

Reproductive Rights of Women in Detention in the Philippines

Introduction

Based on latest data, 12,656 women, making up 8.9% of the country's prison population, are presently detained in the Philippines. The number is a jump from the 3,324 women inmates recorded in 2001, and translates to an alarming statistic of 12 female inmates for every 100,000 Filipinos.

But the increase of women detainees is not accompanied by significant strides within the penal system traditionally designed for male prisoners. As it is, incarceration in the Philippines is characterized by subhuman conditions – congested and airless cells, lack of open spaces, lack of nourishing food and adequate water supply, lack of medical attention and poor hygiene. While hellish prison conditions are shared by male and female detainees alike, the situation is direr for women, particularly pregnant inmates. Cut off from families and with no money, most rely on poorly-equipped jail facilities.

Slow-grinding trials mean that pregnant detainees are likely to give birth during detention during which time, pre- and post-natal care are inadequate, or absent. For inmates who are mothers, the emotional cost of separation brought about by incarceration is particularly sharp. While present policies do not prohibit visits from children, the forbidding prison conditions make it impossible for a detainee to “mother” her very young children.

This paper highlights the situation of female detainees, particularly reproductive health and rights, including access to health care services before, during, and immediately after, pregnancy; access to general health and medical services; and hygiene. It assesses current policies to determine whether they are adequate responses within the standards set forth in various international instruments.

The Bangkok Rules, supplemented by the Mandela Rules

On 17 December 2015, the revision to the Standard Minimum Rules for the Treatment of Prisoners, initially adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the UN Economic and Social Council in 1957, was adopted unanimously by the 70th session of the UN General Assembly, following a four-year revision process. The revision

was aimed to “reflect recent advances in correctional science and best practices.” The revised Rules are presently known as the ‘Mandela Rules’ in honour of Nelson Mandela who spent many years of his life in prison. The Mandela rules are extensive and cover several areas including respect for prisoners’ dignity and value as human beings; medical and health services; disciplinary action and punishment; and the protection of vulnerable groups.

While the “Mandela Rules” is the most recent international instrument providing standards for the treatment of prisoners, it is the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, adopted in Bangkok in 2010, and known as the “**Bangkok Rules**” which presently remains the only international instrument addressing the treatment of women prisoners in particular. Thus, while this paper relies on the Bangkok Rules, it also construes the same in conjunction with the Mandela Rules. The Bangkok Rules, for purposes of this paper, may be categorized into – a) general principles, b) admission procedures, c) personal hygiene; d) healthcare services; e) access to family; f) special concerns; and, g) reintegration.

Site of the Study: The Manila City Jail (MCJ) Female Dormitory

The study chose the MCJ female dormitory because as the largest facility in the Philippines for women detainees undergoing trial, the author believes that it approximates the condition of detention in the country. The MCJ female dormitory forms a separate compound within the larger MCJ and is separated by a mere wall from the male detention facilities. It used to be under the immediate supervision of MCJ male warden until 2004, when the increase in women prisoners elevated the position of the supervisor of the women’ dormitory to that of “warden”. Presently, both wardens – a male warden for the men’s dormitory and the female warden for the female dormitory, report directly to the Regional Director of the Bureau of Jail Management and Penology.

Under the standards set forth by the UN which require a minimum of 4.7 square meter space for every detainee "whether she is alone... (or) shares it with another person" the MCJ female dormitory can ideally accommodate only 176 inmates. Presently however, it houses a staggering number of 1,446 women detainees or 250% more than the ideal capacity.

Maintaining order inside the facility are 61 jail personnel, of which 34 are males, and 27 are females. Their primary duty is escorting the detainees to the

courts to attend hearings. Considering the number daily court hearings, a single personnel has approximately 17 detainees under his or her charge at a given time. However, the location of the MCJ, a mere 3.7 kilometers from the Manila courts, which is a distance traversable in 12 minutes by vehicle, greatly alleviates the “escorting” problem.

The Manila Courts

Manila has seventy-six (76) trial courts thirty (30) of which are metropolitan trial courts with jurisdiction over minor offense while forty-six (46) are regional trial courts with jurisdiction over more serious cases punishable by imprisonment of more than six years to death. With an average case load of 300 cases per court, a case can be scheduled for trial twice a month. The length of trial averages three years and two months before judgment is rendered. On average, more than a half of the cases. Or roughly 75% end in acquittals. In 2018 alone, of the 176 decided cases, 120 were acquittals and 56 were convictions.

Basic facilities

The MCJ female dormitory has eight cells, headed by the dorm head who performs the crucial task of being the conduit between individual detainees and prison officials. The capacity of each cell varies from one hundred to three hundred prisoners.

Detainees are not allotted individual beds. According to informal interviews, affluent inmates pay for a space separating them from other inmates by wooden walls. They may avail of a cot for an additional fee. The less affluent share a space with 2 to 3 people. The destitute sleep on the floor with rice or flour sacks, even newspapers, as beddings. Pillows and blankets are rare.

Conjugal visits, while allowed for male prisoners, are not permitted for women detainees.

a. Problems on basic facilities:

Aside from congestion, water shortage constitutes the perennial problem. On regular days, water is rationed to one pail of water per inmate, which is usually

used for bathing. During perennial shortages, they are not entitled to even a drop of water.

Another problem is the physical integrity of the dormitory itself. The present structure used to be the Bilibid prisons, the first national penitentiary established in 1865. When Bilibid was transferred to another site in 1940, its old structures became the present MCJ. The age of the MCJ facility is apparent in its old, dingy, decaying buildings which, due to dearth of funds, remain in a sad state of disrepair. The absence of any regard for fire safety in the layout of the facility veritably makes the MCJ a fire hazard.

Detainee Profile

Majority or 90% of the women detainees are charged with drug-related offenses. This spike of arrests in drug-related offenses is not surprising given the relentless drug war waged by the Duterte government. Constituting the remaining 10% are economic-related offenses such as *estafa* (deceit) or violation of the bouncing checks law. Almost all women prisoners are from low income groups, with no means to post bail.

Presently, (as of September 6, 2018), 1,446 women detainees of varied ages – the youngest at eighteen (18) years old and the oldest at seventy-two, with the average age being 25 years old, are housed at the MCJ female dormitory. Most are married or are living with men not their husbands.

Assessment of Prison Procedures under the Standards Set Forth in the Bangkok Rules (BR), supplemented by the Mandela Rules (MR)

The Bangkok Rules (hereafter referred to as “BR”) adopts the general principle of non-discrimination embodied in Rule 6 of the **Mandela Rules (hereafter referred to as the “MR”)**. **Under this principle, account is taken of the distinctive needs of women prisoners in their application and providing for these needs is not regarded as “discriminatory” (Rule 1).**

a. Admission procedures

A detainee is admitted to the MCJ as soon as the judge to whom her case is assigned issues an order committing her to said facility. The order is issued after a finding of probable cause that the crime charged has been committed and the

detainee is probably guilty thereof. Upon admission, the detainee is subjected to routine physical examination which includes a pregnancy test. As elaborated by the warden in an interview, pregnancy tests, aside from informing them of the detainee's physical condition, doubles as a precaution against possible charge that the pregnancy occurred while the inmate is under their custody. The examination does not include tests to detect STD or blood-borne diseases, HIV; (b) mental health care needs; (c) reproductive health history, childbirth and any related reproductive health issues; (d) drug dependency; (e) sexual abuse and other forms of violence suffered prior to admission as required in *Rule 6, BR, supplemented by Rules 22 to 26, MR*). Without these data, it is impossible for prison officials to adequately address a detainee's particular condition. Prison officials however assured the author, during the interview, that personal records obtained during the examination are confidential, in compliance with *Rule 8, BR*.

It is also upon admission that information such as the names of the detainee's nearest kin, her children, their ages, their addresses and custody or guardianship status and contact numbers (if applicable), are taken, in compliance with *Rule 3, BR, supplemented by Rules 6 to 10, MR*).

While women with caretaking responsibilities for children are allowed to make arrangements to ensure someone will take over those responsibilities while they are detained, these are limited only to making phone calls or conferring with visiting relatives. Suspension of detention while undergoing trial, taking into account the children's best interests provided in *Rule 2, BR*, is not part of the policy of either the courts or the prison system.

b. personal hygiene

Each inmate has a budgetary allocation of Php60.00 or approximately \$1 per day which goes to her daily meals. An additional amount of Php10.00 or \$0.18 per detainee goes to medicines. Moreover, each inmate is entitled to a monthly toiletry pack of eight (8) pieces of sanitary pads, a small bar of soap, a sachet of shampoo, a sachet of underarm deodorant, a sachet of toothpaste, a laundry bar and powder soap. Upon inspection by the author, it was apparent that these supplies will not last a month.

Generally, the inmates are largely responsible for their personal items while under incarceration. There are no sanitary towels, and exacerbating the situation

is the perennial water shortage in contravention of *Rule 5, BR, supplemented by Rule 18, MR*.

c. Medical Services and Facilities

The MCJ Female Dormitory has an infirmary, with six-bed capacity. There is also an isolation room for inmates with communicable diseases, usually tuberculosis which can accommodate 20 inmates at a time.

After admission, no health care service is provided unless one is called for, on a specific complaint raised by the concerned inmate. Two female nurses take turns doing a 24-shift duty. Medical attention is limited to first aid or palliative care. There is no resident doctor. The only available doctor and dentist, both males, and whose services are shared by both male and female dormitories of the MCJ conduct once-a-month visits during which, cursory examinations are conducted. For serious cases, the inmate is taken to the nearest government hospital for examination, or if necessary, for confinement.

The heavy reliance of the MCJ on private initiatives is notable. Gender-specific tests such as pap smears, mammograms, x-rays, HIV testing, eye and dental examinations come from “voluntary” and “private” initiatives and are therefore, intermittent or irregular. Medical missions of private organizations usually consisting of dental or eye exams provide the only access of the average detainee to medical services. In contravention of *Rules 17 and 18, BR*, education and information on preventive health care measures, including information on HIV, STD and other, blood-borne diseases, as well as gender-specific tests such as Papanicolaou tests and screening for breast and gynecological cancer, are unavailable. However, considering that the BR only require that the tests freely available to the general population be made “mandatory” for women inmates, it may be worthwhile to mention that these same tests are not also freely available to the average woman of the same age in the community.

Most medical services available to the larger female population relating to reproductive health consists in access to contraceptives. This is pursuant to prevailing government policy to curb population growth. Considering that conjugal visits are prohibited, the same access to “standard” medical service is considered “unnecessary” for female detainees.

Hospital examinations are conducted by the doctor who happened to be available at that moment and the inmate-patient's preferred gender of the attending physician is not a consideration. Existing policy does not also require the presence of a female prison staff in case the inmate-patient's request for a male physician is not met. Invariably, these are in contravention of *Rule 10, BR*. On issues of privacy and confidentiality, the author sees no differentiation between medical examinations conducted on an inmate and that conducted on a regular patient.

Hospital examinations or confinement are allowed, albeit grudgingly, by the prison staff. They are resorted to only in "serious" situations. As explained by the warden, they exacerbate the already serious problem of understaffing because requiring a staff to accompany the inmate-patient means one less officer to escort the inmates to their court hearings.

Inmates undergoing examination or confinement at the hospital are usually accompanied and assisted by relatives. For those without relatives, it is the escort jail officer who is expected to "assist" the inmate-patient. This results to awkward situations, considering that often, the prison officer is male. This is also in contravention of *Rule 11, BR* which provides that if necessary for a non-medical staff to be present during medical examination, said staff shall be a woman.

d. Pregnant Prisoners

In contravention of *Rule 48, BR*, there is no policy within the MCJ female dormitory to advise pregnant prisoners on their health and diet, or to give them a diet pertinent to their pregnant state.

The treatment of a pregnant inmate depends on the stage of pregnancy she is in. During the first and second trimesters, she stays in regular cells together with other inmates. Pre-natal examinations are unavailable unless there is a physical complaint. However, as the inmate nears her due date, she is allowed to stay inside the infirmary. As soon as she is due to give birth, she is brought to any of the nearby public hospitals, escorted by jail personnel.

It is also widely practiced to handcuff an inmate to the hospital chair or bed while she is undergoing hospital examination or while confined. This not only makes her status as a detainee plain to everyone, it exposes her to societal discrimination against detainees in general, in contravention of the prohibition

against using Instruments of restraint on women during labor, during birth and immediately after birth provided in *Rule 24 of the BR*.

Barring any complication, the detainee returns to jail within the day after delivery.

Infants of Detainees

Newly born babies cannot stay with their mothers inside prison. After delivery, the members of the inmate's family are informed of the fact. They take custody of the infant. The rare occasions when the baby returns to the MCJ with its mother is when no relative agrees to take custody. At this point of the interview, the warden gives the all-too common instance of the father refusing to take custody of his child. When no relative willingly takes custody, coordination is made with the Department of Social Welfare and Development (DSWD). The DSWD takes custody of the infant until after trial. After the detainee's release, her baby is immediately returned to her; otherwise, (in case of a guilty verdict) the DSWD will make arrangements for the baby's adoption.

The prohibition against newly-born babies staying with their mothers in prison is justified to be to its best interests. The absence of child-care facilities and the high rate of congestion which make the infant susceptible to diseases, are justified reasons which constitute an exception to the mandate of *Rule 49, BR* that infants not be separated from their mothers. Nonetheless, it appears that the policy is not accompanied by a showing that these separations are effected with sensitivity. Indubitably, the separation of the child from its mother, even if justified, is a psychologically-wrenching experience for both and must be undertaken with understanding. The absence of any indication that the same is undertaken with care and sensitivity as required in *Rule 52, BR* may result to psychological trauma that forced separation brings, exacerbated by the prison policy prohibiting visits from children aged one year and below. Under present prison policy, the soonest time that the mother can see her infant again, would be a year after childbirth.

Infant Mortality

When asked for records of infant mortality, the prison authorities were unable to give any, other than the singular case of infant death during the last three years. The death was blamed on the poor physical condition of the mother due to heavy drug use. However, the author sees another explanation for the

absence of data. It is not necessarily because no such deaths occurred but because immediately after delivery, the infant is turned over to the detainee's family or to the DSWD. No follow-up on its condition is thereafter made. Thus, any possible infant death, occurring immediately after delivery, or any complication during pregnancy, is not recorded. With this dearth of data, the prison officers cannot determine the impact of poor or absent pre-natal care on the baby's well-being.

Problems/Challenges:

- a. Hospital confinement** – Unless personal resources allow, maternal deliveries of detainees are in nearby government hospitals which are usually understaffed and short of supplies. Lately, the arrangement has caused friction between hospital personnel and the escorting jail officers. The latter are of the impression that the detainee is the last one attended to by the hospital staff. Prison staff attribute this discriminatory attitude to the public stigma that incarceration brings.

Moreover, jail officer-escorts complain that the hospital nurses and paramedics seem to expect them to assist in performing “nursing” duties such as changing diapers, wiping discharges, and generally attending to the inmate-patient in the absence of family members. The jail escorts, who are usually males, argue that their “escorting duties” do not make them the inmate's personal nurses. In the midst of this tussle between the hospital staff and the jail personnel, it is the female detainee who bears the brunt of inadequate medical attention.

e. Access to family to the family and contact with the outside world

Under Philippine laws, an accused is detained in the detention facility of the place where the offense charged, is committed. Under this policy, any other consideration such as the proximity of the detention facility to the detainee's home, or the detainee's caretaking responsibilities or preferences as provided under *Rule 4* of the BR, are not taken into account.

Contact with family, including one's children, their children's guardians and legal representatives, is allowed under MCJ rules, within reasonable times. Visitation hours on weekdays are from 1 o'clock to 4 o'clock in the afternoon and

from 10 o'clock in the morning to 4 o'clock in the afternoon on Saturdays and special occasions or holidays.

An ocular view by the author of the MCJ female dormitory makes it readily apparent that privacy during visits is impossible. There is no separate room for visitors. Visits are made within the small open space fronting the entrance gate, in makeshift chairs and tables, and in plain sight of everyone. Conjugal visits, while allowed for male prisoners, are not allowed for women prisoners, in contravention of *Rule 27, BR*. As explained by the female warden, conjugal visits are prohibited because of the resulting pregnancy that comes with it.

While visits from children more than a year old are neither encouraged nor prohibited, it does not take place in an environment conducive to a positive visiting experience. Owing to lack of space, visits from very young children are made in the same area as the rest of the other visitors. The influx of visitors on weekends, causing more congestion negate extended visits, in contravention of *Rule 28, BR* which requires that visits involving children take place in an environment conducive to a positive visiting experience and with encouragement given to an extended contact with children.

f. programs to facilitate reintegration to society

To most detainees from the low-income classes, reintegration programs as required in *Rule 40, BR*, which consist mostly of livelihood skills are particularly helpful. Most common are trainings in cosmetology and handicraft-making. However, as observed by the author, these programs, while fairly regular, are private initiatives, and are not part of a comprehensive rehabilitation program which are either designed by prison officials, or built into the detention process, in contravention of *Rule 46 of the BR*.

There is also no indication that after release, additional support to inmates in need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community, remains available, in contravention of *Rule 47, BR*. Sometimes, the accessibility of certain much-needed services only for as long as the detainee remains in detention results to an absurd situation where detention is a preferred option to "release."

For example, as a judge, I am inclined to delay the resolution of a case, on the belief that the interest of an inmate who is of an unsound mind (which

constitutes a valid defense in her case and may lead to an acquittal) is better served if she remains detained. This is because it is only when she is detained that she will maintain access to regular mental examinations and treatment, both of which may not be accessible to her, outside of prison. The warden, on interview, also related the many instances of a pregnant woman soon due to give birth who look for an opportunity to be “arrested” and detained, on the belief that she has better access to free medical attendance upon childbirth, than if she was free.

Recommendations:

An assessment of the policies and practices of the MCJ women dormitory leads to the conclusion that they fall short of the standards set forth in the Bangkok Rules and Mandela Rules. The author understands that most lapses are not brought about by willful omission or lack of awareness of prisoners’ rights but by a severe lack of resources. As recognized in the “Mandela Rules” there is a “great variety of legal, social, economic and geographical conditions in the world, (thus), not all of the rules are capable of application in all places and at all times.”

But this should not be a reason to not even start the first step towards prison reforms particularly efforts to address the concerns of women detainees, especially those who are pregnant or are mothers. The present reality should “serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.”

1. Higher budgetary allocations for better facilities and services –

Undisputedly, the main problem besetting the MCJ Women’s Dormitory is lack of facilities and supplies brought about by meager budgetary allocation. With higher budget, the MCJ could secure larger facilities which translates to larger individual spaces, individual beds, separate facilities for pregnant and lactating mothers, and a nursery for older children and the hiring of more staff and personnel. Pregnant detainees and mothers will have the care that their situation demands. They themselves can take care of their babies for at least six months after birth, including giving them adequate nutrition that is possible through breastfeeding. A nursery will enable visiting children to have spaces conducive to extended mother-child interactions.

Higher budgetary allocations also mean better diet for expectant and lactating mothers, thereby reducing developmental problems of the developing infant that would affect it for life.

2. Coordination with partner hospitals

With respect to the problem regarding hospital confinements and examinations, it is suggested that solutions be facilitated by an increased coordination between jail officers and hospital officials. The same can be formalized in a memorandum of agreement that will contain clear and mutually-agreed rules on – 1) easy admission procedures; 2) prompt medical attendance by the hospital staff; and, 3) non-discriminatory treatment of the female detainees solely on account of the fact of their incarceration.

3. Exploring Alternatives to Incarceration:

Pursuant to the UN “Standard Minimum Rules for Non-Custodial Measures (“Tokyo Rules”) adopted by General Assembly Resolution 45/110 of 14 December 1990, non-custodial, gender-specific measures may be considered as a response to women offenders. These may be diversionary measures and pre-trial and sentencing alternatives taking account of the history of victimization of many women offenders and their caretaking responsibilities (*Rule 57, Tokyo Rules*). Measures that ensure that they are not separated from their families and communities without due consideration to their backgrounds and family ties (*Rule 58, Tokyo Rules*) include early conditional release (parole) for pregnant women and women with dependent children (*Rule 63*), with preference for non-custodial sentences whenever possible and appropriate, after taking into account the best interest of the children while ensuring the best appropriate provision for the care of said children (*Rule 64. Tokyo Rules*).

4. Reintegration Programs to Include Drug Rehabilitation Programs

While the author finds commendable the existing reintegration programs that cater to equipping women with livelihood opportunities, consideration should also be made that 90% of detainees are charged with drug-related offenses. While it may be argued that the likelihood of drug use among those charged with drug-related offenses is low given the high rate of acquittals, it is advanced that in most instances, acquittals are not because an accused is not a drug user but because the State has failed to prove its case, by stringent evidentiary rules. Thus, to the

author, the period of incarceration best serves the interest of the accused when it is utilized to “rehabilitate” her.

While government-funded rehabilitation is presently available, this availability is limited to those who enter a “plea of guilty” to the crime charged. However, a reintegration program designed to wean detainees off drugs even while undergoing trial and without necessarily entering a guilty plea will address the detrimental impact of drug use to the self and the family. This is in consonance with Rule 60 of the Tokyo Rules which provide that “appropriate resources be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to their contact with the criminal justice system. Rehabilitation programs ensure that the female detainees not to relapse to the criminalized drug-habits that led to their incarceration in the first place.

5. Amending the Rules on Prosecution of Offenses

Per available statistic, only a third of criminal cases end in convictions. The high rate of acquittals measured against the number of cases filed can be explained to the fact that present procedure only requires the modicum standard of “probable cause”, before a criminal case can be filed; yet, requires the very high standard of “proof beyond reasonable doubt” to sustain a conviction. In other words, it is easy for the prosecution to file cases; yet, very difficult for them to obtain a conviction. The huge gap between two standards of proof – the first, necessary to file a case and the second, to secure a conviction – has resulted to more cases being filed (which correlates to more accused-detainees) which, after three years of trial, only end in acquittals. In the meantime, the costs of detention, to the State, to the individual detainees and their families, and the court’s time and resources which would have better utilized to more worthwhile cases, are immeasurable.

It is suggested that the standard of proof for the filing of criminal cases be raised to a level where the likelihood of conviction is high and in the process, reduce the rate of incarceration.

Conclusion

Prison is a microcosm of the larger society. There, in the much smaller space, the limitations of society are magnified and its failure to provide basic

resources and the omissions and errors of government, become more felt. While the lack of basic shelter and food, access to water, and medical services, is a reality for a huge percentage of the Philippine population crippled by poverty, it takes a more urgent turn when experienced within the prison walls, especially when the person concerned is pregnant, or is a mother.

We pause to consider two realities that make the concerns of the detainees of the MCJ female dormitory more compelling – *first*, these women are still undergoing trial, and are therefore entitled to the presumption of innocence that is their due under the Bill of Rights. Instead, their dire conditions amount to “cruel” punishment which may equal to that imposed on a convicted criminal. The injustice even becomes more pronounced if we consider that incarceration which, based on the average trial period of three years, only ends for more than half of these women, in acquittals.

Second, the present policies penalize a third party – the inmate’s unborn baby. The lack of adequate nourishment and medical care during pregnancy pose life-lasting effects on the unborn. It need not be belabored that the degree of maternal care during the earliest formative years of the child, is crucial because it largely defines its quality of life, in its physical, mental and emotional aspects. Moreover, they are irreversible. One pauses to ask why should the child of one who, in all probability be acquitted, be made to suffer a life sentence?