



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

**POSITION PAPER ON HOUSE BILL NO. 7379 OR THE
PROPOSED DESTITUTE PERSONS ACT**

1. Pursuant to its Constitutional mandate to recommend to Congress effective measures to promote and protect human rights¹, the Commission on Human Rights (“Commission” for brevity), respectfully submits this position paper on House Bill No. 7379 (HB No. 7379), entitled “AN ACT ESTABLISHING WELFARE HOMES FOR DESTITUTE PERSONS” otherwise known as “Destitute Persons Act.”
2. The Universal Declaration of Human Rights (UDHR) recognizes that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”²
3. This right is echoed in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),³ which the Philippines is a State-Party. The United Nations Commission for Social Development adopted in February 2020, the very first U.N. Resolution on Homelessness, recognizing that people are often pushed into homelessness by a range of diverse social and economic drivers.⁴ Furthermore, General Comment No. 36 (2019) issued by the U.N. Human Rights Committee clarifies that “the duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed in particular risk,”⁵ affirming the State’s duty “to address the general

¹ 1987 Phil. Constitution, Art. 13, S. 18(6).

² Universal Declaration on Human Rights, Art. 25, Sec. 1, 10 December 1948.

³ International Covenant on Economic, Social and Cultural Rights, Article 11, Sec. 1, 16 December 1966.

⁴ United Nations Department of Economic and Social Affairs (UNDESA), First-ever United Nations Resolution on Homelessness, March 9, 2020, available at <https://www.un.org/development/desa/dspd/2020/03/resolution-homelessness/> (last accessed 8 March 2021).

⁵ UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, para 23, 3 September 2019, CCPR/C/GC/36, available at: <https://www.refworld.org/docid/5e5e75e04.html> [last accessed 8 March 2021].

CHR: Dignity of all

conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”⁶

4. The 1987 Constitution provides that “the prime duty of the government is to serve and protect the people”⁷ which entails preserving peace and order, protection of life, liberty and property, promotion of the general welfare of the people,⁸ and the equal protection of laws.⁹ One of the measures to actualize this is compliance to the State’s obligation to promote and protect the right of its people to adequate standard of living for his well-being and his family. This is enshrined in the Constitution such that “the maintenance of peace and order, protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all people of the blessings of democracy.”¹⁰ The fundamental rights of the poor reflected in the Magna Carta of the Poor,¹¹ (Republic Act No. 11291) and other existing laws explicitly enumerated the rights that Filipinos experiencing poverty should enjoy and the obligations the State shall fulfill.
5. Currently, the Department of Social Welfare and Development (DSWD) manages residential and non-residential facilities that cater to a range of destitution-related issues. The National Housing Authority also provides affordable and socialized housing programs. However, these do not sufficiently address the homelessness of about 4.5 million people¹² nationwide whose destitution is mainly caused by poverty, domestic violence, human trafficking, and natural disasters.¹³ The circumstance of homelessness, compounded by the COVID-19 pandemic, magnifies the urgency to address this cross-cutting issue affecting millions of Filipinos.
6. Hence, pursuant to the Constitution, other existing laws, and international obligations of the State, this House Bill seeks to create an enabling law that will protect and promote the rights of the Filipinos who are experiencing homelessness and destitution by establishing Welfare Homes.

⁶ UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, para 26, 3 September 2019, CCPR/C/GC/36, available at: <https://www.refworld.org/docid/5e5e75e04.html> [last accessed 8 March 2021].

⁷ 1987 Phil. Constitution, Art. 2, Sec. 4

⁸ 1987 Phil. Constitution, Art. 2, Sec. 5

⁹ 1987 Phil. Constitution, Art. 3, Sec. 1

¹⁰ 1987 Phil. Constitution, Art. 2, S. 5.

¹¹ Section 4 of the Magna Carta of the Poor or Republic Act No. 11291 enumerates the following fundamental rights of the poor: right to adequate food, right to decent work, right to relevant and quality education, right to adequate housing, and right to highest attainable standard of health.

¹² Rina Chandran, Thomson Reuters Foundation, March 28, 2018, available at <https://www.reuters.com/article/us-philippines-landrights-lawmaking/manilas-homeless-set-to-move-into-more-empty-homes-if-official-handover-delayed-idUSKBN1H41L7> (last accessed 8 March 2021).

¹³ The Borgen Project, *The State of Homelessness in the Philippines*, available at <https://borgenproject.org/homelessness-in-the-philippines/> (last accessed March 8, 2021).

Sec. 3. Definitions.

7. H.B. No. 7379 defines “Destitute Persons” as “any idle person found in a public place, whether or not he or she is begging, who has no visible means of subsistence or place of residence or is unable to give a satisfactory account of himself or herself.”¹⁴

The Commission notes that there are no international standards prescribing for a more politically correct term referring to persons experiencing homelessness and/or destitution. However, simply labeling them as “destitute” characterizes these people as one thing and one thing only: destitute. These people are mothers, fathers, sisters, brothers, daughters, artists, writers, professionals, athletes, and so much more, not just mere strangers experiencing extreme poverty. By labeling and reducing them as one, it often leads to their dehumanization, devaluation, objectification, stigmatization, and further marginalization by the society. The Commission thus recommends a more humane and empathetically correct term to replace “destitute persons” which could be: People Experiencing Homelessness and Destitution (PEHD) or People Experiencing Homelessness and Extreme Poverty (PHEP).

Sec. 4. Power to Require a Destitute Person to Reside in a Welfare Home.

8. The Commission acknowledges the intent of this provision to grant power to the Secretary of DSWD or their duly authorized representative to require any PEHD to reside in a welfare home for their safety, rehabilitation, and empowerment. However, the Commission notes that this provision gives an unbridled discretion to the Secretary of DSWD or its duly authorized representative to deprive any PEHD of their liberty and freedom of movement, a right that is Constitutionally and universally guaranteed.

Although Section 15 of H.B. 7379 provides mechanism for PEHDs to leave the welfare home for a specific reason and time upon permission by the Superintendent, it still leads to the PEHD’s restricted and limited exercise of their right to freedom of movement. The Commission recommends that informed consent be strictly obtained before admission of PEHDs in Welfare Homes. If consent cannot readily be obtained, the PEHD should be given supported decision making, through a social worker or public officer without force, intimidation, or any fraudulent claims. The Commission proposes the following revision to his section:

¹⁴ H.B. 7379, Sec 3 (a), 18th Congress, 2nd Regular Session (2021).

- a. The title of this provision shall be worded as “**Admission of a Person Experiencing Homelessness and Destitution (PEHD) to Reside in a Welfare Home**”.
- b. Section 4 (d) shall be revised as “*If after holding such inquiry, the Secretary of the DSWD or his/her duly authorized representative is satisfied that the person is a PEHD within the meaning of this Act, he or she shall designate, in coordination with the LGU’s local social welfare office, a social worker to be in charge of that case to provide supported decision making with the PEHD until such time consent is freely given. At no instance shall the social worker use force, violence, intimidation, or fraud in obtaining consent from PEHD to reside in a welfare home.*”

Sec. 5. Voluntary Admission to a Welfare Home.

9. The Commission welcomes this provision of the bill as this mechanism will help provide avenue to those People Experiencing Homelessness and Destitution (PEHD), to reach out and seek admission. PEHD from geographically isolated and disadvantaged areas (GIDA) of the country may also have a chance to live with dignity, provided the Local Government Units (LGUs) will be compliant in ensuring the establishment of safe, comfortable and accessible Welfare Homes in their areas of jurisdiction. The Commission however recommends that the conditions to which the PEHD must abide upon admission shall not be so arbitrary and should not be contrary to law.

Sec. 6. Power to Establish Welfare Homes.

10. The Commission welcomes this provision authorizing the Secretary of the DSWD to choose where the welfare homes will be established. The Commission then recommends that technical studies be conducted with the assistance of and in cooperation with the LGUs, Civil Society Organizations (CSOs), and other relevant government agencies and institutions to identify locations where welfare homes shall be established.

Sec. 7. Board of Visitors.

11. The Commission welcomes this provision of the bill designating the Commission as one of the Board of Visitors which “shall advise and make recommendations to the Secretary on all matters pertaining to

the welfare of the residents and such other matters...”¹⁵. The Commission however notes that CHR is an independent National Human Rights Institution (NHRI), and as such, it shall be the Commission *en Banc* (CEB) who shall designate officials and personnel that will represent CHR in this Board.

Sec. 8. Implementing Rules and Regulations.

12. The Commission welcomes this provision of the bill relating to the crafting of the Implementing Rules and Regulations (IRR). However, the Commission recommends the specification or enumeration of the relevant institutions, government agencies, civil society or non-government organizations, and other stakeholders which will take part in the drafting of the IRR.

Sec. 9. Review Committee.

13. The Commission welcomes this provision which prescribes for the establishment of a Review Committee which “shall review the case of every resident at intervals of not more than twelve (12) months to assess his or her suitability for discharge from the welfare home”¹⁶. The Commission believes that this will address potential institutional dependence of the residents of the welfare homes and will allow and provide opportunity for other PEHDs outside the welfare homes to be admitted. However, the Commission recommends that the criteria for the discharge of PEHDs should not be arbitrary and should be based on documented factual and evidential progress, as presented by the concerned social worker assigned to the case and in proper consultation with the PEHD.

Sec. 10. Discharge from Welfare Home.

14. The Commission welcomes this provision prescribing for the discharge of the residents from the welfare homes upon the advice of the Review Committee. This will enable residents who are ready to sustain himself/herself outside the welfare homes, lead the life of his own with dignity. However, the Commission recommends that the bases for readiness to be discharged shall be specified and enumerated in the IRR.

¹⁵ H.B. 7379, Sec. 7 (B), 18th Congress, 2nd Regular Session (2021).

¹⁶ H.B. 7379, Sec. 8 (B), 18th Congress, 2nd Regular Session (2021).

Sec. 11. Discharge to the Care of a Relative or Other Person.

15. The Commission recognizes that the State has finite resources and cannot accommodate millions of PEHDs all at once. This provision allows for the discharge of residents of welfare homes to relatives or other person who is/are willing and able to provide support and care. The Commission welcomes this provision as this will assist in providing support and care for the PEHD from private individuals who genuinely care and connect with the PEHD aside from what the welfare homes can offer. The Commission, however, strictly opposes and recommends the deletion of the criminal provision stated in Section 11 (c) of this bill.
16. The Commission strongly emphasizes that it is illogical and extremely unjust to criminalize the failure to provide information, i.e. cessation of care and support. Such act is not grave or serious to cause harm to a person discharged from a welfare home. Indeed, it is a disproportionate response to a harmless act that may only affect the monitoring of the status and/or whereabouts of the said person. Criminalizing such failure to report may even deter otherwise willing individuals or groups from offering care to persons discharged from welfare homes. Instead, the Commission recommends that a monitoring unit be assigned to every welfare home, who will be tasked to monitor status of PEHD or residents of the Welfare Homes on a regular basis. The monitoring unit shall record any cessation of care and support of the person discharged from a welfare home and shall inform the Secretary of such within twenty-four (24) hours from receipt of the information.

Sec. 12. Persons in a Welfare Home may be Required to Work.

17. The Commission acknowledges that this section aims to capacitate the residents of the welfare homes to develop a self-sustaining, pro-active mindset that will later empower them to provide for themselves. However, the Commission recommends the deletion of the term “Required” as requiring any person to work may be construed as involuntary servitude. The 1987 Constitution only allows the following exceptions to involuntary servitude: 1) as punishment for crime; 2) in case of personal, military or civil service in defense of the State; and 3) in compliance to a return-to-work order issued by the Department of Labor and Employment¹⁷.
18. The Commission suggests that that title of this section be revised into **“Persons in a Welfare Home may be ENCOURAGED to Work.”** The welfare homes may provide several options to residents

¹⁷ 1987 Phil. Constitution, Art. 3, Sec. 18 (2).

as means of improving skills to develop livelihood and self-sustaining work, with the objective of ensuring a dignified life upon release. However, it should not be a requirement for their continuous stay in the welfare home. PEHDs should also be given their right to refuse or discontinue employment.

Sec. 13. Persons in a Welfare Home may be Sent to Hospital.

19. The fulfillment of the right to health of the Filipino people is a State obligation,¹⁸ as it is a basic human right which shall be accorded to everyone. The Commission welcomes this provision as this allows adequate and proper medical attention or treatment to the residents of the welfare home who are in need. In line with this provision, the mental health needs of the residents of welfare homes shall also be taken into account. Considering that PEHDs live in some of the most deleterious possible conditions imaginable, it is entirely possible that the situations they have had to endure and the practices they have had to adopt may have had adverse impacts on their mental health. The Commission likewise recommends that the cost for hospitalization or treatment be shouldered by the local social welfare office.

Sec. 14. Power to Transfer Persons in Welfare Homes.

20. For the safety of other residents of the welfare homes, the Secretary of the DSWD or its duly authorized representative shall indeed have the power to transfer residents who pose grave danger to others to another welfare home. The Commission welcomes this provision, however, there must be prior consultation with the PEHD and notice to the nearest kin or family and to the CHR before the transfer. Record of transfer and other movement of residents must be kept at all times.

Sec. 15. Penalty for Escape from Lawful Custody of Welfare Home.

21. The Commission acknowledges that both admission to and exit from the welfare homes require appropriate process and documents as it is necessary for documentation, liquidation, monitoring, and reporting to the Congress and other authorities as bureaucratic and institutional requirements. The Commission also acknowledges that the potential of the welfare homes to effectively address and alleviate the situations of the PEHDs may be hampered if admitted residents can just freely escape or leave the welfare home prior to the point where they are ready and capacitated to sustain themselves. However, the

¹⁸ 1987 Phil. Constitution, Art. 2, Sec. 15.

Commission notes that PEHDs are inclined to leave welfare homes and go back to living in the streets with which they are most familiar. They should not be penalized for acting out what they believe is necessary, comfortable, or safe for them. Thereby, the Commission recommends the following:

- a. The title of this section shall be revised into “Support for PEHDs Abandoning the Welfare Homes”
- b. This section shall state: “Given the nature and propensity of PEHDs to leave welfare homes, it shall be necessary that they be given proper orientation on the benefits of their residence in the welfare home, support and counselling, and if deemed necessary, be treated for any mental health issues they may have. Additionally, a consistent systematic program of activities shall be implemented to sustain the PEHDs’ interest in staying the welfare home. In case of abandonment, the social worker assigned to that PEHD will provide support and counselling until such time that consent again is given by the PEHD to continue his/her residence in the welfare home.”

Sec. 16. Penalty for Behaving in a Disorderly Manner.

22. The Commission reiterates that the safety and protection of all the rights of the residents of the welfare home and its staff is an obligation not only by the State and authorities but also by the residents and by staff themselves toward each other. Any misconduct shall be taken into account and be addressed in order to preserve harmony in the welfare homes. This also entails the protection of the welfare homes and its properties. The Commission welcomes the intent of this section to penalize disorderly conduct and/or damage to property, but only in so far as prescribed by the Revised Penal Code or other relevant laws. Thereby, the Commission recommends the following:

- a. Incorporate a subsection identifying minor offenses that may warrant both verbal and written warning, for first- or second-time offenders.”
- b. Section 16 (c) shall be revised as “For acts punished in our Revised Penal Code and other laws, the offender shall be guilty of an offence after undergoing judicial process”.

Sec. 17. Return to Welfare Home after Serving Sentence.

23. The basic principles of restorative justice understand that any crime is not solely a legal transgression requiring public condemnation but also

a wound to persons and relations needing to be healed.¹⁹ This provision reflects these principles of restorative justice whereas an offender who is a resident of a welfare home may return and be given a second chance upon service of his/her sentence. The Commission thereby welcomes this provision that allows residents to return to the welfare homes after serving sentence to continue the rehabilitation process and be capacitated and empowered with skills that can help them sustain themselves. Further, the Commission recommends the inclusion of a subsection stating: “The Secretary or his/her duly authorized representative shall assign a social worker for every PEHD returning to a welfare home after serving sentence. The designated social worker shall conduct prior assessment and provide support to ensure that the PEHD has been reformed and assist in the reintegration of the PEHD into society and into the welfare home”.

Sec. 18. Discharge.

24. The Commission however recommends that the declaration for the discharge of any resident must always be done upon the determination of the Review Committee which is mandated to review and assess the case of every person admitted. This is to ensure that the decision to discharge a resident will be based on factual, evidential and participatory assessment of situations and circumstances. The Secretary will not be the lone decision maker for the discharge but a collective effort of all concerned, including the LGU concerned or managing the welfare home, the social worker assigned, and the PEHD himself or herself.

Other Recommendations

25. The Commission respectfully recommends to include in the Bill a provision listing the powers and functions of the welfare homes that will allow them to provide proper care and rehabilitation to the PEHD.
26. It is likewise recommended to add in the House Bill a provision emphasizing the basic human rights of the PEHDs which shall be protected and respected in the welfare homes. The basic human rights of the PEHDs, while being admitted at the welfare homes must be respected and protected at all times. These rights may include, but not limited to the following:
 - a. Exercise all their inherit civil, political, economic, social, religious, educational, and cultural rights respecting individual

¹⁹ United Nations Office on Drugs and Crime, Topic one - Concept, values and origin of restorative justice, available at <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/key-issues/1--concept--values-and-origin-of-restorative-justice.html> (last accessed March 8, 2021).

qualities, abilities, and diversity of background, without discrimination on the basis of physical disability, age, gender, sexual orientation, race, color, language, religion or nationality, ethnic, or social origin;

- b. Freedom from social, economic and political discrimination and stigmatization;
 - c. Access to mental health services at all levels of the national health care system;
 - d. Humane treatment, free from solitary confinement, torture and other forms cruel, inhumane harmful or degrading treatment or punishment;
 - e. Give informed consent before admission, during residency for any treatment and other activity or work, and participate in the determination of his self-sustainability before discharge from welfare homes.
27. In recognition of the finite resources of the government, the Commission recommends the inclusion of a provision fostering partnership and coordination with private individuals, civil society organizations or faith-based organizations in the implementation of this law.

ISSUED this 31st day of August 2021, Quezon City, Philippines.


JOSE LUIS MARTIN C. GASCON
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