

SECOND DIVISION

G.R. No. 257685 — COMMISSION ON HUMAN RIGHTS, represented by COMMISSIONER KAREN S. GOMEZ-DUMPIT, Petitioner, v. OFFICE OF THE OMBUDSMAN, PSUPT ROBERT C. DOMINGO, PO2 DYLAN VERDAN, PO2 JONATHAN UBARRE, PO1 BERLY APOLONIO, and OTHER JOHN DOES, Respondents.

Promulgated:
JAN 24 2024

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DISSENTING OPINION

LEONEN, J.:

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 protection² are important examples of these fundamental rights.

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.

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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:

1. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;
2. 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;
3. The penalty of *prision mayor*, if the detention has continued for more than fifteen days but not more than six months; and
4. 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

³ See CONST., art. XIII, sec. 18(4).

⁴ *Ponencia*, p. 2.

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

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*].

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

¹¹ *Id.* at 765–770.

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*:

¹² *Ponencia*, p. 2.

¹³ *Id.* at 3.

¹⁴ *Rollo*, pp. 265–269.

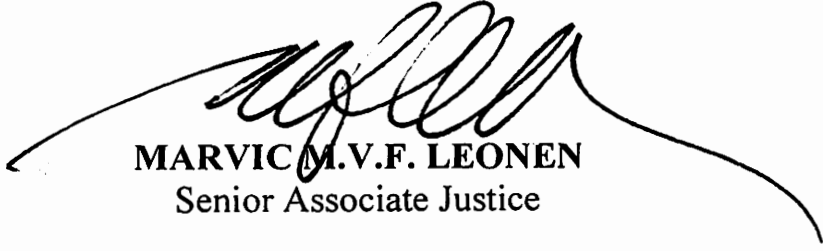
¹⁵ *Ponencia*, p. 10.

¹⁶ See J. Leonen, Separate Opinion in *Almonte v. People*, 878 Phil. 628 (2020) [*Per Curiam, En Banc*].



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.



MARVIC M.V.F. LEONEN
Senior Associate Justice

¹⁷ *Id.* at 811.