

DECISION No. 27/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 6 November 1992.

Concerning: Dioscoro Pendor, Teopanes Ilogon and Fermín Quiaman, 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. The facts as disclosed indicate that Dioscoro Pendor, Teopanes Ilogon and Fermín Quiaman were all arrested without a warrant. In the case of Dioscoro Pendor who was arrested on 23 August 1991, he has not only till date not been informed of the reasons for his arrest, but no charges have been filed against him. He allegedly remains in detention at the Daet Provincial Jail. Teopanes Ilogon was arrested without warrant on 30 July 1987 by members of the Integrated National Police/Philippines Constabulary (PC/INP) and of the Civilian Home Defence Force (CHDF), at Upper Sapong, Lagonglong, Misamis Oriental. He is reportedly detained at Provincial jail, Cagayan De Oro City, charged with murder and kidnapping. After having been held incommunicado for four days he was able to see his lawyer only after three months. Despite the completion of his trial till date no verdict has been pronounced. In the case of Fermín Quiaman he was allegedly arrested on 27 January 1989 by the PC/INP at Cogon Public Market, Lagayan De Oro City, charged with two counts of murder. The source asserts that Fermín Quiaman is a victim of mistaken identity. He was allegedly not informed of the charges against him, was held incommunicado for five days and subjected to torture during that time. The charges having been filed against him, his habeas corpus petition was dismissed as not maintainable.

6. The practice of detaining a person without a warrant enables the authorities to subsequently justify the arrest. In normal circumstances a preliminary inquiry should precede the arrest, entitling the authority to

effect it in justifiable grounds. The facts as alleged do not demonstrate any reason to deviate from the normal procedure of effecting an arrest after inquiry. The practice of arresting persons without warrant, represents a pattern of conduct (see Decision No. 3/1993 (Philippines)) which could render the detentions arbitrary in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

7. In the case of Dioscoro Pendor, he has till date not been charged with any offence. He has clearly suffered administrative detention for an obviously abusive period of time. There is nothing to suggest that Dioscoro Pendor, during the period of his detention, has had recourse to any procedure whereby his detention has been subjected to review by a domestic tribunal or in a court of law. Absence of such safeguards further renders the detention arbitrary in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

8. Teopanes Ilogon, who was arrested without warrant, could see his lawyer only after three months after his arrest. This was a denial of his right to be assisted by legal counsel. His detention is in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

9. In the case of Fermín Quiaman, his allegation that he was held incommunicado for five days and subjected to torture during that time has not been denied. Subjection to torture, cruel, inhuman or degrading treatment would render such a detention arbitrary, in violation of articles 5 and 10 of the Universal Declaration of Human Rights and articles 7 and 14 of the International Covenant on Civil and Political Rights.

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

The detention of Dioscoro Pendor is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 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.

The detention of Teopanes Ilogon is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 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.

The detention of Fermín Quiaman is declared to be arbitrary being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights, and articles 7, 9 and 14 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 Dioscoro Pendor, Teopanes Ilogon and Fermín Quiaman 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