

**PHILIPPINES**  
**Submission to the United Nations Committee Against Torture for the 65<sup>th</sup> Session**  
**(Information for Adoption of the List of Issues Prior to Reporting)**

**June 2018**

**Submitted by Balay Rehabilitation Center, IRCT – International Rehabilitation Council for Torture Victims, and the Philippine Alliance of Human Rights Advocates (PAHRA)**



## **I. REPORTING ORGANIZATION**

**Balay Rehabilitation Center (Balay)** is an independent civil society organization committed to the promotion of peace and human rights in the Philippines. It offers psycho-social supports for the direct benefit of survivors of torture, extra-judicial killings, and internally displaced persons affected by armed conflict. It is a duly-registered organization and serves as one of the conveners of the United against Torture (UATC) in the Philippines.

**IRCT – International Rehabilitation Council for Torture Victims** is the world's largest membership-based civil society organization working in the field of torture rehabilitation and prevention, with a network of 161 torture rehabilitation centres across 74 countries. It defines itself as private, non-partisan, and not-for-profit, as well as governed by democratic structures.

**Philippine Alliance of Human Rights Advocates (PAHRA)** is an alliance of individuals, institutions and organizations committed to the promotion, protection and realization of human rights in the Philippines. It is an affiliate of the International Federation of Human Rights Leagues (FIDH). It is also a member of the Asian Forum of Human Rights and Development (FORUM-ASIA), and the Asian Network for Free Elections (ANFREL).

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## **II. ISSUE SUMMARY**

1. The prohibition of torture in the Philippines is absolute. The Constitution mandates that no one shall be subjected to torture and other cruel, inhuman and degrading treatment and punishment. The Philippines as a state party to the International Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment or CAT. In fulfilment of its state policy and international obligation, the Philippine Government signed into law Republic Act No. 9745 also known as “An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefore” or

the Anti-Torture Law on November 10, 2009. Its implementing guidelines were approved in 2010.

2. The Anti-Torture Act mandates the State to come up with a rehabilitation program for the survivors of torture. The Department of Social Welfare and Development (DSWD), the Department of Health (DOH), and the Department of Justice (DOJ) signed the Comprehensive Rehabilitation Program for Torture Victims and their Families (CRPTV) in 2014. The document outlined the role and functions of different state agencies and their civil society partners towards the full implementation of the right to rehabilitation in the Philippines.
3. In May 2016 the UN Committee against Torture, in its concluding observations on the third periodic report of the Philippines (CAT/C/PHL/3), noted that despite the enactment of national legislation criminalizing torture obstacles continue to exist for the effective implementation of the Anti-Torture Act.

### III. PROPOSED LIST OF ISSUES AND SUGGESTED QUESTIONS

#### A. Impunity and deficits in the implementation of legislation

4. Torture and ill-treatment remains pervasive especially within the context of the government's violent campaign against illegal drugs and criminality. The victims were either living in impoverished urban areas or in places where government, security and peace and order operations against armed insurgency and violent activities of non-state armed groups are palpable. Children in conflict with the law (child offenders) and suspected criminals are also at risk.
5. From 2016-2017, Balay has documented 32 accounts of torture, 69% of the incidents took place in the course of the government's drive against criminality and illegal drugs, with 41% of the cases recorded in the National Capital Region. Thirty-one percent of the cases happened in the context of the government's campaign against insurgency and terrorism in Basilan and North Cotabato in the southern Philippine island of Mindanao. Males and boys account for 97% of all victims. Minors constitute 47% of all victims.
6. Police officers top the list of alleged perpetrators (44%), the military rank second with 23% of the incidents attributed to them. Also implicated in acts of torture are deputized community-based peace-keepers (barangay tanod), security guards, public officials, and anti-drug enforcement agents. Hitting and beating are the most common methods of torture recorded, mostly involving the use of hard objects such as wooden clubs and rifle butts. Psychological torture are mostly done through threats of harm or execution of the victims.
7. Balay has also monitored from various sources a total of 24 cases of torture in 2017, with 58% of the cases reported to be connected to the government's war-on-drugs. Ninety-two percent of the victims are male, and mostly between the 25-50 age group. Most of the incidents happened in the National Capital Region (63%). Police officers account for 69% of alleged perpetrators in the torture incidents.
8. The Commission on Human Rights has been investigating torture reports. But factors that discouraged torture victims from filing a formal complaint include fear of reprisal (particularly for those who are in jail or in police lock up cell), lack of knowledge on justice-

seeking procedures, inconvenience, costly and slow process of litigation, distrust in justice system.

9. The Committee against Torture, in its concluding recommendations in May 2016, expressed concern that impunity for acts of torture continues to prevail, as illustrated by the fact that although the number of cases of torture reported to the Commission on Human Rights of the Philippines has risen since the adoption of the Act, only one person has been convicted to more than seven years since the Act was adopted<sup>1</sup>.

**Recalling its recommendations on its Concluding Observations, we urge the Committee against Torture in its LOIPR to request the State to:**

- a. *Provide evidence that investigations of cases of torture are being carried out and show results of prosecutions against direct perpetrators, including those with command responsibility;*
- b. *Identify measures to encourage victims to report their torture experience and how their access to justice can be facilitated;*
- c. *Cite steps undertaken to convene the oversight committee and show the results of its work in addressing gaps in the effective implementation of the Anti Torture Act;*
- c. *Give updates on cases under consideration, including those pending preliminary investigation at the prosecutor level and those filed in court, document and report on reasons for delays and non-reporting, and provide assessments of possible systemic errors identified in the implementation of the Anti-Torture Act.*
- d. *Present report showing compliance on mandatory collection of information and submission of an inventory of detention centres and facilities under the jurisdiction of the Philippine National Police and the armed forces of the Philippines.*

## **B. Extra-judicial killings and Torture**

10. The Committee has noted of the rise of cases of extra-judicial killings, some of them with torture, under the government of President Duterte. This observation was also raised in the third cycle of the Philippines' Universal Periodic Review (UPR) wherein extrajudicial killings and the campaign against illegal drugs, as reported widely by Amnesty International and Human Rights Watch, the death penalty and human trafficking are the dominant issues cited in the Philippines recommendations.
11. The government has denied that law enforcers are involved in extra judicial killings<sup>2</sup>. Police authorities have insisted that their actions are guided by the principle of regularity consistent with law enforcement regulations. The President is vocal about his shoot-to-kill orders to police officers, as justified in cases where arrested suspects violently resist. He also claims that civilians can arrest and kill criminals under the principles of citizen arrest and self-defense.

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<sup>1</sup> Despite the filing of many well-documented torture cases, it was only in April 2016 that the first perpetrator was convicted when police officer Jerick Dee Jimenez was sentenced to a maximum of two years and one month imprisonment by a court in Pampanga for the torture Jerry Corra. The court also ordered the officer to pay the victim for damages amounting to PhP100,000 (approximately USD \$2,173). Another police officer faces the same charges but remains at large.

<sup>2</sup> Philippines tells UN rights body: No extrajudicial killings. Philstar.com. <https://www.philstar.com/.../philippines-tells-un-rights-body-no-extrajudicial-killings>, September 22, 2017

12. At last three cases of killings and torture have drawn public outrage against the incitement of and actual use of violence in the State's public policy.

- South Korean Jee Ick-Joo, a businessman, along with his house helper, was abducted by unidentified men in Angeles, Pampanga on October 18, 2016. The kidnappers—who turned out to be members of the Philippine National Police (PNP)—accused Jee of being involved in the illegal drug trade. The house helper was released not long after, but Jee's abductors secretly took him to a place inside the headquarters of the PNP. They held him incommunicado. They contacted his wife and demanded a payment in exchange for his life. The ransom was not paid in full. The police officers took Jee to a car, covered his head, threatened him, and eventually strangled him to death. The perpetrators had Jee's body cremated and flushed his ashes down the drain<sup>3</sup>
- Rolando Espinosa, then mayor of Albuera, Leyte, was accused of being a drug lord and detained in Baybay Provincial Jail in October 2016. Members of the police Criminal Investigation and Detection Group (CIDG) swooped down the jail insisting to serve a search warrant to Espinosa on November 5, 2016. They disarmed the jail guards and shot Espinosa to death. The raiding team said the victim opened fire first prompting them to defend themselves. The operation was headed by Police Supt. Marvin Marcos. The National Bureau of Investigation (NBI) said Espinosa's killing was a 'rub out.' Investigators found criminal intent and conspiracy over his death and recommended to the Department of Justice (DOJ) the filing of multiple murder and perjury charges against 18 CIDG police officers and six officers from the PNP Regional Maritime Unit 8. Not long after, President Rodrigo Duterte ordered then PNP Chief Ronald Dela Rosa to reinstate Supt. Marvin Marcos as head of the CIDG in Region 8. In his remarks during ceremonies for the Urban Poor Solidarity Week in Mandaluyong City, President Duterte said, "I will not allow these guys to go to prison, even if the NBI says it was murder. After all, the NBI is under me, the Department of Justice is under me."<sup>4</sup>
- Kian delos Santos, 17 years old, was beaten up and executed by police officers during their anti-narcotics operations in Caloocan City on August 16, 2017. The victim's parents, through the Public Attorney's Office (PAO), filed a case of murder against four policemen. A complaint of torture of a minor leading to death was also filed against other law enforcers implicated in the incident.<sup>5</sup> Caloocan City police chief Chito Bersaluna was removed from his office as authorities investigate the killing. His preventive suspension came a few days after the Caloocan Police was awarded Best Police Station for 2016 in the National Capital Region. Senior Superintendent Bersaluna was promoted to Bulacan provincial police chief on May 9, 2018.<sup>6</sup>

13. President Duterte, in his speech on June 18, 2018, was quoted as saying that families of people killed in his controversial war on drugs will not receive "justice," rejecting calls from

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<sup>3</sup> <https://www.news.com.au/lifestyle/real-life/news-life/shocking-murder-of-south-korean-businessman-sparks-fresh-calls-for-end-to-punishers-drug-war/news-story/do7a003706896fd3aa6f97cfcb29e8ee>

<sup>4</sup> Despite fling of murder charges vs CIDG men, Duterte backs PNP in Espinosa killing, <http://www.manilatimes.net/duterte-backs-pnp-espinosa-killing/300625/>

<sup>5</sup> <https://www.philstar.com/headlines/2017/09/25/1742750/4-cops-kian-slay-deny-murder-torture-raps#UbpUvsrd2LxA8xfP.99>

<sup>6</sup> <https://www.rappler.com/nation/204221-chito-bersaluna-new-bulacan-pnp-chief>

rights groups seeking redress for the thousands of deaths. He also reiterated that he would not allow the police and the military to go to jail for killing drug users and pushers.<sup>7</sup>

14. Legal remedies are available but are hardly accessible to victims of human rights violations. The writ of *amparo* is issued when a person's right to life, liberty and security is violated or threatened by an unlawful act or omission of another. The same writ is availed of in cases of extralegal killings and enforced disappearances. The writ of habeas data is available to a person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of an individual or entity engaged in gathering, collecting, or storing of data or information regarding the person's personal circumstances. However, challenges in accessing these remedies remain. There is a lack of public knowledge on the existence of these remedies.
15. During the 36<sup>th</sup> session of the Human Rights Council in September 2017, 39 states supported a joint statement expressing concern over the thousands of killings associated with the Philippines' so-called 'war on drugs' and calling on the Philippines "to cooperate with the international community to pursue appropriate investigations into these incidents, in keeping with the universal principles of democratic accountability and the rule of law."<sup>8</sup> This was a follow up to a joint statement supported by 32 states during the 35<sup>th</sup> session, which urged "the Philippines to take immediate steps to create and maintain in law and in practice a safe and enabling environment for civil society and human rights defenders."<sup>9</sup>

***Considering the concerns raised by the Committee and the recommendations raised by the UPR to the Philippine government on the issue of extra-judicial killing, we suggest that the Committee against Torture in its LOIPR to request the State to:***

- a. Give reasons why statements of top public officials in support of the killings could not be considered as tantamount to encouraging impunity and inciting vigilante-style executions and torture in the name of war-on-drugs
- b. Provide evidence that investigations of cases of extra judicial killings (many of which are listed by the police as 'deaths under investigation' or 'homicide') are being carried out and show results of prosecutions against direct perpetrators, including those with command responsibility;
- c. Cite steps undertaken to clearly define "extrajudicial killings" in line with internationally recognized standards.
- d. Identify measure for the effective protection of witnesses to alleged enforced disappearances and extrajudicial killings and their immediate families
- e. Show basis on how police officers engaged in anti-drug operations can declare that killings perpetrated by them enjoy the presumption of regularity;
- f. Indicate how access to effective remedies, such as the writs of *amparo*, *habeas corpus*, or *habeas data*, which protect the rights to life, liberty, and property of the people may be made accessible to victims of extra judicial killings.
- g. Show evidence that human rights training of law enforcers result to improved observance of human rights of persons targeted by their operations.

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<sup>7</sup> <https://af.reuters.com/article/worldNews/idAFKBN1JFoBo>

<sup>8</sup> <https://www.iceland.is/iceland-abroad/efta/news/statement-of-iceland-on-the-human-rights-situation-in-the-philippines/13646/>

<sup>9</sup> <https://www.iceland.is/iceland-abroad/efta/news/statement-of-iceland-at-the-35th-session-of-the-human-rights-council/13562/>

### C. Right to redress and rehabilitation

16. Torture victims have a right to rehabilitation under Article 14 of the UN Convention against Torture. Section 19 of the Anti-Torture Act provides for an elaborate rehabilitation programme for torture victims has been developed through strong engagement from civil society including Balay. But for most torture victims, rehabilitation is not a lived reality in the Philippines. This is partially due to lack of political willingness to take responsibility for the programme and adequately fund it and partly due to technical complications in delivering healthcare and psycho-social services in rural areas in the Philippines. Aside from the DSWD and the Bureau of Jail Management and Penology (BJMP), which have drafted their respective guidelines, results of the effective implementation of those programs are yet to be realized.
17. The absence of a coordinating agency creates a risk that rehabilitation services will become compartmentalized within the different responsible agencies and thus not fulfil the objective of taking a holistic approach to the victim's needs. This lack of specificity may tempt government agencies, who have already demonstrated a lack of interest and ability in providing specialized rehabilitation services to torture survivors, to not diligently implement the programme.
18. Only a few victims and their family members have accessed rehabilitation service to date, mostly through the referrals made by Balay. Stakeholders have affirmed the idea that there should be a focal agency to coordinate the referral and case management process between the national agencies mandated to implement the rehabilitation program and similar mechanisms to be established at the regional and local levels. Each mandated agency is expected to come up with their respective budget and case management unit to implement their obligation under the law. Without this, government agencies may simply consider torture victims' rehabilitation as one of the many service components that they are already undertaking without establishing the necessary expertise and capacity of its human resources.
19. Environmental factors and lack of security or stability that impedes or prevents access will render available services inadequate. Many torture survivors do not feel safe and secure enough to approach and access rehabilitation services believing that the concerned government agencies will be biased against them. For example, in places where conflict or political instability is ongoing, torture survivors may run the risk of discrimination and further harassments from authorities. Independent service providers also face some security risks. In these situations, the availability of rehabilitation service providers such as NGOs is compromised, as NGOs are bridging the gap by providing the majority of torture rehabilitation services.
20. Despite the risks involved, many victims in the Philippines do try to obtain recognition and accountability for torture because it is seen as an important part of their full rehabilitation. While the law contains progressive provisions on investigation, prosecution and victims support; victims and their relatives' lack adequate information regarding their rights under the law, and the options available to them to lodge a complaint and to access rehabilitation.

***The Committee, in its concluding observations in May 2016, has expressed concerned at the absence of implementation of section 18 of the Anti-Torture Act, which provides for compensation to victims of torture, and section 19, which provides for the formulation of a rehabilitation programme for victims of***



**torture. It is also concerned at the complexity of the existing agencies and processes with overlapping jurisdictions, which makes it difficult for victims to know to where to apply. Thus, we suggest that the Committee against Torture in its LOIPR to request the State to:**

- a. Provide information on initiatives on formulating a detailed rehabilitation programme for torture victims and the results and action taken to address the challenges in the implementation of such programme
- b. **Identify a specific lead coordinating agency** at the country level for the implementation of the rehabilitation programme and make clear and adequate budgetary provisions for the programme to function as a specialized service;
- c. Show evidence that the programme offers specialized rehabilitation services that are appropriate, available and promptly accessible, in accordance with general comment No. 3, and that access is not conditional on the filing of formal administrative or criminal complaints;
- d. Cite steps undertaken to establish a programme for monitoring and evaluating the impact of the rehabilitation programme that includes a system of data collection in order to identify the number of victims and their specific rehabilitation needs

#### **D. Torture and inhumane **conditions of detention****

21. Report from the Bureau of Jail Management and Penology (BJMP) showed a steady rise in the number of jail population in the last three years<sup>10</sup>. It placed the overcrowding rate at 617% in 2017, where 149,331 persons deprived of liberty share spaces that can only accommodate an ‘ideal jail capacity’ of 20,793. The Bureau said that congestion rate was 511% in 2016 and at 409% in 2015. Conditions in those places of deprivation of liberty include dilapidated and small cells, in some of which detainees are **forced to sleep while sitting or standing**, unsanitary conditions, inadequate amounts of food, poor nutrition, insufficient natural and artificial lighting and poor ventilation, which cause inter-prisoner violence and the spread of infectious diseases such as tuberculosis, the incidence of which is extremely high. BJMP officials, themselves, have acknowledged that jail overcrowding does not meet minimum international standards and may constitute ill-treatment or torture.
22. This phenomenon afflicts **police lock up jails** as well. Police jails are practically bursting to the seams following the order of President Duterte to apprehend “tambays” or night time idlers in streets whom he considers as “potential trouble for the public” last June 13. **The intensified police operations have resulted to 7,290 arrests in Metro Manila and the suspected death due to torture of a detainee in a police lock up jail in Quezon City**, a week after the chief executive issued the directive to police officers.
23. **Policemen arrested Genesis Argoncillo, 22, on June 15 because he was not wearing a shirt.** Four days later he died in a hospital bearing marks of senseless beating. Supt. Carlito Grijaldo, commander of Quezon City Police Station 4, said Argoncillo's death was self-inflicted, claiming the detainee was "mentally disturbed" and was uncontrollable, making a scene inside the cell. A copy of Argoncillo's death certificate obtained by ABS-CBN News

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<sup>10</sup> Presentation of BJMP Officer during the Balay-organized Forum-Consultation on Jail Decongestion and Humane Treatment of Persons Deprived of Liberty in October 2017.

from the family said the victim died of multiple blunt force trauma in the neck, head, chest, and upper extremities. The family said they even saw bruises on his shoulders and hips.<sup>11</sup>

24. Staying or wandering in public spaces is not a criminal offense as vagrancy was already decriminalized through Republic Act 10158 way back in 2012. The police must first have either an arrest warrant or a valid and legal reason before they can arrest or detain idlers or any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets.
25. Six persons have already been arrested without lawful basis in Makati City on June 17. Facebook user Ttam Nanaramid said they were arrested and detained by the police in Makati for no apparent reason while waiting outside his friend's house at around 11 p.m. The authorities told them that they just seek some answers on their presence in the area where a small group of local residents were arrested for having a drinking session along the street. They were subsequently locked up in a detention facility. When they asked about the basis of their arrest, a police reportedly showed them a video clip of President Duterte's order against "tambay" (loiterers) and told them that the President's words are law. Two police officers were relieved pending the result of the investigation on their possible abuse of discretion of authority.<sup>12</sup>
26. Three suspected drug users died apparently due to illness aggravated by heat and exhaustion, from February to April 2018 in Pasay Police Station. Housed in the same building used by the police investigation and detective management section, the 22.8-square-meter jail is originally meant for only 40 people but holds 143, according the section chief.<sup>13</sup>
27. Between May and June 2018, five persons detained in police lock up jails in Quezon City and in Manila died either due to heat stroke or illnesses made worse by overcrowding and lack of health and sanitation facilities.<sup>14</sup>
28. The Bureau of Correction (BuCor) which manages the National Bilibid Prison (NBP) and six penal colonies where convicted prisoners are confined disclosed that it currently supervises 42,986 prisoners with an average congestion rate of 123 percent. NBP has 26,516 prisoners, way above its capacity of 10,082, resulting in a congestion rate of 163 percent and occupancy rate of 263 percent.<sup>15</sup> Inmates and their family members have complained of stringent rules and hard fisted treatment by members of the police Special Action Force (SAF) assigned to check on "narco-machinery" inside the prison. Among their laments are the rigid restrictions on their visitors and service providers, and the verbal abuse they suffer from prison guards. In May 2017, around 900 prisoners suffered from diarrhea traced to spoiled food.<sup>16</sup>
29. A concealed place of detention was discovered in a police station of the Manila Police District (MPD) in Raxabago, Tondo, Manila where suspected drug offenders were detained at a "closet-sized cell" for days with only one ceiling fan and one male urinal, forcing them to defecate in plastic bags. The Commission on Human Rights said it discovered that 12 persons

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<sup>11</sup> <http://news.abs-cbn.com/focus/06/20/18/binaboy-nila-kapatid-ko-family-seeks-justice-for-man-allegedly-beaten-to-death-in-detention>

<sup>12</sup> <https://www.philstar.com/headlines/2018/06/20/1826289/cops-axed-wrong-tambay-arrest>

<sup>13</sup> <http://newsinfo.inquirer.net/982044/heat-congestion-blamed-for-pasay-inmates-death#ixzz5IOElDeCn>

<sup>14</sup> <https://www.philstar.com/nation/2018/06/02/1820763/2-inmates-die-manila-quezon-city>

<sup>15</sup> <https://news.mb.com.ph/2018/05/07/bato-to-bilibid-inmates-my-rules-not-yours-2/>

<sup>16</sup> <http://newsinfo.inquirer.net/900499/deliberate-poisoning-of-900-nbp-inmates-possible-aguirre>



were locked up in a one by 5-meter cell, which was actually just a hole in the wall of the station's Drug Enforcement Unit covered with an open shelf. Some of the detainees said they had not eaten for days, while others said they **were beaten and electrocuted with a taser**, the CHR added.<sup>17</sup>

***The Committee has raised strong recommendations on the conditions of detention in its recommendations in May 2016. We suggest that the Committee against Torture in its LOIPR to request the State to:***

- a. *Provide evidence of its compliance to the recommendations of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arising from its visit to the country in 2015.*
- b. *Give reasons why police authorities in charge of lock up cells may not be held accountable for deaths of detainees under their custody.*
- c. *Show the results of investigation on the **alleged 'secret cell' in the Raxabago Police Station** and identify steps taken to make accountable those implicated in the incident and to make sure that similar occurrence will not be repeated.*
- d. *Cite measures undertaken to ensure that the treatment of prisoners in NBP are aligned with the UN Minimum Standard on the Treatment of Prisoners.*
- e. *Identify the measures to support efforts of the BJMP to decongest their facilities and improve the treatment of persons deprived of liberty.*

#### **E. National preventive mechanism**

30. It has been more than five years since the Philippines ratified the Optional Protocol to the Convention against Torture, the State party has not yet established a national preventive mechanism. A bill proposing the creation of a National Committee for the Prevention of Torture (NCPT) has been filed in Congress. Yet the legislative process remains to be too slow.

***We suggest that the Committee against Torture in its LOIPR to request the State to:***

- a. *Provide an update on initiatives to, without further delay, establish a national preventive mechanism based on a legislative act.*
- b. *Identify salient provisions in the proposed mechanism that provides for its resources necessary to fully carry out its mandate independently and effectively, in conformity with the provisions of the Optional Protocol to the Convention.*
- c. *Cite steps undertaken to facilitate the regular monitoring of places of detention by non-governmental organizations, to complement the monitoring undertaken by the national preventive mechanism.*

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<sup>17</sup> <http://newsinfo.inquirer.net/895871/chr-asks-ombudsman-to-probe-tondo-secret-detention-cell#ixzz5IO4wkhIr>