

## DECISION No. 1/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Roland Abiog and Antonio Cabardo, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The source, in its communications of 18 June and 27 July 1992, informed the Working Group that both Roland Abiog and Antonio Cabardo were released on bail. Instead of filing the case in terms of paragraph 14 (a) of the Methods of work adopted by the Working Group, it has, despite the release of Roland Abiog and Antonio Cabardo, decided to render its decision since the case involves the settlement of a question of principle.

6. In the case of Roland Abiog, he was arrested under a "John Doe" warrant on 28 July 1991, in Tondo, Manila. He was allegedly taken to the PNP Jail Camp Crame in Quezon City and charged with violation of P.D. 1866, subversion (in violation of the law R.A. 1700) and kidnapping with serious illegal intention. On 2 December 1991 the Regional Trial Court of Lucena City (Branch 57) allegedly ordered the dismissal of the cases against him, his release and the recall of the arrest warrant. In the case of Antonio Cabardo, it is alleged he was arrested under a "John Doe" warrant on 9 April 1990 at the Ninoy Aquino International Airport. The warrant was produced only after his arrest. He was not allowed to see his attorney until after the inquest. He was allegedly transferred to the PNP Jail Camp Crame in Quezon City. The detention order was allegedly issued, after the inquest, by the Pasay City Fiscal's office. He was allegedly charged with violation of P.D. 1866 and kidnapping with serious illegal intention.

7. The irrefutable facts are that both Roland Abiog and Antonio Cabardo were arrested under a "John Doe" warrant and in the case of Antonio Cabardo, the said warrant was produced only after his arrest. The practice of issuing "John Doe" warrants and arresting persons without identifying them in the warrant of arrest entitles the authorities to arrest persons without first applying their minds as to their identity. Such a procedure cannot but be considered as arbitrary. The person concerned is neither identified nor are the reasons for his arrest known at the time of effecting it. It vests in the authorities effecting the arrests unbridled and unfettered exercise of power which cannot be justified under acceptable international norms and standards. Such arrests effected under "John Doe" warrants are in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

8. Roland Abiog was also charged with subversion under P.D. 1866 and subversion in violation of R.A. 1700. The Presidential Decree No. 1866 (P.D. 1866), for ensuring public order and safety, stipulates the circumstances in which the illegal manufacture of firearms and ammunition may be presumed and deals with the unlawful manufacture, sale, acquisition, disposition or possession of explosives and presumptions and penalties relating thereto. The Republic Act 1700 (R.A. 1700) declares the Communist Party of the Philippines to be an organized conspiracy to overthrow the Government of the Republic of the Philippines by force, violence, deceit, subversion or other illegal means. Overt affiliation and membership of the Communist Party involves diverse consequences including the penalty of "prison correctional". Conspiracy to overthrow the Government involves penal consequences.

9. The facts as brought on record do not indicate that Roland Abiog was in possession of any arms or was in any way indulging in unlawful manufacture, sale, acquisition, disposition of firearms or ammunition of instruments used or intended to be used in the manufacture of firearms and ammunitions nor do facts as disclosed seek to connect Roland Abiog with any of the offences under which he could possibly be charged under P.D. 1866. The fact that Roland Abiog had been charged under the Republic Act 1700 suggests that he had been arrested only on account of his being a member of the Communist Party of the Philippines. His detention was clearly illegal as it seems to have been effected because of his holding opinions which he is entitled to as part of his right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

10. In the case of Antonio Cabardo, apart from his illegal arrest, his detention under P.D. 1866 was also arbitrary. Nothing stated in the facts could possibly have led to the conclusion that he was in any way involved in any of the activities to which P.D. 1866 applies.

11. In the light of the above the Working Group decides:

The detention under a "John Doe" warrant, of Roland Abiog and Antonio Cabardo is declared to be arbitrary despite their release on bail, being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and

Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group. Roland Abiog having been detained for being a member of the Communist Party of the Philippines, his detention is also declared to be in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within Category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Having declared the detention of Roland Abiog and Antonio Cabardo to be arbitrary, the Working Group requests the Government of the Philippines to take note of its decision and in the light thereof bring its laws into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993