

DECISION No. 30/1993 (PHILIPPINES)

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

Concerning: Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Antonio Lacaba, Rogelio Laurella, Virgilio Maceda, Alejandro Mandamian, Federico Marizana, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Pérez, Honesto Pesimo Jr., Panfilo Ricablanca, Jerry Robilon, Nathaniel Jonathan Sallacay Jr., Francisco Salle, Ruben Tan-Awon, and Rogelio Tupas 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 except in the case of Francisco G. Salle Jr. 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, except to the extent indicated in paragraph 2 hereinabove, 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. The source in its communication of 18 June 1992 informed the Working Group that Nathaniel Jonathan Sallacay and Alejandro Mandamian were released after their acquittal on 1 June 1992. Pánfilo Ricablanca and Rogelio Tupas were also released after their acquittal on 24 March 1992 and September 1992 respectively. The source, on 4 September 1992, has also informed the Working Group that both Antonio Lacaba and Virgilio Maceda were released on bail in August 1992, and, on 21 December 1992, that Honesto Pesimo Jr. has also been released on bail.

6. Instead of filing the cases in respect of Nathaniel Jonathan Sallacay, Alejandro Mandamian, Panfilo Ricablanca, Rogelio Tupas, Antonio Lacaba, Virgilio Maceda and Honesto Pesimo, in terms of paragraph 14 (a) of the

Methods of Work adopted by the Working Group, it has, despite their release, decided to render its decision since the cases of each of the persons concerned, along with others not released thus far, involves the settlement of certain questions of principle.

7. In the case of:

Reynaldo Bernardo; he was allegedly arrested without a warrant on 4 November 1990, in Quezon City. He was allegedly transferred to PNP Jail Camp Crame in Quezon City where he allegedly remains in detention, charged with violation of P.D. 1866.

Francis Bundaco; he was allegedly arrested without a warrant on 24 April 1990 at Lala, Lanao del Norte. He was not informed of the reasons for his arrest. He allegedly remains in detention at Lanao del Norte Provincial Jail, charged with being a member of the New People's Army and murder.

Rolando Datoon; he was allegedly arrested without a warrant on 27 November 1989 at his home. He was not informed of the reasons for his arrest. He was allegedly taken to the Municipal Jail of E.B. Mangalona on 29 November 1989 where he remains in detention on charges of double murder.

Eduardo Diolola; he was allegedly arrested without a warrant on 24 April 1990 at Lanipao, Lanao del Norte. He was not informed of the reasons for his arrest. He allegedly continues to be in detention at Lanao del Norte Provincial Jail, charged with being a member of the New People's Army and murder.

Mario Flores; he was allegedly arrested without a warrant on 7 August 1990 at his home. He was not informed of the reasons for his arrest. Since 4 October 1990 he allegedly continues to be in detention at the Provincial Jail on charges of kidnapping with serious illegal intention.

Eliezer Hemongala; he was allegedly arrested without a warrant on 23 April 1991 at Kolambugan, Lanao del Norte. He allegedly continues to be in detention at Lanao del Norte Provincial Jail, charged with being a member of the New People's Army and robbery of firearms with multiple homicide. He was allegedly denied visits by his family during two weeks and was not granted access to legal counsel during two months. Charges against him were allegedly filed only one month after his arrest.

Juanito Itaas; he was allegedly arrested without a warrant on 27 August 1989 at Davao City. He was not informed of the reasons for his arrest. He was allegedly taken to the PNP Jail Camp Crame in Quezon City where he continues to be in detention, charged with violation of P.D. 1866, murder and frustrated murder.

Antonio Lacaba; he was allegedly arrested without a warrant on 29 July 1991 in Novaliches, Quezon City, by Major Hernando Zafra. He was not informed of the reasons for his arrest. He was allegedly taken to the PNP Jail Camp Crame in Quezon City charged with violation of P.D. 1866 and subversion.

Rogelio Laurella; he was allegedly arrested without a warrant on 16 August 1989 at his home by 16 military men led by Sgt. Castillo of the 331st PC Company. He was not informed of the reasons for his arrest. Since 18 September 1989 he continues to be in detention at the Provincial Jail on charges of arson.

Virgilio Maceda; he was allegedly arrested under a search warrant on 29 July 1991 near his home, by security personnel under the command of Lt. Col. Robert Delfin. Allegedly no arrest warrant was shown. He was allegedly transferred to the PNP Jail in Quezon City on 7 August 1991 under a detention order issued by the Police Intelligence Security Group (PISG). He was charged with violation of P.D. 1866, murder, kidnapping with serious illegal intention and subversion.

Alejandro Mandamian; he was allegedly arrested without a warrant on 6 September 1990 at Iligan City. He was detained at Iligan City Jail, charged with violation of R.A. 1700. His lawyers were allegedly not granted access to him during 12 days.

Federico Martizano; he was allegedly arrested without a warrant on 6 July 1990 in Bago City. He was allegedly not informed of the reasons for his arrest. When on 6 August 1990 he was due to be released he was apparently re-arrested. He was taken to the Provincial Jail on 28 November 1990 where he continues to be in detention on charges of subversion.

Dionoro Miniao; he was allegedly arrested without a warrant on 3 December 1990 at Kolambugan, Lanao del Norte. He was not informed of the reasons for his arrest. He was allegedly transferred to San Ramon Penal Colony, Zamboanga City, where he remains in detention on charges of multiple murder.

Hermes Nayona; he was allegedly arrested without a warrant on 20 September 1990 at Maigo, Lanao del Norte and he continues to be in detention at San Ramon Penal Colony, Zamboanga City, charged with violation of P.D. 1866 and multiple murder. His lawyers were allegedly denied access to him during 10 days.

Joseph Obedencio; he was allegedly arrested without a warrant on 1 May 1991 at Kolambugan, Lanao del Norte, and transferred to Lanao del Norte Provincial Jail where he continues to be in detention on charges of being a member of the New People's Army and robbery of firearms with multiple homicide. His lawyers were allegedly denied permission to visit him until 17 May 1991.

Joseph Olayer; he was allegedly arrested without a warrant on 9 July 1991 at North Harbor, Tondo, Manila. Until 23 September 1991 he was allegedly held at the ISAFP headquarters in an isolation cell. On that day he was transferred to the PNP Jail in Quezon City where he continues to be in detention, charged with violation of P.D. 1866, multiple frustrated murder, multiple murder and arson. He was allegedly denied access to his lawyer for one month.

Maurizio Paas Jr.; he was arrested without a warrant on 30 July 1991. He continues to be in detention since 5 August 1991 at the PNP Jail Camp Crame in Quezon City, charged with violation of P.D. 1866 on account of material found when his house was searched the day after the arrest.

Claudio Pérez; he was arrested without a warrant on 26 May 1991 at his home by military personnel under the command of Sgt. Flores, who shot Claudio's neighbour to death. Claudio was ordered to take the body to the Biao Detachment from where he was allegedly not allowed to leave. He was allegedly transferred to the Municipal Jail of Binalbagan on 3 June 1991 after his attorney had written a letter on 31 May 1991 requesting his release. It was only then that charges of kidnapping with serious illegal intention were allegedly filed against him. He continues to be in detention since 21 June 1991 at the Provincial Jail.

Honesto Pesimo Jr.; he was arrested without a warrant on 12 May 1990 at Tunsuya Malabon, Metro Manila, where he was allegedly tortured in order to force him to admit that he was a rebel. He allegedly was in detention at the PNP Jail Camp Crame in Quezon City, charged with violation of P.D. 1866, murder and frustrated murder.

Panfilo Ricablanca; he was arrested without a warrant on 4 November 1991 at Iligan City Jail on charges of being a hit man of the New People's Army in violation of R.A. 1700 and P.D. 1866.

Jerry Robilon; he was arrested without a warrant on 2 August 1989 at Murcia Proper, by military personnel under the command of Sgt. Nono Pederio. He was transferred to the Provincial Jail on 18 September 1989 where he continues to be in detention, charged with arson.

Nathaniel Jonathan Sallacay Jr.; he was arrested without a warrant on 6 September 1990 at Iligan City. His lawyers were not allegedly allowed to visit him until 18 September 1990. He allegedly was in detention at Iligan City Jail, charged under the Anti-Subversion Act R.A. 1700 with being an illegal recruiter and organizer of the Communist Party of the Philippines and the New People's Army.

Francisco Salle; he was arrested without a warrant on 7 April 1990 in Galas, Quezon City, by security personnel under the command of Col. George Alino. He was allegedly transferred to PNP Jail Camp in Quezon City where he continues to be in detention, charged with murder and arson.

Ruben Tan-Awon; he was arrested without a warrant on 4 December 1991 at Kolambugan, Lanao del Norte. His family was allegedly not allowed to visit him during the first two weeks. He allegedly continues to be in detention being a member of the New People's Army. These charges were not filed against him until twenty (20) days after his arrest.

Rogelio Tupas; he was arrested without a warrant on 24 December 1989 at Sagay Proper. He allegedly was in detention at the Provincial Jail, charged with murder.

8. The facts as alleged in the case of Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Antonio Lacaba, Rogelio Laurella, Virgilio Maceda, Alejandro Mandamian, Federico Martizano, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Perez, Honesto Pesimo Jr., Panfilo Ricablanca, Jerry Robilon, Nathaniel Jonathan Sallacay Jr., Francisco Salle, Ruben Tan-Awon, and Rogelio Tupas indicate that each of them was arrested without a warrant. Pursuant to his arrest each was charged for the commission of offences. The facts further indicate that each at the time of his arrest was not informed of the reasons for the arrest. The practice of first arresting a person without warrant and thereafter charging him with commission of offences is one which enables the authorities to justify the arrest on grounds which did not exist at the time of the arrest.

9. Rule 113 of the Philippines Rules of Criminal Procedure entitles, under Section 5, certain Peace Officers or a private person to arrest a person without a warrant in three circumstances. These are:

(a) When in the presence of the person seeking to effect the arrest, the person to be arrested has committed, is actually committing, or is attempting to commit an offence;

(b) When an offence has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgement or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

10. In cases falling under the first two categories hereinabove the person arrested without a warrant is required under the law to be forthwith delivered to the closest police station or jail and thereafter is required to be prosecuted against in accordance with Rule 112, Section 7.

11. The facts indicated in each of the cases concerning each of the individuals named herein do not indicate that the arrests were effected while the person arrested had either committed or was actually committing or attempting to commit an offence. Nor do the facts indicate that the person had been arrested in relation to offences of which he had personal knowledge indicating that the person to be arrested had committed the offence. The facts do not suggest that any of the persons arrested was at the time of

arrest in the process of committing an offence or had any personal knowledge of facts in respect of an offence which had been committed indicating his involvement in the commission of offences. Authorities have taken recourse to Rule 113 of the Philippines Rules on Criminal Procedure for effecting arrests without a warrant, without fulfilling the conditions precedent for the exercise of the said powers. The fact that each of those arrested was subsequently charged with commission of offences without establishing the necessary facts relating thereto, would not justify the initial arrest without a warrant.

12. In the case of Reynaldo Bernardo, Antonio Lacaba, Virgilio Maceda, Joseph Olayer, Mauricio Paas Jr., Honesto Pesimo Jr., and Panfilo Ricabalanca, each of them was charged for violation of P.D. 1866 which declares illegal the unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. It further creates a presumption of illegal manufacture of firearms or ammunition pursuant to possession of any machinery, tool or instrument used directly in the manufacture of firearms or ammunitions. The Decree seeks to impose a penalty of death on all those who in violation of the Decree unlawfully manufacture, assemble, acquire, dispose or possess explosives in connection with the crimes of rebellion, insurrection or subversion. What amounts to rebellion, subversion or insurrection is not defined in the Decree. The facts do not indicate that any of the said persons were involved in any such activity so as to justify his being charged under P.D. 1866. The pattern of arresting persons without a warrant and subsequent indictment by filing unsubstantiated charges against them indicates a pattern of conduct which is clearly arbitrary.

13. In the case of Francis Bundaco, arrested without a warrant, he has been charged with being a member of the New People's Army and murder. Reasons for his arrest were not disclosed to him at the time of effecting it. A similar allegation has been made in the case of Eduardo Diolola. Alejandro Mandamian, who was arrested without a warrant, was charged with violation of R.A. 1700. In terms of the said Act, Congress has declared the Communist Party of the Philippines to be an organization designed to overthrow the Government of the Republic of the Philippines by force, violence, deceit, subversion or other illegal means. Consequently the said Party has been declared to be illegal and outlawed. Alejandro Mandamian, who was arrested without a warrant, was charged under the said Republic Act, he being a member of the Communist Party of the Philippines. Hermes Nayona, who was arrested without a warrant, apart from being charged with gross violation of P.D. 1866 was also subsequently charged with multiple murder. Joseph Obedencio, who was arrested without a warrant, was charged subsequently with being a member of the New People's Army and robbery of firearms with multiple homicide. Joseph Olayer, who was arrested without a warrant, apart from being charged subsequently for violation of P.D. 1866, was also subsequently charged with multiple frustrated murder, multiple murder and arson. Honesto Pesimo Jr., who was arrested without a warrant, apart from a subsequent charge under P.D. 1866 was also subsequently charged with multiple and frustrated murder. Panfilo Ricabalanca, who was arrested without a warrant, was subsequently charged, apart from violation of P.D. 1866, also for violation of R.A. 1700, apparently being a member of the Communist Party of the Philippines. Jonathan Sallacay Jr., who was arrested without a warrant, was subsequently

charged under R.A. 1700 being a recruiter and organiser of the Communist Party of the Philippines and the New People's Army. Ruben Tan-Awon, who was arrested without a warrant, was subsequently charged with being a member of the New People's Army, charges which were filed twenty (20) days after his arrest.

14. The arrests of persons without warrant, without informing them of the reasons for their arrest, in violation of Rule 113 of the Philippines Rules of Criminal Procedure, and subsequent filing of charges, is violative of a persons's right to life, liberty and security of person and consequently is in violation of articles 3 and 9 of the Universal Declaration of Human Rights. It is also in contravention of article 9 of the International Covenant on Civil and Political Rights.

15. In the case of Francis Bundaco, Eduardo Diolola, Eliezer Hemongala, Alejandro Mandamian, Pánfilo Ricablanca, Jonathan Sallacay Jr., and Ruben Tan-Awon, apart from the fact that their detention is arbitrary being violative of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, each of them was apparently arrested for holding opinions and being members of Parties politically opposed to the Party in power. Therefore their detention is considered to be in violation of article 19 of the Universal Declaration of Human Rights, and of article 19 of the International Covenant on Civil and Political Rights. Each of these articles entitles persons to hold opinions without interference. Each of these persons is entitled to freedom of expression and ought not to have been arrested for holding beliefs which they are and were entitled to hold under universally accepted principles. Persons who are the members of the Communist Party of the Philippines, even though declared to be unlawful under the R.A. 1700, cannot be arrested on that account.

16. In the case of Francisco G. Salle Jr., the information forwarded on 23 March 1993, related to certain proceedings before the Commission on Human Rights set up by the Government of the Philippines, which has little bearing on the contents of the communication dated 8 April 1992.

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

(a) The arrest without warrant in the circumstances alleged, and despite the release of some of the persons concerned, in the case of Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Antonio Lacaba, Rogelio Laurella, Virgilio Maceda, Alejandro Mandamian, Federico Martizano, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Perez, Honesto Pesimo Jr., Panfilo Ricablanca, Jerry Robilon, Nathaniel Jonathan Sallacay Jr., Francisco Salle, Ruben Tan-Awon, and Rogelio Tupas is declared to be arbitrary being in contravention of articles 3 and 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.

(b) The detention of Francis Bundaco, Alejandro Mandamian, Eduardo Diolola, Eliezer Hemongala, Panfilo Ricablanca, Nathaniel Jonathan Sallacay Jr. and Ruben Tan-Awon is also declared to be arbitrary being in contravention 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.

18. Consequent upon the decision of the Working Group declaring the detention of Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Rogelio Laurella, Federico Marizana, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Pérez, Jerry Robilon, Francisco Salle and Ruben Tan-Awon 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.

19. Having declared the detention of Antonio Lacaba, Virgilio Maceda, Alejandro Mandamian, Honesto Pesimo Jr., Panfilo Ricablanca, Nathaniel Jonathan Sallacay Jr., and Rogelio Tupas to be arbitrary, the Working Group requests the Government of the Philippines to take note of its decision and in the light thereof take such steps as are necessary to bring its actions and 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