



## HUMAN RIGHTS ADVISORY

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### ON THE RIGHT TO ADEQUATE FOOD OF PNP DETAINEES (The right to adequate food: an inclusive right) CHR A2015-005

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#### *An overview on the Philippine Penitentiary system:*

In the Philippines, the complexity of the penitentiary system is evident with the number of agencies having jurisdiction over the custody of detainees depending on the stage of prosecution. Upon arrest, during custodial investigation and while undergoing preliminary investigation, suspects are detained in “temporary lock up cells” of police stations under the supervision of the Philippine National Police (PNP). Upon findings of probable cause by the prosecutor and release of commitment orders by courts, detainees are transferred to detention facilities maintained by the Bureau of Jail and Penology (BJMP) referred to as “district jails.” In some localities however, due to large numbers of detainees, some may be detained in facilities maintained and funded by local government units called “provincial jails.” Finally, when judgements of convictions have been rendered by courts, detainees are transferred to facilities maintained by the Bureau of Corrections (BuCOR) or the National Penitentiary, both under the Department of Justice (DOJ). Needless to say, funding for the upkeep of the detainees, most importantly, food, is provided to all the agencies, except the PNP. The reason for the absence of budget allocation to the PNP was apparent in the law before but may no longer apply today.

Under the Revised Penal Code (RPC), specifically under Art. 125 thereof, a suspect shall only stay in police lock up cells for periods of 12, 18 and 36 hours, with the latter, as the maximum period of detention for those charged with serious infractions of the law.<sup>1</sup> These may account for the fact that detention facilities maintained by the PNP have been referred to as “temporary” since the law contemplates that detainees shall only stay in these facilities for mere hours.

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<sup>1</sup> Art. 125, Revised Penal Code.

However, increasingly during the last few years, as the population exponentially grew, so did the commission of crimes.<sup>2</sup>

As detainees stay longer beyond the maximum period provided for by law, their basic rights or necessities become a huge problem. At the minimum, at least three meals are required a day as well as provisions for bedding, sanitation installation, water, personal hygiene, lighting and ventilation, to name a few. Among all of these basic needs, the provision of food for detainees may be a recurring expense over a period of time. Since a majority of detainees fall under low income groups, their families find it increasingly difficult to visit and provide their kin meals as time passes by possibly due to the detention of the income earner himself or herself, low income, cost for transportation and distance.<sup>3</sup> The absence of budgetary allocation for the basic and indispensable requirement for sustenance eventually has become a huge concern for local policemen and has caused considerable strain and burden on them, both as an organization and personally. More often than not, they provide food for the detainees, usually from their own pockets or sometimes by squeezing the cost to the meager budgets of their stations.<sup>4</sup>

This situation is not ideal for both the detainee and the policemen. For the detainee, the absence and/or uncertainty of the source of food is deplorable as sustenance is a basic requirement for the right to life. The disadvantage to the policemen is readily apparent; a closer scrutiny of the situation will reveal the negative consequences. One, the resources or MOOE of local police stations are not sufficient to even provide for their own operational and administrative needs. Second, absorbing the cost for the food of detainees may cause cuts in their own organizational efficiency to maintaining the rule of law. Third, this may possibly cause or account for doing acts of corruption to fund the upkeep of detainees. Finally, on a personal scale, the voluntary provision of food to the detainees out of sympathy or any reason, may also cause strain on the inadequate salary of the average policeman to the detriment of his family.

### **Human Rights Standards for the Treatment of Prisoners in relation to food:**

The right to the highest attainable standard of health, being a fundamental part of our human rights, consists of key aspects. As an inclusive right, it consists of underlying determinants of health, including *safe drinking water and sanitation, safe food, adequate nutrition*, among others. It also contains freedoms such as *to be free from torture and other cruel, inhuman and degrading treatment or punishment*, as well as entitlements such as *equal and timely access to basic health*

<sup>2</sup> NSCB-Sexy Statistics-Pulis, Pulis!, www.nscb.gov.ph

<sup>3</sup> Interviews with kin and victims of the PIB Binan Torture Case.

<sup>4</sup> Supplementary Jail Guide, Torture Prevention Ambassador Project.

*services.* The right also contemplates the provision of these services to be *available, accessible, acceptable and of good quality.* More importantly, the enjoyment of this right must be provided *to all* without any discrimination (*italics supplied*).<sup>5</sup>

The right to food is a primordial right of every individual and is directly linked to one's right to life and dignity as a human being. The right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the fulfillment of all human rights for all.<sup>6</sup>

The Special Rapporteur on the Right to Food in 2002 defined the right to adequate food as "The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear."<sup>7</sup> The right to food is not a right to a minimum ration of calories, proteins and other specific nutrients, or a right to be fed. It is about being guaranteed the right to feed oneself, which requires not only that food is available – that the ratio of production to the population is sufficient – but also that it is accessible. However, if individuals are deprived of access to food for reasons beyond their control, for instance because of an armed conflict, natural disaster **or because they are in detention**, recognition of the right to life obliges States to provide them with sufficient food for their survival.<sup>8</sup>

Reflecting on the actualities achieved by the visitorial mandate of the Commission, the disconnect in the law and reality pertaining to the unforeseen prolonged detention of persons suspected of committing a crime in the temporary detention facilities of police stations, has caused adverse implications on the rights and dignity of the detainees. The unforeseen protracted detention of PDLs in police stations has become more apparent in the compliance of the State to the *UN Standard Minimum Rules for the Treatment of Prisoners, specifically Rule 20.1 and 20.2 which provides for the provision of food "of nutritional value adequate for health and strength" to every prisoner. Further, the United Nations Rules for*

<sup>5</sup> The Right to Health., Fact Sheet 13, p. 3-5.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (Twentieth Session, 1999), U.N.

<sup>7</sup> Special Rapporteur on the Right to Food 2008: para. 17;

<sup>8</sup> Special Rapporteur on the Right to Food 2012a: "Right to Food."

*the Protection of Juveniles Deprived of their Liberty mandates that every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time (italics supplied).*<sup>9</sup>

Republic Act 10575 or the Bureau of Corrections Act of 2013 mandates that “the safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards.” The right to food of prisoners, on the other hand, is embodied in the guidelines of the Bureau of Jail Management and Penology (BJMP) through the Prisoner Subsistence Allowance (PSA). Both agencies, under the 2015 General Appropriations Act, have allocated a Fifty Pesos (Php 50.00) daily allowance for the food of every detainee. However, no budgetary allocation was allotted by the State for the provision of food for detainees of temporary detention facilities of police stations.

Persons Deprived of Liberty (PDL's) is a vulnerable group due primarily to its total reliance to prison authorities for basic needs. The provision of clean water at all times and good quality food are essential to their healthy existence. It is a universal vital need and the root cause of many conflicts inside detention facilities. The quality, quantity, delivery schedule, variety, and even temperature of food tend to be polarising factors in daily prison life. Prison authorities, including those in the police stations, have an obligation to meet the needs of the detainees. Failure to comply with this obligation may constitute a form of cruel, inhuman or degrading treatment, or even torture.<sup>10</sup> Deprivation of food as a form of punishment for detainees is strictly proscribed by existing International Human Rights and Humanitarian Laws. It is thus essential and indispensable that Persons Deprived of Liberty are provided with adequate and good quality of food, which is highly personal and culture-specific.

### Conclusion:

The right to food is an inclusive right, encompassing even persons whose civil rights and liberties have been temporarily suspended. It must be *available*, *adequate*, and *accessible* corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>11</sup> In light of the inability of

<sup>9</sup> Rule 37 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

<sup>10</sup> [http://www.apt.ch/detention-focus/en/detention\\_issues/44/](http://www.apt.ch/detention-focus/en/detention_issues/44/)

<sup>11</sup> UN OHCHR Fact Sheet No. 34: The Right to Adequate Foo

most detainees and their families or friends to provide for their food, the government should assume this role.<sup>12</sup>

At the interim, the PNP is urged to review its existing policies, protocols and practices on providing PDLs with adequate and sufficient food and ensure that at least the minimum standards for adequate and sufficient food are provided to PDLs using the existing resources of the PNP, including options to partner with other government agencies, civil society groups and the private sector to fill the gap.

**Consistent with this, the Commission on Human Rights, urges the Philippine Government, through its respective line agency/ies and branch/es ie. the Department of Budget and Management (DBM), together with the Legislative, to enact measures to ensure the provision of budget to the Philippine National Police (PNP), to solely fund for the upkeep of detainees, among them, the most basic, are meals, in fulfillment of their basic right to adequate food consistent with its role as a duty bearer.**

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



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<sup>12</sup> 87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food, Standard Minimum Rules for the Treatment of Prisoners.