

DECISION No. 3/1993 (PHILIPPINES)

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

Concerning: Augusto César 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 case 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 the case 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. Augusto César Tupas was arrested without a warrant on 30 November 1990, in Mandalagan, Bacolod. He was allegedly transferred to the Bacolod City Jail on 24 December 1990. A habeas corpus petition filed on his behalf by his wife was allegedly denied by Major Lázaro Torcita on the grounds that murder charges against him had already been filed. Nevertheless, it was alleged that the same officer himself filed the charges on 10 December 1990, four days after he had denied the petition. On 11 December 1990, RTC Vice Executive Judge Bethel Katalbas-Moscardon issued a warrant of arrest in connection with the murder charges filed against him. It was allegedly stated by the Second Assistant City Prosecutor that his arrest without a warrant was lawful and a preliminary investigation was not needed. On 17 December 1990 an arson charge was allegedly filed and a subsequent warrant of arrest was presented.

6. The facts demonstrate that the charges of murder filed against Augusto César Tupas were filed four days after the filing of the habeas corpus petition by August César Tupas's wife. The person denying the petition for habeas corpus, Major Lázaro Torcita, was the very officer who filed the charges four days after denying the habeas corpus petition, on the ground that the charges against Augusto César Tupas had already been filed. It is also clear that no preliminary investigation was conducted at the time of his arrest. The arrest of Augusto César Tupas is against accepted international norms and standards, he having been arrested without a warrant, without any preliminary investigation and without informing him of the reasons for his

arrest. This is in contravention 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 the officer filing the charges was the one who denied the habeas corpus petition itself suggests an arbitrary procedure in that the person filing the charges viz. the prosecutor, was the one who was entitled to deal with the habeas corpus petition. The fact that subsequently on 11 December 1990 a warrant of arrest was issued against Augusto César Tupas with murder charges against him suggests an attempt to justify the arbitrary arrest without a warrant effected on 30 November 1990. The filing of a charge of arson on 17 December 1990 reflects yet another attempt made by the authorities to justify the initial arbitrary arrest. More so when the facts do not demonstrate that Augusto César Tupas is in any way involved in the commission of the alleged offences.

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

The detention of Augusto César Tupas without a warrant on 30 November 1990 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.

8. Consequent upon the decision of the Working Group declaring the detention of Augusto César Tupas 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