

COMMISSION ON HUMAN RIGHTS, REP. BY COMMISSIONER KAREN S. GOMEZ-DUMPIT, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, PSUPT ROBERT C. DOMINGO, PO2 DYLAN VERDAN, PO2 JONATHAN UBARRE, ...*G.R. No. 257685. January 24, 2024*

Ponente: KHO, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-257685/>**KHO, JR., J.:**

Assailed in this Petition for Certiorari[1] under Rule 65 is the criminal aspect of the Joint Resolution[2] dated July 28, 2020 and the Joint Order[3] dated May 18, 2021 rendered by the Office of the Ombudsman (Ombudsman) in OMB-P-C-17-0193 and OMB-P-A-17-0211 dismissing the criminal and administrative Complaint filed by petitioner Commission on Human Rights (CHR) against respondents Police Superintendent (PSUPT) Robert C. Domingo (PSUPT Domingo), Police Officer 2 (PO2) Dylan Verdan (PO2 Verdan), PO2 Jonathan Ubarre (PO2 Ubarre), Police Officer 1 (PO1) Berly Apolonio (PO1 Apolonio), and other John Does (collectively, respondents) for lack of probable cause.

The Facts

This case stemmed from a Complaint[4] filed by the CHR before the Ombudsman charging respondents with violations of: (i) the Revised Penal Code, specifically arbitrary detention, delay in the delivery of detained persons, grave threats, grave coercion, and robbery/extortion; (ii) Republic Act No. 9745,[5] also known as the Anti-Torture Act of 2009, specifically Section 4(a)(1) to (4) and Section 4(b)(3) and (11); and (iii) the 2013 Revised Philippine National Police (PNP) Operational Procedures (2013 RPNPOP).[6]

The Complaint arose after the CHR visited the Raxabago Police Station 1 (Raxabago PS 1) located in Tondo, City of Manila, then under the command of PSUPT Domingo, in the early evening of April 27, 2017, after taking cognizance of an information about a secret detention cell in the station.

During their visit, the CHR found a room, which it called a "secret detention cell," inside the Drug Enforcement Unit's (DEU) office measuring one meter by five meters with a wooden shelf covering its entrance. The CHR described the secret detention cell as cramped, dingy, fetid, and dark, with no lights and windows. Since it only had one male urinal, the CHR claimed that some detainees urinated and defecated in plastic bags.

Inside the secret detention cell were three women and nine men who were allegedly arrested for various violations of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, namely:[7]

Name of Detainee

Period of confinement in the alleged secret detention cell

1. Narcisa Dalisay

Since April 25, 2017

2. Jonard Refran

Since April 25, 2017

3. Swady Guilleno

Since April 23, 2017

4. Arman Andal

1 week

5. Robert Muro

1 week

6. Cesar De Guzman

1 week

7. Chester Garcia

Since April 25, 2017

8. Carlito Garcia

Since April 25, 2017

9. RJ Balingit

1 week

10. Sonny Iglesia

Since April 20, 2017

11. Jervin Cajucom Perez

2 days

12. Grace De Guzman

Since April 20, 2017

The CHR further alleged that: (a) the names of said detainees were not recorded in the logbooks of Raxabago PS 1; (b) the detainees were unlawfully arrested; (c) the detainees were not subjected to inquest proceedings as of April 27, 2017; (d) they were not provided with food; (e) some police officers demanded money in exchange for their release and took money amounting to PHP 12,000.00 from one of the detainees; (f) a detainee expressed his fear of getting killed; and (g) some detainees were physically assaulted and electrocuted with a taser.[8]

To support its allegations, the CHR submitted to the Ombudsman, among others: (a) a video of their confrontation with the personnel of Raxabago PS 1 and the secret detention cell;[9] (b) photos of the exterior and interior of Raxabago PS 1; (c) Sworn Statements of Josephine O. Sua, Marie Fhear G. Mercadero, and Aquilina H. Nayre;[10] and (d) the Affidavits of Attys. Gilbert Boiser, Brenda Canapi, and Diana B. De Leon, all from the CHR.[11]

On the part of respondents, only PSUPT Domingo submitted a counter-affidavit. He alleged that the said

detainees were lawfully arrested during a legitimate police operation conducted at around 4:30 a.m. on April 27, 2017. Since the documents pertaining to them were still being processed, they were placed in a "holding room" (or what the CHR called a "secret detention cell") for the following reasons: (1) to separate them from persons deprived of liberty who are already being tried in court; (2) for expediency, since the holding room is near the office of the DEU; (3) to decongest the regular detention cells; (4) to enforce stiffer security measure inside the DEU; and (5) to safeguard the welfare of the police officers. After inquest, detainees in the holding room were either transferred to the main detention cells or released, depending on the findings of the inquest prosecutor.[12]

As to the holding room, PSUPT Domingo explained that the DEU's office is on Capulong Street, which has a separate ingress and egress. Thus, from Capulong Street, the holding room can be seen. However, if one is coming from the main office, the holding room could be seen by removing the shelf used as a partition wall. He added that because of budget constraints, they were forced to be resourceful. PSUPT Domingo claimed that the holding room had sufficient lighting, ventilation (with electric and exhaust fans), water supply, and urinals.[13] PSUPT Domingo added that on the day the CHR visited Raxabago PS 1, it had 78 men and 18 women detainees despite having a capacity for only 50 detainees.[14] Further, PSUPT Domingo denied the allegations of torture, inhumane treatment, unlawful arrest, and extortion.[15]

Notably, PO2 Verdan, PO2 Ubarre, and PO1 Apolonia did not submit their counter-affidavits and position papers.[16]

The Ombudsman Ruling

In a Joint Resolution[17] dated July 28, 2020, the Ombudsman dismissed the Complaint docketed as OMB-P-C-17-0193 (the criminal aspect) and OMB-P-A-17-0211 (the administrative aspect) for lack of probable cause.

The Ombudsman ruled that for the allegations of arbitrary detention and delay in the delivery of detained persons to the proper judicial authority, the CHR failed to show by clear and convincing evidence that the detained persons were being held beyond the period allowed by law without a complaint being filed against them.[18] As to the allegations of grave threats, grave coercion and robbery/extortion, maltreatment of prisoners, and violations of Republic Act No. 9745 and the 2013 RPNPOP, the Ombudsman deemed the same to be unsupported by independent, impartial, and credible evidence.[19]

The Ombudsman further ruled that the CHR failed to sufficiently controvert the defense that: (1) the DEU, where the room in issue (the "secret detention cell" per CHR and "holding room" per PSUPT Domingo) is located, has a separate ingress and egress along Capulong Street; and (2) that the shelf therein merely served as a wall or partition separating the room from the investigator's area and the regular detention cells. Likewise, based on the Sworn Statements of the detainees, the Indorsements to the inquest prosecutor, and the Joint Affidavits of Arrest, the detainees were arrested either on April 26, 2017 or April 27, 2017 as a result of the PNP's "one time, big time" operation or anti-criminality campaign. Considering the number of newly arrested persons, Raxabago PS 1 had them detained in a confined and cramped space.[20]

Aggrieved, the CHR sought reconsideration which was, however, denied in a Joint Order[21] dated May 18, 2021.

In the Joint Order, the Ombudsman maintained its findings that the CHR failed to show clear and convincing evidence to support its allegations. The Ombudsman noted that all of the detainees in the room in issue, except Robert Muro, executed Affidavits belying the claims made by the CHR. Relatedly, while detainee Cesar De Guzman recanted his Affidavit and executed a new one now supporting the CHR's allegations of arbitrary

detention, delay in the delivery of detained persons, maltreatment, and torture, the Ombudsman ruled that it has basis to question his credibility considering that the official documentation showed otherwise.[22]

In addition, the Ombudsman pointed out that the medical check-up conducted on the detainees on different dates[23] yielded no external signs of physical injuries. Furthermore, the documents relating to the arrest of the 12 detainees established that they were arrested on April 27, 2017 (except for detainees Sonny Iglesias and Grace De Guzman who were arrested the previous day) for violation of Republic Act No. 9165. Hence, detainee Cesar De Guzman's Affidavit cannot be given credence.[24]

The Ombudsman added that the video submitted by the CHR showed only a dark room with a male urinal with insufficient details and that the CHR's description of the detention cell cannot be taken as fact because of the lack of sufficient lighting to support the alleged terrible conditions therein. Hence, the Ombudsman relied on the Affidavits of the detainees, which did not advance the CHR's cause. The Ombudsman noted that on April 27, 2017, the number of detainees (78 men and 18 women) at Raxabago PS 1 exceeded capacity of only 40 men and 10 women and that while the detention cell may be argued as inadequate, respondents were left without much option.[25]

Hence, this Petition for Certiorari assailing OMB-P-C-17-0193 (the criminal aspect). The CHR ascribes grave abuse of discretion on the part of the Ombudsman when it dismissed the Complaint using "clear and convincing evidence" as quantum of evidence instead of "probable cause." [26] The CHR claims that with probable cause as the quantum of evidence, it has sufficiently established the crimes charged.[27]

Respondents were required to submit their comments. PSUPT Domingo submitted his Comment[28] and Supplemental Comment[29] attaching his Counter-Affidavit[30] and its attachment filed before the Ombudsman. The Ombudsman manifested[31] in lieu of comment that it will not participate as this would amount to advocating for the innocence or non-culpability of respondents.

The Issue Before the Court

The issue for the Court's resolution is whether the Ombudsman committed grave abuse of discretion when it dismissed the criminal aspect of the Complaint.

The Court's Ruling

The Petition is denied.

Preliminarily, the Court notes that the CHR failed to include in its Petition the attachments to the Counter-Affidavit of PSUPT Domingo, which are considered documents relevant and pertinent to this case. This failure is in violation of Rule 65, Section 1, second paragraph of the Rules of Court. It was PSUPT Domingo who provided the attachments on the Counter-Affidavit in his Supplemental Comment.

Nevertheless, it is well-settled that "[t]he Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. The Ombudsman may dismiss the complaint should the Ombudsman find the complaint insufficient in form or substance, or the Ombudsman may proceed with the investigation if, in the Ombudsman's view, the complaint is in due form and substance. Hence, the filing or non-filing of the information is primarily lodged within the 'full discretion' of the Ombudsman." [32]

The Court has consistently adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman, which is "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." [33]

In *Arroyo v. Sandiganbayan*, [34] the Court, through now Senior Associate Justice Marvic M.V.F. Leonen, held:

"The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints." As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers[.][35]

While the Court is not precluded from reviewing the Ombudsman's action when it is tainted with grave abuse of discretion—which implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction—the Court's certiorari jurisdiction pursuant to Article VIII, Section 1, paragraph 2 of the Constitution may be invoked. However, it must be shown that "[t]he Ombudsman's exercise of its powers must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [36]

In this case, it goes without saying that the CHR has the burden of proving that the Ombudsman gravely abused its discretion when it did not indict respondents of the crimes they were accused of committing. In this regard, the CHR argues that the Ombudsman committed grave abuse of discretion in using clear and convincing evidence instead of probable cause as quantum of evidence in the filing or non-filing of information. With probable cause as standard evidence, the CHR alleges that it has established its criminal complaint.

The Court disagrees.

While the Ombudsman stated: (1) in its May 18, 2021 Joint Order, that the CHR "failed to show clear and convincing evidence to support its allegations;" [37] and (2) in its July 28, 2020 Joint Resolution, that the CHR "failed to show by clear and strong evidence," [38] it must be correlated to the prior statement of the Ombudsman in its Joint Resolution that the CHR "failed to establish probable cause against respondents[.]" [39]

A careful reading of the Ombudsman's Joint Order and Joint Resolution shows that the phrases "clear and convincing evidence" and "clear and strong evidence" do not pertain to the quantum of evidence necessary to establish the complaint. Rather, in the Court's view, the Ombudsman is describing the pieces of evidence presented by the CHR which are not clear, convincing, and strong enough to warrant probable cause. This is easily shown because when the Ombudsman ruled that the CHR failed to "establish probable cause" for the crimes of arbitrary detention and delay in the delivery of detained persons to the proper judicial authority, the Ombudsman immediately followed it with a statement that the CHR "failed to show by clear and strong evidence that the detained persons were being held beyond the period allowed by law[.]" [40]

Even if the Court goes on the merit of the CHR's argument that it has established probable cause, the Court finds that the Ombudsman's appreciation of evidence is correct; that is, the evidence is not enough to establish probable cause, as will be explained hereunder.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which they were prosecuted. [41] Probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious person's belief that the person accused is guilty of the offense with which they are charged. [42] The Ombudsman has to find enough relevant evidence to support its belief that the accused most likely committed the crimes charged. [43]

To recapitulate, the CHR alleged the following to support the criminal complaint against respondents: [44]

23.1 An examination of the logbook of the Raxabago Police Station did not include the names of the Detainees. This means that as of 27 April 2017, the Detainees have not been logged and blotted:

23.2 Furthermore, the Detainees have not been subjected to inquest proceedings for alleged violation of the

Comprehensive Dangerous Drugs Act of 2002;

23.3 The Secret Detention Cell had no windows and had no light. It had a very foul smell and had only one (1) male urinal but had no toilet, thus, forcing the Detainees to defecate and urinate in plastic bags;

23.4 The Detainees were forced to sleep in a sitting position due to the lack of space and beds. Likewise, the police have not provided them food, hence, they had to rely on provisions by their relatives. Some of the Detainees have not eaten for days;

23.5 The Team, after conducting interviews with some of the Detainees, discovered that some of them were beaten and electrocuted with the use of tasers, especially when the police officers were drunk. They mentioned a certain "Antonio" who would usually conduct the beating. The face of one of the detainees was swollen – allegedly as a result of the beatings, while one detainee had a healed wound on the forehead; and

23.6 The Detainees further claimed that the police officers of Raxabago Police Station demanded from them certain amount of money in exchange for their release and would often threaten them when they fail to produce the money, to wit:

Name of Detainee/Relative of Detainee

Amount Demanded by Police

Cesar de Guzman

Fifty Thousand Pesos (P50,000.00) for his release

Narcisa Dalisay and Jonard Refran

Forty Thousand Pesos (P40,000.00) for their release

Arman Andal

Thirty Thousand Pesos (P30,000.00) for his release

Grace de Guzman and Sonny Boy Iglesias

Three Hundred Thousand Pesos (P300,000.00)

The Ombudsman dismissed the Complaint after finding that: (a) the detainees were either arrested on April 26 or 27, 2017 based on indorsements to the inquest prosecutor and joint affidavits of arrest, and there was no showing that the detainees were detained more than the allowable time; (b) the sworn statements of 10 detainees found inside the detention cell did not support CHR's allegations; (c) the recantation made by detainee Cesar De Guzman, which now advanced the CHR's claims cannot be given credence considering that medical certificates issued on different dates showed no sign of physical injuries; and (d) the video footage presented by the CHR showing the detention cell was not clear given that it only showed that it was a dark room with a male urinal. Moreover the Ombudsman recognized the congested situation of jail facilities.[45]

The Court agrees with the Ombudsman that the CHR failed to prove its Complaint with probable cause. Other than the alleged secret detention cell which the CHR has seen firsthand, its allegations constituting the crimes of grave threats, grave coercion, robbery/extortion, violations of Republic Act No. 9745, specifically Section 4(a)(1) to (4) and Section 4(b)(3) and (11) were based on hearsay considering that the CHR stated that the detainees relayed it to them. Worse, 10 out of the 12 detainees[46] executed sworn statements before the Public Attorney's Office which did not support the CHR's claims that the detainees were threatened, maltreated, or abused. On the contrary, the 10 detainees stated that their condition inside the station was fine.[47] In addition, the medical certificates of the detainees issued on separate dates showed no manifestation of physical abuse.[48]

There is also no basis for the crimes of arbitrary detention and delay in the delivery of detained persons to the proper judicial authority considering that the detainees themselves stated that they were either arrested at or around 5:30 p.m. of the 26[th] or around 4:00 a.m. of the 27[th] of April 2017 for drug-related cases. The Indorsements to the Office of the City Prosecutor of Manila and the attachments, such as the Joint Affidavit of Arrest, Receipt/Inventory for Property Seized, Chain of Custody Form, Requests for Laboratory Screening, and Chemical Analysis were received by the said office on April 28, 2017.[49] While it was not clear at what time the Office of the City Prosecutor received the Indorsements, however, it is the burden of the CHR to support its allegations. In this regard, not only did the CHR fail to provide evidence to support the allegation of delay in the delivery of detained persons to the proper authority, it even failed to allege details showing the supposed delay. Moreover, it does not escape the Court that there is a presumption of regularity in the performance of official duties.[50] Hence, absent evidence from the CHR that respondents failed to perform their duty, it is presumed that respondents did their duty properly.

As to the alleged secret detention cell which PSUPT Domingo defended as a mere holding room, the CHR failed to provide the video footage before this Court. Even then, it is noted that at the time the CHR visited Raxabago PS 1, the number of detainees present exceeded its capacity, which the CHR did not deny. Hence, the Court cannot find bad faith on respondents when they put the 12 detainees in a small room, which appeared to have no artificial light, considering that there is no showing that there were other available spaces where the 12 detainees may be detained.

Although the Court is not unmindful of the deplorable state of jail facilities in general and perennial jail congestion, as these were recognized in the En Banc case of *Almonte v. People*,[51] it will be the height of injustice to blame the officers on the ground for the alleged unbearable detention facility, especially so that in this case, PSUPT Domingo's defense was that they were forced to be resourceful due to budget constraints.

The 1987 Constitution provides that the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law, to wit:

ARTICLE III

Bill of Rights

. . . .

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Relatedly, Republic Act No. 6975[52] or the Department of the Interior and Local Government Act of 1990 provides that "[t]here shall be established and maintained in every district, city and municipality a secured, clean[,] adequately equipped and sanitary jail for the custody and safekeeping of city and municipal prisoners[.]"[53]

Further, Republic Act No. 10575,[54] otherwise known as the Bureau of Corrections Act of 2013, states that "[i]t is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services."[55] Moreover, it provides that the Bureau of Corrections is mandated with the safekeeping of inmates

imprisoned in its facilities, which shall include "decent provisions of quarters, food, water and clothing in compliance with established United Nations standards." [56] In addition, the Implementing Rules and Regulations of Republic Act No. 10575 states that the "safekeeping" of inmates "shall include decent and adequate provision of basic necessities, such as habitable quarters food, water, clothing, medical care, and proper observance of prescribed rights and privileges, such as visitation, communication, practice of one's religion and others, in compliance with established United Nations standards." [57]

The United Nations (UN) standards referred to in Republic Act No. 10575 pertain to the UN Standard Minimum Rules for the Treatment of Prisoners (otherwise known as the Nelson Mandela Rules) adopted in 2015 by the UN General Assembly.

In her Separate Opinion in *Almonte*, then Senior Associate Justice Estela Perlas-Bernabe explained the Nelson Mandela Rules:

These United Nations standards pertain to the Nelson Mandela Rules issued by the UN General Assembly:

The Standard Minimum Rules for the Treatment of Prisoners, originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world. (Emphasis in the original)

The Nelson Mandela Rules pertinently provide:

1.

PRISONER'S INHERENT DIGNITY AND VALUE AS HUMAN BEINGS

-

Treat all prisoners with the respect due to their inherent dignity and value as human beings.

-

Prohibit and protect prisoners from torture and other forms of ill-treatment.

-

Ensure the safety and security of prisoners, staff, service providers and visitors at all times.

2.

VULNERABLE GROUPS OF PRISONERS

-

Take account of the individual needs of prisoners, in particular the most vulnerable categories.

-

Protect and promote the rights of prisoners with special needs.

-

Ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis, and are treated in line with their health conditions.

3.

MEDICAL AND HEALTH SERVICES

-

Ensuring the same standards of health care that are available in the community and providing access to necessary health-care services to prisoners free of charge without discrimination.

-

Evaluating, promoting, protecting and improving the physical and mental health of prisoners, including prisoners with special healthcare needs.[58]

Notwithstanding the clear import of the duty and obligation of the State to provide for a clean, adequately equipped, and sanitary jail for the safekeeping of inmates, this enforcement remains to be seen. With this, the Court calls the policymakers, implementers, and stakeholders to urgently improve jail facilities.

It does not escape the Court that the improvement of penal facilities may be restricted by a budget which only the Congress can provide and which the Court cannot compel to allocate. This budgetary constraint, however, does not mean that the inmates or detainees in prison or jail are not entitled to their right to live a decent life while in penal facilities. The Court can still grant some form of relief to the detainees or prisoners therein, as the ultimate guardian of the Constitution.[59] Then SAJ Perlas-Bernabe advanced this view in her Separate Opinion in *Almonte*:

To be sure, the lack of laws allocating budget for the structural improvement of our jails in order to address subhuman conditions does not mean that our courts are powerless to grant permissible reliefs which are grounded on the Bill of Rights of our Constitution. In this relation, it must be emphasized that when the court grants such reliefs, it does not venture in policy making or meddle in matters of implementation; after all, it cannot compel — as petitioners do not even pray to compel — Congress to make laws or pass a budget for whatever purpose. Policy making towards improving our jail conditions is a separate and distinct function from adjudicating Bill of Rights concerns upon a valid claim of serious and critical life threats while incarcerated. The former is within the province of Congress, the latter is within the Court's.[60] (Emphasis in the original)

This was echoed by now Senior Associate Justice Marvic M.V.F. Leonen in his Separate Opinion in *Almonte*, to wit:

Second, persons deprived of liberty should be able to file an action for violations of their constitutional right against cruel, inhuman, and degrading punishment, and their rights to life, health, and security. As proposed by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe), we should not diminish the possibility that they may avail of these rights. This Court is not powerless to ensure that these fundamental rights are respected and implemented. It is why this Court exists. This aspect of judicial review, to measure the constitutionality of a government act or inaction vis-à-vis a legal right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1 of the 1987 Constitution.[61]

Hence, should the government agencies mandated with the safekeeping of inmates/detainees continue to fail in improving jails or detention facilities in compliance with the standards set by law, then the Court, when properly invoked, will not hesitate to act in upholding the existing rights of the detainees and inmates.

Given the foregoing, the Court notes that this case involves a custodial facility[62] within the PNP's premises. Custodial facilities are for the holding of arrested persons under custodial investigation;[63] hence, it is a facility for people deprived of liberty for a limited period. Despite its temporariness, the people detained therein are also entitled to basic human rights. Necessarily, the PNP's custodial facilities should be clean, adequately equipped, and sanitary, with decent provisions of quarters, food, water, and the like, consistent with the penal facilities envisioned in Republic Act No. 10575, Republic Act No. 6975, and the Nelson Mandela Rules. Thus, the Court calls the attention of the PNP to provide custodial facilities that are clean, adequately equipped, and sanitary. Persons deprived of liberty deserve no less.

To close, the Court quotes Nelson Mandela: "It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." [64]

ACCORDINGLY, the Petition is DENIED. The Joint Resolution dated July 28, 2020 and the Joint Order dated May 18, 2021 of the Office of the Ombudsman in OMB-P-C-17-0193 are hereby AFFIRMED.

Let copies of this Decision be furnished to the Congress, the Office of the President, the Department of Interior and Local Government, the National Police Commission, and the Philippine National Police.

SO ORDERED.

Lazaro-Javier, M. Lopez, and J. Lopez, JJ., concur.

Leonen, SAJ. (Chairperson), dissent. See separate opinion.

[1] Rollo, pp. 3-57.

[2] Id. at 59-67. Penned by Graft Investigation and Prosecution Officer Myra Dela Rama-Gargaceran with the concurrence of Acting Director, PIAAPB-C Dyna I. Camba and the recommending approval of Acting Assistant Ombudsman, MOLEO Dennis L. Garcia and approved by Deputy Ombudsman for the Military and Other Law Enforcement Offices Cyril E. Ramos.

[3] Id. at 68-73.

[4] Id. at 85-87.

[5] Entitled "An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor," approved on November 10, 2009.

[6] Rollo, pp. 86-87.

[7] Id. at 77.

[8] Id. at 61.

[9] The CHR did not submit this video before the Court.

[10] Rollo, pp. 94-98. These individuals are not related to any of the 12 detainees listed in the complaint and merely shared about their relatives who were arrested and detained in Raxabago PS 1.

[11] Id. at 61.

[12] Id. at 62.

[13] Id. at 62-63. See also Counter-Affidavit of PSUPT Domingo, id. at 293.

[14] Id. at 62.

[15] Id. at 63.

[16] Id.

[17] Id. at 59-67.

[18] Id. at 63-64.

[19] Id. at 64.

[20] Id.

[21] Id. at 68-73.

[22] Id. at 70-71.

[23] The dates are as follows: 1) April 27, 2017 at the Gat Andres Bonifacio Memorial Medical Center; 2) April 28, 2017 at the Ospital ng Maynila; and 3) May 2, 2017 at the Manila Police District Crime Laboratory; id. at 71.

[24] Id. at 71.

[25] Id. at 71-72.

[26] Id. at 12.

[27] Id. at 17, 34-35, 37.

[28] Id. at 442-449.

[29] Id. at 258-285.

[30] Id. at 286-309.

[31] Id. at 450-456.

[32] Vergara v. Ombudsman, 600 Phil. 26, 41 (2009) [Per J. Carpio, En Banc].

[33] Id. at 42.

[34] 869 Phil. 400, 415 (2020) [Per J. Leonen, Third Division].

[35] Id. at 415.

[36] Ciron v. Ombudsman, 758 Phil. 354, 362 (2015) [Per J. Perlas-Bernabe, First Division], citing Soriano v. Marcelo, 610 Phil. 72, 79 (2009) [Per J. Carpio, Second Division].

[37] Rollo, p. 70.

[38] Id. at 64.

[39] Id. at 63.

[40] Id. at 63-64.

[41] Vergara v. Ombudsman, 600 Phil. 26, 44 (2009) [Per J. Carpio, En Banc].

[42] Tetangco v. Ombudsman, 515 Phil. 230, 235 (2006) [Per J. Quisumbing, Third Division].

- [43] *Clave v. Office of the Ombudsman (Visayas)*, 801 Phil. 967, 978 (2016) [Per J. Brion, Second Division].
- [44] *Rollo*, pp. 9-10.
- [45] *Id.* at 63-65.
- [46] One detainee in the name of Robert Muro did not execute a sworn statement while the other detainee, Cesar De Guzman recanted his earlier affidavit, *id.* at 70-71.
- [47] *Rollo*, pp. 316-333.
- [48] *Id.* at 71.
- [49] *Id.* at 268.
- [50] *Yap v. Lagtapon*, 803 Phil. 652, 662 (2017) [Per J. Caguioa, First Division].
- [51] 878 Phil. 628 (2020) [Per C.J. Peralta, En Banc]. See the respective Opinions of former SAJ Perlas-Bernabe, now SAJ Leonen, J. Caguioa, Zalameda, J.M. Lopez, and J. Delos Santos.
- [52] Entitled "An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes," approved on December 13, 1990. See also the Rules and Regulations Implementing the Department of the Interior and Local Government Act of 1990, approved on January 14, 1992.
- [53] Republic Act No. 6975 (1990), sec. 63.
- [54] Entitled "An Act Strengthening the Bureau of Corrections (BUCOR) and Providing Funds Therefor," approved on May 24, 2013.
- [55] Republic Act No. 10575 (2013), sec. 2.
- [56] Republic Act No. 10575 (2013), sec. 4.
- [57] Implementing Rules and Regulations of Republic Act No. 10575 (2014), sec. 4(a).
- [58] *Almonte v. People*, 878 Phil. 628, 929-930 (2020) [C.J. Peralta, En Banc].
- [59] *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, 610 Phil. 730, 742 (2009) [Per J. Corona, En Banc].
- [60] *Almonte v. People*, 878 Phil. 628, 929-930 (2020) [C.J. Peralta, En Banc].
- [61] *Almonte v. People*, 878 Phil. 628, 702-703 (2020) [C.J. Peralta, En Banc].
- [62] See PNP Memorandum Circular Number 2018-027 entitled "Guidelines and Procedure in the Management and Supervision of All PNP Custodial Facilities and Persons Under PNP Custody," dated June 28, 2018.
- [63] PNP Memorandum Circular Number 2018-027 (2018), item 5(c).
- [64] Available at https://www.un.org/en/events/mandeladay/mandela_rules.shtml (last accessed on January 12, 2023).
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DISSENTING OPINION

LEONEN, SAJ.:

Maintaining peace and order is an important aspect of the people's enjoyment of democratic life.[1] Law enforcement and criminal prosecution are legitimate measures to fulfill the State duty of preserving and protecting, not only itself, but also its citizens.

Nevertheless, law enforcement and criminal prosecution, however extensive, are not without limitations. Recent developments in these fields have seen a crucial shift toward emphasizing the human element of legal processes. In a system that seeks to exact accountability for a wrong done, the person undergoing investigation, detention, or imprisonment remains central. The State must not lose sight of this vital aspect in administering the criminal justice system.

Our constitutional design does not make room for overlooking this human component in the criminal justice system. Emphasis on this human element is not a novel idea. Human rights, after all, are fundamental in our constitutional order.

The Bill of Rights enshrined in Article III of the Constitution sets express limitations on the State's powers. The people are guaranteed constitutionally drawn boundaries that restrain the State from arbitrary and malicious misuse of its powers. The rights to due process and equal protection[2] are important examples of these fundamental rights.

Moreover, specific constitutional provisions mandate that the State handle the dignity of people undergoing these legal processes with caution. Focusing on law enforcement and criminal prosecution, the Constitution provides in Article III:

SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

. . . .

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

. . . .

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law. (Emphasis supplied)

Statutes reinforce the State's commitment to ensuring these guarantees. Under the Civil Code:

ARTICLE 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

. . . .

(4) Freedom from arbitrary or illegal detention;

. . . .

(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional[.]

These rights are also protected under the Revised Penal Code, which penalizes crimes against the fundamental laws of the State:

ARTICLE 124. Arbitrary detention. — Any public officer or employee who, without legal grounds, detains a person, shall suffer:

- The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;
- The penalty of *prision correccional* in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;
- The penalty of *prision mayor*, if the detention has continued for more than fifteen days but not more than six months; and
- That of *reclusion temporal*, if the detention shall have exceeded six months.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

ARTICLE 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such persons to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent, and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

Special laws also reiterate universally accepted principles such as the proscription against torture. Section 7 of Republic Act No. 9745, or the Anti-Torture Act of 2009, states that "[s]ecret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity,

are hereby prohibited[.]"

Section 4 lists acts of torture penalized under the law, specifically:

SECTION 4. Acts of Torture. — For purposes of this Act, torture shall include, but not be limited to, the following:

(a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

(1)

Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;

(2)

Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;

(3)

Electric shock;

(4)

Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s)[.]

These provisions emphasize the primacy of protecting the rights of people undergoing investigation, detention, or imprisonment. Depriving them of their liberty exposes them to vulnerabilities regarding their personal security and wellbeing, as well as the risk to the further erosion of their fundamental rights. A person who undergoes the criminal justice system is inevitably at a disadvantage as against the State, which has the resources and mechanisms at its disposal.

In this case, the Commission on Human Rights, exercising its visitorial power over jails, prisons, and detention facilities,[3] visited the Raxabago Police Station in Tondo, Manila on April 27, 2017 after receiving information of a "secret detention cell" in that station.[4] There, it found a room inside the station's Drug Enforcement Unit with its entrance covered by a wooden shelf. It described the living conditions in this room to be substandard: "cramp, dingy, fetid, and dark, with no lights and windows" with some of the detained relieving themselves in plastic bags.[5]

From this, the Commission on Human Rights filed a Complaint against the impleaded police officers before the Office of the Ombudsman. It accused them of committing arbitrary detention, delay in the delivery of detained persons, grave threats, grave coercion, and robbery/extortion, all under the Revised Penal Code, as well as violation of Section 4(a)(1) to (4) and Section 4(b)(3) and (11) of the Anti-Torture Act.[6]

The Office of the Ombudsman dismissed the Complaint for lack of probable cause. This Court's majority affirmed

this ruling, saying that the Commission on Human Rights failed to establish probable cause with the evidence presented.[7]

While acknowledging the lamentable conditions of our jails, prisons, and detention facilities, the majority finds no fault in the poor conditions of the secret detention cell because "there is no showing that there were other available spaces wherein the 12 detainees may be detained." [8] The conditions fall short of the standards outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), but the majority excuses these shortcomings by agreeing with the police officers' claim that they were merely being resourceful.[9] I disagree.

The standards articulated in the Nelson Mandela Rules are positive State obligations and are sources of rights that must be protected. The continuing nonadherence to these standards should be seen as their continuing violation. Our courts, the guardians of our people's rights, should not reward the status quo failing to meet these obligations with blind deference to the government.

In my separate opinion in *Almonte v. People*, [10] I described the nature of the State's obligations under the Nelson Mandela Rules:

[T]he Nelson Mandela Rules and its precedent, the United Nations Minimum Standard on the Treatment of Prisoners, cannot simply be disregarded as non-binding norms. The principles and fundamental rights on which these declarations are based — the right to life, the prohibition of torture, and the prohibition of cruel and unusual punishment — have attained a *jus cogens* status. These Rules have been adhered to and transformed into local legislation and incorporated in our penal institutions.

To view a resolution adopted by the United Nations General Assembly as not being *jus cogens*, only being recommendatory, is limited. It fails to consider that a resolution of the United Nations General Assembly may be any of the following: (1) an articulation of a customary international norm; (2) a reiteration of existing treaty obligations; (3) a reflection of emerging international norms and standards, or commonly referred to as "soft law"; or (4) a binding source of obligation that is judicially enforceable once acceded to by a member state.

First, the Nelson Mandela Rules articulates customary international norms on the treatment of prisoners. These are based on one's fundamental dignity, including those under confinement. These are codified into several declarations and conventions that the Philippines have ratified.

....

Second, a resolution of the United Nations General Assembly may reiterate an existing treaty obligation, as in the preambulatory clause of Resolution No. 70/175:

Taking into account the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto[.]

....

Third, the Nelson Mandela Rules reflects emerging international norms and standards, or commonly referred to as "soft law." It partakes of "new soft law standards" that function as a "significant normative reference for national legislators, courts, correctional administrators, and advocates on a range of prison conditions issues."

....

Finally, the Nelson Mandela Rules could not be ignored, precisely because the Philippines adopted these

standards through its express adherence to the established standards of the United Nations under Republic Act No. 10575, or the Bureau of Corrections Act of 2013.[11] (Citation omitted)

The visit—or more appropriately, raid—conducted by the Commission on Human Rights exposed the actual conditions of this secret detention cell. Its deplorable state is sufficient to show probable cause of a violation of the individuals' rights against torture and freedom from other cruel, inhuman, and degrading treatment.

The size of the holding room measures one by five meters but is being occupied by a total of 12 individuals—three women and nine men. Inside the same room was one male urinal where these individuals urinated. The room also had no lights or windows, and the only useable entrance and exit was covered by a wooden shelf.[12]

The police officers argue that the room has a separate ingress and egress along Capulong Street.[13] However, photos submitted by respondent PSUPT Robert C. Domingo in his Supplemental Comment show that the supposed ingress and egress had been blocked by steel bars and provided no outside access from the cell. It cannot be considered as ingress and egress at all. The only one available is that covered by the wooden shelf. This presents an even bigger problem, because this shows the intention to conceal the existence of the holding cell by blocking it with an inconspicuous object. If it were a legitimate holding cell, an appropriate cell door should have been used to secure the space.[14]

It is difficult to accept the conditions of the holding cell simply as a result of the police officers' supposed resourcefulness, and that the presumption of regularity in the performance of official duties could easily justify the obvious insufficiencies.[15] If not for the offenses charged, the police officers should also be held for trial for violations of Sections 5 and 7 on Cruel, Inhuman, and Degrading Treatment, and Prohibited Detention. These are penalized under Section 14(h) and (i) of the same law.

Finally, I reiterate what I had suggested in *Almonte*: that the Court should consider formulating a judicial remedy grounded on social justice called the writ of *kalayaan*.^[16] The perennial problem of the substandard conditions plaguing our prisons, jails, and detention centers has become so pervasive in our institutions that conditions described in the holding cell in Raxabago Police Station are the first things that come to mind when speaking of our facilities. This shows the symptoms of an underlying systemic problem that requires urgent and systemic remedies. With its mandate to protect and enforce the people's constitutional rights, this Court will not find its role in addressing this social problem with passive acquiescence. We must take a more active role in protecting the most vulnerable of our people. As I had stated in *Almonte*:

Persons deprived of liberty do not shed their humanity once they are taken into custody, yet the perennial congestion that plague our jails do not reflect this. Instead, they reveal our failure to respect the very fundamental rights that the State has guaranteed to protect. This wrong, which we have allowed to persist, is all the more pressing in the face of a highly contagious and deadly disease. Persons deprived of liberty are in need of more remedies to ensure that their detention do not prejudice their right to live.^[17]

ACCORDINGLY, I vote to GRANT the Petition.

[1] CONST., art. II, sec. 5 states:

SECTION 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

[2] CONST., art. III, sec. 1.

[3] See CONST., art. XIII, sec. 18(4).

[4] Ponencia, p. 2.

[5] Id.

[6] Id. The Commission on Human Rights also accused them of violating the 2013 Revised Philippine National Police Operational Procedures.

[7] Id. at 8-9.

[8] Id. at 10.

[9] Id.

[10] 878 Phil. 628 (2020) [Per Curiam, En Banc].

[11] Id. at 765-770.

[12] Ponencia, p. 2.

[13] Id. at 3.

[14] Rollo, pp. 265-269.

[15] Ponencia, p. 10.

[16] See J. Leonen, Separate Opinion in *Almonte v. People*, 818 Phil. 628 (2020) [Per Curiam, En Banc].

[17] Id. at 811.

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