



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

**POSITION PAPER ON THE PROPOSED ACT CREATING PROGRAMS
FOR INCARCERATED MOTHERS AND THEIR CHILDREN ACT
(House Bill Nos. 117 and 3197)**

The Commission on Human Rights ('Commission' for brevity), pursuant to its mandate to recommend to Congress effective measures to promote human rights and as Gender Ombud under the Magna Carta of Women, submits this position paper on House Bill Nos. 117 and 3197 or the proposed measures creating programs for incarcerated mothers and their children.

The United Nations Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules')¹ was adopted by the United Nations General Assembly (UNGA) to ensure the humane treatment of persons deprived of liberty. The same incorporated relevant provisions, including those set forth by the International Covenant on Civil and Political Rights and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Additionally, the UNGA adopted the United Nations Rules for the Treatment of Female Prisoners and non-Custodial Measures for Women Offenders, also known as the Bangkok Rules,² taking into consideration the specific needs and realities of women as prisoners and the impact of parental detention and imprisonment on children.

The Bangkok Rules recognize the direct and indirect multiple layers of discrimination and deprivation that women face in society such as in the political, economic, social, and cultural field that may cause their incarceration and seek to address the issues, women face in the criminal justice system. Further, they provide safeguards and other measures for the welfare of pregnant detainees and female persons deprived of liberty (PDLs) with their infants, such as the prohibition on the use of instruments of restraint for pregnant PDLs and during labor, birth, and immediately after birth and necessary medical intervention, including juvenile pregnant detainee. Recognizing the circumstances and special needs of women in detention, the Magna Carta of Women defines women in especially difficult circumstances³ to include women in detention and states that they shall have access to necessary services and interventions, such as medical and psychological evaluation, counselling, legal services, and productivity skills capability training, among others.

In 2015, the Commission, together with the National Capital Region Police Office, conducted a study on the human rights situation in police lock-up cells. Among the findings are the lack of human resources in the women and children's

¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. 70/175, U.N. Doc. A/RES/70/175 (Dec. 15, 2015).

² United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), G.A. 65/229, U.N. Doc. A/RES/65/229 (Dec. 21, 2010).

³ An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710, § 30 (2009).

desk and some personnel lack proper training on human rights. The Commission conducted a discussion forum on the situation of women in detention in 2018 where among the issues discussed were the lack of pre- and post-natal care and services in detention facilities.⁴ The general practice would be facilitating agreements with the nearest government hospital. However, this would require a court order and will take time before they will be able to access these services.

The proposed measures provide for the placement of guardianship options and a child-friendly visitation program to ensure that mothers and their children maintain communication and fulfill their parental role for their children. Communicative rights and the child's rights to participation and respect for their views are enshrined in the Convention on the Rights of the Child. The convention likewise provides that all children, regardless of the status of their parents, are afforded equal rights and non-discrimination. Alternative care for children shall always be based on children's rights and on the best interest of the child. We highlight the need to ensure that children in detention facilities with their mother should never be treated as detainees or PDLs.⁵

It is in this light that the Commission expresses its support for the passage of House Bill Nos. 117 and 3197 filed in the House of Representatives and hereby proposes, for consideration of the Committees where these measures have been referred to, the following recommendations:

1. Uniformly apply the provisions of this law in all places of detention (POD) including but not limited to those managed by the Bureau of Corrections, Bureau of Jail Management and Penology, and in all police stations. This can be ensured if there is a specific provision that mandates both institutions and all jail facilities are accountable for non-compliance to the law.
2. Ensure that detention facilities have adequate personnel, especially female personnel, who will conduct body searches especially for female detainees and visitors.
3. Allocate sufficient funds both in the national and local government supporting the establishment and/or maintenance of nursing rooms for breastfeeding mothers and child-friendly spaces for the visitation program of their children . These child-friendly spaces shall be separate from the cells of PDLs and be spaces allocated for mother-and-child interaction.
4. Ensure access to pediatric services and learning opportunities for infants and children staying with their mothers in detention facilities.
5. Emphasize that any decision on, and regarding the custody of the children, provided in Sec. 4 on Placement of Guardianship Options, should always be based on their best interests.
6. Give due consideration to circumstances in which the best interests of the child may be better fulfilled by having the child live with the incarcerated parent. In doing so, due consideration to the overall conditions of the incarceration and the particular need for parent-child contact during early childhood should be taken into full account.

⁴ Commission on Human Rights, Inside Story: Initial Discussion on the Situation of Women in Detention, documentation report (Dec. 3, 2018)

⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, *supra* note 2, rule 49.

7. Ensure that infants, up to a certain age, should not be separated from their mothers so that the children will be given proper nutrition, through breastfeeding, and maternal care.
8. Ensure child-friendly visitation programs, which can be supplemented, using audio-video interactions, when access to these programs are hindered by distance and cost of expenses for travel. In addition, incarcerated mothers should be allowed to communicate, thru phone calls, letters, or audio-video interaction with her children, husband, or any relative in custody of their children, to check on their welfare, especially for infants or children with special needs. This serves as a means to strengthen family ties among the incarcerated mother and her children and prevent the breakdown of families.
9. Provision of affordable pre-and post-natal care to PDLs who are pregnant. This should include counselling and psychosocial services for postpartum depression. The pre-and post- natal care for women PDLs should coincide with faster and timely issuance/release of Court Order allowing for the said health intervention.
10. Allow for regular check-up for infants who are born while the mother is incarcerated.
11. Ensure provision of affordable reproductive health services to pregnant PDLs, especially minors.
12. Include in Section 5 (C) the development of a reunification plan for incarcerated mothers and their children after the sentence has been served. This shall include livelihood and skills development to ensure that the mothers are productive and are able to provide for their children's needs.
13. Establish reintegration programs for incarcerated mothers, prior to their release to prepare them to go back to their respective families and to society in general.
14. Amend Section 7 to explicitly state CHR's power to visit places of detention as provided by the Constitution. The visitorial powers of the CHR entail unrestricted access and unannounced visits to places of detention as provided by existing laws and policies related to the mandate to conduct visitorial functions and inspections.
15. Explore non-custodial sentences for pregnant women and those with dependent children where possible and appropriate, such as those with non-serious crimes. Such women may just be subject to alternative penalties in accordance with the law.
16. Train professionals working with/for children at all stages of the criminal justice process, as well as other professionals such as teachers and social workers who may come into contact with children of incarcerated parents, to enable them to appropriately provide any needed support to children of incarcerated parents.

In conclusion, the Commission supports the enactment of a law that aims to provide for programs and services for incarcerated women and their children consistent with the abovementioned rules on the treatment of PDLs and the existing international human rights treaties.

ISSUED this 10th day of February 2021, Quezon City, Philippines.



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