

DECISION No. 5/1993 (PHILIPPINES)

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

Concerning: Rafael G. Baylosis, Benjamin de Vera and Ponciano Resuena, 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 cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In the case of Rafael G. Baylosis, he was arrested on 29 March 1988 in San Juan, Metro Manila, under an allegedly defective search warrant issued by the Pasig Regional Trial Court. He was allegedly transferred to the PNP Jail Camp Crame in Quezon City on 12 June 1988 where he continues to be in detention charged with violation of P.D. 1866. In the case of Benjamin de Vera, he was arrested on 29 March 1988 in San Juan, Metro Manila, under a search warrant which was later proven defective and suppressed by the Regional Trial Court. He allegedly continues to be in detention at the PNP Jail Camp Crame in Quezon City, on charges of violation of P.D. 1866. In the case of Ponciano Resuena, he was arrested under a search warrant issued for a person called Sonny Resuena, on 31 July 1991. He was allegedly transferred to the PNP Jail Camp Crame in Quezon City on 4 August 1991, charged with violation of P.D. 1866.

6. In the case of Rafael G. Baylosis his arrest under a defective search warrant is illegal, contrary to accepted international standards. Arrest without a valid search warrant is deemed to be arbitrary. It is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The fact that he has been charged with violation of P.D. 1866 also suggests that his continued detention is arbitrary. The facts as disclosed do not suggest that he has indulged in any of the activities considered to be prohibited under P.D. 1866 in terms of which a person can be charged with unlawful manufacture, sale,

acquisition, disposition or possession of firearms or ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. Nor do the facts as alleged indicate that Rafael G. Baylosis was in any way connected with the unlawful manufacture, sale, acquisition, disposition or possession of explosives or that any of his activities were in furtherance of or connected with crimes of rebellion, insurrection or subversion.

7. In the case of Benjamin de Vera the facts clearly indicate that the warrant of search which was proved to be defective was made the basis of a search and a subsequent arrest without a warrant. It is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The allegations against him are also for violation of P.D. 1866. None of the facts alleged against him indicate any activities on his part which would attract any of the provisions of P.D. 1866.

8. In the case of Ponciano Resuena his detention is clearly arbitrary since he was arrested under a search warrant issued with reference to another person. It is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. He too stands charged with violation of P.D. 1866. None of the facts alleged against him indicate any activities on his part which would attract any of the provisions of P.D. 1866.

9. In each of the cases the warrant issued against each of the persons was defective, disentitling the authorities to effect the arrest. Besides, the facts as disclosed do not indicate that the activities of each of them attract any of the provisions of P.D. 1866 entitling the authorities to proceed against them and charge them with violation of any of the provisions of P.D. 1866.

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

The detention of Rafael G. Baylosis, Benjamin de Vera and Ponciano Resuena is declared to be arbitrary 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.

11. Consequent upon the decision of the Working Group declaring the detention of Rafael G. Baylosis, Benjamin de Vera and Ponciano Resuena to be arbitrary, the Working Group requests the Government of the Philippines to take the necessary steps to remedy the situation in order to bring it 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