

## HUMAN RIGHTS ADVISORY

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### ON THE PNP'S COMPLIANCE ON THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (Ensuring the Integrity of Data of Detainees and Policy on Detention, a State Obligation) CHR A2015-004

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#### Treaty Obligation under the ICCPR and CAT:

The Philippines has obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) to enact domestic measures providing for the absolute prohibition of torture, as well as cruel, inhuman, and degrading treatment or punishment in the country. The passing in 2009 of RA 9745, "An Act Penalizing Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment and Prescribing Penalties Therefor", clearly entrenched the state's policy of respecting the dignity of detainees and guaranteeing their rights. It also effectively provided the state's accountability for acts of torture and cruel, inhuman and degrading treatment or punishment.<sup>1</sup>

One of the key features of the said law is the emphasis on the monitoring function of the Commission on Human Rights (*CHR or Commission*, for brevity) as the primary national human rights institution (NHRI) of the country, over data relating to detention facilities and detainees. Under Sec. 7 of the said law, all law enforcement agencies (LEA's) are required to submit an updated list of all detention facilities maintained by them under their respective jurisdictions, together with the list of all detainees under their custody with the corresponding relevant data, every 5<sup>th</sup> day of the following month to the Commission.<sup>2</sup> It is further required that their regional offices maintain an overall list of all these requirements to be made available to the public at all times. An act of omission or failure to comply with this requirement shall merit the imposition of the penalty of Arresto Mayor.<sup>3</sup>

The evil sought to be prevented by such provision is to ensure the safety of detainees by accounting their presence in detention facilities and maintaining the integrity of the data relevant to them. This is in accord with the principles of ensuring

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<sup>1</sup> Republic Act 9745, An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor, July 27, 2009.

<sup>2</sup> Sec. 7, RA 9745.

<sup>3</sup> Sec. 14, RA 9745

transparency in processes and accountability of state agents in cases of violation. It also functions as a deterrent for the commission of torture and enforced disappearance. It is also an effective mechanism in providing relevant information<sup>4</sup> to the Commission and other government agencies in shaping policies and programs.

Although not legally binding, the UN Minimum Standard Rules for the Treatment of Prisoners provide guidelines for international and domestic law for citizens held in prisons and other forms of custody. . Under Sec. 7 of the Minimum Standards, in every place where persons are imprisoned there should be *a bound registration book with numbered pages* in which the information concerning the identity, reason/s for the commitment and the authority therefor, and the day and hour of the admission and release, shall be entered in respect of each prisoner received (*italics supplied*). Further, no person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

Further, under the CAT, certain basic guarantees apply to all persons deprived of their liberty. Some of these are specified in the Convention, and the Committee consistently calls upon State Parties to use them. The Committee's recommendations concerning effective measures aim to clarify the current baseline and are not exhaustive. Such guarantees include, inter alia, *maintaining an official registry of detainees*, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment (*italics supplied*).<sup>5</sup>

Continual evaluation is therefore a crucial component of effective measures. *The Committee has consistently recommended that States Parties provide data disaggregated by age, gender and other key factors in their reports to enable the Committee to adequately evaluate the implementation of the Convention. Disaggregated data permits the States Parties and the Committee to identify, compare and take steps to remedy discriminatory treatment that may otherwise go unnoticed and unaddressed (italics supplied).* States Parties are requested to describe, as far as possible, factors affecting the incidence and prevention of torture or ill-treatment, as well as the difficulties experienced in preventing torture or ill-treatment against specific relevant sectors of the population, such as minorities, victims of torture,

<sup>4</sup> Ibid.

<sup>5</sup> Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment General Comment No. 2

children and women, taking into account the general and particular forms that such torture and ill-treatment may take.<sup>6</sup>

**Gaps in the Implementation:**

Data gathered by the Commission, in compliance with its mandate under the Constitution<sup>7</sup>, the Anti-Torture Act<sup>8</sup> and the Anti- Enforced Disappearance Act<sup>9</sup>, will show that the Philippine National Police (PNP) through its police stations and other units with detention facilities to a large extent, complies with their obligation for the monthly submission of a list of detainees in their respective detention facilities. To effectively present an accurate data however, as well as to ensure the integrity and reliability of said data, an examination of the basis for said list has to be made. It is in this respect that registry of detainees are referred to. *Based on the regular and preventive visits conducted by the Commission, police stations maintain their own registry of detainees but vary in terms of form, security measures, and data, among others*<sup>10</sup>.

To date, there is no clear, specific and uniform policy providing for the system of accounting for detainees in the PNP. The PNP Operational Manual, however provides that all occurrences in the police station must be recorded in the police blotter.<sup>11</sup> Whether police stations or units should record the data on detainees in compliance with RA 9745 and RA 10353 in the police blotters or maintain separate registry of detainees is unclear. While there is reference to the maintenance of a bound register in the HR Primer on Law Enforcement of the PNP, strict adherence to, regular updating of existing policies and issuance of a policy to ensure uniformity in application, on Detention<sup>12</sup>, Requirements for Admission<sup>13</sup>, Authority and Responsibilities<sup>14</sup>, Visitation Rights and Rules<sup>15</sup>, Release<sup>16</sup> and Segregation of

<sup>6</sup> Ibid.

<sup>7</sup> Sec. 18, Art. XIII, 1987 Philippine Constitution.

<sup>8</sup> Sec. 11, Implementing Rules and Regulations of the Anti –Torture Act of 2009.

<sup>9</sup> Sec. 14, Implementing Rules and Regulations of the Anti-Enforced or Disappearance Act of 2012.

<sup>10</sup> Based on the TPA Project Supplemental Jail Guide, there is variation in the form of registers. Some police stations enter data in the police blotter, others maintain separate logbooks while others use computers. In terms of ensuring security, there are variations also. Others maintain bound registers, others do not. For those who use computers, security measures vary. There is also no existing software to prevent modifications/alterations or deletions.

<sup>11</sup> PNP Operational Manual of Procedures.

<sup>12</sup> "...ensuring that under no circumstances shall the arrested suspects under custodial investigation be held in the detention center beyond the prescribed reglementary period unless, while in custody, appropriate charges have been filed and commitment order has been issued by the court concerned."

<sup>13</sup> Requirements for Admission: Before you are admitted for detention, there are requirements that must be submitted by the arresting unit to the Chief of the Detention or Custodial Center:

- a. Request for custody of the arresting unit or the commitment order from the court;
- b. Proof of your medical examination or medical certificate to be provided by the arresting unit requesting for custody;

<sup>14</sup> Authority and Responsibilities:

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c. Detainee's case folder; and

d. Proof that you were informed of your constitutional rights as provided under RA 7438 prior to your detention.

<sup>15</sup> Visitation rights and rules

While on detention, you will be allowed visits by or conferences with any members of your immediate family, or any medical doctor or priest or religious minister chosen by you or by your immediate family or by your counsel, or by any Non-

Detainees<sup>17</sup>, among others, should be a continuing endeavor. Moreover, in the absence of a clear policy guideline providing for such, variations as to form, whether written or computerized, content in the information<sup>18</sup> and security measures to ensure the integrity thereof, is likely to occur.

The Commission enjoins the PNP to regularly submit the list of detainees, as required by law, to CHR. The issuance of a policy guideline contained in a Memorandum Circular or any form by the PNP providing uniformity in form and substance or reminding them of existing policies shall benefit both the detainees and the police. Kin of detainees shall be given access to accurate information regarding their whereabouts and the police are given an accurate information and accounting of their detainees, thereby reducing liability and arbitrariness. This shall also guarantee transparency, organizational efficiency and accountability which are the primary objectives of the government. It should also adhere to investigation techniques that do not result to torture or other inhuman or degrading treatment and punishment. The PNP must not place persons deprived of liberty in solitary confinement, which is a practice that is contrary to the Constitution. The PNP must promote the minimum standards of treatment to all and observe all of the standards

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Government Organization (NGO) duly accredited by the Commission on Human Rights or by any international NGO duly accredited by the Office of the President.

The Chief of the Detention/Custodial Center or his duly authorized representative is authorized to apportion the number of visitors per detainee at any given time as the space of the visitor's area may allow.

Visiting family members must present public and/or pertinent documents to prove their relationship with you. Visitors wearing the color of the detainee's uniform will be advised to wear another color. Conjugal visits will not be allowed during detention. Cameras, video equipment, cellular phones and similar devices are not allowed inside the visiting area.

<sup>16</sup> Release

Detainees can be released only upon issuance of release order by the court. Upon confirmation of the court order, the Chief of Detention/Custodial Center will coordinate with other concerned units/offices to determine if there are objections to the release or if there are other pending warrants of arrest for the person who is about to be released.

If there are objections to the release, the arresting unit will make a written manifestation containing its objections. If there are valid grounds to sustain further detention, the Chief, Detention/Custodial Center in coordination with the arresting unit prepares appropriate MANIFESTATION for the court containing therein the ground/s for objection.

Granting that all documents are legally in order, the Chief, Detention/Custodial Center prepares the memorandum addressed to the Chief of Office for the approval of the release.

Prior to the official release, the detainee will be given medical examination by the city/municipal health office or health center (Health Service or Rural Health Unit). The results form part of the records/case folder of the detainee.

<sup>17</sup> Segregation of detainees "Detainees will be segregated according to gender and, as much as possible, xxx

<sup>18</sup> Under Sec. 12 of Ra 9745, all LEA's " shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, dates of arrest and incarceration, and the crime or offense charged while under Sec. 10 of RA 10353, the following details, among others, shall be recorded, in the register: (a) The identity or name, description and address of the person deprived of liberty; (b) The date, time and location where the person was deprived of liberty and the identity of the person who made such deprivation of liberty; (c) The authority who decided the deprivation of liberty and the reasons for the deprivation of liberty or the crime or offense committed; (d) The authority controlling the deprivation of liberty; (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty; (f) Records of physical, mental and psychological condition of the detained or confined person before and after the deprivation of liberty and the name and address of the physician who examined him or her physically, mentally and medically; (g) The date and time of release or transfer of the detained or confined person to another place of detention, the destination and the authority responsible for the transfer; (h) The date and time of each removal of the detained or confined person from his or her cell, the reason or purpose for such removal and the date and time of his or her return to his or her cell; (i) A summary of the physical, mental and medical findings of the detained or confined person after each interrogation; (j) The names and addresses of the persons who visit the detained or confined person and the date and time of such visits and the date and time of each departure; (k) In the event of death during the deprivation of liberty, the identity, the circumstances and cause of death of the victim as well as the destination of the human remains; and (l) All other important events bearing on and all relevant details regarding the treatment of the detained or confined person.

**Recommendation:**

Combatting torture does not start and end with the prosecution of those guilty of committing it. **The solution lies in providing for policies ensuring the strict and uniform implementation of practices in handling detainees, consistent with the principles of human rights-based policing and in the thrust of our government for an efficient and transparent system of governance, to prevent the occurrence of torture.**

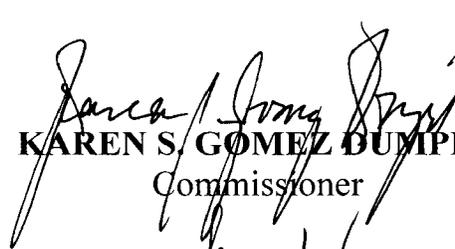
At the interim, the PNP should immediately institute measures to ensure compliance with the minimum requirements prescribed by the UN Standard Minimum Rules for the Treatment of Prisoners pending congressional approval of the requested budget.

It is to this end that the Commission reminds the PNP of its obligation to issue policies concerning data over detainees to ensure their uniformity, security and transparency, consistent with the provisions of the United Nations Minimum Rules for the Treatment of Prisoners, the CAT and RA 9745 without prejudice to the those which may be issued by the Oversight Committee under the same law. Finally, the PNP must hold administratively liable and pursue criminal actions against its members found to have perpetuated torture or other cruel, inhuman or degrading treatment or punishment.

Issued this 28<sup>th</sup> day of December 2015, Quezon City, Philippines.



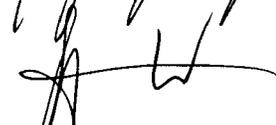
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