7610.html>*

*Other statements:*

*President, top officials criminally liable for jailing children with adult crime suspects<sup>21</sup>  
by Perfecto Caparas Thursday, Aug. 25, 2005 at 4:21 AM  
coalition@stopchilddetention.com*

*The principle of command responsibility pins down the President and top police and government officials for the barbaric and wide scale practice of hauling off 13,300 to 20,000 children of the poorest of the poor (some estimate the number of children to be 52,000) in police jails packed with adult crime suspects under sub-human conditions, where they get sodomized and raped, tortured, tattooed, and subjected to various forms of cruel, inhumane, and degrading treatment and punishment.*

*PRESIDENT Arroyo and top officials should be held criminally liable for the wide scale jailing of children with adults due to command responsibility, a rights group urged the Ombudsman recently.*

*In its motion for reconsideration asking the Ombudsman to reconsider its earlier order dismissing the suit against Arroyo and her top officials, the Coalition to Stop Child Detention Through Restorative Justice, a group of 26 human rights groups in the country, urged the Ombudsman anew to slap graft charges against Arroyo and top police and Cabinet officials and order them to stop the widespread abuse of children in prison.*

*“The President’s and the alter egos’ inaction, notwithstanding their own actual and/or constructive knowledge of this serious affront to the children’s fundamental dignity and human rights, as they actually know and/or are in a position to know the egregious, wide scale, and continuing violations, bespeaks of their own acquiescence to and giving of their tacit approval and authority, for the continuing commission of such violations, under the cloak of impunity, and contrary to the peremptory norm of international human rights law prohibiting the jailing of children with adults,” the group stressed.*

*“In effect, the President and the public respondents effectively conspired and are conspiring with the officers and members of the Philippine National Police in committing this form of crimes against humanity,” the group charged.*

*In seeking to charge Arroyo and top officials for violating the Anti-Graft and Corrupt Practices Act (RA 3019), the group said that mixing up children with adults is “injurious to the human rights of children in conflict with the law.”*

*The practice, the group stated, goes “on a continuing basis.”*

*“This practice is going on right at this very minute and would continue to emasculate the dignity and human rights of thousands of children in the days to come.”*

*Earlier, the Ombudsman junked the class suit filed by five children prisoners, aged 11 to 17, who were hauled off to police prisons packed with adult inmates, on behalf of children mixed up with adult detainees nationwide, asking that Arroyo, the secretaries of the Department of Justice and Department of Interior and Local Governments, and the Philippine National Police chief be charged for violating the Anti-Graft and Corrupt Practices Act (RA 3019) for causing undue injury to the complainants.*

#### *Class suit*

*In dismissing the complaint filed on December 10, 2003, the Ombudsman said that the undue injury asserted by the children was merely “speculative.” The Ombudsman also said that Arroyo and her top officials were unaware and far removed from the violations.*

*The group feared that the dismissal of the complaint would lead to further violations.*

*“The Order further gives to the officers and members of the Philippine National Police the green light in continuously perpetrating this injustice, this form of crimes against humanity, and this act of torture, cruel, inhumane, and degrading treatment and punishment that smacks of injurious discrimination against children belonging to the poorest of the poor,” the group declared.*

*The group stressed that the Ombudsman’s dismissal of the case “leaves children prisoners without redress, in the face of the continuing, recurring, non-stop, and officially sanctioned violation of their human rights.”*



*“Sadly, instead of redeeming thousands of children, this Order opens up the floodgates for the perpetration of gross violation of the human rights of children in conflict with the law,” the Coalition stressed.*

*“Nowhere in the world has this ghastly practice of jailing children with adult crime suspects received as much official condonation and acquiescence as in this country,” the group lamented*

#### *Impunity*

*“Contrary to international human rights norms and standards, the Order effectively immunizes state functionaries from any accountability for their obligation to respect, protect, and fulfill the human rights of children in conflict with the law,” the group stressed.*

*“The Order of this Honorable Office regretfully entrenches further the wall of impunity surrounding the state practice of jailing children belonging to the poorest of the poor with adults in cramped police jails nationwide during preventive detention, and prior to their turnover to the custody of the Bureau of Jail Management and Penology by virtue of court orders.”*

#### *Command responsibility*

*“The President, like Chilean General Augusto Pinochet, and the President’s own alter egos cannot escape culpability for jailing children with adult prisoners since the practice constitutes a continuing act of torture, cruel, inhumane, and degrading treatment and punishment and/or a form of crimes against humanity that is universally outlawed by humankind,” the group said.*

*The group belied the Ombudsman’s claim that Arroyo and top officials have no knowledge of the wide scale prison abuse that victimizes 13,300 to 20,000 children every year.*

*The group charged that mixing up children with adult prisoners has been “happening with the President’s, and the President’s co-respondents’ own knowledge and acquiescence and tacit authority.”*

*The group cited that Ricardo Saludo, Arroyo’s former spokesperson, promised to look into the matter on December 11, 2003 during a press conference in Malacanang.*

*“Moreover, given the fact that the jailing of children with adults has been taken cognizance of by experts belonging to the Human Rights Committee as well as the Committee on the Rights of the Child, the baseless claim by the Office of the Ombudsman that the President, the Chief of the Philippine National Police, and the Secretaries of the Department of Justice and of the Department of Interior and Local Governments have no knowledge of this criminality is readily exposed as an attempt to protect the Public Respondents with the mantle of impunity, thereby further institutionalizing the barbarism,” the group said.*

*The Coalition cited the concluding observations issued by the United Nations Human Rights Committee on October 30, 2003 lamenting “that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable.” The HRC also assailed the “persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment.”*

*For its part, the UN Committee on the Rights of the Child condemned last June 3 “the placement of persons below 18 years of age together with adults in detention.”*

*The reports from these UN bodies had been officially transmitted to the government.*

*“To absolve the President and the President’s alter egos who receive instructions, directly or indirectly, from the Office of the President, from culpability for the large scale jailing of children with adult crime suspects in police jails is tantamount to the Ombudsman’s giving its own stamp of approval to a wide scale and serious human rights violation committed shamelessly by the Commander-in-Chief, the President’s alter egos, and the officers and members of the Philippine National Police in blatant disregard of the best interests of the children of this country,” the group charged.*

*“The sufferings and pains to which children are subjected to by officers and members of the Philippine National Police, with the full knowledge, acquiescence, and authority of the President and top Cabinet officials constitute torture, cruel, inhumane, and degrading treatment and punishment outlawed internationally and domestically,” the coalition added.*

*“No doubt,” the group averred, “these constitute undue injury for which the Public Respondents should be held criminally liable as well as ordered to refrain from further committing immediately and unconditionally.”*

*“The Rome Statute of the International Criminal Court that was signed by the Philippines, the Pinochet doctrine, the Nuremberg Charter and Judgments, and the jurisprudence hammered out by the International Criminal Tribunals for the former Yugoslavia and Rwanda establish the Public Respondents’ culpability for the institutionalized, systematic, organized, and widespread violation of the human rights of children in conflict with the law based on the principle of command responsibility,” the group argued.*

*“The claim by the Honorable Ombudsman that the President and the Cabinet officials named herein are not at all aware of this ignominy is ludicrous,” the group said.*

*“The President and the rest of the public respondents know and/or are in a position to know about this continuing violation of human rights on a grand scale, but until now, continue and opt to refuse, and criminally neglect to do anything to stop the violation and/or to punish the direct perpetrators, thereby*

*giving rise to the applicability of the doctrine of command responsibility entrenched in international law,” the group said.*

*“Such criminal negligence, omission, and acquiescence to the despicable practice on the part of the President and the top Cabinet officials show tacit, official approval on their part of the de facto norm and practice of jailing children with adults,” the group pointed out.*

*“The President’s and the President’s alter egos’ knowledge and acquiescence to this serious human rights violation and continuing failure, refusal, and criminal neglect to stop the practice as well as to punish the officers and members of the Philippine National Police who directly perpetrate this evil partakes of the nature of a conspiratorial act,” the group charged.*

#### *Undue injury*

*The group debunked the Ombudsman’s claim that the undue injury sustained by children mixed up with adult detainees was “speculative.”*

*“Detaining children with adult prisoners traumatizes and criminalizes the young as a matter of judicial notice,” the group stressed. “This initiates them to a career of crime due to the virus of criminality.”*

*“Detaining children with adult prisoners subjects them to a host of abuses, such as torture and beatings, tattooing, rape and other forms of sexual abuse, forced confessions, and other acts of cruelty, etc., without redress in the hands of agents of the state as well as some adult prisoners,” the group continued.*

*“What the children who have been detained with adults and who are going to be detained in the future with adults have sustained constitutes a factual injury as this is inimical to their psychological, emotional, social, moral, spiritual, and physical growth and well-being,” the group countered.*

*“What these children have suffered and are going to suffer in the future likewise constitutes a legal injury, for being blatant violations of the Philippine state’s treaty obligations,” the group added, citing the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child, the 1987 Philippine Constitution, the Child and Youth Welfare Code, the Special Child Protection Act, and the Family Courts Act.*

*“Mixing up children with adults has been outlawed by the community of nations since this destroys the young in more ways than one that fits right under the definition of undue injury in its multifarious, concrete, and specific forms,” the Coalition stressed.*

[www.stopchilddetention.com](http://www.stopchilddetention.com)

*add your comments*

Mr.

by Rufino S. Magno Thursday, Aug. 25, 2005 at 10:42 PM  
magn0161@umn.edu (952) 837 - 9803 7151 York Ave. S. Edina, MN 55435  
USA

*To Perfecto Caparas and the 26 organizations, please keep up the good work on fighting for the rights of the child. I am hoping that the religious community is part of the other organizations fighting for the rights of the child, for I am reminded of Jesus who said, "let the children come to me. . they belong to my kingdom.."*

*On behalf of the Human Rights Center and the Human Rights Program at the University of Minnesota, I wish to congratulate everyone in the 26 NGO's, and particularly, Perfecto Caparas, for following Gandhi's suggestion: ". . .be the change you wish to see in the world.."*

*Best wishes,*

*Rufino S. Magno*

The Coalition to Stop Child Detention Through Restorative Justice has repeatedly submitted to the Office of the President public appeals to stop this barbarity to no avail. Only international pressure could compel the President of the Philippines and her top Cabinet officials to once and for all stop this monstrosity committed in gross violation of the pertinent provisions of the Covenant.

If domestic remedies have not been exhausted, explain why:

**Petition for certiorari, mandamus or prohibition—inutile**

After receiving the denial of their motion for reconsideration by the Ombudsman, child prisoners, due to the futility of resorting to further judicial or administrative remedies, filed this petition to the Committee.

The very nature of the violation, *i.e.*, its institutionalized and widespread character involving, and requiring the intervention of, no less than the President of the Philippines not only militates against this option . The mere fact that the President is the one being sought to be held criminally liable under the Anti-Graft and Corrupt Practices Act for causing undue injury to the child prisoners and compelled to address this widespread and continuing problem renders the option futile and inutile.

This is because of the doctrine of non-suability of the state and the traditional deference and respect accorded by a co-equal branch of government to the executive department headed by the President based on the principle of separation of powers.

Moreover, the legal requirement of grave abuse of discretion amounting to a lack or excess of jurisdiction presupposes the lack of merely some basis, *i.e.*, something to support itself, on the part of the Ombudsman in dismissing the children's complaint. As jurisprudence on the question of what constitutes grave abuse of discretion amounting to

a lack or excess of jurisdiction shows, resorting to the filing of a petition before the Supreme Court would be ineffectual since any ground would actually suffice to sustain the decision of the Ombudsman to absolve the President and her top police and Cabinet officials from any culpability. The Supreme Court, based on jurisprudence, would never supplant the Ombudsman's decision with its (Supreme Court's) own judgment as to whether to charge the President, et. al., with graft for causing undue injury to child prisoners, as this is essentially the Ombudsman's and the not judiciary's function.

*The well-settled rule confines the original and exclusive jurisdiction of the Supreme Court in the review of decisions of the NLRC under Rule 65 of the Revised Rules of Court only to the issue of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction.<sup>5</sup> Grave abuse of discretion is committed when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner.<sup>22</sup>(citation omitted)*

In another case, the Supreme Court *en banc* held:

*Thus, "judicial review of decisions or final resolutions of the House Electoral Tribunal is (thus) possible only in the exercise of this Court's so-called extraordinary jurisdiction, upon a determination that the tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or, paraphrasing Morrera, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such a grave abuse of discretion that there has to be a remedy for such abuse.*

*In the absence of any clear showing of abuse of discretion on the part of respondent tribunal in promulgating the assailed resolutions, a writ of certiorari will not issue.<sup>23</sup>*

Ordinarily, a petition for certiorari, prohibition, and mandamus may be availing from the decision of the Office of the Ombudsman on the ground of grave abuse of discretion amounting to a lack or excess of jurisdiction should one exist. This is the only ground to appeal the order of the Ombudsman dismissing the complainants' class action to the Supreme Court.

The Office of the Ombudsman, however, has the sole and exclusive prerogative to determine whom to charge. Its decision may be appealed to the Supreme Court only on the ground of grave abuse of discretion amounting to a lack or excess of jurisdiction.

Based on jurisprudence, authorities commit grave abuse of discretion amounting to a lack or excess of jurisdiction if they acted without some basis, which is much less than the preponderance of evidence threshold test.

Appealing to the Supreme Court would prove ineffective in view of the traditional deference accorded by the Supreme Court to the prerogative of the Office of the Ombudsman in determining whom to charge as established by jurisprudence.

Furthermore, jurisprudence has established that deference and respect is accorded by the Supreme Court to an independent body like the Ombudsman in the exercise of its own discretion and prerogative in deciding whom to charge for certain crimes and under what circumstances. These are areas that the courts dare not venture and interfere with.

#### 6. Other international procedures

Has the same matter ever been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

No.

#### 7. Facts of the Claim

Detailed description of the facts of the alleged violation or violations (including relevant dates).

Child prisoners lie prostrate as victims of the conspiracy of Philippine institutions.

The complainants are five child prisoners who suffered from the ordeal of being locked up with adult crime suspects in cramped police jails controlled by the Philippine National Police in 2003 when they were aged 10 to 16. They are filing this petition for themselves and/or on behalf of some 20,000 children accused of violating the law (CAVL), who had suffered, are going through, and would suffer from being jailed and mixed up with adult crime suspects in police headquarters, stations, and substations, every year, pursuant to the standard operating procedure observed by officers of the Philippine National Police.

The complainants were arrested by officers of the Philippine National Police on separate occasions and detained in decrepit police jails packed with adult crime suspects in 2003. During police custody, officers of the Philippine National Police violated their rights to be informed of their constitutional right to remain silent and to have an independent and competent counsel of their own choice, and to be provided with one, since they cannot afford the services of such a counsel pursuant to the Custodial Investigation Act (Republic Act 7438.<sup>24</sup> They were all deprived of access to psychosocial, health, and legal services during police detention, which violated Covenant Article 9(10). The form of their detention exposed the children to more serious risks of getting tortured, sodomized, raped, tattooed, and subjected to other indignities.

The complainants are also representing the estimated 20,000 children accused of violating the law jailed every year on account of their joint, common, and intertwining rights and interests violated by the Philippine state. The class suitors include street children, child laborers, children with mental disabilities, prostituted girls, children hooked on substance abuse, and beggars. Being homeless, these class suitors would never be able to seek redress for these Covenant violations, save through the representation by the five complainants of their rights and interests before this Committee. Due to the political powerlessness of street children, who oftentimes get arrested and jailed with

adult crime suspects in filthy police jails without judicial warrants, coupled with the lack of grassroots mechanisms to prevent, monitor, and redress the human rights violations indirectly committed against them by the President through her subordinates, the wall of impunity for these human rights violations get erected and entrenched. The lack of official acknowledgment on the part of the President and her Cabinet secretaries of the state commission of this organized, systematic, and widespread barbarity also condemns children to suffer further under this state-sponsored inhumanity on a continuing basis. Until now, only the Philippine Supreme Court, the Commission on Human Rights, and quite a few legislators have acknowledged that this crime is being perpetrated by the state against children.

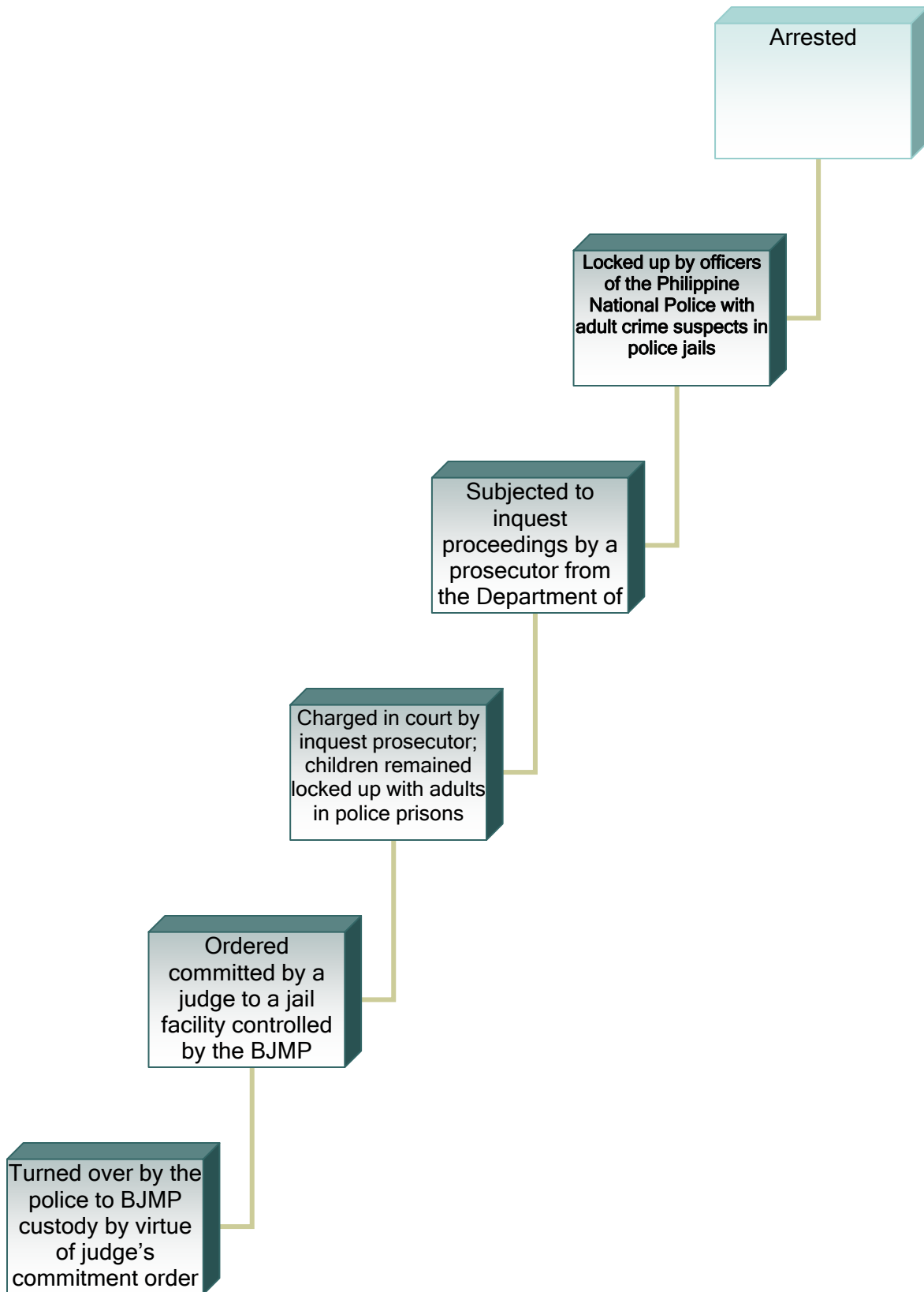
Street children also face serious risks if they would individually hold state agents accountable for violating their human rights due to their extreme vulnerability and helplessness in the face of imminent reprisals from law enforcers who can easily determine the children's whereabouts and subject them to harm, and in extreme cases, to extra-judicial execution. The Philippine Witness Protection Program only secures witnesses who testify with respect to heinous crimes. Even non-governmental organizations lack the capability to secure child witnesses who experience abuse in the hands of law enforcers. This is the reason why instances of violation of children's human rights cannot be prosecuted without jeopardizing the life of children. It is important for the Committee to consider this barrier facing street children, who number 1.5 million throughout the Philippines, according to conservative estimates given by Philippine Senator Jamby Madrigal, chairperson of the Senate Committee on Youth, Women and Children. This grows by more than 6,000 street children each year, according to the Department of Social Welfare and Development.

Complainants and/or class suitors are hereby re-pleading and adopting *en toto* all their averments and evidence adduced in their complaint filed before the Philippine Office of the Ombudsman on December 10, 2003, their motion for reconsideration after the same was dismissed, as well as all the herein attachments and online references and materials, as parts and parcels of their petition/communication to the Committee.

### **Anatomy of non-segregation of adult and child prisoners**

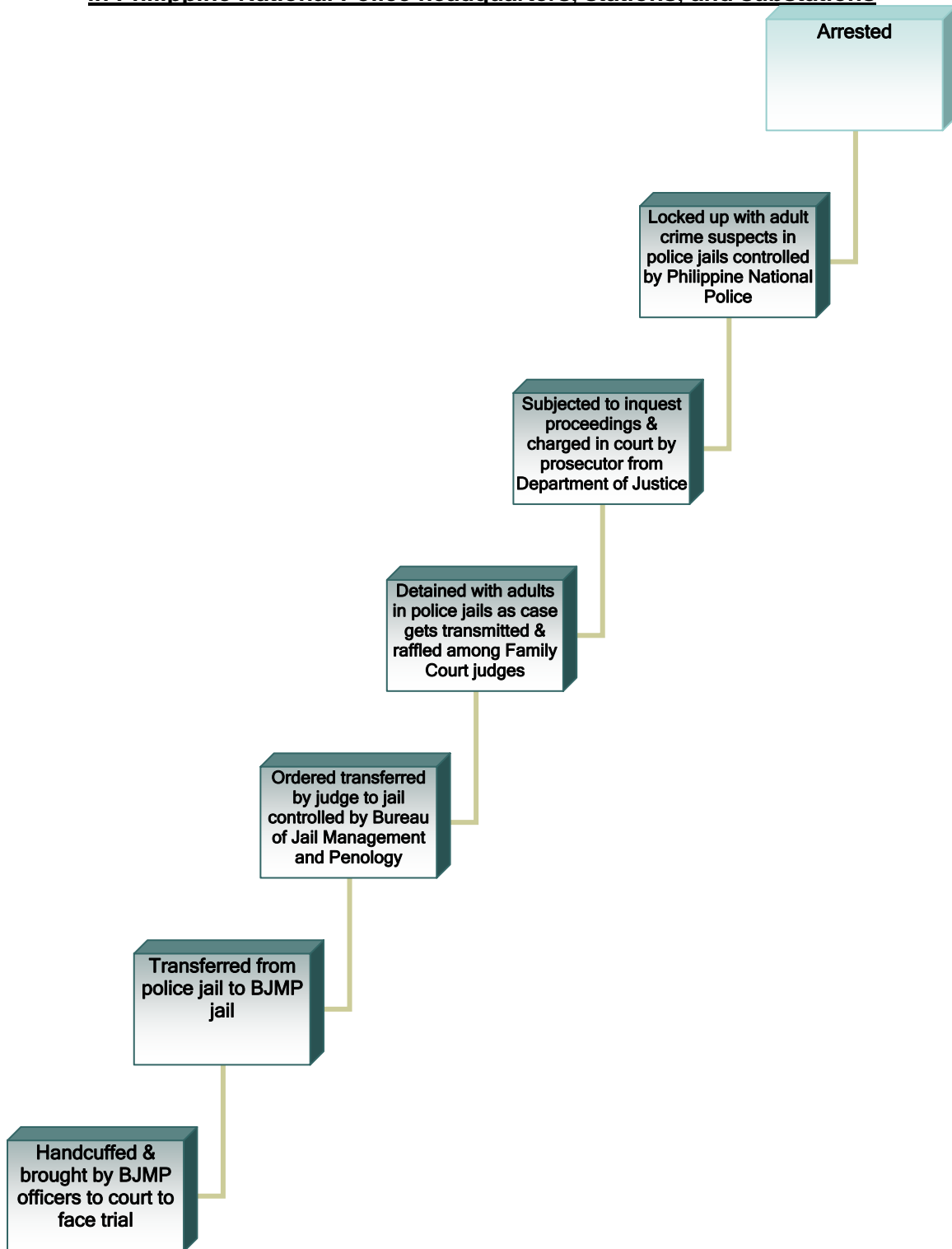
Upon arrest, officers of the Philippine National Police lock up children in cramped police jails swarming with adult crime suspects. Children are then made to go through inquest proceedings and routinely charged before the court by inquest prosecutors belonging to the Department of Justice, who conspiratorially turn a blind eye to the illegal practice of locking up children with adults. Upon raffle to the Family Court of their case, the judge issues a commitment order for the children to be transferred to a detention facility controlled by the Bureau of Jail Management and Penology. Only then are the children released from police custody. Children usually languish in decrepit cells packed with adult crime suspects over a period of two weeks to six months, sometimes even longer.

### **Anatomy of police child detention and the lumping of children together with adult prisoners**





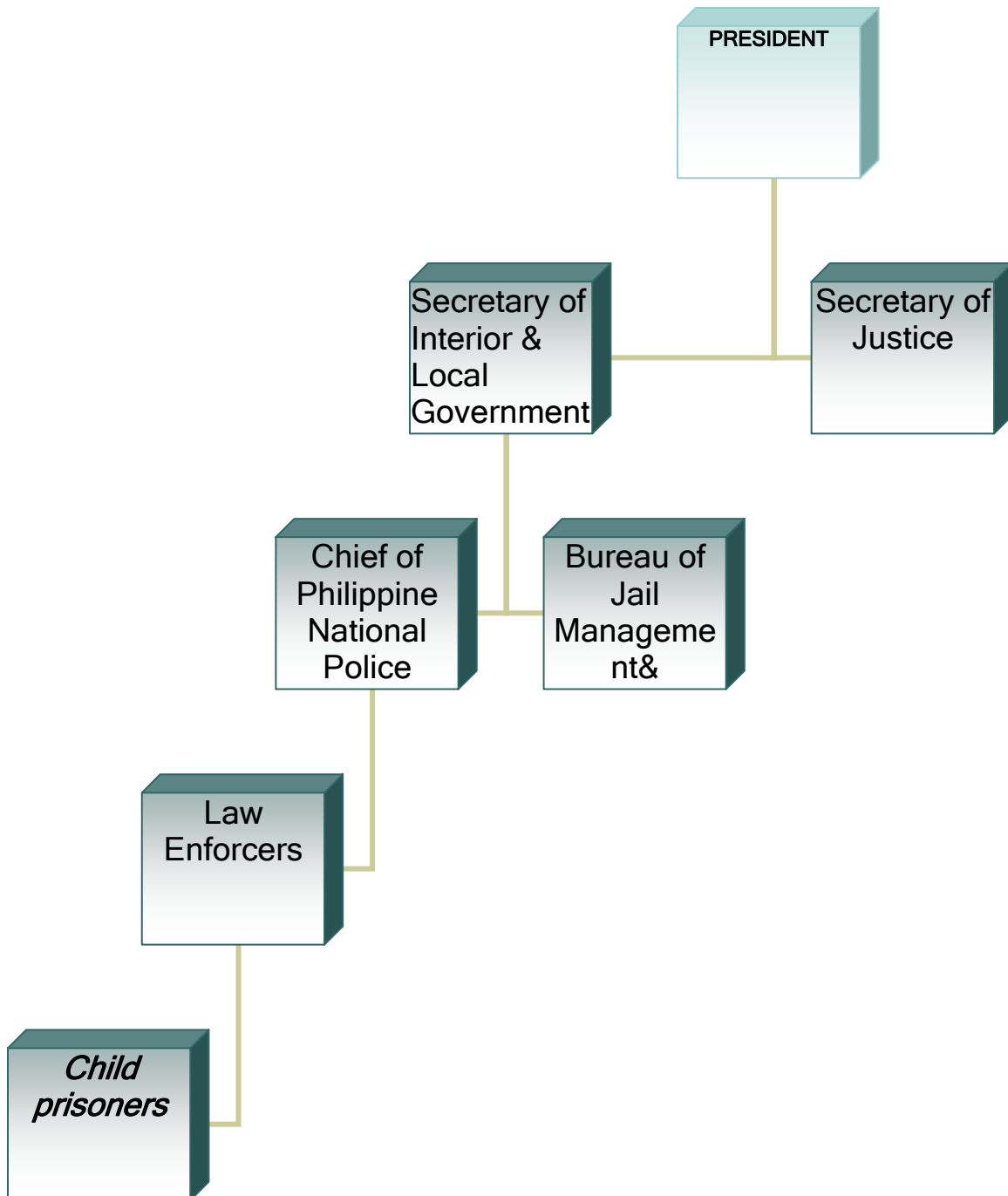
**Anatomy of police child detention and the mixing up of children with adults in Philippine National Police headquarters, stations, and substations**



State officials responsible

Law enforcers perpetrate this barbarity with the conspiratorial acquiescence, tacit consent, and implicit authority of the President of the Philippines, her Secretary of Justice, Secretary of Interior and Local Governments, and Chief of the Philippine National Police.

**Chain of command from the President of the Philippines to the Philippine National Police**



Discrimination based on Article 2(1), in relation to Article 24 and Article 26, and Committee General Comment 17 (Paragraphs, 1, 2, 3, and 5) and Committee General Comment 28 (Paragraphs 3, 4, and 15)

## Article 2

1. **Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

Xxx

3. Each State Party to the present Covenant undertakes:

**(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;**

The failure and refusal of the Office of the Ombudsman to charge the President of the Philippines, the Secretaries of the Department of Justice and the Department of Interior and Local Governments, and the Chief of the Philippine National Police for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 3019)<sup>25</sup> countervails against the institution of appropriate remedies for the child prisoners, especially in light of the continuing and recurring nature of police child detention and the mixing up of children with adult crime suspects in police jails nationwide. This enshrouds the wide scale practice of jailing children with adult crime suspects with the mantle of impunity, thereby ensuring its perpetuation, and nonstop perpetration of continuing human rights violations against child prisoners.

Holding these top officials criminally and administratively accountable is closely related to and intertwined with the institution of appropriate remedies to stop the ghastly crime of jailing children with adult crime suspects.

Breaking the wall of impunity would be decisive in stopping the institutionalized crime of jailing children with adult crime suspects. This could be achieved by holding the President of the Philippines and her top Cabinet officials and chief of the Philippine National Police criminally and administratively accountable for this form of torture, cruel, inhumane, and degrading treatment and punishment as well as form of crimes against humanity.

However, the Ombudsman refuses and fails to hold these top government officials criminally and administratively accountable under the principle of command responsibility, pursuant to the American landmark case of *In re Yamashita*, the holding of the International Criminal Tribunal for the Former Yugoslavia on the Tadic and Celebici cases, the Nuremberg Charter and Judgments, and the Rome Statute of the

International Criminal Court, despite the organized, systematic, and widespread practice of jailing children with adult crime suspects under sub-human conditions and without access to psychosocial, health, and legal services.

*1219. Criminal responsibility and culpability within the Statute of the International Tribunal is considered both in terms of the exercise of superior authority and of direct participation in the commission of the crimes charged. The sentencing provisions of Article 24 and Rule 101 do not make such a distinction. This is probably because of the evident truth on which the concept of command responsibility is based, which is the maxim qui facit per alium facit per se, and the fact that offences are committed by individual human beings and not by abstract entities. The Trial Chamber has already stated that the issue of sentencing arises only after guilt has been established. Accordingly, as submitted by the Prosecution in this case, "there can be no absolute rule regarding the manner in which an accused's position as a superior affects his sentence. . .". The general view is that "[t]he punishment meted out, like the question of guilt itself, will depend on the circumstances of each case".*

*1220. The finding of guilt on the basis of the exercise of superior authority depends upon knowledge of the crimes committed and the failure to prevent their commission, or punish the perpetrators.<sup>26</sup>*

Without holding top Philippine officials accountable for this form of crimes against humanity, torture, and cruel, inhumane, and degrading treatment and punishment, any other remedy would be unavailing.

### **Breaking the chains of impunity**

Impunity mars this violation of the Covenant, with the so-called Office of the Ombudsman dismissing in November 2005 the 50-page attached class suit filed by these five complainants on behalf of some 20,000 child prisoners on December 10, 2003, International Human Rights Day, to hale the President and her top police and Cabinet officials to court in order to account for these Covenant violations.

The dismissal by the so-called Ombudsman of the child prisoners' class action against the President et. al. only serves to further entrench the impunity characterizing the twin evils of police child detention and the lumping of children together with adult crime suspects. The hollowness of the so-called Ombudsman's claim of providing effective remedies to child prisoners by the ruse of furnishing the Commission on Human Rights and the Department of Social Welfare and Development with its own anti-human rights order dismissing the child prisoners' suit against the President et. al. only rings louder as the imprisonment of children with adult crime suspects in police jails persists without letup and with the Ombudsman's own blessings.

Any further judicial, administrative, or meta-legal remedies, other than the ones taken by the child prisoners, counsel, and the rest of the Philippine human rights community would be futile and ineffective in stopping the Philippine state's violation of the Covenant. This is due to the wall of impunity surrounding the violations. The Office of the President is responsible for the violations by virtue of the principle of command responsibility. Hence, no single prosecution for violation of the Covenant under

domestic law has been initiated by the state party, despite the fact that the institutionalized jailing of children with adult crime suspects in filthy police jails violates Article VI, Section 10(a) of the Special Child Protection Act (Republic Act 7610), carrying a 12-year jail term, and also under Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 3019). This is because the executive department headed by the President controls the prosecutory arm of government, headed by the Secretary of the Department of Justice, whom the President appoints. Although supposedly politically and structurally independent, the Ombudsman is also an appointee of the President.

Nor is the breaking of this wall of impunity possible without holding the President and her top police and Cabinet officials criminally liable for the violations. The administrative and criminal complaints filed by child prisoners against the President et. al. before the Ombudsman are inextricably related, intertwined, and complementary. Taken together, these remedies would ensure the attainment of proper closure as far as these violations are concerned and erect the barrier of non-recurrence.

The President and her top officials will not be compelled to lift a finger to stop the criminal violations of the children's dignity and human rights unless they could be held criminally liable for their conspiratorial acquiescence, tacit authority, and implicit consent for their subordinates in the police to shamelessly carry out the violations against child prisoners on a wide scale and continuing basis with impunity.

Stopping the human rights violations committed against the children could not be effectively achieved and the President cannot be compelled to address the issue without breaking the walls of impunity surrounding the Covenant violations. An effective way of smashing the walls of impunity perpetuating this monstrosity is to hold the President and her top officials criminally liable for the violations, such as the one sought by the child prisoners in suing the President and her top police and Cabinet officials—who have the power to stop this ignominy—for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 3019) for causing undue injury to children accused of violating the law.

It is only the President, however, who could stop the violation of the Covenant due to the multidimensional and multilevel nature of the twin evils of police child detention and the mixing up of children with adult crime suspects in police detention cells, which logically requires the mobilization of the Cabinet officials under her, specifically, the Secretary of Interior and Local Governments, who controls the Philippine National Police, the Secretary of Social Welfare and Development, who should be assuming custody over the children from the point of arrest, and the Secretary of Justice, who callously turns a blind eye to this ignominious violation of children's human rights and refuses to order prosecutors under him to observe Article 191 of the Child and Youth Welfare Code (Presidential Decree 603), by requiring law enforcers to divert and turn over children to the care and custody of the Department of Social Welfare and Development upon arrest.

Stopping this practice could only be undertaken by mobilizing and coordinating efforts by, between, and among the Secretaries of the Department of Interior and Local Governments, Department of Justice, and Department of Social Welfare and Development, who fall under the President's supervisory power, authority, and control.

Despite her own actual knowledge and/or her being in a position to know about these continuing violations, the President and her top officials fail and refuse to investigate and prosecute all police officers responsible for lumping children together with adult crime suspects in decrepit police jails nationwide. This further shows the President's and her top officials' conspiratorial acquiescence, tacit consent, and implicit authority for the police officers to carry out this egregious practice nationwide, thereby erecting the wall of impunity surrounding this inhumanity.

### **Supreme Court and Family Courts**

In spite of the *en banc* case of *Roger Chavez vs. Court of Appeals*,<sup>27</sup> which empowers them to *motu proprio* dismiss cases against the children on the ground of failure of jurisdiction, Family Court judges continuously assume jurisdiction over child prisoners' cases. This all the more emboldened law enforcers and prosecutors to mindlessly violate the children's human rights. Unwittingly, Family Court judges, by continuously assuming jurisdiction over the cases filed by prosecutors against child prisoners who have been illegally detained in the company of adult crime suspects in police jails, in violation of the Covenant, exacerbate the problem of police child detention and the mixing up of children with adult crime suspects. Instead of *motu proprio* dismissing the cases against the children on the ground of failure of jurisdiction due to the law enforcers' and prosecutors' violation of the due process rights of child prisoners, Family Court judges invariably continue to hear and try cases against child prisoners. No Family Court judge has gone on record to confront and challenge the constitutionality of the practice of police child detention and the mixing up of children with adult crime suspects by dismissing the cases filed by prosecutors against child prisoners on the ground of "loss or absence of jurisdiction," despite judicial notice that this constitutes a pervasive, institutionalized, and continuing practice, the very *raison d'être* for the Supreme Court's issuance of two circulars dated February 1, 2002 and March 30, 2004, expressing concern about this issue.

The Supreme Court has been aware of the illegal practice of jailing children in police jails packed with adult crime suspects, and has repeatedly ordered Family Court judges to constantly inspect jails and ensure the segregation of children and adult prisoners, to no avail.

To its own credit, the Supreme Court has repeatedly ordered judges to ensure that children get segregated from adult crime suspects as evidenced by the circulars issued by the Supreme Court in recent years.<sup>28</sup> However, this is the farthest the Supreme Court could go on account of the principle of separation of powers.

This demonstrates how the Supreme Court exerts its best efforts in avoiding a usurpation of executive authority, powers, and function by carefully avoiding confrontation concerning this issue with the executive branch of government headed by the President. The Supreme Court scrupulously avoids overstepping its constitutional boundaries. Although aware of the institutionalized jailing of children with adult crime suspects, the Honorable Supreme Court could only address this issue from the perspective of the judiciary in recognition and in deference to the principle of separation of powers.

### **Department of Justice**

Despite the prohibition under Article VI, Section 10(a) of the Special Child Protection Act (Republic Act 7610)<sup>29</sup> of the jailing of children with adult prisoners as a form of cruelty, neglect, abuse, and act that puts children in conditions inimical and injurious to their development, the Department of Justice has never initiated any investigation or prosecution of law enforcers, their superiors, and civilian authorities for the widespread incarceration of children with adult crime suspects in police jails nationwide.

This is because the DOJ and the Philippine National Police are in fact in cahoots in committing this inhumanity. DOJ prosecutors routinely charge police child prisoners in court and tacitly authorize law enforcers to imprison children in police jails swarming with adult crime suspects.

Despite a long-standing petition by members of the public and the Coalition to require inquest prosecutors to ensure that children get diverted and turned over by law enforcers to the custody of social workers pursuant to the mandate of Article 191 of the Child and Youth Welfare Code or Presidential Decree 603, the Philippine state persists in committing this brutality against children who mostly belong to the poorest of the poor.

This underscores the climate of impunity, animated by *esprit de corps* among public officials, surrounding the state crime of jailing children with adult crime suspects.

### **Commission on Human Rights**

The Philippine Commission on Human Rights (CHR) has repeatedly decried the Philippine government's unjustifiable neglect in complying with its mandatory treaty obligations. As evidenced by its resolution dated December 17, 2003,<sup>30</sup> the Commission on Human Rights has been demanding for the Office of the President to observe the Philippine government's obligation under the Covenant. However, the Commission's plea remains unheeded up to this day.

### **Office of the President**

No power in the Philippines could enforce the diversion of children at the precise point of arrest other than the Office of the President. This is because of the multi-faceted and multi-layered nature of the twin evils of police child detention and the mixing up of children with adult crime suspects in an institutionalized, continuing, and widespread manner. Hence, coordinative and collaborative actions and efforts need to be exerted by, between, and among the governmental departments and agencies that are all under the sole and exclusive supervisory authority, power, and control of the President. These include the Department of Justice, the Department of Interior and Local Governments, and the Department of Social Welfare and Development. DILG controls both the Philippine National Police and Bureau of Jail Management and Penology. All these departments have to be mobilized in order to ensure the proper enforcement of the Child and Youth Welfare Code for law enforcers to commit to the custody of social workers all children upon arrest without exemption and without qualification.

It is the President who appoints the heads of DSWD, DILG, and DOJ. All the secretaries of these departments take their cue from and follow the policy priorities and

goals of the President. Thus, without compelling the President to address the continuing human rights violations committed by her own subordinates against child prisoners in a systematic, organized, and widespread manner, with her own actual knowledge, the problem would never be resolved.

Moreover, the diversion of children away from the hands of the police and to the custody of social workers requires the allotment of budget to the DSWD who would be assuming custody over the children. The President should be compelled as well to allot funds for this purpose from her discretionary social and/or intelligence funds, a power which the Supreme Court could not compel the President to exercise due to the doctrine of separation of powers.

**Article 24 in relation to Committee General Comment 17 (Paragraphs 1, 2, 3, and 5)**

1. **Every child shall have, without any discrimination** as to race, colour, **sex**, language, religion, national or **social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.**

**Article 26 in relation to Committee General Comment 28 (Paragraphs 3, 4, and 15)**

**All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as** race, colour, sex, language, religion, political or other opinion, national or **social origin, property, birth or other status.**

The Philippine state has been violating the non-derogable right to equality and non-discrimination of child prisoners, a peremptory principle of international law, on the ground of “sex... social origin, property, birth, or other status” as laid down under Article 2, Article 24, and Article 26 of the Covenant. Virtually all child prisoners come from the poorest of the poor as well. Child prisoners detained by police officers in the company of adult crime suspects include prostituted girls, children hooked on substance abuse, street urchins, child scavengers, and children with mental disabilities.

With the conspiratorial acquiescence, tacit consent, and implicit authority of the President and her top officials, and in violation of the principle of equality under Paragraphs 7, 10, and 12 of Committee General Comment 18, police officers commit the crime of jailing the children of the poorest of the poor on account of their being poor, sex (with respect to girls), poor social origins, and lack of property. The President down to the police officers know that these prisoners come from the economically marginalized and politically powerless sectors of society and therefore could not stand up to defend their human rights in the face of such onslaughts from the state. This reveals the discriminatory nature of the crime of jailing children with adult crime suspects, which the President and top officials refuse to officially acknowledge and stop until now, in violation of Articles 2(1), 24, and 26. Recently, NGOs, especially the PREDA Foundation, were restricted by the Philippine in their visits to child prisoners.

The Philippine state has been committing a form of unlawful discrimination based on the status of the child prisoners as children of the poorest of the poor, on account of



their being poor, their sex (as far as girl prisoners are concerned), and of their tender age which render them defenseless and powerless to rise up in defense of their dignity and human rights in the face of the systematic, organized, and widespread onslaught by law enforcers acting under color of official authority and title from the President who is their commander-in-chief. This violates Article 26 as elucidated in Committee General Comment 28 (Paragraphs 3, 4, and 15).

These state functionaries know and/or are in a position to know that these child prisoners are mostly unlettered, economically marginalized, and politically powerless; thus, enabling them to commit this institutionalized discrimination against child prisoners with impunity. The President, et. al., know and/or are in a position to know that these children are incapable of defending and protecting their rights amid the onslaughts from the law enforcers who tacitly and indirectly receive their orders from the Philippine President, who is their Commander-in-Chief.

The President refuses and fails to stop the institutionalized, widespread, and systematic jailing of children with adult crime suspects in police jails all over the Philippines, save for Cebu City, victimizing some 20,000 children every year on a cumulative basis. This 20,000 figure is based on statistics on children accused of violating the law (CAVL) released by the Office of Philippine Senator Francis Pangilinan in 2003. The Philippine Public Attorney's Office reported having provided free legal aid to 13,300 CAVL in 2002. For its part, the government's Council for the Welfare of Children reported that, over a six-year period, there were 52,756 CAVL, from 1995 to 2000.

Despite the clamor from many sectors of society, the Philippine President fails and refuses to stop the incarceration of children with adult crime suspects in cramped police jails where the children, especially girl prisoners, face greater risks of torture, sodomy, rape, tattooing, and other despicable forms of abuse both in the hands of their police captors and adult prisoners. Instead, the President blames the judiciary for the children's prolonged detention as evidenced by her speech during the founding anniversary of the Volunteers Against Crime and Corruption held at the Rizal Hall in Malacanang last August 12.

The President down to the law enforcers in the entire chain of command persist in carrying out this practice due to their retributive mindset, bias and prejudice, that manifest as a brazen form of unlawful discrimination against children belonging to the poorest of the poor on account of their age, economic and social status, and in the case of girl prisoners, sex, on top of this age and other status discrimination. Data culled by the Coalition to Stop Child Detention Through Restorative Justice prove that all these children come from the ranks of children whose families' income level falls below the poverty threshold as indicated by no less than the government's own National Economic and Development Authority (NEDA).

Most child prisoners come from 45.30 percent of the population living below the poverty threshold as of 1991. While NEDA statistics show a downtrend in poverty incidence – pegged at 40.60 percent in 1994, reduced to 34 percent in 2000, and curbed down further to 30.40 percent in 2003 – the phenomenon of child detention is actually worsening. Senator Jamby Madrigal, chairperson of the Philippine Senate's Committee on Youth, Women and Children, cites conservative estimates on the number of street children nationwide as reaching 1.5 million. About 50,000 of these children were

considered to be hard core. The Department of Social Welfare and Development also warns that the street children population increases by more than 6,000 every year.

This is alarming considering that the ranks of street children serve as the wellspring of children accused of violating the law. They suffer from arrest without judicial warrants for allegedly committing robbery snatching, theft, substance abuse, vagrancy, and concealing a deadly weapon.

Child prisoners belong to the poorest of the poor. They come from families whose earning falls way below the P6,817 (US\$122) monthly income needed to live decently in 2000, according to NEDA. Poverty threshold indicators show that to live decently, a family has to earn P3,043 (US\$54.5) in 1991, P3,702 (US\$66.3) in 1994, and P4,101 (US\$73.5) in 1997.

A number of child prisoners come from families with incomes not exceeding P2,000 (US\$35.8) and P4,000 (US\$71.6) per month. This is based on the 1990-2002 statistics of the Social Services Development Department that runs the Molave Youth Home in Quezon City, that accounts for one of the cities with the highest number of child prisoners in the country.

An analysis of Molave statistics shows that most child prisoners belong to families living below the poverty threshold, pegged at 39.90 percent in 1991 and at 28.40 percent in 2000 by NEDA.

In 2001, for instance, 178 out of 538 Molave detainees (33 percent) came from families earning below P3,000 (US\$53.7). This was followed by 142 children (26 percent) whose family income falls below P4,000. During the same period, only 63 children (12 percent) belonged to families earning less than P6,000 (US\$107.5).

A similar pattern could be gleaned during the 11-year period covering 1990 to 2000. Categorized into several income groups, the highest number of Molave prisoners mostly comes from families earning less than P3,000 (US\$53.7). Their number and percentage vis-à-vis the total number of Molave prisoners are as follows: 121 in 2000 (29 percent); 103 in 1999 (27 percent); 123 in 1996 (47 percent); 102 in 1995 (39 percent); 118 in 1994 (47 percent); 94 in 1993 (48 percent); 91 in 1992 (50 percent); 150 in 1991 (63 percent); and 141 in 1990 (62 percent).

In 1998, the 127 highest number of prisoners in the Molave income grouping (equivalent to 30 percent) belonged to families with income not exceeding P4,000, while a total of 101 children (31 percent) accounted for the P2,000 income category in 1997.

The state practice of jailing them with adult crime suspects under sub-human conditions smacks of unlawful discrimination committed by government functionaries, along with law enforcers, on account of the children's bleak economic status. This violates the peremptory principle of international law that prohibits discrimination on the ground of status.

On account of their status of extreme poverty and political powerlessness, sex, and their young age, the President, together with her top police and Cabinet officials, fail and refuse to prioritize and take action to spare the children from the inhumanity to

which law enforcers acting under the President's own supervisory authority and control subject them in a continuing and wide scale manner.

These discriminatory acts persist due to the voicelessness and powerlessness of the children of the poorest of the poor. Hence, they cannot speak up and stand up against the President *et. al.* due to their tender age, sex (in the case of girls), and economic and political marginalization. They have no economic resources to hire counsels to seek redress for the violations of their dignity and human rights. They lack political connections. Theirs is simply an unending struggle to survive, to make both ends meet, day in and day out, albeit stripped of their dignity and human rights.

Because of the extreme vulnerability of child prisoners, especially girls, the President *et. al.* manage to persist in carrying out the blatantly inhuman practice with impunity. No institutional mechanisms exist to ventilate the grievances of these child prisoners. No grassroots mechanisms exist to effectively monitor, prevent, and redress the legion violations committed against them during police custody. The practice of jailing children with adult crime suspects in police jails lacks any form of transparency or accountability whatsoever, thereby contributing to the climate of impunity that leads to further violations of children's human rights.

Neither do child prisoners appear within the radar screen of state functionaries. Theirs is a shadowless existence.

The President and her political appointees holding the reins of the Department of Justice, Department of Interior and Local Governments, and Philippine National Police see no political gain for themselves in paying attention to and addressing the monstrosity their own subordinates in the police inflict upon child prisoners. Children do not vote. They cannot speak. Philippine media and society only listen to politicians. Never, never to child prisoners stigmatized by unjust and inhumane imprisonment.

This hooliganism perpetuated and perpetrated by the President smacks of unlawful discrimination committed against child prisoners on account of their tender age, sex, and poor economic status, in violation of the Covenant's proscription against any form of discrimination on the ground of status, property, birth, social origins, and sex, in violation of Articles 2(1), 24, and 26.

## **Article 7**

**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.**

The incarceration by the Philippine state of complainants and an estimated 20,000 child prisoners on a cumulative basis per year in various police headquarters, stations, and sub-stations all over the country constitutes a form of crimes against humanity, torture, cruel, inhuman, or degrading treatment or punishment prohibited under the Covenant.

During police detention, law enforcers routinely lock up child prisoners with adult crime suspects in cramped police jails. The children lack access to psychosocial, health, and legal services during police custody.

Their jail conditions are horrible. They lack adequate ventilation and sanitation facilities. They sleep on the cold pavement without provisions. They only survive through the food brought by relatives of some prisoners which all the inmates share among themselves.

Being of tender age, the children get maltreated and abused by the police and adult inmates who order them, for instance, to clean the toilet. They are also made to sleep under the worst conditions inside cramped police cells, most of the time near the dilapidated and stinking toilet bowl.

## Article 9

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**

In violation of this Article and in brazen disregard of the Committee's recommendations in paragraph 2, Section 11 of the Concluding Observations on the Philippines adopted on October 30, 2003, children, upon their arrest, routinely get locked up in police jails packed with adult crime suspects. This standard operating procedure among officers of the Philippine National Police violates Article 191 of the Child and Youth Welfare Code (Presidential Decree 603) and Section 11 of the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders, both of which require law enforcers to turn over children, upon arrest, to the custody of social workers and/or responsible members of the community.

The Child and Youth Welfare Code or Presidential Decree 603 mandates law enforcers to immediately divert and turn over children, at the precise moment of arrest, to the custody of social workers and/or responsible members of the community.<sup>31</sup> This provision gets reiterated in the 1995 Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders. Law enforcers, however, violate this provision by locking up children in police prisons instead.

The arrest, imprisonment, and dehumanization inflicted in characteristic fashion by law enforcers upon child prisoners on a wide scale and institutionalized manner, with the conspiratorial acquiescence, tacit consent, and implicit authority of their own Commander-in-Chief, who is the President of the Philippines, along with her top police and Cabinet secretaries violate the Philippines' own Constitution and statutes, especially their right to due process of law and equal protection of the laws,<sup>32</sup> not to mention its own treaty obligations.

The Family Courts Act of 1997 or Republic Act 8369 also provides for diversionary measures in order to prevent the stigmatization of children arising from their contact with the police.<sup>33</sup> Despite this welter of laws, children do not get diverted at all at

the point of contact with law enforcers, but instead locked up indiscriminately with adult crime suspects in jails controlled by the Philippine National Police.

Philippine law is clear on this score. No single child shall be held in police custody even for a second. They should, under any and all circumstances, be immediately diverted and turned over to the custody of social workers and/or responsible members of the community upon arrest.

They should be under the care and custody of the Department of Social Welfare and Development to be nurtured, protected, and reintegrated with society eventually, and not criminalized, stigmatized, and brutalized in filthy police dungeons teeming with adult crime suspects, where they get contaminated with the virus of criminal contagion.

The Special Child Protection Act or Republic Act 7610 even prescribes a penalty of 12-year imprisonment for public officials<sup>34</sup> who commit any form of cruelty, neglect, abuse, or act that puts children in conditions inimical to their development<sup>35</sup> such as imprisonment with adult crime suspects under sub-human conditions and without access to health, psychosocial, and legal services and assistance.

The Anti-Graft and Corrupt Practices Act or Republic Act 3019<sup>36</sup> also makes public officials liable for causing undue injury to child prisoners for subjecting them to this barbaric form of detention.

The 1987 Philippine Constitution also prohibits this practice as a form of “cruel, degrading or inhuman punishment” under Section 19, Article III.

Yet, despite this welter of laws, the President of the Philippines conspiratorially acquiesces, tacitly authorizes, and implicitly consents to the standard operating procedure being followed by law enforcers—who indirectly and tacitly receive this order from the President, who is their superior—in throwing children behind prison bars in the company of adult crime suspects.

In fine, this atrocity violates the child prisoners’ right to due process of law and equal protection of the laws. On a wide scale, the Philippine state denies child prisoners, especially girls, their right to equal protection of the laws on account of their poor economic status as well as tender age, and in the case of girl prisoners, their sex.

**Article 10(1) in relation to Committee General Comment 21 (Paragraphs 2, 3, and 4), and Article 10(2)(b) in relation to Committee General Comment 21 (Paragraph 13), Articles 10(2)(b) and 10(3) in relation to Committee General Comment 21**

**1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.**

2.

Xxx

**(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.**

**2. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.**

Notwithstanding the Philippine state's obligation to comply with its treaty obligations in good faith pursuant to Article 26 of the Vienna Convention on the Law of Treaties, the President of the Philippines criminally neglects and instead conspiratorially acquiesces, tacitly consents, and implicitly authorizes the wide scale jailing of children with adult crime suspects in police headquarters, stations, and substations, all over the country, save for Cebu City, and prior to their transfer to detention facilities controlled by the Bureau of Jail Management and Penology, by virtue of commitment orders issued by backlog-ridden and snail-paced courts, in contravention of Articles 10(1), 10(2)(b), and 10(3), in relation to Committee General Commend 21.

During police custody, child prisoners, especially girls who are pregnant, face greater risks of being raped, sodomized, tortured, tattooed, and abused.

Law enforcers also routinely violate their right to be informed of their constitutional right to remain silent and to avail of the services of an independent and competent counsel of their own choice and to be provided with one by their police captors since they could not afford the services of such counsel pursuant to Section 12, Article III of the 1987 Philippine Constitution,<sup>37</sup> in violation of Covenant Article 9. They also face greater risks of being tortured and forced to confess to crime by their police captors, beaten up and tattooed by adult crime suspects who belong to tattoo-sporting gangs, sodomized and raped, and subjected to other despicable forms of indignities, in contravention of Covenant Article 7.

The fact that child prisoners are subjected to this form of Covenant violations is evidenced by the following duly certified documents obtained by counsel from the courts that formed part of the evidence submitted to, but unduly shunned, by the so-called Office of the Ombudsman in its efforts to shield and protect the President and state functionaries from any culpability for these treaty violations:

- Annexes "A" to "A-2" to Ombudsman complaint – Criminal Information against Victim 4
- Annex "A-3" to Ombudsman complaint – Philippine National Police letter addressed to the Department of Justice concerning Victim 4, whose origin shows the place of detention of Victim 4, a prison swarming with adult crime suspects
- Annex A-4 to Ombudsman complaint – commitment order issued by the court directing the Philippine National Police to transfer the custody of Victim 4, proving that the police, contrary to Article 191 of the Child and Youth Welfare Code (Presidential Decree 603) has been detaining children in police jails swarming with adult crime suspects
- Annexes B and B-1 to Ombudsman complaint – the sworn statement of the complainant against Victim 1 showing the date of incident that gave rise to the detention of Victim 1 at the PNP jail stated in this document, where adults were actually locked up
- Annex B-2 to Ombudsman complaint – PNP referral letter to the Department of Justice, showing the place of detention of Victim 1, which is actually a police jail swarming with adult crime suspects

- Annexes B-3-B-4 to Ombudsman complaint – Joint Sworn Affidavit of Arrest executed by two law enforcers who have sworn to having taken Victim 1 to the PNP station whose prison cell teemed with adult crime suspects. The signature of the prosecutor from the Department of Justice proved the common knowledge and acquiescence on the part of prosecutors to the jailing of children like Victim 1 in police jails packed with adult crime suspects
- Annex B-5 to Ombudsman complaint – commitment order issued by the court proving that victim 1 was in fact under police custody, contrary to the mandate of Article 191 of the Child and Youth Welfare Code (Presidential Decree 603), prior to the PNP's compliance with the said commitment order
- Annex C to Ombudsman complaint – referral letter of PNP to the DOJ prosecutor of the case against Victim 1, proving that the PNP had custody of Victim 1, contrary to the mandate of PD 603
- Annex C-1 – sworn statement of complainant against Victim 1, showing the date of incarceration of Victim 1 at police jail with adults
- Annex C-2 – commitment order issued by the court to the PNP directing Victim's 1 transfer
- Annex D – commitment order addressed to the PNP to transfer the custody of Victim 2, showing that the PNP had detained Victim 2 at the police jail packed with adults prior to the PNP's compliance with the court directive
- Annex D-1 – police referral letter of Victim 2's case to the prosecutor
- Annex D-2 – Affidavit of Arrest which proves that Victim 2 was in fact taken and held by the police at the police station where a number of adult crime suspects were actually detained in the company of Victim 2
- Annex D-3 – criminal information against Victim 2
- Annex E to E-3 – criminal information against three other children to prove the widespread character of the Covenant violation
- Annex E-4 – commitment order by the court to prove the widespread character of the jailing of children with adult crime suspects and the acceptance by various stakeholders, i.e., judges, prosecutors, and law enforcers, of this violation as a way of life
- Annex E-5 – request for the issuance of a commitment order signed by the police, to prove that police detain children in police jails in the company of adult crime suspects
- Annexes F, F-1, and F-2 – photographs of children behind bars in the company of adult crime suspects

N.B.: These pieces of evidence also prove the institutionalized nature of the jailing of children with adult crime suspects to the extent that judges simply order the police to commit the children to another facility, rather than express indignation over the detention and mixing up of children with adult crime suspects. This has been an established way of life that various stakeholders no longer find the same to be a despicable violation of the Covenant.

That children suffer from tattooing in the hands of adult crime suspects during police custody is evidenced by:

- Annex G – photograph showing the tattoo emblazoned on the back of a child detainee (below 18 years of age)

The institutionalized jailing of children with adult crime suspects under sub-human conditions and without access to psychosocial, health, and legal services violates the

principle of humanity under Article 10(1) as elucidated further in Committee General Comment 21 (Paragraphs 2,3, and 4). This is inherently reprehensible and stings the collective conscience of humanity.

Article 37© of the Convention on the Rights of the Child<sup>38</sup> that likewise outlaws the non-segregation of children and adult prisoners, combined with Covenant Articles 10(2)(b) and 10(3), has attained the status of universal ratification, custom and/or usage.

Although it has not ratified the CRC, the United States prohibits the jailing of children with adults. Somalia on the other hand has no government who would ratify the CRC. Verily, the proscription against the mixing up of children with adult prisoners, like the universal outlawing of torture, and as clarified in Committee General Comment 21 (Paragraph 13) constitutes a principle of *jus cogens* (compelling law) and an *obligatio erga omnes* (binding upon all nations). Hence, the nature of the violation being complained about by the child prisoners qualifies as a form of crimes against humanity for which the Philippine President and her top police and Cabinet officials—like Chilean despot Augusto Pinochet—can be held criminally liable as enemies of humankind anywhere in the world.

### Prayer

Pursuant to the requirement for state parties to adopt affirmative actions to address discrimination and to promote the principle of equality, under Paragraph 10 of Committee General Comment 18, as well as Committee General Comment 17, the complainants and/or the class suitors respectfully pray unto the Committee for the grant of the following relief:

1. Require the President of the Philippines to comply with the Philippine government's obligation to segregate children *upon arrest* from adult crime suspects in accordance with Covenant Article 10(2)(b) and Article 10(3), which is "a mandatory provision of the Covenant," according to Paragraph 13 of Committee General Comment 21;
2. Pursuant to Covenant Article 2(3)(a) and Article 9(1), and Committee Concluding Observations adopted on October 30, 2003, require the President to enforce Article 191 of the Child and Youth Welfare Code or Presidential Decree 603 mandating law enforcers to divert and turn over children to the custody of social workers under the Department of Social Welfare and Development and/or responsible members of the community at the precise point of arrest, without the self-serving and bureaucratic requirement for a court-issued commitment order;
3. *Immediately and unconditionally* enjoin the Philippine state, through the President, her Secretary of Justice, Secretary of Interior and Local Governments, and Chief of the Philippine National Police, from further jailing children, especially girls and those with mental disabilities, in police headquarters, stations, and sub-stations all over the country, especially in the company of adult crime suspects, in accordance with Paragraph 3 of Committee General Comment 28, requiring states parties to "take all necessary steps to enable every person to enjoy" her Covenant rights,



including “the removal of obstacles to the equal enjoyment each of such rights”;

4. Require the President to immediately direct the Secretary of Interior and Local Governments and the Chief of the Philippine National Police to immediately and unconditionally release all children, especially girls, languishing in police jails to the care and custody of the Department of Social Welfare and Development, without need of any court order, pursuant to Paragraph 3 of Committee General Comment 28, Covenant Article 2(3)(a), Article 10(2)(b), and Article 10(3), and Paragraph 13 of Committee General Comment 21;
5. Require the President to permanently cease and desist from further jailing children with adult crime suspects, under any and all circumstances, pursuant to Paragraph 3 of Committee General Comment 28, Article 2(3)(a), Article 10(2)(b), Article 10(3), and Paragraph 13 of Committee General Comment 21;
6. Require the President to order the investigation and prosecution in good faith of law enforcers, their superiors, the Chief of the Philippine National Police, and the Secretaries of the Department of Justice and of the Department of Interior and Local Governments for their culpability for the wide scale violation of the Covenant provisions in accordance with Article 2(3)(a) and Article 9(1) of the Covenant, specifically in relation to their command responsibility, based on the Tadic, Celebici, Pinochet, Yamashita, and Nuremberg doctrines, for the widespread violation of Article VI, Section 10(a) of the Special Child Protection Act (Republic Act 7610), and/or Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 3019), in order to destroy the wall of impunity and erect the barrier of non-recurrence of these Covenant violations, and pursuant to the Committee Concluding Observations on the Philippines, under Section 11, paragraph 2;
7. Require the President to ensure that all past and present victims of police child detention and the mixing up of children with adult crime suspects be provided with the necessary psychosocial and healing assistance and services according to Article 2(3)(a) and Article 9(1) of the Covenant;
8. Require the President to compensate all past and present child prisoners on account of the egregious violations of the Philippine state’s treaty commitments in accordance with Article 2(3)(a) and Article 10(1), as elucidated in paragraph 3 of Committee General Comment 21, and Articles 7, 9(1), 10(2)(b), and 10(3), specifically with reference to Section 12(4), Article III of the 1987 Philippine Constitution,<sup>39</sup> requiring compensation for victims of torture, cruel, inhuman, and degrading treatment and punishment, in accordance with paragraph 9 of Consideration of the Merits in the Committee Views in the case of Ramil Rayos v. Philippines;<sup>40</sup>;
9. Other just and equitable remedies are likewise prayed for.

## 8. Date and signature

Date

Location Bangkok, Thailand at time of electronic filing of petition

Signature Perfecto Caparas

Counsel Perfecto Caparas

## 9. List of Documents Attached (do not send originals -- only copies)

- Video footages online of children locked up in police jails with adult crime suspects <http://www.stopchilddetention.com/clips.html>
- Photos online of children behind bars <http://www.stopchilddetention.com/photos.html>  
For more photos of child prisoners, please access the PREDA website headed by Fr. Shay Cullen at <http://preda.org/home.htm> then click Child Rescue Page
- Order of dismissal by Ombudsman of complaint, signed by Victor Fernandez, Deputy Ombudsman for Luzon, on June 21, 2005, consisting of 11 pages
- Motion for Reconsideration filed by counsel upon receipt of Ombudsman's order of dismissal signed on June 21, 2005
- Order denying the motion for reconsideration signed by Victor Fernandez on October 7, 2005, consisting of four pages
- Ombudsman complaint subscribed and sworn to by five complainants, with the assistance of a licensed social worker or their parents, and/or class suitors before counsel in the latter's capacity as notary public, consisting of 50 pages, including the following annexes, filed on December 10, 2003 before the Office of the Ombudsman
- Annexes "A" to "A-2" to Ombudsman complaint – Criminal Information against Victim 4
- Annex "A-3" to Ombudsman complaint – Philippine National Police letter addressed to the Department of Justice concerning Victim 4, whose origin shows the place of detention of Victim 4, a prison swarming with adult crime suspects
- Annex A-4 to Ombudsman complaint – commitment order issued by the court directing the Philippine National Police to transfer the custody of Victim 4, proving that the police, contrary to Article 191 of the Child and Youth Welfare Code (Presidential Decree 603) has been detaining children in police jails swarming with adult crime suspects
- Annexes B and B-1 to Ombudsman complaint – the sworn statement of the complainant against Victim 1 showing the date of incident that gave rise to the detention of Victim 1 at the PNP jail stated in this document, where adults were actually locked up
- Annex B-2 to Ombudsman complaint -- PNP referral letter to the Department of Justice, showing the place of detention of Victim 1, which is actually a police jail swarming with adult crime suspects
- Annexes B-3-B-4 to Ombudsman complaint – Joint Sworn Affidavit of Arrest executed by two law enforcers who have sworn to having taken Victim 1 to the PNP station whose prison cell teemed with adult crime suspects. The signature of the prosecutor from the Department of Justice proved the common knowledge and acquiescence on the part of prosecutors to the jailing of children like Victim 1 in police jails packed with adult crime suspects
- Annex B-5 to Ombudsman complaint – commitment order issued by the court proving that victim 1 was in fact under police custody, contrary to the mandate of

Article 191 of the Child and Youth Welfare Code (Presidential Decree 603), prior to the PNP's compliance with the said commitment order

- Annex C to Ombudsman complaint – referral letter of PNP to the DOJ prosecutor of the case against Victim 1, proving that the PNP had custody of Victim 1, contrary to the mandate of PD 603
- Annex C-1 – sworn statement of complainant against Victim 1, showing the date of incarceration of Victim 1 at police jail with adults
- Annex C-2 – commitment order issued by the court to the PNP directing Victim's 1 transfer
- Annex D – commitment order addressed to the PNP to transfer the custody of Victim 2, showing that the PNP had detained Victim 2 at the police jail packed with adults prior to the PNP's compliance with the court directive
- Annex D-1 – police referral letter of Victim 2's case to the prosecutor
- Annex D-2 – Affidavit of Arrest which proves that Victim 2 was in fact taken and held by the police at the police station where a number of adult crime suspects were actually detained in the company of Victim 2
- Annex D-3 – criminal information against Victim 2
- Annex E to E-3 – criminal information against three other children to prove the widespread character of the Covenant violation
- Annex E-4 – commitment order by the court to prove the widespread character of the jailing of children with adult crime suspects and the acceptance by various stakeholders, i.e., judges, prosecutors, and law enforcers, of this violation as a way of life
- Annex E-5 – request for the issuance of a commitment order signed by the police, to prove that police detain children in police jails in the company of adult crime suspects
- Annexes F, F-1, and F-2 – photographs of children behind bars in the company of adult crime suspects
- Appeal to Honorable Supreme Court Chief Justice Hilario Davide to stop the illegal detention of children with adult crime suspects in police jails, signed by Fr. Anthony J. Ranada, Atty. Rene Sarmineto, and counsel, signed/received by the Chief Justice's office on January 2, 2003, consisting of two pages
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- "Petition to issue a memorandum circular to stop the illegal detention of children" addressed to the Department of Interior and Local Governments (DILG) signed by Fr. Anthony J. Ranada, counsel, and other concerned citizens, asking Interior Secretary Jose Lina to direct law enforcers to divert and turn over children immediately upon arrest to the care and custody of the Department of Social Welfare and Development, and for law enforcers to refrain from further jailing them with adult crime suspects in police jails This six-page letter was received by Secretary Lina's office on March 3, 2003 as shown by the rubberstamp marking and signature found on page 1 thereof
- Two separate appeals titled *Tattooing and Beating Up of Children in Police Custody* addressed to then Interior and Local Governments Secretary Jose Lina signed by Fr. Anthony J. Ranada, and the other by concerned citizens and counsel, dated June 30, 2003, and received/signed by Secretary Lina's office on the same date.
- Appeal by counsel to all Family Court Judges of Quezon City, National Capital Judicial Region, Philippines, titled *An Open Exhortation for Grassroots Judicial Activism to Stop Police Child Detention*, to dismiss the cases against children accused of violating the law on the ground of failure of jurisdiction due to the violation of the constitutional rights of children committed by law enforcers and prosecutors by

means of locking them up with adult crime suspects in police jails, consisting of 12 pages and signed/received by the different Family Court judges on March 25, 2003.

- Petition to the Commission on Human Rights by Fr. Anthony J. Ranada, Atty. Rene V. Sarmiento, and counsel to investigate and denounce the illegal detention of children with adults in police jails nationwide dated April 23, 2003.<sup>41</sup>
- Complaint to the Secretary of Justice bringing to his attention the torture, tattooing, sexual abuse, and other atrocities committed against children accused of violating the law during police detention, signed/received on November 24, 2003
- Mass petition to the Supreme Court for the expansion of the scope of judicial diversion signed/received on January 8, 2004, consisting of four pages, excluding the hundreds of signatures submitted along with the petition. The Supreme Court referred the matter for further evaluation and study.
- Petition by human rights advocates, concerned citizens, and counsel to the Department of Justice, calling for the Secretary of Justice to require all prosecutors nationwide to ensure the compliance by law enforcers with Article 191 of the Child and Youth Welfare Code (Presidential Decree 603), signed/received on January 7, 2004 (Annex \_\_). Draft Department of Justice Memorandum Circular signed/received on January 7, 2004 (Annex \_\_). No action.
- Photos of rally in front of the Ombudsman Building simultaneous with the symbolic filing by former child prisoners and street children on December 10, 2003 of the five complainants' class action against the President and her top officials for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act 7610), covered by national television and national newspapers.<sup>42</sup>
- Photos of march-rally by children, together with counsel, in front of the Commission on Human Rights Building and dialogue with Commission officials on December 10, 2003. This resulted in the reiteration of the Commission's resolution calling for the Office of the President to comply with the Philippine government's treaty obligation, to no avail.<sup>43</sup>
- Photos of march-rally near the Presidential Palace by children belonging to various organizations, together with counsel, on January 8, 2004, covered by national television and various national newspapers.<sup>44</sup> No effect, other than the action of the police in getting the name of counsel and the various organizations engaged in the mass action.
- Online and print media appeals to the President on various occasions, including the putting up by the Coalition to Stop Child Detention Through Restorative Justice of a website proving the wide scale violation.<sup>45</sup> The President and her top officials feigned ignorance about the illegal practice of jailing some 20,000 children on a yearly basis with adults in police jails. They instead subtly passed the buck to the judiciary, although the detention occurred without the knowledge and authority of the court, since the children were arrested and locked up without judicial warrants.
- Photos online of mass actions to stop the jailing of children with adults before the Office of the Ombudsman and Commission on Human Rights  
<http://www.stopchilddetention.com/coalition.html>
- <http://www.stopchilddetention.com/suitphotos.html>
- <http://preda.org/home.htm> then click Children and Youth Activities
- Mass Petition for the Department of Justice to divert children during inquest proceedings to the custody of social workers and/or responsible members of the community, including their next-of-kin, signed/received on January 7, 2004, consisting of three pages, excluding the actual signatures by some 500 concerned citizens, including members of the clergy, non-government organizations, and

Department of Social Welfare and Development officials, and counsel, the original signatures having been submitted to the DOJ

- Department of Justice draft circular addressed to all inquest prosecutors to ensure the diversion of children to the custody of social workers during inquest proceedings, attached to the preceding petition, signed/received by the DOJ on January 7, 2004 consisting of four pages, proving that the issue has been properly brought to the attention of the Secretary of Interior and Local Governments
- Appeal by counsel to Family Court Judges of Quezon City, National Capital Judicial Region, titled Open Exhortation for Grassroots Judicial Activism to Stop Police Child Detention, signed/received on March 25, 2003, consisting of 12 pages
- Appeal by Fr. Anthony J. Ranada, S.V.D., President of the PRESO Foundation, to then Secretary of Interior and Local Governments Jose Lina titled Tattooing and beating up of children prisoners in police custody, signed/received on June 30, 2003, consisting of two pages
- Official disposition form of the National Police Commission-Department of Interior and Local Governments addressed by the Napolcom commissioners to then Interior and Local Governments Secretary Jose Lina, dated July 17, 2003, consisting of three pages, proving that the DILG Secretary has been asked by concerned citizens and counsel to stop the illegal detention of children with adult crime suspects
- Internal routing slip of the Department of Interior and Local Governments confirming the DILG's receipt of the petition to stop the jailing of children with adult crime suspects, dated August 4, 2003, and signed by Annabella V. Isidro, head executive assistant
- Appeal by concerned citizens, including counsel, to then Secretary of Interior and Local Governments Jose Lina titled Tattooing and beating up of children prisoners in police custody, signed/received on June 30, 2003, consisting of two pages
- Mass petition by concerned citizens, including counsel, for then Interior and Local Governments Secretary Jose Lina to issue a memorandum circular to all law enforcers nationwide to immediately stop the illegal detention of children in police jails packed with adult crime suspects, signed/received by his office on March 25, 2003, consisting of seven pages, proving that the matter has been officially brought to his attention
- Appeal to judges, prosecutors, social workers, police, city councilors, and officers of the Bureau of Jail Management and Penology to stop police child detention and the mixing up of children with adult prisoners signed by concerned citizens, including counsel, dated December 11, 2002, consisting of seven pages, including the signatures
- Appeal by children's human rights advocates, including counsel, to then Secretary Simeon Datumanong concerning the abuse of children in prison signed/received by his office on November 24, 2003, consisting of two pages

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<sup>1</sup> This figure is based on estimates given by the office of Philippine Senator Francis Pangilinan in 2003.

<sup>2</sup> The Honorable Supreme Court issued Administrative Circular No. 13-2004 whose full text follows:

To: All Judges Of The Regional Trial Courts Designated As Family Courts

Subject : Cases Involving Youthful Offenders

Report had reached this Court regarding violations in the apprehension of youthful offenders, delay in the disposition of their cases, and their detention or commitment in cramped detentions cells in the company of adult offenders.

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In view of these reports, it is high time to remind you again of the pertinent administrative circulars issued to address these matters. Administrative Circular No. 23-95 dated 11 October 1995 provides:

All trial judges are enjoined to act with dispatch on all cases involving children, including but not limited to child labor case under Rep. Act No. 7610, cases of child abuses and pedophilia.

It is directed that arraignments should be scheduled within a week after the accused is placed in the court's custody or upon filing of the bailbond and pre-trial/trial shall commence within three (3) days from arraignment.

Attention is called to Section 30 of Rep. Act No. 7610 which provides that violations of this Act should be heard in the chambers of the RTC duly designated as Juvenile and Domestic Relations Courts.

In Administrative Circular No. 04-2002 dated i February 2002, this Court issued guidelines to protect the interests and rights of prisoners, especially minor detainees, and to eradicate or at least minimize the congestion of jails in the country; thus:

1. Effective immediately, trial judges shall hold regular dialogues, conferences, or visitations, in coordination with appropriate government agencies, as well as the local chief executives, jail wardens, chiefs of police and officials from social welfare office, at least once a month with the inmates in all jails in their respective territorial jurisdiction.

2. Said dialogues, conferences, or visitations shall be for the following purposes:

a. To determine the sufficiency or manner of safekeeping and reformation of prisoners, especially minor detainees, as well as their proper accommodation and health;

b. To sot limits to the number of detainees in jail, **and provide for the segregation of minors from the adult prisoners;**

c. To identify minor prisoners who are willing to plead guilty, if qualified, and to inform them of the benefits granted by the provisions of P.O. No. 603 on suspended sentence of minors;

3. Strict compliance with the provisions of R.A. No. 8369

(An Act Establishing Family Courts) and its implementing guidelines is hereby enjoined.

.4. Trial judges designated in the Family Courts shall endeavor to assign specific days for the trial of cases involving minor offenders to the exclusion of criminal cases against adult offenders. (Emphasis supplied).

Pursuant to the said circulars you are enjoined to act with dispatch on all cases involving minor offenders. Likewise, you must observe Article 191 of the Child and Youth Welfare Code (P.D. No. 603) on the care of youthful offenders held for examination or trial; Sections 2 and 8 of the Family Courts Act of 1997 (R.A. No. 8369) mandating a system of adjudication for youthful offenders which takes into account their peculiar circumstances, and directing Family Court Judges to have direct control and supervision of youth detention homes; and Article 10(2)(b) and 10(3) of the International Covenant on Civil and Political Rights providing for the segregation of juvenile offenders from adults for a speedy adjudication of their cases, and for treatment appropriate to their age and legal status.

Issued this 30th day of March 2004.

(Sgd.) Hilario G. Davide Jr.  
Chief Justice

*(underscoring supplied)*

<sup>3</sup> A copy of the appeal to the Commission on Human Rights is accessible at <http://www.philsol.nl/A03a/ChildDetention-CHR-apr03.htm>

<sup>4</sup> For a copy of the full text of the Commission on Human Rights resolution dated December 17, 2003, please access.

<http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/abthr031-035.htm#sdetention>

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This came out seven days after some 100 children belonging to various organizations, Fr. Shay Cullen of PREDA Foundation, counsel, and other children's human rights advocates staged a march-rally in front of the Commission on Human Rights building and held a dialogue with Commission officials to decry the illegal detention of children in police jails.

<sup>5</sup> No hard jail time for minors, DOJ orders, Philippine Daily Inquirer, January 10, 2004

[http://www.inq7.net/nat/2004/jan/11/nat\\_8-1.htm](http://www.inq7.net/nat/2004/jan/11/nat_8-1.htm)

<sup>6</sup> <http://www.stopchilddetention.com/coalition.html>

<sup>7</sup> Full text of the resolution is accessible at

<http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/abthr031-035.htm#sdetention>

<sup>8</sup>

<sup>9</sup> <http://stopchilddetention.com>

<http://www.stopchilddetention.com/clips.html>

<http://stopchilddetention.com/photos.html>

<http://coalitiontostopchilddetention.blogspot.com/>

<sup>10</sup> *Concluding Observations of the Human Rights Committee, Philippines, U.N. Doc. CCPR/CO/79/PHL (2003).*

The full text of the concluding observations is accessible online at:  
<http://www1.umn.edu/humanrts/hrcommittee/philippines2003.html>

<sup>11</sup> Child prisoners accuse GMA and top officials, Solidarity Philippines Australia Network

<http://www.cpcabrisbane.org/Kasama/2003/V17n4/ChildPrisoners.htm>

Philippines: Illegal detention of children (Action appeal), Asian Human Rights Commission

<http://acr.hrschool.org/mainfile.php/0170/287/>

Kids in jails spark protests, Manila Standard Today, January 8, 2004

[http://www.manilastandardonline.com:8080/mnlastd/ContentLoader?page=police01\\_jan04\\_2004](http://www.manilastandardonline.com:8080/mnlastd/ContentLoader?page=police01_jan04_2004)

Petition for DOJ to divert children prisoners during inquest proceedings, Cyberdyaryo, October 28, 2003

[http://www.cyberdyaryo.com/statements/st2003\\_1028\\_04.html](http://www.cyberdyaryo.com/statements/st2003_1028_04.html)

<sup>12</sup> Accessible at <http://www.jubileereaction.co.uk/campaigns/kbb/jcusa051115.html#rogers>

<sup>13</sup> <http://preda.org/home.htm>

<sup>14</sup> Accessible online at

<http://www.gov.ph/forum/thread.asp?rootID=68288&catID=17>

Visited and downloaded on December 5, 2005

<sup>15</sup> Accessible at

<http://www.gov.ph/forum/thread.asp?rootID=66614&catID=2>

Visited and downloaded on December 5, 2005

<sup>16</sup> Accessible at

<http://www.gov.ph/forum/thread.asp?rootID=65642&catID=11>

Visited and downloaded on December 5, 2005

<sup>17</sup> Accessible at

<http://www.gov.ph/forum/thread.asp?rootID=65234&catID=2>

Visited and downloaded on December 5, 2005

<sup>18</sup> Accessible at the PREDA website

<http://www.preda.org/work/child%20rescue/jreport/a05081202.html>

Visited and downloaded on December 5, 2005

<sup>19</sup> Philippines International Review, Pilot Online Issue, December 2003

<http://www.philsol.nl/pir/v3/ChildDetention.htm>

<sup>20</sup> Petition Spot

<http://www.petitionspot.com/petitions/gmaliablechildprisonabuse>

<sup>21</sup> Independent Media Center

[http://qc.indymedia.org/news/2005/08/4486\\_comment.php](http://qc.indymedia.org/news/2005/08/4486_comment.php)

<sup>22</sup> Philippine Advertising Counselors, et. al. vs. National Labor Relations Commission, G.R. 120008, October 18, 1996

The full text of the decision is accessible at

[http://www.lawphil.net/judjuris/juri1996/oct1996/gr\\_120008\\_1996.html](http://www.lawphil.net/judjuris/juri1996/oct1996/gr_120008_1996.html)



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<sup>23</sup> Rep. Virgilio P. Robles vs. Honorable House of Representatives Electoral Tribunal and Romeo Santos, G.R. 86647, February 5, 1990

Full text of this decision is accessible at  
<http://www.chanrobles.com/cralaw19906.htm>

<sup>24</sup> 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, Republic Act No. 7438, April 27, 1992  
<http://www.chanrobles.com/republicactno7438.htm>

<sup>25</sup> **Sec. 3. Corrupt practices of public officers.** - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) **Causing any undue injury to any party**, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions **through manifest partiality, evident bad faith or gross inexcusable negligence**. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. (underscoring supplied)

- Anti-Graft and Corrupt Practices Act (Republic Act 3019)

<sup>26</sup> Prosecutor v. Zejnil Delalic Zdravko Mucic Also Known As "Pavo" Hazim Delic Esad Landzo Also Known As "Zenga"

<http://www.un.org/icty/celebici/trialc2/judgement/>

See Also Prosecutor v. Zejnil Delalic Zdravko Mucic Also Known As "Pavo" Hazim Delic

<http://lawofwar.org/celebici.htm>

<sup>27</sup> In this case, the Honorable Philippine Supreme Court declared: "The course which petitioner takes is correct. Habeas corpus is a high prerogative writ. It is traditionally considered as an exceptional remedy to release a person whose liberty is illegally restrained such as ***when the accused's constitutional rights are disregarded. Such defect results in the absence or loss of jurisdiction and therefore invalidates the trial and the consequent conviction of the accused whose fundamental right was violated.*** That void judgment of conviction may be challenged by collateral attack, which precisely is the function of habeas corpus. This writ may issue even if another remedy which is less effective may be availed of by the defendant. Thus, failure by the accused to perfect his appeal before the Court of Appeals does not preclude a recourse to the writ. The writ may be granted upon a judgment already final. For, as explained in Johnson vs. Zerst, the writ of habeas corpus as an extraordinary remedy must be liberally given effect so as to protect well a person whose liberty is at stake." [underscoring supplied] - G.R. No. L-29169; August 19, 1968

<sup>28</sup> Administrative Circular No. 04-2002 re **Special Treatment Of Minor Detainees And Jail Decongestion** addressed to All Executive Judges And Judges Of Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts In Cities, Municipal Trial Court And Muncipal Circuit Trial Courts.

<sup>29</sup> Article VI Other Acts of Abuse

Sec. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

- Article VI, An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes, Republic Act 7610

<sup>30</sup> The full text of the Commission on Human Rights resolution runs as follows:

On Separate Detention Facilities for Women and Children



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

“ x x x

2. Provide separate detention facilities for women and children.

x x x “

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

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

1. International Covenant on Civil and Political Rights, Article 10

“1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person;

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

2. Convention on the Rights of the Child, Article 37

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and form the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

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

“The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn

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from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.”

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

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

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

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

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

Art. 191. Care of Youthful Offender Held for Examination or Trial.- A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court, may, in its discretion upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable persons who shall be responsible for his appearance whenever required.

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

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

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

1. For the Department of Social Welfare and Development to recommend the exercise of its authority under Article 191 of Presidential Decree No. 603, to prevent human rights violations and future occurrence thereof to children who languish in jail and detention centers together with adult detained and convicted persons and suffering sub-standard and inhuman conditions while incarcerated.

2. For the Department of Justice to review the complaints and cases against children in conflict with the law, especially those detained and convicted and serving sentence, for the adoption of measures to improve the justice system for their humane reformation and rehabilitation to include:

\* Recommend for the commutation of death sentence or for the imposition of less severe penalty to children in conflict with the law.

\* Investigate and/or take into consideration all forms of admission and confession of children in conflict with the law and allegation of torture, force, violence, threat intimidation or any other means which vitiate the free will.

\* Report the documented age of minors to all judicial and custodial officials

3. For the Department of the Interiors and Local Government to coordinate efforts to provide humane detention centers and shelter for these children and to issue instructions and monitor compliance for

\* Law enforcement officials to immediately investigate and document on arrest or first contact, the age of any perpetrator who seems younger than eighteen.

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\* The Bureau of Jail Management and Penology to ensure that children detainees are provided with separate detention facilities, in accordance with international standards.

\* The Bureau of Jail Management and Penology to adopt pro-active and effective measure, to prevent violence between child detainees or between adult and child detainees and to investigate and prosecute those responsible, or those abetting, by way of protecting or encouraging those who have the tendency to abuse.

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

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

Quezon City, 17 December 2003

<sup>31</sup> Art. 191. Care of Youthful Offender Held for Examination or Trial. - A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, **shall from the time of his arrest be committed to the care of the Department of Social Welfare** or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required.

-- The Child And Youth Welfare Code, Presidential Decree No. 603, December 10, 1974

<sup>32</sup> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

- Article III, Bill of Rights, 1987 Philippine Constitution

<sup>33</sup> SECTION 8. Supervision of Youth Detention Homes. - The judge of the Family Court shall have direct control and supervision of the youth detention home which the local government unit **shall establish to separate the youth offenders from adult criminals**: Provided, however, That **alternatives to detention and institutional care shall be made available to the accused including counseling, recognizance, bail, community continuum, or diversions from the justice system**: Provided, further, That the human rights of the accused are fully respected in a manner appropriate to their well-being.

-- An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child And Family Cases, Amending Batas Pambansa Bilang 129, As Amended, Otherwise Known As Act Of 1980, Appropriating Funds Therefor And For Other Purposes, Republic Act No. 8369

<sup>34</sup> Article XII

Common Penal Provisions

Sec. 31. Common Penal Provisions. -

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is prision correccional or arresto mayor, the penalty of suspension shall also be imposed;

-- Republic Act No. 7610

An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes

<sup>35</sup> Article VI

Other Acts of Abuse

Sec. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period. ***ibid.***

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<sup>36</sup> Sec. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing **any undue injury to any party**, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through **manifest partiality, evident bad faith or gross inexcusable negligence**. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

-- Anti-Graft And Corrupt Practices Act, Republic Act No. 3019 (*underscoring supplied*)

<sup>37</sup>. Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

- Article III, 1987 Philippine Constitution

<sup>38</sup> States Parties shall ensure that:

xxx

( c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, **every child deprived of liberty shall be separated from adults** unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

- Article 37, Convention on the Rights of the Child

<sup>39</sup> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Section 12, Article III, 1987 Philippine Constitution

<sup>40</sup> Communication No. 1167/2003, U.N. Doc. CCPR/C/81/D/1167/2003 (2004)

<sup>41</sup> A copy of the appeal to the Commission on Human Rights is accessible at <http://www.philsol.nl/A03a/ChildDetention-CHR-apr03.htm>

<sup>42</sup> <http://www.stopchilddetention.com/coalition.html>

<sup>43</sup> Full text of the resolution is accessible at

<http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/abthr031-035.htm#sdetention>

<sup>44</sup>

<sup>45</sup> <http://stopchilddetention.com>

<http://www.stopchilddetention.com/clips.html>

<http://stopchilddetention.com/photos.html>

<http://coalitiontostopchilddetention.blogspot.com/>