

Cruel Detentions: Subhuman Prison Conditions — a Form of Cruel and Unusual Punishment

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I. INTRODUCTION

[O]ur criminal justice system rests on five interconnected pillars: the police, the prosecution, the courts, the correctional system, and the community. The interconnection between these five pillars acts as an intricate web designed to ensnare the transgressors: the efficiency of one brings about a positive effect to the others.¹

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1. Reynato S. Puno, Chief Justice, Inspirational Message, Delivered during The Asia Foundation's Launching of Five Documentary Films on the State of the Philippine Penal System (Nov. 23, 2007).

Often, society, as a whole, concentrates its efforts on the eradication of crime and the prosecution of criminals. Once the crime rate decreases and the gavel has been brought down, nary is a second thought given to the human being who has been stripped of his liberty. The international community recognizes this restriction on liberty as justifiable, when public safety demands. It is a form of crime prevention, just retribution, and deterrence, keeping in mind that the “ultimate goal of the criminal justice system is the reintegration of the offender into society.”²

In the usual scheme of things, after a person is sentenced, the wrongdoer is labeled a convict and sent to rot in a godforsaken facility — tossed aside as a forgotten member of society. There are, of course, exceptions. An example is nongovernmental organizations dedicated to the development of programs for the reintegration of those released from prison as well the improvement of the facilities for those who are slated never to leave the confines of prison walls.³ Yet, stories about the horrors of Philippine prisons continue to dominate the consciousness of the public. This Note examines that part of the Criminal Justice System that is often overlooked and ventures to discover whether the atrocities experienced by inmates have met the threshold for cruel and unusual punishment.

A. Scope and limitations

The author begins by giving a brief overview on the correctional system of the Philippines, presenting each of the government agencies that are given official charge with its administration. Then, the realities of the situation are confronted, as accounts of what prison conditions inmates are forced to live with are explored through a review of some of the 2009 International Reports on the Philippines. An overview of the United Nations’ (U.N.) Standards for Correctional Institutions⁴ and the key concepts in the discussion, such as the concept of correction and cruel and unusual punishment, is also provided. This Note ends with an assessment of the verisimilitude of the contention that the State’s correctional system produces conditions equivalent to cruel and unusual punishment.

This Note seeks to tackle the issue of whether or not the current state of Philippine detention centers warrants a suit against the State for cruel and unusual punishment.

For the sake of this Note, “prisons” and “detention centers” are

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2. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. Res. 45/110, U.N. GAOR, 68th plenary meeting, U.N. Doc. A/RES/45/110 (Dec. 14, 1990).
 3. An example of this is the Philippine Jesuit Prison Service.
 4. Standard Minimum Rules for the Treatment of Prisoners, GA 663 C (XXIV), U.N. Doc. A/CONF/611 (Aug. 30, 1955).

interchangeably used and refer to a structure to which people are legally committed as a punishment for crimes they have committed or while awaiting trial. The author has adopted the definition of “prison conditions” as “all treatments and practices to which inmates are subjected, and all situations in which they are placed, that are alleged to be attributable to the independent decisions, act [sic], or omissions of prison personnel and of the inmates themselves.”⁵ “Inmates,” “prisoners,” and “detainees” are interchangeably used to refer to those persons under the custody of the Bureau of Corrections or the Bureau of Jail Management and Penology whether merely detained or serving a sentence for a crime or felony committed.

B. Significance

Even with the infamous snail-pace of the Philippine courts, the Philippines still manages to put away a significant number of people.⁶ In fact, this slow resolution of cases is cited as one of the reasons behind the increase in the jail population, giving rise to the initial assessment that it is possible that those who are cruelly and unusually punished are not even guilty of any crime.⁷

5. Voltaire Y. Rosales, *Can Cruel and Unusual Punishment Exist by Reason of Subhuman Prison Conditions?*, 25 *ATENEO L.J.* 55 (1981).

6. Freedom House, *Freedom in the World 2009 — Philippines* (July 16, 2009), available at <http://www.unhcr.org/refworld/docid/4a64528e1e.html> (last accessed Oct. 24, 2009). (On average, it takes six to seven years for the resolution of cases in courts like the Sandiganbayan.)

7. Bureau of Jail Management and Penology, *Question and Answer*, available at http://www.bjmp.gov.ph/Data_Stat/JULY_QandA_2007.pdf (last accessed Oct. 24, 2009); The Bureau of Jail Management and Penology cite the remaining justifications for the increase in jail population —

- (1) Implementation of Comprehensive Dangerous Drugs Act of 2002;
- (2) Reduction in the quantity of illegal drugs bailable under R.A. No. 9165;
- (3) Inability to pay bail;
- (4) Recidivism;
- (5) Poverty and Unemployment [sic];
- (6) Increase in the amount of bail bond required by courts;
- (7) Some courts do not accept surety bond instead they want cash bail;
- (8) Some Bonding companies refuses [sic], to accept muslim [sic], inmates;
- (9) Increase in the number of arrested person by the PNP brought about by their intensive campaign against criminality.

Id.

The Bureau of Jail Management and Penology reported a five percent annual increase in jail population (61,006 nationwide).⁸

In spite of the knowledge about these rates, the BJMP has admitted that they cannot keep up and that the implementation of the UN's set standard of ideal space of one inmate for every three square meters is unattainable.⁹ The advent of restorative justice in the Philippine Criminal Justice System has seen to the disposal of the attitude that criminals must be locked up and the key thrown away.¹⁰ Attempts have been made to create programs that would facilitate the reintegration of wrongdoers in society. It is no longer acceptable to stand idly by as fellow human beings are treated worse than most animals just because they have been accused of or convicted of a crime. The law may be harsh but it is not cruel.

It is hoped that this Note will contribute to the actuation of the determined advocacies of both the citizens and the proper authorities when shown that the prison conditions are, in fact, in such a dismal state amounting to cruel and unusual punishment.

II. Philippine Detention Centers

A. History of the Correctional System

The Correctional System, which takes charge of the administration of Philippine Detention Centers, is composed of six agencies under three distinct and separate departments of the national government: the Department of Interior and Local Government (DILG), the Department of Justice (DOJ), and the Department of Social Welfare and Development (DSWD). For the purposes of this Note, only the agencies under the DILG (the Bureau of Jail Management and Penology) and the DOJ (the Bureau of Corrections) shall be discussed in detail. The DSWD simply provides ancillary services to certain inmates but does not carry the burden of the administration of the detention centers and will therefore be given only a cursory glance.

I. Bureau of Jail Management and Penology

The Department of the Interior and Local Government Act of 1990 (DILG Act)¹¹ created the Bureau of Jail Management and Penology (BJMP).¹² It is a

8. Bureau of Jail Management and Penology, BJMP Opposes Privatization of Jail System, *available at* http://www.bjmp.gov.ph/PressReleases/20080430_OpposePrivatization.html (last accessed Oct. 24, 2009).

9. *Id.*

10. Puno, *supra* note 1.

11. An Act Establishing the Philippine National Police Under a Reorganized Department of The Interior and Local Government, and for Other Purposes

line bureau under the DILG and took the place of the Office of Jail Management and Penology of the defunct Philippine Constabulary/Integrated National Police (PC/INP).¹³ It originally consisted of uniformed officers and members of the Jail Management and Penology service.¹⁴

BJMP is primarily governed by Sections 60 to 65, Chapter V of the DILG Act, which states that the Jail Bureau is to oversee city and municipal jails and leaves provincial jails to the provincial government.¹⁵ The law set a standard for the BJMP to uphold; albeit a general and vague standard, it is still a standard nonetheless in that these jails must be kept secure, clean, and adequately equipped.¹⁶ It is intended that the BJMP supervises structures that would house “any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person who endangers himself or the safety of others, duly certified as such by the proper medical or health officer, pending the transfer to a medical institution.”¹⁷

The BJMP is headed by a Chief who is assisted by two Deputy Chiefs, one for Administration and another for Operations, and one Chief of Directorial Staff, all of whom are appointed by the President upon the recommendation of the DILG Secretary chosen among the qualified officers with the rank of at least Senior Superintendent in the Jail Bureau.¹⁸ The Chief carries the rank of Director and serves a tour of duty that must not exceed four years, unless extended by the President in times of war and other national emergencies.¹⁹ Officers who have retired or are within six months from their compulsory retirement age are not qualified to be

[Department of the Interior and Local Government Act of 1990], Republic Act No. 6975 (1990).

12. *Id.* § 6.

13. Bureau of Jail Management and Penology, History Profiles, *available at* <http://www.bjmp.gov.ph/history.html> (last accessed Oct. 24, 2009).

14. Providing for the Constitution of the Integrated National Police and for Other Purposes, Presidential Decree No. 765 (1975).

15. Department of the Interior and Local Government Act of 1990, § 61.

16. *Id.* § 63.

17. *Id.*

18. An Act Providing for the Professionalization of the Bureau of Fire Protection (BFP) and the Bureau of Jail Management and Penology (BJMP), Amending Certain Provisions of Republic Act No. 6975, Providing Funds thereof and for Other Purposes [Bureau of Fire Protection and Bureau of Jail Management and Penology Professionalization Act of 2004], Republic Act No. 9263 (2004).

19. *Id.* § 3.

appointed as Jail Director or designated as BJMP Chief.²⁰

The BJMP is mandated to take operational and administrative control over all city, district, and municipal jails. At the time of this writing, BJMP reported a total of 1,132 city, district, and municipal jails.²¹ Even with this mandate, only 417 of these prisons are fully staffed and controlled by the BJMP (two female dormitories, two youth centers, 152 district jails, 84 city jails, and 177 municipal jails); 63% or 715 jails are still overseen by the PNP.²²

At present, there are only 6,976 uniformed and non-uniformed BJMP personnel tasked with overseeing the maintenance and operation of the facilities housing thousands of prisoners.²³ In terms of jail population, however, 59,639 inmates are housed in BJMP-manned jails, while only 1,529 are with the PNP-manned jails.²⁴

2. Bureau of Corrections

The Bureau of Corrections may trace its current form to older and more complex origins. It is an agency that has grown along with the expansion of its facilities. Unfortunately, as will be later illustrated, this growth has not been proportionate to the needs of the correctional system. The proliferation of detention centers is far from sufficient, and the personnel hired to man the few that are already in existence can hardly be called a staff. The Old Bilibid Prison in Manila was established in 1847 and formally opened by a Royal Decree in 1865;²⁵ however, the facility was only completed on 10 April 1866.²⁶ On 21 August 1869, the San Ramon Prison and Penal Farm was established in Zamboanga City for Muslim rebels and political prisoners opposed to the rule of Spain.²⁷ In 1904, the Iuhit penal Settlement (Iwahig

20. *Id.*

21. Bureau of Jail Management and Penology, Overview, available at <http://www.bjmp.gov.ph/overview.html> (last accessed Oct. 24, 2009).

22. *Id.*

23. *Id.*

24. *Id.*

25. Bureau of Corrections, History of the Bureau of Corrections — Chapter 1: The Pre-colonial and Spanish Regimes, available at <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

26. *Id.*

27. *Id.*

Prison and Penal Farm) was established by the Americans in 28,072 hectares of land.²⁸

On 1 November 1905, the Bureau of Prisons was created by virtue of the Reorganization Act of 1905²⁹ of the Philippine Commission. It was tasked with the safekeeping of all prisoners confined at Insular and provisional prisons and of all penal settlements, or committed to the custody of the Bureau. It was an agency under the Department of Commerce and Police.³⁰ The Old Bilibid Prison, the San Ramon Prison and Penal Farm, and the Iwahig Penal Colony, from being interdependent government institutions, were integrated into one.³¹

The San Ramon Prison in 1907, which was destroyed during the Spanish-American War in 1888, was also reestablished under this Act.³² When it was placed under the Bureau of Prisons, it started to receive prisoners from Mindanao.³³

The Iwahig Prison and Penal Farm was expanded twice, first to 40,000 hectares and again to 41,007 hectares to accommodate the increasing number of prisoners.³⁴ The year 1929 saw more developments in Philippine Correctional System, particularly in the number and size of the detention centers. This is because the Correctional Institution for Women was founded

28. Bureau of Corrections, History of the Bureau of Corrections — Chapter 2: The American and Commonwealth Governments, *available at* <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

29. An Act Abolishing Certain Bureaus of the Insular Government, Reducing the Number of Bureaus by Consolidating Certain Bureaus with Others, Prescribing the Duties of the Various Bureaus and Certain Officials thereof, Fixing the Salaries of Chiefs and Assistant Chiefs of Bureaus and Certain Other Officials thereof, Reorganizing the Department of Interior, Commerce and Police, Finance and Justice, and Public Instruction, Assigning Certain Bureaus to the Immediate and Direct Executive Control of the Government-General, and for Other Purposes [Reorganization Act of 1905], Act No. 1407 (Nov. 1, 1905).

30. Bureau of Corrections, History of the Bureau of Corrections — Chapter 2: The American and Commonwealth Governments, *available at* <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

31. *See* Reorganization Act of 1905.

32. Bureau of Corrections, History of the Bureau of Corrections – Chapter 2: The American and Commonwealth Governments, *available at* <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

33. *Id.*

34. Establishing the Iwahig Penal Colony in Palawan, by Segregating Portions of the Land Embraced Therein and Declaring the Same as Civil Reservation for Resettlement and Agricultural Sites Purposes, Executive Order No. 67 (Oct. 15, 1912).

as the only prison for women in the country that year.³⁵

Unfortunately, these institutions were still not sufficient to house all the criminals in the Philippines. Thus, in 1932, the Davao Penal Colony in Southern Mindanao was constructed. In 1935, another national prison was constructed in the southern suburb of Muntinlupa, Rizal³⁶ for one million pesos (₱1,000,000.00).³⁷ The Correctional System was once again expanded when the Reception and Diagnostic Center (RDC) was established in order to properly orient newly committed prisoners.³⁸ The reception facilities were patterned after those of the California State Prison and are considered to be “an independent institution tasked to receive, study, and classify all national prisoners committed by final judgment to the National Penitentiary.”³⁹

The Sablayan Prison and Penal Farm in Occidental Mindoro⁴⁰ and the Leyte Regional Prison⁴¹ were created as what would turn out to be one of the last additions to the System for many decades.⁴²

The Bureau of Prisons was later christened as the Bureau of Corrections (BuCor) under the Department of Justice.⁴³ BuCor is “headed by the Director of Corrections who is assisted by two ... Assistant Directors, one

35. An Act Authorizing the Transfer to Welfareville Compound in Mandaluyong, Rizal, and Appropriating Funds for Purposes Thereof, Act No. 3579 (Nov. 27, 1929).

36. See Commonwealth Act No. 67 (1935).

37. Bureau of Corrections, History of the Bureau of Corrections — Chapter 3: Transfer of the Old Bilibid to Muntinlupa, *available at* <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

38. Bureau of Corrections, History of the Bureau of Corrections — Chapter 5: Birth of the Reception and Diagnostic Center, *available at* <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

39. *Id.*

40. Establishing the Sablayan Prison and Penal Farm in Occidental Mindoro, Proclamation No. 72 (Sep. 26, 1954).

41. Establishing the Leyte Regional Prison in Abuyog, Leyte, Proclamation No. 1101 (Jan. 16, 1973).

42. Bureau of Jail Management and Penology, BJMP Opposes Privatization of Jail System, *available at* http://www.bjmp.gov.ph/Press%20Releases/20080430_OpposePrivatization.html (last accessed Oct. 24, 2009) (Minor improvements and additional facilities are said to be under construction, such as the Malabon City Jail.).

43. Office of the President, Instituting the Administrative Code of 1987 [ADMINISTRATIVE CODE OF 1987], Executive Order No. 292, Title III, § 26 (July 25, 1987).

[for] Administration and Rehabilitation and one for Prisons and Security.”⁴⁴ The Director and Assistant Directors of BuCor are appointed by the President of the Philippines upon recommendation of the Secretary of the Department of Justice.⁴⁵ Under its new name, certain changes were made such as Director Dionisio Santiago’s entrusting of the administration of the Muntinlupa Juvenile Training Center (MJTC) to the RDC through a memorandum dated 18 June 2005.⁴⁶

When BuCor changed its name, it did so in order to allow the public to realign its perception of the agency along with its new functions and duties. Aside from having custody over national offenders sentenced to serve a term of imprisonment of more than three years, BuCor was directed to rehabilitate these offenders so that they may, one day, become productive and useful members of society.⁴⁷

Their correctional jurisdiction was also expanded.⁴⁸ From the original three offices, the BuCor now solely handles the seven national prisons — New Bilibid Prison (NBP) in Muntinlupa City; Correctional Institution for Women (CIW) in Mandaluyong City; Leyte Regional Prison (LRP) in Abuyog, Leyte; Davao Prison and Penal Farm (DPPF) in Panabo City, Davao del Norte; San Ramon Prison and Penal Farm (SRPPF) in Zamboanga City; Sablayan Prison and Penal Farm (SPPF) in Occidental Mindoro; and, Iwahig Prison and Penal Farm (IPPF) in Puerto Princesa City, Palawan.⁴⁹

3. Department of Social Welfare and Development

Finally, the Department of Social Welfare and Development (DSWD) has been delegated certain duties and responsibilities in an effort to alleviate the acknowledged suffering of those in the Correctional System. Its designated roles attempt to place a bandage upon the cancer infecting the Correctional System. In 1968, the Social Welfare Act of 1968⁵⁰ elevated the Social

44. Bureau of Corrections, *Operating Manual*, Book II, Part I, § 1 (Mar. 30, 2000).

45. *Id.*

46. Bureau of Corrections, *History of the Bureau of Corrections — Chapter 5: Birth of the Reception and Diagnostic Center*, available at <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009).

47. Commission on Audit, *Performance Audit Report on the Bureau of Corrections (CY 2004) Executive Summary*, available at <http://www.coa.gov.ph/GWSPA/2004/BuCor2004-01.htm> (last accessed Oct. 24, 2009).

48. *Id.*

49. Bureau of Corrections, *Operating Manual*, Book II, Part I, § 4 (Mar. 30, 2000).

50. An Act Providing for Comprehensive Social Services for Individuals and Groups in Need of Assistance, Creating for this Purpose a Department of Social Welfare [Social Welfare Act of 1968], Republic Act No. 5461 (1968).

Welfare Administration into a Department, placing it under the executive branch of government.⁵¹ It was later renamed the Department of Social Services and Development, which allowed it to distinguish itself by its thrusts.⁵² After the Marcos regime, the agency was again reorganized and renamed Department of Social Welfare and Development.⁵³

DSWD's name, organizational structure, functional areas of responsibility, and statutory authority were defined in 1987.⁵⁴ Many of its responsibilities, however, were later handed to the Local Government Units.⁵⁵ In an effort to counteract the adverse effects of this devolution of powers, efforts were made to reposition the Department in the grand scheme of the government.⁵⁶ Finally, in 2003, President Gloria Macapagal-Arroyo defined the mandate, roles, powers, and functions of the DSWD.⁵⁷

Although the DSWD is not normally thought of when the Philippine Correctional System is discussed, its official involvement and functions make the paradigm that the government does not tolerate injustices, even to those who have been accused of or held guilty of injustices, clearer. DSWD is charged with assisting Children In Conflict with the Law (CICL). CICL are "those who are over nine years old and below 18 years old who committed an offense or a crime whose case is filed in court with the prosecutor or the police."⁵⁸ DSWD has adopted the approach of treating CICL as "victims of circumstances beyond their control and should, therefore, be treated as individuals with problems who need help and not as criminals."⁵⁹ As of June

51. *Id.*

52. Changing the Name of the Department of Social Welfare to Department of Social Services and Development, Presidential Decree No. 994 (1976).

53. Office of the President, Reorganizing the Ministry of Social Services and Development, Now Referred to as Ministry of Social Welfare and Development, Executive Order No. 123 (1987).

54. ADMINISTRATIVE CODE OF 1987, Title XVI, §§ 1-26.

55. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160 (1991).

56. Office of the President, Redirecting the Functions and Operations of the Department of Social Welfare and Development, Executive Order No. 15 (1998).

57. Office of the President, Amending Executive Order No. 15 series of 1998, Entitled "Redirecting the Functions and Operations of the Department of Social Welfare and Development," Executive Order No. 221 (2003).

58. Department of Social Welfare and Development, Helping Children in Conflict with the Law, *available at* <http://www.dswd.gov.ph/article/details.php?id=136> (last accessed Oct. 24, 2009).

59. *Id.*

2009, the BJMP reported 294 inmates who are classified as CICL.⁶⁰

DSWD is mandated to promote the rights and welfare of children, so it implements programs and services to promote the best interest of CICL.⁶¹ The programs are either community-based or center-based, and coordination is done with the law enforcement agencies, the prosecutors, the judiciary, the detention centers, and the community.⁶²

The task of ensuring that a CICL is properly rehabilitated is not left to the family alone. Even if the offense was minor and the CICL is released back into the custody of his family, DSWD still makes an effort to intervene. All is done to keep the CICL away from the confines and traumas of detention centers. From the moment a CICL is put on trial, DSWD makes its services available through custody supervision wherein a CICL is allowed to “serve his suspended sentence and undergo rehabilitation with his family, subject to the visitation of a social worker.”⁶³

As much as possible, the social worker does his part to keep the CICL from entering a detention center. The social worker assigned “mediates [on] behalf of the minor and arranges for [an] amicable settlement maximizing the barangay justice system, so he may be released to his/her parents or responsible member of the community under the supervision of the DSWD.”⁶⁴

The programs of the DSWD are aimed to protect those CICL even after other efforts have failed and they are placed in detention centers. Rehabilitation Centers have been set up in order to facilitate the normal development of the CICL’s social skills in hope that they may one day be reintegrated into society and lead normal lives, breaking free from the possible stigma of mistakes of youthful exuberance or misguided innocence.⁶⁵

The Rehabilitation Center for Youth (RRCY) is designed to provide:

60. Bureau of Jail Management and Penology, Data on Children In Conflict with the Law, *available at* http://www.bjmp.gov.ph/Data_Stat/Nov_2007/Data_CICL_sentenced_detained.html (last accessed Oct. 24, 2009).

61. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344 (2006).

62. Department of Social Welfare and Development, Helping Children in Conflict with the Law, *available at* <http://www.dswd.gov.ph/searchdetails.php?id=136> (last accessed Oct. 24, 2009).

63. *Id.*

64. *Id.*

65. *Id.*

24-hour custodial care, treatment and rehabilitation services by a team of social workers, psychologists, houseparents, and vocational instructors, among others. The DSWD has established 11 RRCYs nationwide. Youth found guilty of criminal offense[s] like rape, murder, robbery and the like are rehabilitated or helped to overcome their deviant behavior and become law abiding and productive individuals.⁶⁶

The National Training School for Boys (NTSB) in Tanay, Rizal nurtures the psyche of its wards through therapy, counseling, group living services, and special non-formal education in elementary and high school levels.⁶⁷ Nevertheless, the realities of their future are not forgotten and they are prepared for reintegration through practical training, particularly vocational skills training on welding, automotive repair, practical electronics, computer literacy program, and agro-farming. Even the families of the wards are looked after.⁶⁸ Family counseling and referral for livelihood opportunities are part and parcel of the program.⁶⁹

There are three Local Government Unit Detention Centers/Homes under the supervision of the DSWD in Metro Manila — the Molave Youth Home behind the Quezon City Hall of Justice, the Manila Youth Reception Center in Arroceros, Manila, and the Pasay City Youth Home. There is also one in Cebu City wherein the Local Government Unit maintains “Operation Second Chance.” In these detention centers, children are segregated from adult detainees and the typical DSWD services, such as those enumerated above, are provided.⁷⁰

Although it is sought to be avoided, it is undeniable that there are many minors in national penitentiaries. As mentioned above, there are over 200 currently detained. In 2003, only 148 minors in the national penitentiaries were provided with legal and psychosocial services.⁷¹ Eight of these CICL were on the death row.⁷² In light of this reality, a “Special Project for Minors” in the National Bilibid Prison was created by the DSWD with the Philippine Jesuit Prison Service (PJPS) and an NGO based at the National Bilibid Prison (NBP).⁷³ Thanks to the efforts of DSWD, “10 children have been transferred from NBP to DSWD Rehabilitation Centers for

66. *Id.*

67. *Id.*

68. Department of Social Welfare and Development, *supra* note 62.

69. *Id.*

70. *Id.*

71. Department of Social Welfare and Development, Helping Children in Conflict with the Law, available at <http://www.dswd.gov.ph/searchdetails.P?id=136> (last accessed Oct. 24, 2009).

72. *Id.*

73. *Id.*

appropriate treatment services.”⁷⁴

B. Facilities

*Thousands of children in jail in the Philippines are subjected [daily] to violence and trauma which should not allow any of us to sleep at night.*⁷⁵

In 2008, the BuCor received ₱1,102,151,000.00 or approximately 17.7% of the budget of the Department of Justice, but only ₱680,036,000.00 was allotted for the basic needs of 35,813 prisoners.⁷⁶ BJMP, in the same year, received a mere ₱3,750,552.00 for its expenses.⁷⁷ At the time of writing this Note, the Department of Budget and Management reported that the budget of BJMP was increased to ₱4,160,698,000.00 and that of the BuCor to ₱1,339,924,000.00.⁷⁸ These appropriations were broken down as follows:

Table 1: Bureau of Corrections⁷⁹

PROGRAMS AND ACTIVITIES	TOTAL
I. General Administration and Support	
A. General Administration and Support Services	
1. General Management and Supervision including ₱1,000,000 burial assistance to inmates	₱127,304,000.00
Sub-total, General Administration and Support	₱127,304,000.00
II. Operations	
A. Custody, Maintenance and Rehabilitation of National Prisoners	

74. *Id.*

75. Richard C. Paddock, *Philippine Prison's Crushing Problem*, Los Angeles Times (June 9, 2005) (citing Nicholas Alipui, UNICEF representative to the Philippines).

76. Department of Budget and Management, Organizational Performance Indicator Framework 217 (2008).

77. *Id.* at 197.

78. Department of Budget and Management, General Appropriation for the Bureau of Corrections, available at <http://www.dbm.gov.ph/GAA09/doj/B.pdf> (last accessed Oct. 24, 2009); Department of Budget and Management, General Appropriation for the Bureau Jail Management and Penology, available at <http://www.dbm.gov.ph/GAA09/dilg/C.pdf> (last accessed Oct. 24, 2009).

79. *Id.*

i. Supervision, control and rehabilitation of national prisoners in the following:	₱1,176,111,000.00
a. New Bilibid Prison	₱660,341,000.00
b. Correctional Institute for Women	₱46,194,000.00
c. San Ramon Prison and Penal Farm	₱62,946,000.00
d. Iwahig Prison and Penal Farm	₱115,437,000.00
e. Davao Prison and Penal Farm	₱169,950,000.00
f. Leyte Regional Prison	₱55,763,000.00
g. Sablayan Prison and Penal Farm	₱65,480,000.00
B. Operation of Corrections Agro-Industries	
i. Implementation of agro-industries in the following:	₱36,509,000.00
a. New Bilibid Prison	₱20,134,000.00
b. Iwahig Prison and Penal Farm	₱7,217,000.00
c. Davao Prison and Penal Farm	₱3,485,000.00
d. San Ramon Prison and Penal Farm	₱1,719,000.00
e. Sablayan Prison and Penal Farm	₱3,954,000.00
Sub-total, Operations	₱1,212,620,000.00
Total Programs and Activities	₱1,339,924,000.00

Table 2: Bureau of Jail Management and Penology⁸⁰

PROGRAMS AND ACTIVITIES	TOTAL
I. General Administration and Support	
A. General Administrative and Support Services	
i. General Management and Supervision	₱55,599,000.00
Sub-total, General Administration and Support	₱55,599,000.00
II. Support to Operations	
A. Logistical Services	
i. Procurement, transport, distribution, and storage of supplies and materials in operation of jail facilities	₱184,394,000.00

80. Department of Budget and Management, General Appropriation for the Bureau Jail Management and Penology, available at <http://www.dbm.gov.ph/GAA09/dilg/C.pdf> (last accessed Oct. 24, 2009).

Sub-total, Support to Operations	₱184,394,000.00
III. Operations	
A. Supervision, Security, and Control Over District, City, and Municipal Jails	
1. Custody, safekeeping, and rehabilitation of district, city, municipal prisoners, or any detainee awaiting investigation, trial, and/or transfer to national penitentiary	₱3,920,705,000.00
Sub-total, Operations	₱3,920,705,000.00
Total Programs and Activities	₱4,160,698,000

In a report submitted to the Department of Budget and Management, it was revealed that out of the total amount appropriated for the operation of the facilities under BuCor, only ₱680,036,000.00 was allotted for the basic needs of 35,813 prisoners.⁸¹ This means that each prisoner under BuCor was expected to live on ₱52.02 a day. In the same report, BJMP reported a total of ₱952,591,000.00 for the personal welfare and development services to 61,371 inmates.⁸² Approximately, ₱42.53 is allotted for each prisoner's daily needs. Given that the jail population is now set at approximately 91,712 prisoners, it is hoped that the State has made the appropriate adjustments to improve the basic services provided.⁸³ This is considering that on average, each person needs ₱91.13 daily to live decently.⁸⁴ When you consider the additional costs of housing people in jail (security measures and such), it is a wonder how anyone survives. Food provisions were revealed to be tacked at a meager ₱17.00 a day in 1993, an amount which, even back then, could not be considered to be sufficient to provide even the minimum amount of

81. Department of Budget and Management, *supra* note 76, at 217 (2008).

82. *Id.* at 197.

83. The prison population reported by BJMP and BuCor combined; see Bureau of Corrections, Inmates Statistics as to Admission and Releases (as of June 30, 2008), available at <http://www.bucor.gov.ph/> (last accessed Oct. 24, 2009); see also Bureau of Jail Management and Penology, BJMP Jail Population Data (as of June 2009), available at http://www.bjmp.gov.ph/Data_Stat/Nov_2007/nation_sentenced.html (last accessed Oct. 24, 2009). For more information please see tables in Annex.

84. Jennifer Del Rosario-Malonzo, Amid High Living Costs and Growing Poverty: Worker's Demand for Decent Wages Becomes More Urgent (Apr. 30-May 6, 2006), available at <http://www.bulatlat.com/news/6-12/6-12-decent.htm> (last accessed Oct. 24, 2009).

sustenance for a human being to survive with dignity.⁸⁵ To add insult to injury, the little food that they could expect was often delayed in its delivery and unsanitary in its preparation.⁸⁶

Medical services are spread out paper-thin, there usually being only one person in a medical staff for every 157 inmates at best.⁸⁷ Then the facilities and equipment utilized in the performance of any medical service are dangerously old and nearly always insufficient.⁸⁸ Access to such a basic element as water is a luxury, and in some cases a hundred inmates have been made to share a single toilet.⁸⁹ Therefore, when diseases infect a few inmates because of the tremendous overcrowding, there is little hope of putting a stop to its spread.⁹⁰ It was even reported that there is only one jail custodian for every 53 inmates, a far cry from the UN standards discussed below.⁹¹ Based on these bare figures alone, the nefarious treatment of prisoners seems to be glaringly obvious.

The Amnesty International Report for 2009 stated that Philippine prisons were in such a horrid state that they amounted to being “[c]ruel, inhuman and degrading.”⁹² Aside from the oft complained issue of overcrowding, basic sustenance could not be counted on since the food served is usually rotten.⁹³ CICLs in these centers are also left in the same cells as adults. This placed them at greater risk of physical and sexual abuse. If this is not bad enough, the additional insult of discrimination within these centers is common. In fact, the media reported that “as many as 6,000 special private cubicles, some reportedly with amenities such as [a] large-sized bed

85. Ray Paolo J. Santiago, Jail Standards Law: Putting Jail Conditions Cases in Motion 9 (citing Commission on Human Rights, A Study on the Existing Conditions of Jail and Correctional Institutions, Oct. 1993).

86. Vicente Homer B. Revil, Privatization of Penal Institutions: Its Legal Implications and Viability to the Imperatives of Art. III Sec. 19, 19 (2001) (unpublished J.D. thesis, Ateneo Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

87. *Id.* at 15.

88. *Id.*

89. *Id.*

90. Santiago, *supra* note 85, at 11.

91. Philippine Information Agency, DILG seeks to hire 500 new jail officers in 2009, available at <http://www.pia.gov.ph/?m=12&sec=reader&rp=1&fi=p0907.htm&no=8&d ate=01/05/2009>. (last accessed Oct. 24, 2009).

92. Amnesty International, Amnesty International Report 2009 — Philippines, available at <http://www.unhcr.org/refworld/docid/4a1fadca41.html> (last accessed Oct. 24, 2009).

93. *Id.*

and [an] LCD TV, [are] available to rich or influential prisoners.”⁹⁴

Meanwhile, the United States of America’s State Department reported that —

Prisoners awaiting trial and those already convicted were often held under primitive conditions.

...

The CHR [Commission on Human Rights] provided the police with mandatory human rights training. The CHR noted that senior PNP [Philippine National Police] officials appeared receptive to respecting the human rights of detainees, but rank-and-file awareness of the rights of detainees remained inadequate.

...

There were reports that prison guards physically abused inmates. The CHR and TFDP [Task Force Detainees of the Philippines] reported that abuse by prison guards and other inmates was common, but prisoners, fearing retaliation, refused to lodge formal complaints. Women in police custody were particularly vulnerable to sexual and physical assault by police and prison officials.

...

Prison conditions were rudimentary and sometimes harsh. Provincial jails and prisons were overcrowded, lacked basic infrastructure, and provided prisoners with an inadequate diet. Jails managed by the Bureau of Jail Management and Penology (BJMP) operated at an average of 191 percent of designed capacity, an improvement over the previous year owing to prison decongestion efforts. ... Lack of potable water, poor sanitation, and poor ventilation continued to cause health problems. Some prisoners, including women and children, were abused by other prisoners and prison personnel. The slow judicial process exacerbated overcrowding.⁹⁵

In addition to the deplorable prison conditions, there have been reports of widespread corruption among prison guards and, to some extent, at higher levels of authority within the prison system. Moreover, even though BJMP regulations dictate that male and female inmates are to be held in separate facilities and, in national prisons, overseen by guards of the same sex, reports showed that these regulations were not uniformly enforced.⁹⁶

In provincial and municipal prisons, male guards sometimes supervised female prisoners directly or indirectly. Although prison authorities attempted to segregate children or to place them in youth detention

94. *Id.*

95. United States Department of State, 2008 Country Reports on Human Rights Practices — Philippines (Feb. 25, 2009), *available at* <http://www.unhcr.org/refworld/docid/49a8f161a8.html> (last accessed Oct. 24, 2009).

96. *Id.*

centers, sometimes the children were held in facilities not fully segregated from adult male inmates. Girls were even held in the same cells as boys. During the year as part of reform and budget reduction efforts, the government consolidated women and minors into fewer jails, including some that contained separate facilities for those groups. Out of 1,075 jails managed by the BJMP and PNP, 205 had separate cells for minors, while 353 jails had separate cells for adult females. Lack of adequate food for minors in prisons also became a concern.⁹⁷

In July 2007, President Gloria Macapagal-Arroyo directed the immediate release of all minor prisoners who were ages 15 years and below at the time they committed the crime.⁹⁸ From January to November, the BJMP released 298 minor inmates, usually in response to a court order following a petition by the public attorney's office or the inmate's private lawyer or through the appeals of NGOs.⁹⁹ International monitoring groups, including the International Committee of the Red Cross, were also allowed free access to jails and prisons.¹⁰⁰ A local NGO, however, reported difficulty accessing jails or detentions centers where children were held.¹⁰¹

The international reports and figures reported by the agencies only represent a fraction of the daily reality of torture most prisoners face. It would be best to recall that those who draft these reports are tied down to a bureaucracy that constantly watches its own back. These official reports primarily stem from what is placed down on paper by those who would eventually be charged with these inhumanities. Therefore, it is the consideration of the personal accounts of prisoners and their families that would lend any evaluation verity.

Many personal accounts of the inhumanities suffered by the prisoners have circulated in the media. One such account is that of Ranilyn Geronimo who commemorated her 14th birthday in a jail cell confined with 50 women.¹⁰² She stole a fish, and even if the typical sentence for petty theft is six months in jail, she paid for it with her life.¹⁰³

Her experience was narrated as follows —

The cell is so crowded that the prisoners sleep on the floor packed tight in rows, all of them lying on their left side. During the day, the temperature routinely soars above 100 degrees. Her best friends are accused murderers.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. United States Department of State, *supra* note 95.

102. *Id.*

103. Paddock, *supra* note 75.

The court system is so clogged that some prisoners spend more time in jail awaiting trial than they would serve if they could get before a judge, plead guilty and be sentenced.¹⁰⁴

Unfortunately, Ranilyn's situation is the norm for those who are incarcerated in jail. Prisoners often sit together on the floor in their dimly lighted cells, sometimes watching videos, and sometimes doing nothing.¹⁰⁵ Other inmates hang out in the long corridor between the rows of cells, which doubles at night as a sleeping area.¹⁰⁶ Many of these prisoners are awaiting trial while others are serving sentences of up to three years.¹⁰⁷ In addition, prisoners resort to fanning themselves with pieces of cardboard when the power goes out as only grimy electric fans are available.¹⁰⁸ The government has banned karaoke night, an inmate favorite, in all jails to save on the cost of electricity.¹⁰⁹ Meanwhile, the most trusted male and female prisoners are allowed to mix together in a small courtyard, where they cook for the other inmates over open fires.¹¹⁰ They also bathe, wash laundry, give each other haircuts, and meet with visitors. Others, on the other hand, are only allowed out for a short period once a day.¹¹¹

Other horrifying stories abound. For instance, in the Navotas jail, boys, aged 15 to 17, were housed with 10 young men who were arrested as juveniles but turned 18 while awaiting trial on charges including theft, glue sniffing, and murder. Some of them have been in jail for as long as a year and a half. One older inmate, an accused rapist in his 50s, was assigned to live in the cell and watch over the boys.¹¹² The cell had two bunks and no window, but with only 28 prisoners, it is the least crowded in the jail.¹¹³ Most of the boys sleep on the concrete floor on pieces of cardboard and plastic sheeting.¹¹⁴ The boys' cell was located at the end of the corridor directly across from the women's, which has six bunks, one toilet and a stove for its 51 occupants.¹¹⁵ The men were even worse off as they were packed

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. Paddock, *supra* note 75.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. Paddock, *supra* note 75.

120 to a cell.¹¹⁶

All of these in what is considered to be one of the “nicer” jails in the Philippines. Then again, nice accommodations in the Quezon City detention center mean that 581 inmates are housed in a facility built to accommodate 84, while in Navotas jail, 560 inmates are forced to cohabitate in a space meant for 63.¹¹⁷ Low funding is often blamed for these conditions.¹¹⁸ It was estimated by the warden of the Navotas jail, Deogracias Tapayan, that each inmate lives in less than four square feet of space.¹¹⁹

But, what is worse is that this is not the exception, it is the rule. BJMP reported that “jails in the city on average are holding more than six times their stated capacity. The Makati City Jail in Manila's wealthy financial district is the most crowded, operating at 15 times its intended capacity.”¹²⁰

III. Minimum Standards of Detention Centers

When evaluating the Philippine Detention Centers and the Philippine Correctional System, it may be useful to take into consideration certain standards set by the International Community. Long ago, the ambit of cruelty was confined to torture. It took years before the sense of humanity and compassion was awakened in Criminal Law. Standards for the conditions of penitentiaries were set in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standards).¹²¹ It details good principles and practices in the treatment of prisoners and the management of institutions.

Under the Standards slated for general application, adult and juvenile inmates must be separated, as well a civil and criminal offenders, untried, and convicted prisoners. Also, the separation of male and female prisoners in completely different institutions is strongly advised.¹²²

When it comes to the accommodation of the prisoners, the Standards clearly state that cells designed for individuals should not be used to accommodate more than one person overnight.¹²³ Also, the occupants of communal cells should be carefully selected to ensure that they would be able to harmoniously share them.¹²⁴

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Standard Minimum Rules for the Treatment of Prisoners, at 11.

122. *Id.* at part I, 8 (a).

123. *Id.* at part I, 9 (1).

124. *Id.* at part I, 9 (2).

All facilities are supposed to meet the requirements regarding health, heating, ventilation, floor space, sanitary facilities, and lighting.¹²⁵ These particular minimum standards, however, are elaborated upon in numbers 11 to 19 of this document.¹²⁶ Even the meal schedule and food quality of the

125. *Id.* at part I, 10.

126. *Id.* at part I, 11-17, which provides:

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

inmates are specified as having to have a “nutritional value adequate for health and strength”¹²⁷ as well as be of “wholesome quality and well prepared and served.”¹²⁸ Potable water is also expected to be readily available to a prisoner.¹²⁹

The Standards demand that education be provided to all prisoners. The schooling of those who are illiterate or young is supposed to be mandatory.¹³⁰ The education received inside the detention center is supposed to be of the same level demanded of the country’s educational system in order for the prisoners to go on with life as normal as possible.¹³¹ And much like what life is in the outside world, recreational and cultural activities like sports, music, and other hobbies should be made available to all prisoners.¹³² These measures are in line with the prevalent philosophy that the aim of detention centers is to rehabilitate and eventually reintegrate — in hopes of reinvigorating a system that is meant to be correctional and no longer penal in nature.

The Standards attempt to take it a step further by attempting to safeguard the mental health of an inmate by requiring the availability of at least one qualified medical officer who also has some knowledge of psychiatry in each institution.¹³³ Desiring a situation wherein the life of an inmate is valued just as any life in the outside world, when a prisoner’s ailment requires specialized treatment, the Standards provide that he be transported to a civil hospital.¹³⁴ And in the care of women, pre- and post-natal care are supposed to be readily available (something most free and law-abiding Filipinas do not seem to have access to).¹³⁵

There are Standards that are particularly applicable to prisoners under sentence (*vis-à-vis* those who are merely detained). The trend of restorative

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Id.

127. Standard Minimum Rules for the Treatment of Prisoners, at 11.

128. *Id.*

129. *Id.* at part I, 20 (2).

130. *Id.* at part II, 77 (1).

131. *Id.* at part II, 77 (2).

132. *Id.* at part II, 78.

133. Standard Minimum Rules for the Treatment of Prisoners, at part I, 22 (1).

134. *Id.* at part I, 22 (2).

135. *Id.* at part I, 23.

justice still did not distract the framers of the Standards from the ultimate purpose of detention and the duty of these centers to protect society from the proliferation of crime. So though it is acknowledged that this can only be achieved through imprisonment and isolation from the rest of society, the manner by which this is carried out has long since evolved. A humanistic paradigm has emerged front and center, giving birth to programs intended to reform the inmates into law-abiding and self-supporting citizens of the country. To this end, the Standards demand that institutions utilize appropriate and available remedial, educational, moral, and spiritual forms of assistance.¹³⁶

The Standards direct the division and separation of inmates into classes in order to facilitate their treatment with a view towards their social rehabilitation. Those who may lead reforming inmates astray are supposed to be separated from the general population.¹³⁷

The inmate's social and criminal history, personal temperament, and physical and mental capacities are all taken into consideration when determining the mode of treatment that is meant to encourage their self-respect and develop their sense of responsibility.¹³⁸

Although inmates have been put to work in the past, in this context they are given work to empower them and assist in the upholding of their human dignity and contributing members of society. They are not slaves of the State, degraded to the lowest rung. Rather, they are treated as regular laborers whose works have limitations and are compensated. In fact, their work must not cause distress.¹³⁹ The daily and weekly working hours should follow the labor laws of the Philippines (the country wherein the detention center is situated), giving sufficient time for all the programs designed for the inmate's reformation.¹⁴⁰ The remuneration is supposed to be equitable and the inmate is supposed to be permitted to dispose of such as he deems fit — be it on approved articles or on people outside the detention center.¹⁴¹ Vocational training should also be provided for prisoners able to profit from it and especially for young prisoners.¹⁴²

136. *Id.* at part II, 56-60.

137. *Id.* at part II, 67 (a).

138. *Id.* at part II, 65.

139. Standard Minimum Rules for the Treatment of Prisoners, at part II, 71 (2).

140. *Id.* at part II, 75 (1) & (2).

141. *Id.* at part II, 76 (1) & (2).

142. *Id.* at part II, 71 (5).

IV. Evaluation

*You know, given our conditions in jail, [being imprisoned] is a fate worse than death.*¹⁴³

Table 3. Evaluation of Philippine Detention Centers

UN MINIMUM STANDARDS	PHILIPPINE DETENTION CENTERS
Segregation of prisoners	✗
Limit to number of occupants per cell	✗
Sanitation	✗
Meals	✗
Education	✗
Recreation	✓
Medical services	✗
Work	✓

When the situation, as revealed in the above portions of this Note, are taken into consideration and summarized in the Table above, the premise for a charge of Cruel and Unusual punishment is laid out. This Note did not even try to delve into the detailed requirements since on the onset, it becomes apparent that majority of the Standards have not and cannot be met by the current Correctional System. Speaking on the economic level alone, the most basic requirements cannot possibly be met for all prisoners given the current budget and existing structures or facilities. If the facilities were already built then maybe the budget could then be stretched out. But given that infrastructure projects are the costliest and most demanded in this situation the future for these prisoners looks bleak.

Considering the amount of information freely available, it is appalling that the situation not only persists but worsens. Rather than focusing on the unfortunate situation prisoners find themselves in, many have taken to suggesting alternative routes and viewpoints. The U.N. has recommended

strengthening the legal and judicial measures to protect human rights by, inter alia, adopting legislation criminalising torture, ratifying the Optional Protocol to the Convention Against Torture and by empowering the Commission on Human Rights to carry out unannounced visits to all detention centres and military establishments.¹⁴⁴

143. Paddock, *supra* note 75 (citing President Gloria Macapagal-Arroyo speech on February 2005, defending her decision not to carry out executions).

144. World Organization Against Torture, Preventing Torture and other Cruel, Inhuman and Degrading Treatment in the Philippines by Acting on their Economic, Social and Cultural Root Causes, *available at* <http://www.preda.org/archives/2009/un-torture-in-the-phils.pdf> (last accessed Oct. 24, 2009).

In the past, the U.N. has even suggested simpler solutions such as taking the nature and gravity of offenses into consideration when sentencing an offender to avoid imprisonment as much as possible, “the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. [But] [t]he number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.”¹⁴⁵

It is a wonder why Philippine jurisprudence is not replete with instances of the Court declaring the conditions of imprisonment to be a cruel and unusual punishment especially when the Court itself has acknowledged these problems when it declared June as Jail Decongestion Month.¹⁴⁶ The Court directed the lower courts to conduct visitations and ocular inspections of jails within their jurisdiction.¹⁴⁷ In recognition of it, inmates were released as soon as possible through proceedings held in *Justice on Wheels*.¹⁴⁸ Therefore they cannot claim ignorance to the dire straits of human beings in their jurisdiction. The dignity of thousands is continuously and systematically being trampled upon. And even if the situation was not so well-publicized, ignorance excuses no one.

Admittedly, there are practical concerns as the amount of money appropriated to the maintenance of detentions is completely inadequate. This fiscal deficiency, however, should not prevent the State from meeting the very minimum standards at the very least.

Even the international community has recognized these practical concerns. Yet, they are unbending in their determination to uphold the dignity of man. International instruments on crime prevention and criminal justice have suggested the examining alternatives to incarceration.¹⁴⁹ If they are planned and used appropriately, the non-custodial measures are supposed to lessen human rights violations and cut costs. They are hoped to be generally more effective than imprisonment in reducing recidivism. Fines, community service, probation, house arrest, and other non-custodial measures are intended to enable the authorities to adjust penal sanctions to the needs of the individual offender in a manner proportionate to the offence

145. G.A. Res. 45/110, *supra* note 2.

146. Supreme Court of the Philippines, Administrative Circular No. 26-2005 (2005).

147. Jen T. Tuazon, JOW releases 39 Caloocan City Jail inmates, *available at* <http://sc.judiciary.gov.ph/news/courtnews%20flash/2008/08/08050801.php> (last accessed Oct. 24, 2009).

148. *Id.*

149. 10th United Nations Congress on the Prevention of Crime and the Treatment of Offender, Vienna, Apr. 10-17, 2000, A/CONF.187/4/Rev.3 (Apr. 15, 2000); G.A. Res. 55/59, U.N. Doc. A/RES/55/59 (Jan. 17, 2001).

committed.¹⁵⁰

Another option is to resort to restorative justice programs under which the victim, offender, and other people in the community help to find negotiated solutions. The process emphasizes relationship building and reconciliation. The outcome may include reparation, restitution, and community services.¹⁵¹

In the meantime, however, no person should rest in the hopes of these alternative suggestions being put into action. The following Part of this Note evaluates the legal implications of the persistence of subhuman conditions in Philippine Detention Centers and the persistent violation of the Standards set by the U.N. in the hope of inspiring legal action to be taken as a first step.

V. System of Correction or Cruel and Unusual Punishment?

According to Philippine law, the purpose of imprisonment is “to segregate [a person] from society; and ... to rehabilitate him so that upon his return to society he shall be a responsible and law-abiding citizen.”¹⁵² In the U.S., “punishment or retribution, deterrence, custodial monitoring or incapacitation, and rehabilitation”¹⁵³ are amongst the purposes of incarceration. Much thought must be placed upon the sentencing of a criminal because it could promote respect for the law if they are proportional to the crime committed.¹⁵⁴

But in determining the legal implications of the current situation in Philippine Detention Centers it is necessary to ask — at what point does confinement cease to be correction (or even punishment) and commence to take the form of torture? It may be true that a vast majority of those confined are guilty of a crime, but no matter what evils lay behind those bars, the State may not disregard the value of a life.

VI. Cruel & Unusual

A. *United States of America*

Punishment is defined as “[a]ny fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a

150. United Nations Office on Drugs and Crime, United Nations Prison-Related Standards and Norm, *available at* <http://www.unodc.org/newsletter/pt/perspectives/no02/page004a.html> (last accessed Oct. 24, 2009).

151. *Id.*

152. Bureau of Corrections, Operating Manual, Book I, Part I, § I (Mar. 30, 2000).

153. DEAN JOHN CHAMPION, SENTENCING: A REFERENCE HANDBOOK 2 (2007).

154. *Id.* at 3.

duty enjoined by law.”¹⁵⁵ It is considered cruel and unusual when it “would amount to torture or barbarity, and any cruel and degrading punishment not known to common law, and also any punishment so disproportionate to the offense as to shock the moral sense of the community.”¹⁵⁶

It is admitted that there is no set standard by which it may be distinguished but such standard is “flexible and tends to broaden as society tends to pay more regard to human decency and dignity and becomes, or likes to think that it becomes, more humane.”¹⁵⁷ It is this humanity that demands that “the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process.”¹⁵⁸

The clause originated from the English Bill of Rights of 1689.¹⁵⁹ When it was first conceptualized it excluded the death penalty and was intended to refer to a very brief list of disfavored punishments.¹⁶⁰ If a punishment was not on this list and complied with the evolving standards of human decency, which can now be considered as codified by the UN Standard Minimum Rules for the Treatment of Prisoners earlier discussed, as these values were reflected in “contemporary public attitudes”¹⁶¹ and the concept of the “dignity of man” then it would fall under the rubric of Cruel and Unusual.¹⁶²

“The philosophy of human dignity is the underlying basis for the equality and liberty that is the overarching command of the constitution.”¹⁶³ When the Eighth Amendment is examined it should not be taken as

a proscription of procedure but as a mandate for recognition and protection of human dignity, as the concept was inherent in the Philosophical genesis of the Bill of Rights as a continuation of the promises of the Declaration of

155. *People v. Vanderppol*, 20 Cal.2d 746, 128 P.2d 513, 515 (1942).

156. *In re Kemmler*, 136 U.S. 436, 10 S.Ct. 930 (1890).

157. *Holt v. Sarver*, D.C.Ark, 309 F.Supp. 362, 380 (1970).

158. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976); *Roberts v. Louisiana*, 431 U.S. 633, 637 (1977).

159. Raoul Berger, Brennan, “Dignity,” and *Constitutional Interpretation*, in *THE CONSTITUTION OF RIGHTS* 131 (Michael Meyer and W.A. Parent, eds., 1992).

160. HUGO ADAM BEDAU, *DEATH IS DIFFERENT: STUDIES IN THE MORALITY, LAW, AND POLITICS OF CAPITAL PUNISHMENT* 106 (1987).

161. *Gregg v. Georgia*, 428 U.S. 153, 172-73 (1976).

162. *Id.*

163. Shannon D. Gilreath, *Cruel and Unusual Punishment and the Eighth Amendment as a Mandate for Human Dignity: Another Look at Original Intent*, available at <http://ssrn.com/abstract=413121> (last accessed Oct. 24, 2009).

Independence, most significantly that “all men are created equal ... and are endowed by their Creator with certain inalienable rights ... among them life.”¹⁶⁴

B. Philippines

The Constitution clearly prohibits the infliction of cruel and unusual punishment just like the U.S. Constitution from which it drew inspiration.¹⁶⁵ The Constitutional Committee, however, honed in on its prohibition by elaborating that degrading or inhuman punishment be embraced under its definition.¹⁶⁶

This discussion would be so much easier if the sole criteria by which we judge the severity of punishment was the extinguishment of life. But as stated in *Legarda v. Valdez*¹⁶⁷, severity of punishment is “something inhuman and barbarous, something more than mere extinguishment of life.”¹⁶⁸

The Court has made known that if the punishment is “flagrantly and plainly oppressive; wholly disproportionate to the nature of the offense as to shock the moral sense of the community,”¹⁶⁹ then such punishment would come under the ban. While it seems simple enough when discussed, before the punishment is considered “cruel and unusual,” it has to be shown that the punishment is blatantly disproportionate to the crime.

The problem comes in when pinpointing who is at fault. Academic discussions on the Constitution have pointed to the Legislature as the one typically at fault when designating punishment as “cruel and unusual.”¹⁷⁰ This is because it is the Legislature who designates the punishment for a crime. It must, however, be remembered that imprisonment per se is in no way cruel and unusual. As mentioned earlier, it is one of the few curtailments of liberty that is recognized as valid and necessary.

Can the government agencies tasked with the upkeep of these detention centers then be faulted for transforming what would ordinarily be accepted as harsh but fair into an excessive and therefore “cruel and unusual” form of punishment?

164. *Id.* (citing Declaration of Independence, ¶ 2 (U.S. 1776)).

165. PHIL. CONST. art. III, § 19, ¶ 1.

166. 1 RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 707-08 (1986).

167. *Legarda v. Valdez*, 1 Phil 146 (1902).

168. *Id.* at 149.

169. *People v. Etoista*, 93 Phil. 647, 655 (1953) (citing 24 C.J.S. 1187-88).

170. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 553 (2003 ed.).

Section 19 (2), Article III¹⁷¹ of the 1987 Constitution deals with the problems discussed in this Note. The Commission on Human Rights is authorized to take action to put a stop to situations such as the one existing.¹⁷² But, it is still up to the Legislature to enact laws specifying who must suffer the consequences of such negligence since the constitution clearly provides that it must be “dealt with by law.”¹⁷³

Though delineating proportionate and excessive punishment has become the troublesome task, which has, in the recent years, been rarely taken up in court, the Constitutional Commissioners saw this problem coming. In their discussion, Commissioner Regalado E. Maambong said that no matter what the crime, prisoners must still be treated in a “fair manner.”¹⁷⁴

In fact, he concretely suggested a direction the State must take when conditions such as those discussed above prevail —

Unless facilities of the penitentiary are brought up to a level of constitutional tolerability, they should not be used for the confinement of prisoners at all. Courts in other jurisdictions have ordered the closure of substandard and outmoded penal institutions. All these require judicial orders in the absence of implementing laws to provide direct measures to correct violations of human rights or institute alterations in the operations and facilities of penal institutions.¹⁷⁵

But none of this has been done. In fact, the Filipino people have been desensitized to the cruelty inflicted for the supposed good of peace and order in society. The Detention Centers are allowed to further deteriorate and the human beings trapped inside are cast into obscurity.

VI. Conclusion

Decades have come and gone awaiting to see people or agencies held accountable for the degrading way of life inmates or detainees suffer through. Yet, until now, little has been done. The programs created seem to merely sweep up the horrors that have boiled over the tight lid of the Philippine Correctional System. Rather than addressing the root causes of the problem, it has been seen as sufficient to throw a bone every once in awhile to select inmates. This way, inspirational stories splash the headlines and the State avoids facing another problem society has been desensitized to.

171. The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

172. PHIL. CONST. art. XIII, §§ 18 I-II.

173. PHIL. CONST. art. III, § 19 (2).

174. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 778 (1986).

175. *Id.*

This cannot be permitted to go on. Not only is there a wealth of statistical and narrative data on the subhuman conditions, but the highest law of the land has made it explicit that such situations cannot be tolerated. The cause of action is there; all that is awaited now is the person with the will to see it through. The Criminal Justice System must no longer be allowed to systematically violate human rights and perpetuate the very actions it claims to seek an end to.

But the judgment of whether the subhuman conditions fall within the ambit of the clause's prohibition should not end with a judgment of the history and intentions of the correctional system. Rather, "the actual operation of a practice viewed in retrospect may help assess its workings with respect to constitutional limitations ... [it must involve the] identification of the constitutional limitations impleaded by a challenged governmental practice."¹⁷⁶

Will it take the second coming of the barbaric punishments such as drawing and quartering, tearing asunder, burying alive, or breaking on the wheel before a punishment is declared cruel and unusual?

The Constitution from its very inception is incompatible with an institution that does not recognize the equal worth of all human beings.¹⁷⁷ The criteria by which punishment is weighed is not trapped in a fixed historical moment. Therefore, the determination of its level of cruelty or unusualness should not have to depend on the blatant such as death. Even the President of the Philippines, as earlier mentioned, has recognized that a sentence to a Philippine Prison is a sentence worse than death and this travesty must no longer be allowed to stand.

176. *Elrod v. Burns*, 427 U.S. 347, 354-55 (1976).

177. Gilreath, *supra* note 163 (citing Alexander Hamilton Stephens, Cornerstone Speech Given at Savannah Georgia (Mar. 21, 1861) in Henry Cleveland, Alexander H. Stephens, in *Public and Private: With Letters and Speeches, Before, During, and Since the War* 717-29).

ANNEX

Table 4. Summary of Information on the Philippine Correctional System¹

Primary Government Agencies	a) Department of Interior and Local Government (jails for pre-trial and short sentences) b) Department of Justice (national prisons for sentences of over 3 years)
Prison Administration	a) Bureau of Jail Management and Penology (BJMP) b) Bureau of Corrections (BuCor) c) Local Government Units (LGUs)
Contact Information	a) Address: 144 Juco Building, Mindanao Avenue, Quezon City, Philippines Telephone Nos.: +632 927 6383 Fax No.: +632 926 7756 Website: www.bjmp.gov.ph b) Address: NBP Reservation, Muntinlupa City 1776, Philippines Telephone Nos.: +632 809 8073 or +632 809 9775 Fax No.: +632 850 32 82 Website: http://www.bucor.gov.ph
Head	a) Chief: Rosendo M. Dial b) Director: Oscar C. Calderon
Prison population total (including pre-trial detainees / remand prisoners)	91,530 ²

1. Updated version of Summary found in King's College London, Prison Brief for Philippines, *available at* <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpbcountry.ph?country=108> (last accessed Oct. 24, 2009).
2. *Id.* 2006, 10th U.N. Survey.

Prison population rate (per 100,000 of national population)	108 ³
Pre-trial detainees / remand prisoners (percentage of prison population)	63.3% ⁴
Female prisoners (percentage of prison population)	7.9% ⁵
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	1.4% ⁶
Foreign prisoners (percentage of prison population)	0.3% ⁷
Number of establishments /institutions	1,139 ⁸
Official capacity of prison system	45,000 ⁹
Occupancy level (based on official capacity)	156.4% ¹⁰

3. *Id.* (based on an estimated national population of 84.5 million at mid-2006, U.N. 2006).
4. *Id.*
5. *Id.*
6. *Id.*
7. King's College London, Prison Brief for Philippines, *available at* http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=108 (last accessed Oct. 24, 2009).
8. *Id.* (2008 – 1,132 jails, seven national prisons).
9. *Id.*
10. *Id.*

Recent prison population trend (year, prison population total, prison population rate)	1993 35,864 (55)
	1999 70,383 (94)
	2002 67,798 (86)
	2005 89,639 (108)

Table 5. BJMP Prison Population as of June 2009¹¹

SENTENCED						DETAINED						PNP JAIL POPULATION	GRAND TOTAL		
Adult		Sub total	Minor		Sub total	Total	Adult		Sub total	Minor				Sub total	Total
M	F		M	F			M	F		M	F	M	F		
2,762	256	3,018	12	0	12	3,030	48,746	5,220	53,676	272	13	285	53,961	1,130	58,121

Table 6. Bureau of Corrections Prison Population as of 2009

	NBP	CIW	IPPF	DPPF		SRPPF	SPPF	LRP	TOTAL
				F	M				
18 & below	5	2	0	0	3	0	0	0	10
19 & above	19,888	1,553	3,050	125	4,933	1,166	1,561	1,145	33,421
Unknown	87	13	4	0	31	12	10	3	160
TOTAL	19,980	1,568	3,054	125	4,967	1,178	1,571	1,148	33,591

11. Bureau of Jail Management and Penology, BJMP Jail Population Data (as of June 2009), available at http://www.bjmp.gov.ph/Data_Stat/Nov_2007/nation_sentenced.html (last accessed Oct. 24, 2009).